



MAURA HEALEY
GOVERNOR

KIM DRISCOLL
LIEUTENANT GOVERNOR

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL

LAFAYETTE CITY CENTER
2 AVENUE DE LAFAYETTE
BOSTON, MASSACHUSETTS 02111

JOHN A. PULGINI
CHAIR

TODD R. JOHNSON
VICE-CHAIR

MAUREEN O'CONNELL
EXECUTIVE DIRECTOR

MINUTES

April 10, 2024
Via WebEx

Present: Attendees: John Pulgini, Todd Johnson, Michael Hess, Teri McHugh, James Steenbruggen, Samuel Larson, Michael Kelley, Bernie Mulholland, and Stephen Falvey; Bill Taupier – DIA Director of Administration, Omar Hernández - Senior Judge, General Counsel Philip Imbrescia, DIA Vinnie Lopes, Shamia Moore, Maryann Brunton; Daniel Judson - WCRIBMA, Cara Toomey - WCRIBMA, ; Roman Dolinschi-WCRI; Tiffany Benjamin - Massport; Attorney Patrick Francomano; Isabel Hernandez - HealtheSystems, Emily Spieler, and Maureen O'Connell.

Date: April 10, 2024
Location: Department of Industrial Accidents - via WebEx
Lafayette City Center
2 Avenue de Lafayette, Boston, MA 02111
Time: 9:00 A.M.
Notice: All meetings are voice recorded to aid in preparing "hard copy" minutes.

1. CHAIRMAN'S WELCOME

2. DIA UPDATE

- A. DIA Judicial Update - Senior Judge Omar Hernández, Senior Judge
 - o Conference/Hearing/Reviewing Board Queue
 - o Impartial Medical Exams/Physicians
- B. DIA Vital Statistics - Bill Taupier, Director of Administration
 - o Cases Filed with DIA
 - o Workers' Compensation Trust Fund
 - o Personnel Update
 - o Enforcement and Compliance
- C. Director's Update – Sheri Bowles, Director

3. EXECUTIVE DIRECTOR'S UPDATE

- o 2023-24 Legislative bills

4. ACTION ITEMS

- o Minutes - February 14, 2024
- o Minutes - March 13, 2024

5. COMMUNICATIONS

N/A

6. MISCELLANEOUS

N/A

Chairman John Pulgini began the meeting at 9:01am.

Senior Judge Omar Hernández provided the statistical update on the dispute resolution unit. The time between conciliation and conference look good, and the queues are in getting a bit longer (16 weeks) and we've been watching this on a weekly basis so we will be adding more conferences to the cycle to bring those numbers down - this will be happening soon. The conciliation numbers are in great shape thanks to Dele Edibiri and his team who are doing great work. Hearing decisions are not too old, outside forces like ADR, social security are a part of these delays. With respect to attorneys fees we will surpass last year.

Council Member Michael Kelley asked Senior Judge Hernández about the conference lists and why it doubled from last summer. Senior Judge Hernández mentioned that last summer the unit went too low, and we've doubled back as it was too fast last year (average waiting period for a conference). Council Member Kelley then asked about the impartial exams. Senior Judge Hernández mentioned that it all depends on the DIA regions, but at the rate of \$650, it is not easy to retain physicians. There is a move to increase the fees, but that is ongoing conversation. Senior Judge Hernández further explained that while he was in Newport RI he learned that the fees are much higher in RI and other states (\$1,200) and \$1,500-\$1,700 for IMEs (independent medical examinations). DIA is trying their best given the roster and hopes that a higher fee will help do better with recruitment and retention of physicians.

Vice Chair Todd Johnson asked Senior Judge Hernández for a reminder on the process of getting an impartial fee changed. Given the new administration, everything must run through the Governor Maura Healey's Office before the public hearing process can begin, this is an added element that we didn't have before. Secretary Lauren Jones is reviewing the process and then it will be passed onto the Governor Healey's Office. Once Senior Judge Hernández gets their approve the public hearing process can begin. We did this before approximately 11 years ago, put the notice out to the public, people came in and talked about it. We have the support right now with the Massachusetts Bar and members, and if we don't increase the fee the roster keeps dwindling. The recommended fee, indexing at the state average weekly wage, it will change each year.

Council Member Kelley asked about the impartial process and wanted to make sure that it was in process and not just a discussion. Senior Judge Hernández confirmed that the process has begun and he has been advocating for this change for awhile, it benefits everyone and is important. Council Member Kelley asked for a monthly update on how the process is moving along, Senior Judge Hernández confirmed that he would provide the Advisory Council with a monthly update.

Mr. Bill Taupier, Director of Administration presented the Monthly Statistical Report Card slide deck for the Department of Industrial Accident (DIA) units.

