



**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 12, 2023

Via WebEx

**Present:** Attendees: John Pulgini, Todd Johnson, Stephen Joyce, Teri McHugh, James Steenbruggen, Michael Kelley, Patrick Walsh, Stephen Falvey; Sheri Bowles – DIA Interim Director, Bill Taupier – DIA Director of Administration, Senior Judge Omar Hernández – DIA Senior Judge, Acting General Counsel Gerard Pugsley, WCTF Director Holly Anderson, DIA Attorney Timothy Foley, DIA Vinnie Lopes, Shamia Moore, Daniel Judson - WCRIBMA, Cara Toomey - WCRIBMA, Christopher Stark - Mass Insurance Federation; Roman Dolinschi- WCRI, Kerry Nero - City of Boston, Attorney Alicia DelSignore, Attorney Ana Mari DeGaravilla, Attorney Alice Lang, Attorney Lori Favata, Attorney Patrick Francomano, Attorney Maryann Calnan, Attorney Steven Bolognese, Attorney David O'Connor, Attorney Ryan Benharries, Julie Bowler, and Maureen O'Connell.

**Date:** April 12, 2023

**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, Interim Director

#### **3. EXECUTIVE DIRECTOR'S UPDATE**

- o 2023-24 Legislative bills

#### **4. ACTION ITEMS**

- o Minutes - December 14, 2022
- o Minutes - January 11, 2023
- o Minutes - February 8, 2023
- o Minutes - March 8, 2023

#### **5. COMMUNICATIONS**

N/A

#### **6. MISCELLANEOUS**

N/A

LAFAYETTE CITY CENTER

PHONE: 857.321.7379

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Chairman John Pulgini began the meeting at 9:02 am and asked Senior Judge Omar Hernández to provide an update on judicial activity.

Senior Judge Hernández indicated that the conciliation unit is doing well resolving cases, thank you to Dele Edibiri and his team. With respect to the conference and hearing queue, coming down a lot and is hearing feedback that this timeframe is too quick. The number of conferences per judge has been reduced from 8 to 7 and with vacations coming the unit is still doing great and in good shape. Overdue decisions came down by a few numbers - next month it is expected to drop further - a few decisions will be written.

Senior Judge Hernández explained with the few outstanding decisions were: a few of the judges had decisions week, those cases will be resolved, a Section 19 case, a withdrawal not filed, Section 36 without paperwork, one case is holding off date for hearing - waiting for injured worker applying for ADR, one case the employees attorney left the firm while defense attorney passed away, and the last one the injured worker passed away. We are well-within the guidelines and everyone is doing a great job.

With respect to the pending hearing decisions, there is an uptick in those numbers, 14, and is a result of pending cases either due to surgery, agreements, ADR or pro-se cases. Senior Judge Hernández is not concerned with these numbers - everyone is doing a really nice job.

The inventory went up - insurer had 86 board numbers, but we are down to 24 mark, it's just the way the system is presenting it.

Chairman Pulgini interrupted the meeting to vote on December 14, 2022, January 11, February 8, March 8, 2023 minutes - a motion was made and seconded - with a quorum and without opposition all of the minutes were approved.

Without any questions for Senior Judge Hernández the floor was directed to Bill Taupier, Director of Administration.

With respect to conciliations, In March, 524 cases were resolved (52.3%) and 497 were referred to conference (an increase from last month). The average waiting period for a conference is 6-14 weeks (down from the previous month). 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. In addition, during FY 2023 attorneys have requested a total of 5,304 continuances. For FY 2022, there were 6,860 continuances.

With respect to the hearing queue, there are 1306 with Conferences scheduled: 562, Hearings scheduled: 593, Orders issued: 355, and Appeals to reviewing board: 95 - this was a multi-party case with 89 matters that was referred to the reviewing board, each case was filed individually. With respect to the pending hearing decisions, there were 12 (a decrease from the previous month). Senior Judge Hernández mentioned this is a result of pending cases either due to surgery, agreements, ADR or pro-se cases.

Review Board inventory: 95, Fee waivers granted: 51, Exam fees collected: \$1,078,489, Attorneys fees: \$71,386,135, and Section 7/8 penalties: 0.

Mr. Taupier provided statistics on Compliance/Stop Work Orders: 122, 5 defaults (SWOs increased from last month). The DIA compliance unit sent 1,584 compliance letters in the month of March 2023. Fine collection for the month of March was \$21,813 with a FY 2023 total of \$576,269.

There were some WebEx technical difficulties with user Mr. Taupier and Council Members and attendees were having difficulty hearing Mr. Taupier. Without a backup microphone, Mr. Taupier turned off his video to secure better reception.

The DIA conducted 5,326 total compliance checks and 234 field investigations in March a decrease from previous month. In addition, since the beginning FY 2023, DIA has conducted 45,974 compliance checks with 3,279 employees now covered by WC insurance. There were a total of 60,435 compliance checks and 2,506 employees newly covered in FY 2022.

The audio presentation by Mr. Taupier continued to cut in and out during the compliance check and claims presentation.

First Report of Injury (FRI) filings for January were 2,878, an increase from previous month. Total FRIs filed for FY 2023 are

25,022. The total FRIs file for FY 2022 were 35,644. The number of Cases filed for March 2023 was 1,091. Total cases filed for FY 2023 are 7,861. Cases filed by type: 12,659 total cases, 10,566 employee claims, 1,943 in insurance discontinuances, and 150 third-party claims. Total cases 1,091 - 19 manual with 1,072 web online filing. Total cases in July 2022 (beginning of FY '23) 841, with 827 manual and 14 web online filings.

