

**MASSACHUSETTS
WORKERS' COMPENSATION ADVISORY COUNCIL
MINUTES**

November 8, 2017
Department of Industrial Accidents
1 Congress Street, Suite 100
Boston, MA 02114-2017

Council Members Present: Todd Johnson; John Pulgini; Mickey Long; Stephen Joyce; Stephen Falvey; Michael Kelley, Frank Ruel, James Steenbruggen, and Bernie Mulholland.

Also Present: Linda Edmonds Turner, Director; Bill Taupier, Director of Administration; Kevin O'Leary, General Counsel; Karen Fabiszewski, Director Workers' Compensation Trust Fund; Alan Green, Deputy Director of Investigations; Robert Cronin, Director of Investigations; Aaron D'Elia, CFO; Stetson Marshall, Director of Internal Audit; John Murphy, Executive Director, Massachusetts Insurance Federation; Secretary Rosalin Acosta, Executive Office of Labor and Workforce Development and Diane Walsh, Administrative Assistant to Director and General Counsel .

Advisory Council Staff: Maureen O'Connell, Executive Director

Absent: John Regan, Teri McHugh, and Executive Office of Housing and Economic Development.

Agenda:

Chairman's Welcome

DIA Update

- Judicial Update – Senior Judge Omar Hernandez
- Vital Statistics – Bill Taupier, Director of Administration
- Director's Update – Linda Edmonds Turner
- Workers' Compensation Trust Fund Update – Karen Fabiszewski, Director

Action Items

- Minutes
- September 13, 2017
- October 11, 2017

Communication

Executive Director Update

Miscellaneous

CHAIRMAN'S WELCOME

Chairman Todd Johnson began the meeting at 9:00 A.M. by saying that the Council does not quite have a quorum (6 votes at the outset of the meeting), but with traffic delays it is expected that Council members are on their way.

Chairman Johnson welcomed Secretary Rosalin Acosta, Executive Office of Labor and Workforce Development and asked if each Council member would identify themselves and mention which organization they represented.

Chairman Johnson asked Secretary Acosta if she had any commentary for the Council. Secretary Acosta provided her background and updated the Council on programs and missions of the Executive Office of Labor and Workforce Development. Secretary Acosta added that she has an open door policy and if improvements need to be made she is welcome to suggestions.

Chairman Johnson offered the floor to Senior Judge Omar Hernandez to provide the judicial update.

DIA UPDATE

Judicial Update

Senior Judge Omar Hernandez explained that the conference queue is running between three and four months decreased to 942 for the month of October, 2017 (the September figure was 1,034).

With regard to the new Judge, Thomas Daniels, the caseload has increased because of the need to shuffle judges while Judge Daniels is in training in Boston. Once Judge Daniels is settled in Springfield, Judge McNamara will move to Boston. Judge O'Neill has been transferred from Worcester to Fall River. Chairman Johnson asked Senior Judge Hernandez if he had a full roster of judges, he confirmed. Lastly, Judge Solomon announced her retirement and will be leaving the DIA at the end of the year. She was up for reappointment in 2018, as are a few other Judges; however, Senior Judge Hernandez indicated that she will most likely leave in December or early January 2018.

Senior Judge Hernandez provided an update on the Opioid Pathway Alternative Treatment Program. He was in Lawrence last week where three employees entered into the program, nine in total to date. Senior Judge had an interview with the New Hampshire Union Leader, the newspaper in Manchester NH highlighting his work with the New Hampshire Workers' Compensation Commission. Senior Judge Hernandez also presented at an opioid seminar in Connecticut last week with physicians and their Industrial Accident Board in hopes of developing a program in Connecticut. There's no trademark or copyright on this pathway treatment program, however if we can spread the word that this program can save lives it is all worth it. It's a new program, but people are investing in it and Judges are assisting these injured workers by assisting them through the process.

Chairman Johnson asked Senior Judge Hernandez if any of the nine candidates have completed the program, he responded not yet. The program is in its early stages, and it is Senior Judge Hernandez' intention to publicize the success stories on the website in the future.

Council Member Ruel asked Senior Judge Hernandez if there was any theme with the accepted candidates (i.e. similar insurance company/attorney), his response was no.

Director Turner asked if the Union Leader newspaper article was sent out, Executive Director O'Connell said that a copy was emailed to Council members yesterday.

Senior Judge Hernandez reminded the Council about the upcoming 2017 MCLE Conference and the successful 4th Workers' Compensation Conference that was held at Gillette Stadium in September.

Senior Judge Hernandez informed the Council of the passing of Attorney Rick McLeod, a mentor for many attorneys within the DIA.

Council Member Joyce asked Senior Judge Hernandez to provide an update on the recent Workers' Compensation Conference. Senior Judge Hernandez mentioned the fascinating presentation by ReWalk, a wearable robotic exoskeleton that provides hip/knee motion to enable individuals with spinal cord injury to stand upright and walk. The robotic is approximately \$100,000 and lasts ten years. The company is located in Marlboro, MA and would love to share their story. Senior Judge Hernandez is working with the company on providing a demonstration to the Council.

