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MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL

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JOHN A. PULGINI
CHAIR

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MAUREEN O'CONNELL
EXECUTIVE DIRECTOR

MINUTES

October 9, 2019

Department of Industrial Accidents
Lafayette City Center
2 Avenue de Lafayette
Boston, MA 02111-1750

Attendees: John Pulgini; Todd Johnson; Mickey Long; Stephen Joyce; Teri McHugh; Bernie Mulholland; Patrick Walsh; Sheri Bowles, Interim Director; Bill Taupier, Director of Administration; Omar Hernandez, Senior Judge; Kevin O'Leary, General Counsel; Peter Vitale, Lawrence Regional Manager; Halina Poliszczuk, Administrative Assistant; John Murphy, Massachusetts Insurance Federation; Ginny McCarthy, Workers' Compensation Rating and Inspection Bureau (WCRI); Roman Dolinski, Workers' Compensation Research Institute (WCRI); Kathy Fisher, Workers' Compensation Research Institute (WCRI); Evelina Radeva, Workers' Compensation Research Institute (WCRI); Maureen O'Connell; and Darnel Turbides.

AGENDA

Chairman's Welcome

DIA Update

- DIA Judicial Update – Omar Hernandez, Senior Judge
 - Conference/Hearing/Reviewing Board Queue
 - Impartial Medical Exams/Physicians
- DIA Vital Statistics – Bill Taupier, Director of Administration
 - Cases Filed with DIA
 - Workers' Compensation Trust Fund
 - Personnel Update
 - Enforcement and Compliance
- Director's Update – Sheri Bowles, Interim Director
- Executive Director's Update
 - FY 2019 Annual Report draft
 - Travel Reimbursement
- Action Items
 - Minutes – April 10, 2019

CHAIRMAN'S WELCOME

The meeting began at 9:10 AM; Chairman Pulgini announced the new Advisory Council member, Patrick Walsh of the Laborer's Union 223. Chairman Pulgini asked the attendees to make a brief introduction for Council Member Walsh.

Chairman Pulgini moved the agenda out of order and directed the floor to Director of Administration, Bill Taupier.

DIA UPDATE

Vital Statistics

Mr. Taupier said the October 2019 Conference queue is 530 cases, which is down compared to the September figure of 547. Currently, the average waiting period for conference is between 10 to 12 weeks. The October 2019 Hearing queue is 579. This is up when compared to the September figure of 480. Mr. Taupier said the Conference and Hearing queue remain consistent and held steady despite the office relocation and system upgrades. Senior Judge Omar Hernandez stated the time frame between conciliation and conference is 2 to 3 months and is consistent throughout all regions. Senior Judge Hernandez commended his staff; given the challenges they've faced over the last few months, stating the current numbers reflect their hard work.

Vice-Chairman Todd Johnson asked Senior Judge Hernandez if any Judges were still on medical leave. Senior Judge Hernandez said Administrative Law Judge Harpin retired in April, Judge Vieira will be retiring by the end of October, and Judge Braithwaite is doing ok and holding his own. Senior Judge Hernandez said, despite his staff dealing with various health issues, they received support from other Judges to assist with the workload, adding that the reappointment process begins next week, and the nominating panel is convening next Wednesday, October 16, 2019 for judicial interviews. There are four reappointments, Judge Williams, Judge Preston, Judge Calliotte, and Judge Herlihy, along with six external candidates for a total of 10 interviews. Council Member Stephen Joyce asked how many candidates in the pool have already been interviewed and through the process. Senior Judge Hernandez stated there were five.

Vice-Chairman Johnson asked what attributed to the increase of the Hearing queue for October. Senior Judge Hernandez confirmed the current Hearing queue is the result of continuances and an increase in conferences. Vice-Chairman Johnson commended Senior Judge's staff for keeping the numbers down.