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 audio presentation by Mr. Taupier continued to cut in an out during the Trust Fund presentation.

There are 69 new Section 65 injuries for March 2023 - an increase from the previous month, (Example: **Uninsured Claims by Occupation:** 10 laborer, 5 carpenter, 5 home health aide, and **Uninsured Claims by Industry:** 28 construction, 3 healthcare, 4 landscaping. As of the end of last month, payments against open claims in FY 2023 stands at \$4,905,106. Recovery efforts: \$727,270. The WCTF issued \$6,924,993 in payments against open claims during FY 2022. ***Please note, the claims paid in the current fiscal year may have occurred in the prior fiscal year.*** The audio presentation by Mr. Taupier continued to cut in an out during this portion Trust Fund presentation.

***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.***

The Second Injury budget is \$28,000,000 and payments made were \$18,233,551 - an increase 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.* The audio presentation by Mr. Taupier continued to cut in an out during this portion Second Injury presentation.

COLA reimbursements were \$5,230,905 with a \$6,000,000 budget. The budget for the COLA reimbursements have been reduced. 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. The audio presentation by Mr. Taupier continued to cut in an out during the portion of the COLA presentation.

Referral fees were \$3,074,914 - an increase from previous month. Assessment collection budget is \$63,000,000 with a payment of \$53,158,152 - an increase from last month. The audio presentation by Mr. Taupier continued to cut in an out during this portion of the presentation.

Personnel: 200 (68 Administration, 79 dispute, 15, legal, 28 WCTF, and 10 finance). A few on boarding which reflects the numbers - one departure from Legal and one addition in Investigation. Mr. Taupier indicated that the DIA expects employee retirements over the summer 2023. Slide deck has been adjusted to reflect breakdown of personnel. *Staff are paid from either the General Appropriation Account or the WCTF depending upon their job. These number reflect full-time and part-time employees as of the close of the month.*

Vice Chair Todd Johnson asked Executive Director Maureen O'Connell if the attendees had access to the Report Card to fill in the spotty portion of the Mr. Taupier - confirmation that document will be sent to attendees as it is a public record.

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

Director Bowles reported a few changes since last month's meeting. The General Counsel position has been posted and will interview once resumes have been received. Second round of interviews has been conducted with the Director of

Investigations. EOLWD Secretariat will be working with TRC Consulting and will be evaluating operational risks on climate change and will determine if there are any exposure for the agencies and what they can be done to mitigate exposures. Once completed Director Bowles will provide an update to the Council.

Vice Chair Johnson asked about the start of a study with medical rates study and how far that has progressed. Director Bowles indicated the EOHHS are responsible for updating medical rates. This is important, Vice Chair Johnson said - another rate reduction will begin effective July 1, 2023. Thank you for the feedback said Director Bowles.

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

Executive Director Maureen O'Connell to provide her update. Since we last met, a few docket numbers were given bill numbers - 4 refer to loss and disfigure HB 1880, 1896, 1897, 1898, and 1903 - the changes are reflected in yellow highlight. If you'd like the legislative spreadsheet please email me after the meeting for this and the report card. The Open Meeting Advisory Council meeting - individuals in the neurodivergent community expressed positivity with remote meetings. The Advisory Council is following 34 bills related to workers' compensation, labor, and remote meetings. The remote meeting capability has been extended until March 31, 2025 in accordance with Governor Healey's bill.

Without questions for Director O'Connell, Chairman Pulgini asked the guests if they had any comments or concerns.

Council Member Michael Kelley asked about in-person conferences. Senior Judge Hernández said that it will remain virtual moving forward, it is out business practice, and the metrics support the virtual environment.

Chairman Pulgini commented that the decision to operate remotely came from the Legislature and Governor's office.

Council Member Kelley wanted to go on record to say that he is hearing complaints from plaintiff and defendant side that they want to go back to in-person.

Senior Judge Hernández that he is receiving positive feedback about virtual conferences and would like to go on record to indicate that.

Council Member Stephen Falvey mentioned that we needed a backup plan with respect to the difficulties in WebEx presentation by Mr. Taupier.

Chairman Pulgini asked the guests if they had any questions. Attorney Steven Bolognese from Tentindo Kendall Canniff and Keefe Law Firm and part of the Mass Bar Association workers' compensation committee has said that the issue of virtual meetings has come up before. Having done many conferences virtually, issues have raised but they have worked through these issues. The judges and attorneys have been very accommodating and they bridge the gaps by phone calls. All conferences have been completed successfully. There are some people who do want to go back live. Virtual is a benefit, people do not have to drive, and can do many conferences in one day. It is not a perfect system, tweaks can be made, and Senior Judge Hernández has been open to suggestions. Happening soon will be a legislative change is going to be [MGL CH 152 Section 48](#) - presumption that was brought into litigation by plaintiff counsel - this section conflicts with the Federal ADA act. The MBA committee felt that one of the ways to address this is not require an employee to resign. Thank you for your time.

Attorney Ana Mari deGaravilla provided a few comments - they have had difficulties with conferences, not able to see injured workers on the screen, sound issues, and do feel that there has been an impact on the integrity of the process. My other comment is with respect to the Open Meeting Law and that doesn't apply to DIA conferences and wouldn't dictate what happens at the DIA.

Without further questions and with a motion to adjourn, Chairman Pulgini concluded the meeting at 9:32am.

Webex meeting recording: 2023 - April 12 | Advisory Council meeting-20230412 1246-1

Password: FiPTcuR6 **Recording link:** <https://maureenocconnell.my.webex.com/maureenocconnell.my/jdr.php?RCID=6845e1c1c011be0920c1dd69446b1f70>