Council Member Long asked if the robotic was covered under the workers' compensation policy, Senior Judge Hernandez said that it was covered in New York.

Lastly, Senior Judge Hernandez mentioned that the list of cases that went over the twelve month mark decreased to twelve.

Without additional questions, Chairman Johnson directed the floor to Mr. Taupier.

Vital Statistics

Director of Administration Bill Taupier updated Council members on the information contained within the DIA's vital statistics report for October 2017.

The Review Board Inventory stayed fairly the same at 58 which is slightly down when compared to 66 in October. Impartial exams were at 1,321 for the year, 27 waivers. Fees collected: \$557,311 in fees collected.

With respect to Stop Work Orders (SWO), 167 were issued in the month of October (10 were defaults), with a total of 308 for FY 2018. Total fines for the month of October, \$89,366 with a FY2018 total of \$302,130.

Council Member Joyce directed his attention to Secretary Acosta and mentioned how the SWOs have significantly increased since his ten year stint on the Council. They have gone from 20 SWOs issued per month to over 100 by the investigative unit. The number of companies that have been brought under workers' compensation insurance and into compliance has significantly increased. Council Member Joyce commended the investigative staff for their tremendous effort in getting companies to comply with the workers' compensation regulations.

Secretary Acosta thanked Council Member Joyce for sharing this information.

Mr. Taupier provided the following statistics for SWOs: 167 for the month of October, 7,302 compliance checks were conducted, and an estimate of 1,696 workers had been brought under workers' compensation insurance coverage.

Without additional questions on investigations, Mr. Taupier offered the following statistics on cases filed within DIA: the number of cases filed for October 2017 was 991. First Report of Injury (FRI) filings for August were 2,664. Total FRIs filed for FY 2018 is 11,199. The total number of FRIs for FY 2017 was 33,854. Total cases filed for FY 2018 is 3,937. The total number of cases filed for FY 2017 was 11,924. Please note: a case is an employee claim, an insurers request for discontinuance, or a third party claim/lien.

Mr. Taupier offered the following statistics: the WCAC Trust Fund ended the month of October FY 2018 year with 45 uninsured persons reporting injuries. For FY 2017, a total of 133 new Section 65 injuries were recorded. Payments against open claims in FY 2018 stand at \$1,457,977. The Workers' Compensation Trust Fund made \$8,484,448 in payments against open claims during FY 2017.

Mr. Taupier continued with statistics on the recovery efforts against uninsured employers: for FY 2018 \$356,889 has been recovered by the Civil Litigation Unit and the Workers' Compensation Trust Fund.

Mr. Taupier provided FY 2018 statistics on the Second Injury Fund: \$5,162,907 in payments. The FY 2018 COLA reimbursements were \$31,932. These reimbursements generally come quarterly and the numbers will reflect this in the months to come.

Mr. Taupier continued with a personnel update: 220 employees for October 2017. There has been one new hire, Judge Daniels, and one departure in October. Two Trust Fund attorneys were also hired. Staff is kept at a level to the DIA need.

Mr. Taupier presented the statistics on the referral fees for FY 2018: \$1,559,100.

Lastly, Mr. Taupier provided statistics on the assessment collections: FY 2018 \$28,234,175 while the FY 2017 number was \$78,761,392.

Council Member Steenbruggen asked Mr. Taupier about the referral fees and whether they would be increasing. Mr. Taupier explained that a referral fee is charged when the matter is referred from conciliation to conference and that is more of a function of the cases coming through the DIA. Council Member Steenbruggen elaborated on his question and said that as the unemployment rate drops will there be an increase in injuries, to which Mr. Taupier said the trend shows the opposite, there are more injuries when the unemployment rate goes down.

Chairman Johnson inquired about the trust fund attorneys who moved on to becoming Administrative Judges and wondered how the replacement trust fund attorneys were doing. General Counsel O'Leary said it was an easy transition for the newly hired attorneys, Kathleen McNeil and Philip Ronan, who had over 15 years of experience each in handling workers' compensation cases.

Council Member Falvey asked Mr. Taupier how the DIA agency was funded. Mr. Taupier responded through employer assessments. Council Member Long commented that no taxes are used to fund the DIA.

In the context of the forthcoming WCAC Annual Report, Chairman Johnson mentioned to Secretary Acosta that the unique nature of the DIA funding is one item that will be highlighted in the report. Chairman Johnson also asked Mr. D'Elia about the potential sweep of the WCAC Trust Fund. Mr. D'Elia responded by saying that the final supplemental for FY 2017 budget passed recently and although there

was no official news of the potential sweep from Administration and Finance a final decision will be made shortly. Mr. D'Elia said that he would inform Executive Director O'Connell when the official statement has been made.

Without any further questions for Mr. Taupier, Chairman Johnson directed the floor to Director Turner.

Director Update

Director Linda Turner asked WCAC Director Fabiszewski to comment on the WCAC Trust Fund material that was provided in October's WCAC meeting. The Council asked Director Fabiszewski to provide information on the total payments made on trust fund cases for FY 2017. The lifetime payments on the case are highlighted on the third column.

Council Member Long asked for further clarification on the lifetime payments.