Chairman Pulgini asked how the office relocation was going. Senior Judge Hernandez said that the move went well, and the Worcester regional office is settling into their new space. Council Member Teri McHugh asked if the Springfield regional office was relocating. Interim Director Sheri Bowles said that it is possible, but nothing that can be discussed now as the main focus is ensuring both Boston and Worcester offices are situated. Mr. Taupier added that they're not going to begin the moving process for Springfield until the beginning of the next calendar year

With respect to the overdue Hearing Decisions; Senior Judge Hernandez said they are in good shape as the numbers were brought down. There were 14 in July, 11 in August, and seven in September. Council Member Joyce commented on the Pending Hearing Decisions, stating that although he appreciates the numbers being brought down, it is always a concern when the numbers increase. Council Member McHugh asked if the stats are entered from the hearing date or when the record closes. Senior Judge Hernandez said the stats are entered when the record closes. Chairman Pulgini asked if Hearing Decisions were placed on hold when a discontinuance is submitted. Senior Judge Hernandez confirmed that it is put in a hold status as it could take up to a year to clear; noting that three of the Pending Hearing Decisions within the 12 to 36 month period are from discontinuances. Council Member Joyce asked if the two Pending Hearing Decisions in September are closer to the 9 or 12 month period. Senior Judge Hernandez confirmed it is closer to the 9 month period.

Council Member Mickey Long asked if the Alternative Dispute Resolution (ADR) cases had hearings with evidence presented. Senior Judge Hernandez confirmed they were presented, however, with these cases in ADR, the focus is moving them due to an increase in how long it takes to clear. Council Member Bernie Mulholland commented on the ADR and Division of Administrative Law Appeals (DALA) process, stating that it could take two to three years once you've been denied by the Local Board to get a hearing at DALA for a decision. Council Member Long asked about the Council's concern with the ADR process and the statutory obligation. Council Member Mulholland said they usually don't put ADR cases with DALA on a hold status unless there is an indication of a DALA decision.

Without any further questions, Chairman Pulgini directed the floor back to Mr. Taupier.

Mr. Taupier provided statistics for the Reviewing Board Inventory, stating there are 45 cases on appeal for the month of October. This is down when compared to the September inventory of 60.

The Impartial Medical Examinations (IMEs) were 841 for FY 2020; the number of fee waivers granted was 19 and \$453,216 in collected exam fees.

Looking at Enforcement and Compliance, Mr. Taupier provided statistics on Stop Work Orders (SWOs); 129 were issued in the month of September for a total of 326 in FY 2020. 10 SWOs were reissued as the result of defaults of previous orders. Fine collections for the month of September were \$66,059 with a FY 2020 total of \$128,457. For FY 2019, a total of 2,029 SWOs were issued; and collected \$1,165,656 in total fines. The Department of Industrial Accidents (DIA) conducted 6,481 compliance checks in the month of September, with an estimated 1,357 workers brought under workers' compensation insurance coverage. The office and field compliance checks are 2,517 (Office) and 3,964 (Field) totaling 6,481 compliance checks for the month of September 2019.

Cases filed with DIA claims administration for September 2019 was 1,115. First Report of Injury (FRI) filings for September were 2,783. Total FRIs filed for FY 2020 is 8,374. FRIs for FY 2019: 34,169. Total cases filed for FY 2020 is 3,065.

Cases filed in FY 2019: 12,659. Mr. Taupier noted that the yearly trend for cases filed with the DIA hovers around 12,000 and doesn't expect it to change.

Mr. Taupier continued with a further breakdown of cases filed with claims administration by type, adding that there were zero Third Party Claims for September 2019, which is down compared to the five in August of 2019. Council Member Long asked why there is a nearly 50% increase in insurance claims; wondering how it could go from 117 in July to 205 in September.

Mr. Taupier said the ratio for these cases are generally split 85/15, adding the claims filed in July 2019 was 677, which is lower compared to the 910 filed in September 2019. Mr. Taupier added the increase could also be due to the system being offline for two weeks. Council Member McHugh asked if the statistics reflect Form 108 (Insurer's Complaint for Modification, Discontinuance or Recoupment of Compensation) filings or Motions to join. Mr. Taupier said the recorded numbers only reflect Form 108 and Form 110 (Employee's Claim Form) filings, and does not include Motions to Join, Section 37 cases, or Comp Third Party Liens as they do not involve the claimant.

Please note: a case is an employee claim, an insurers request for discontinuance or a third party claim/lien.