With respect to conciliations, in February 479 cases were resolved and 477 were referred to conference (50.1%). The average waiting period for a conference is 10-16 weeks. ***Dispute Resolution: fluctuations in the conference & hearing queues will depend upon number of cases being referred from conciliation, conference order appeals, judges scheduling cycles, continuance requests and regional variations.***

With respect to the conference queue, there are 895 (up from last month) with conferences scheduled: 816, there have been 4,611 continuances as of March 31, 2024. In April the Hearing queue: 1,747 and hearings scheduled: 568, Orders issued: 210, and Appeals to reviewing board: 0. Form 110 filed 51% of conferences and no 110 filed 78% while hearings were 90% with a Form 110 filed and 85% without a Form 110 filed. With respect to the pending hearing decisions, there were 4, down one from last month - a new section was added to reflect 1, 2 and 3 year post hearing. Review Board inventory for April: 24, Fee waivers granted: 54, Exam fees collected: \$788,500, Attorneys fees: \$67,616,593, Referral fees: \$2,062,043, and Section 7/8 penalties: 0. **Note:** *Attorneys fees are not paid by the DIA, these fees are paid by the insurer to the claimant's counsel at certain stages of the dispute resolution process.*

First Report of Injury (FRI) filings for March were 3,131, up from last month. The number of Cases filed for March 2024 was 890 (down from last month). Cases filed by type: 7,896 total cases, 6,505 employee claims, 1,362 in Insurance discontinuances, and 29 third-party claims. Total FROIs in FY'24: 23,980 with 5,209 in sprains/strains (40%).

Mr. Taupier provided statistics on compliance and enforcement for FY'24: 13,751 compliance letters, 28,276 field checks, and 28,951 office checks. In March, there were 7,231 compliance checks, 235 field investigations conducted, 1,866 compliance letters sent, and 2,955 employees covered by workers' compensation insurance. There were 127 Stop Work Orders, this includes 3 defaults - 1,024 SWOs issued year-to-date, and fine collection was \$855,889, **up from last month**. There were 85 uninsured injuries, with 27 laborer (occupation) and 20 other occupation, while 34 were in the construction industry, and 30 were in other industries.

Out of a budget of \$7,500,000 there were \$4,349,950 in payments against open claims and there was \$475,900 recovered by the Civil Litigation Unit, up from last month. ***Please note, the claims paid in the current fiscal year may have occurred in the prior fiscal year. The Civil Litigation Unit make every effort to recover monies owed by utilizing the authority of M.G.L. Chapter 152 to recover money paid on uninsured claims through legal action against the employer in question.***

With respect to the Workers' Compensation Trust Fund, these slides have been revised. For comparative reasons, the left hand side is benefits side with budget, and on the right hand side is civil recovery. ***Please note, claims may be determined to be insured or underinsured after they've been filed.***

The Second Injury budget is \$31,000,000 and payments made were \$18,649,362, up from last month. Chart shows dollars paid for Sec. 37 /37A Claims (including quarterly payments and interest) by Fiscal Year. Sec. 37/37A claims are filed by insurers who are seeking reimbursement up to 75% of benefits paid for a second injury per the statute. In addition, the numbers indicate final payments have been registered in the state accounting system known as MMARS. ***Additional payments may be in process and are not yet registered in MMARS at the time of this publication.***

COLA reimbursements were \$5,880,609 with a \$8,700,000 budget. These numbers lag throughout the fiscal year. *The dollar amounts indicate the final payments that have been registered in the state accounting system known as MMARS. Additional payments are often in process that have not yet registered in MMARS at the time of this publication.*

Assessment collection budget is \$79,000,000 with a payment of \$58,853,391.

Personnel: As of March 31, 2024, there were 197 employees, no change since December 2023 (65 Administration, 80 dispute, 14, legal, 28 WCTF, and 10 finance). Slide deck has been adjusted to reflect breakdown of personnel. **Staff:** *paid from either the General Appropriation Account or the WCTF depending upon their job. These numbers reflect full-time and part-time employees as of the close of the month.*

Without questions for Mr. Taupier the floor was directed to Director Sheri Bowles.

Director Bowles was not able to attend the meeting, there was no update.

Without questions, the floor was directed to Executive Director Maureen O'Connell.

Good Morning, everyone. Thank you Chairman Pulgini. Executive Director O'Connell provide a status update on legislative bills. There are a few bills whose status has changed since our last meeting that involve wage theft. HB 1868, SB 1148, SB 1158, SB 1161, and SB 1224, all of these bills had an extension order granted until today, April 10, 2024. HB 1949 involves workers' compensation protection for cannabis patients, and this bill had an extension order granted until July 13, 2024. There was a hearing on the app-based driving petition, and a discussion was held before the Joint Committee on Labor and Workforce Development about whether the drivers are employees or independent contractors and likely misclassified - these bills were granted an extension order until July 1, 2024 and likely after the trial begins with the Massachusetts Attorney General's Office. The AG lawsuit is seeking a court ruling that Uber and Lyft drivers are employees under the Massachusetts Wage and Hour Law. This lawsuit was brought before Suffolk Superior Court by then Attorney General Maura Healey. Executive Director O'Connell mentioned the Minneapolis threat by Uber to leave the city, and the Austin Texas case in May of 2016 where Uber stopped serving the Texas capital after voters upheld the city's new background checks for drivers.

The Monthly Statistical Report Card will be on the website later today. Should you need a copy of the legislative spreadsheet, please email me after the meeting. Thank you.

Without further questions from the guests, Chairman Pulgini ended the meeting at 9:18am.

Webex meeting recording: 2024 | April 10 Advisory Council meeting-20240410 1319-1

Password: YsJAdE3b

Recording link: <https://maureenocconnell.my.webex.com/maureenocconnell.my/jdr.php?RCID=b7cd2ac207d32867d798de49e9daf528>