General Counsel O'Leary thanked Karen Fabiszewski and Jennifer Korzeniowski and the Trust Fund staff for manually preparing the information. Chairman Johnson said that Council appreciated the information as it was a follow-up to the questions generated by Council members in prior meetings.

Council Member Pulgini asked Director Fabiszewski to clarify the medical/indemnity payments on the lifetime claims.

Council Member Joyce addressed his statement to Secretary Acosta and said that the reason the trust fund claims are so high in medical payments is directly tied into the SWOs and the companies that are not in compliance with workers' compensation regulations.

Director Turner provided the Council with an update on the DIA agency move. The lease expires in July of 2020 and the process of seeking a new location is underway. A meeting with DCAMM will be held this afternoon.

Director Turner updated the Council on the drug formulary for opioids. The Governor is in the process of making statutory changes within the health and human services and labor and workforce Secretariats in the area of opioids. Massachusetts General Law Chapter 152 will reflect this change.

Director Turner commented on Senior Judge Hernandez' Opioid Pathway Treatment Program and how this program has gained national recognition. Director Turner thanked Senior Judge Hernandez for his work on this program.

Director Turner also mentioned the President's Opioid Report that was sent to the Council.

Council Member Pulgini asked Director Turner about the DIA agency move and whether the office will remain in downtown Boston. Mr. Taupier responded that the objective is to stay close to a major highway and MBTA transportation.

Chairman Johnson asked the Council if we could move the agenda around and discuss the Executive Director's update next.

Executive Director Update

Executive Director O'Connell provided an update on Council member terms/ expiration dates and vacancies. Although some terms have expired, the Executive Office of Labor and Workforce Development has instructed council members to perform their duties as necessary until the Governor tells them otherwise.

Regarding House Bill 3151 and email was sent to Council members updating them on this bill that was before the Joint Committee, left favorably from this Committee and is now before the Health Care Finance Committee. This bill is backed by MassCOSH and if passed it will significantly increase the costs on the trust fund and increase the assessment rates.

Council Member Kelley asked Executive Director O'Connell whether the Council sponsored that bill, she responded no.

Chairman Johnson asked the Council if they wanted to take a position on this bill it will be on the Agenda for December. Council Member Joyce asked that if there would be a position on HB3151 then other bills before the Joint Committee should be looked at.

Chairman Johnson asked Executive Director O'Connell to provide a list to the Council of bills before the Joint Committee.

Regarding the WCRIB filing of the audit noncompliance charge, Executive Director O'Connell provided an update on the telephone conversations had with the Attorney General's Office and the State Rating Board.

Council Member Long indicated that within the United States 34 of the states have the audit noncompliance charge. Council Member Long urged Council members to stay up-to-date with this charge and indicated that the AG has been in opposition of this charge.

Council Member Joyce asked Chairman Johnson why there was reluctance on behalf of the Attorney General.

Both Executive Director O'Connell and Council Member Long said that it wasn't their impression that there was reluctance from the Attorney General's office.

Chairman Johnson asked Executive Director O'Connell in addition to circulating the legislative bills that the audit noncompliance charge information be circulated to the Council as well.

Council Member Kelley suggested that Virginia McCarthy, General Counsel for WCRIB be invited to the December 13 meeting to discuss the audit noncompliance charge and their position on the matter.

Chairman Johnson requested that Executive Director O'Connell extend an invitation to Peter Leight of the Attorney General's office to attend the Advisory Council's December meeting.

Executive Director O'Connell provided an update on the subcommittee that was developed with the task of completing the 2017 WCAC Annual Report.

Executive Director O'Connell introduced Stetson Marshall, Director of Internal Audits. Previously, the Council had questions regarding the state of self-insured audits. Director Marshall provided an overview and said that he was in agreement with conducting self-insured audits; moving forward there will be a discussion about what the audit process will look like.

Council Member Long asked Director Marshall if self-insured groups would be audited and he said that would be reviewed. Chairman Johnson mentioned that self-insured groups are heavily monitored by the Division of Insurance.

Council Member Kelley explained that the self-insured and self-insured groups have the option of opting out of the trust fund. If these groups decide to do this, their assessment is lower than an insurer who participates in the second injury fund.

Council Member Falvey highlighted the trust fund information that was provided in the October meeting. Out of 130 employers on the list, 62 were in the construction industry.

Chairman Johnson asked if Director Marshall could update the Council at the December meeting.

Council Member Mulholland asked whether the results of the stand-alone audits would prohibit companies from participating in the system and if their bond rates would be impacted.

Director Marshall agreed with Council Member Mulholland in that accountability is important.

Chairman Johnson asked the Council to reach out to the Division of Insurance if they have questions with regard to self-insured groups. DOI has direct oversight, highly intensive, into these groups.

Chairman Johnson

Chairman Johnson commented that the Council had a quorum and that voting on the September 2017 and October 2017 minutes will be conducted. A motion to approve both September and October minutes was made and seconded.

Chairman Johnson thanked Secretary Acosta for her leadership and also thanked her for attending the WCAC meeting.

The next meeting of the Advisory Council is tentatively scheduled for Wednesday, January 10, 2018 at 9:00 A.M., at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.