Vice-Chairman Johnson requested data regarding the employee claim and Insurance Discontinuance Requests for July, August, and September in the first quarter of FY 2019; for comparison with the current FY 2020 data to see if it is consistent over the summer. Mr. Taupier said he will gather that data and provide it next meeting. General Counsel Kevin O'Leary said the numbers from July 2018 will be different from July 2019, as the system was offline for two weeks during the office relocation.

Without any further questions, Mr. Taupier offered the following statistics: The Workers' Compensation Trust Fund (WCTF) had 21 uninsured injuries for FY 2020, and 117 new Section 65 injuries were recorded in FY 2019. As of today, payments against open claims stand at \$1,603,687. The WCTF made \$6,613,536 in payments against open claims during FY 2019.

Mr. Taupier provided statistics against uninsured employers for FY 2020: \$400,652 has been recovered by the Civil Litigation Unit and WCTF. Council Member Joyce commented on the recovery efforts, stating that the current figure of \$400,652 is looking better than the last couple of years. General Counsel O'Leary said although the recovery efforts in FY 2017 was a high point, the current figures are trending lower due to less money paid out, leaving less to recover.

Without any further questions, Mr. Taupier offered statistics on the Second Injury Fund, stating Second Injury Fund and Cost of Living Adjustment (COLA) tend to lag in the first quarter with \$792,942 recorded thus far and \$0 in COLA reimbursements. Mr. Taupier stated the COLAs are reflective of what is recorded on the state ledger. The COLA budget of \$14,400,000 is conservative.

Vice-Chairman Johnson asked if the payment of \$26,503,949 made in FY 2019 is final. Mr. Taupier said he will check with finance but believes the book closed on August 31, 2019. Vice-Chairman Johnson praised the FY 2020 Second Injury Fund budget dropping to \$32,000,000 from the \$38,100,000 in FY 2019; commented on the noticeable trend in amounts paid over the last four years and asked if the DIA considers that when assigning the budget. Mr. Taupier confirmed that it is looked at every year; adding that they are aware of how it affects the assessment. General Counsel O'Leary stated pending litigations are also factored into the budget.

Without any further questions, Mr. Taupier presented statistics for DIA personnel, which is currently 212. Mr. Taupier informed the Council there were a couple of retirements over the past couple of months; a new Review Officer was hired, Shamia Monroe was hired as the new Regional Manager for the Fall River office, and stated there are a few people contemplating retirement with one looking to retire by the end of the year. Senior Judge Hernandez added they are in the process of interviewing for a new Conciliator in Springfield. Council Member Long asked if there is any anticipated hiring. Mr. Taupier confirmed they can start the hiring process but cannot hire someone until the person occupying the position has left state service. Council Member Long asked if the number of DIA personnel is expected to increase. Mr. Taupier confirmed that it will increase; noting the personnel statistics are reflective of folks currently employed, vacancies and retirements in the near future.

With regard to referral fees, \$803,610 have been received thus far; and lastly, the assessment collections for FY 2020: \$15,642,379.

Without any further questions for Mr. Taupier, Chairman Pulgini directed the floor to Interim Director Bowles.

Director Update

Interim Director Bowles updated the Council on the move and welcomed everyone to DIA's new Boston location; adding the Worcester regional office also relocated, and moving plans for the Springfield office is currently on hold until the beginning of next year. In addition to moving, the phones, computer systems, and teleconferencing equipment was upgraded, providing the capability to connect with all DIA regional offices for video conferencing.

Interim Director Bowles informed the Council of the state auditors from the Office of the Comptroller that are currently on-site conducting a performance audit of Generally Accepted Accounting Principles standards; with areas of focus on reports filed with the Advisory Council, the Opioid program, and the adjudication of claims. They are in the planning stages and currently gathering information via interviews with members of staff handling various areas of focus and senior staff. More information will be provided once the audit has concluded, and their reports are submitted. The Internal Control Department of the Self-Insured Group (SIG) completed one round of SIG audits, and are currently working on the second round, generally conducting four per quarter.

The Director of Internal Control and Security position (previously held by Stetson Marshall) will need to be backfilled; however, the SIG audits will continue. With regard to staffing, Interim Director Bowles added the DIA welcomed new members to the team; Peter Vitali, as the new Regional Manager for Lawrence, Shamia Monroe for the Fall River office, Philip Imbrescia, and Holly Anderson for the Legal Counsel team. As for retirements; Brenda Gomes, a stenographer in Fall River, Jane Jones, a clerk in Fall River, James Beauregard, an Investigator, Administrative Law Judge Harpin and Joseph Brunelle, a Conciliator in the Worcester regional office, has remained on staff part-time to assist with the transition, and lastly the DIA will be celebrating Bill Taupier for 25 years.

Chairman Pulgini asked if the DIA experiences any difficulty in receiving applicants for vacant positions. Interim Director Bowles said they received over 300 applicants for the clerk position in Fall River; adding that the most difficult position to backfill are the stenographers. Senior Judge Hernandez added the stenographer positions are difficult to fill due to a lack of stenography schools in Massachusetts; with Brenda Gomes retiring, Susan Balzarini has transferred to the Fall River office.

Without additional questions, Chairman Pulgini directed the floor to Executive Director Maureen O'Connell.

Executive Director O'Connell said Aaron D'Elia, CFO for the Executive Office of Labor and Workforce Development will provide the financial update in November, pushing back Karen Fabiszewski's presentation regarding uninsured claims to December's meeting, and informed the Council of their eligibility for travel reimbursement. Executive Director O'Connell mentioned a signed letter by Ryan Swansey; addressed to the Maine Department of Labor and the Advisory Council; discussing Independent Contractors within construction, and the misclassification of businesses, although he is a Maine resident, he mentions businesses in Massachusetts. The letter will be scanned in, sent to Council Members, and put on the Agenda for November. Executive Director O'Connell added there are outstanding items for the FY 2019 Annual Report, such as Chairman's Welcome, information regarding the \$30,000 private right of action received by the DIA in FY 2019, and updated information regarding the Opioids program. Executive Director O'Connell mentioned staying within the December deadline for the Annual Report; adding the possibility of not having enough voting members present for a quorum. Vice-Chairman Johnson asked if the Council will have a quorum for the judicial interviews. Executive Director O'Connell said Council Member John Regan will be present for the judicial interviews. Vice-Chairman Johnson suggested scheduling an open meeting either before or after the judicial interviews to capture votes.

Chairman Pulgini mentioned reaching out to Raytheon regarding the seat that has remained open since Frank Ruel left. Vice-Chairman Johnson stated the open seat is a manufacturer's position and not specifically Raytheon. Chairman Pulgini expressed concern with not having enough voting members present for the judicial interviews scheduled for the week of October 28.

Council Member Long requested that a statement regarding the issue of ADR delaying the statutory mandate be added to the Annual Report. Chairman Pulgini agrees and said the reason why some of the decisions are lagging is due to party agreements and the ADR process taking longer. Council Member Joyce asked about the DALA role in the ADR process. Council Member Mulholland explained that a board votes on ADR, if a denial is issued, you appeal to DALA. Council Member Long was still unclear, stating that his understanding of ADR is that it cannot be appealed. Council Member Mulholland said ADR is appealable as it is not arbitration. Senior Judge Hernandez said to Council Member Long that he was probably thinking of Alternative Dispute Resolution as oppose to Accidental Disability Retirement. Council Member Long thanked Senior Judge Hernandez for clarification as he thought the conversation regarding ADR was about Alternative Dispute Resolution instead of Accidental Disability Retirement.

Vice-Chairman Johnson asked Executive Director O'Connell about the accuracy of the data in the DRAFT Annual Report. Executive Director O'Connell confirmed the data is accurate as of June 30, 2019.

Lastly, Executive Director O'Connell mentioned the Advisory Council website has been updated to reflect Patrick Walsh's appointment.

Chairman Pulgini asked to put in a request for an extension so the Advisory Council can conduct judicial interviews. The Advisory Council agreed to schedule the next meeting on October 31, 2019 at 9:00am to vote on the April 2019 minutes, and the Annual Report.

Without a quorum, votes were not taken on the April 2019 minutes.

Without additional questions, the meeting adjourned at 10:02am.

The next meeting of the Advisory Council is scheduled for October 31, 2019, 9:00am at the Department of Industrial Accidents, Lafayette City Center, 2 Avenue de Lafayette, Commons Conference Room, Boston, MA 02111-1750