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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

December 13, 2023

Via WebEx

Present: Attendees: John Pulgini, Todd Johnson, Stephen Joyce, Teri McHugh, John Regan, James Steenbruggen, Bernie Mulholland, Michael Kelley, Patrick Walsh, and Stephen Falvey; Sheri Bowles – DIA Director, Bill Taupier – DIA Director of Administration, Senior Judge Omar Hernández – DIA Senior Judge, General Counsel Philip Imbrescia, WCTF Director Holly Anderson, DIA Investigations Deputy Director Alan Green, DIA Vinnie Lopes,; Cara Toomey - WCRIBMA; Roman Dolinschi- WCRI; Christopher Stark, MA Insurance Federation, Tiffany Benjamin - Massport; Attorney Kero Nero - City of Boston, Attorney Ryan Benharris, Attorney Lori Favata, Attorney David O'Connor; Mary-Beth McGrath - Commonwealth of MA HRD; Isabel Hernandez, Kevin Tribout, and Teriann Scarantino - Healthe Systems, Emily Spieler - Northeastern University, and Maureen O'Connell.

Date: December 13, 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, Director

3. EXECUTIVE DIRECTOR'S UPDATE

- o 2023-24 Legislative bills
- o FY'23 Annual Report
- o Workers' Compensation Prescription drug pricing protocol

4. ACTION ITEMS

- o Minutes - July 12, 2023
- o Minutes - September 13, 2023
- o Minutes - October 11, 2023
- o Minutes - November 8, 2023

5. COMMUNICATIONS

N/A

6. MISCELLANEOUS

N/A

LAFAYETTE CITY CENTER

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Chairman John Pulgini began the meeting at 9:00am.

With 8 voting members in attendance for a quorum, and Council Members having to leave, the agenda went out of order to vote on minutes for July 12, September 13, October 11, and November 8, 2023, and FY'23 Workers' Compensation Advisory Council Annual Report, a motion was granted by Council Member John Regan, and seconded by Council Member and Vice Chair Todd Johnson, and all of the minutes, and annual report were approved, no objections/no oppositions.

Council Member John Regan announced his retirement at the end of the month, December 2023. Council Members congratulated Council Member Regan.

Chairman John Pulgini asked Senior Judge Omar Hernández to provide an update on judicial activity.

Senior Judge Hernández indicated that there hasn't been any changes, conciliation unit is doing incredible work resolving cases, thanks to Dele Edebiri and his team. The conference queue and hearing queue are in good shape, time running between 10-16 weeks (up from last month). With respect to the pending hearing decisions, 11, same from last month, but the department is in good shape. Reviewing board, 31, up from last month. Exam fees are down which may have to do with an accounting issue. Everything in dispute resolution is moving well, credit to the staff and attorneys.

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

With respect to conciliations, In November, 497 cases were resolved and 541 were referred to conference (both down from prior month 47.9%). The average waiting period for a conference is 8-14 weeks - up from last 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.

With respect to the conference queue, there are 726 (down from last month) with conferences scheduled: 711 (up from last month), Hearing queue: 1,774 and hearings scheduled: 439, Orders issued: 297, and Appeals to reviewing board: 7. Form 110 filed 50% of conferences and no 110 filed 88% while hearings were 77% with a Form 110 filed and 84% without a Form 110 filed. With respect to the pending hearing decisions, there were 11. Review Board inventory: 31, Fee waivers granted: 33, Exam fees collected: \$575,175, Attorneys fees: \$33,058,241, 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 November were 2,523. Total FRIs filed for FY'24: 13,603. The number of Cases filed for November 2023 was 815 (down from last month). Cases filed by type: 4,468 total cases, 3,645 employee claims, 807 in Insurance discontinuances, and 16 third-party claims.

Mr. Taupier provided statistics on compliance letters for the month of December: 15,249, field checks: 14,520, office checks, 6,798 compliance letters, 1,701 employees covered by workers' compensation insurance; 4,921 total compliance checks, 167 field investigations for the month of December, 1,190 sent out compliance letters, 96 SWOs, 563 for FY'24, fine collection: \$648,964, 50 uninsured injuries, 18 other occupations, 11 laborer under Occupation, and 23 other and 15 construction under Industry.

Council Member Stephen Joyce asked about the DIA Office of Investigation website with respect to the SWOs (Stop Work Orders) and the companies who have been debarred. Council Member Joyce indicated that the website had not been updated since July of 2023, and added that it would be helpful if this website could be updated monthly. Mr. Taupier replied that they would look into it.

Council Member John Regan commented to Mr. Taupier on the slide that the healthcare numbers were surprising. Mr. Taupier added that most of those numbers were home health aides.

Out of a budget of \$7,500,000 there were \$2,541,335 in payments against open claims (up from last month) and there was \$291,336 recovered by the Civil Litigation Unit. **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 (budget increase) and payments made were \$8,248,843. 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 \$4,420,095 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 \$31,749,561.

Vice Chair Todd Johnson asked about the MMARS issues and whether these numbers were accurate. Mr. Taupier mentioned that the fiscal year was closing, and the supplemental budget process was ongoing, and both of these were issues, but the numbers are now caught up.

Personnel: **No change since June 2023** - 199 (67 Administration, 79 dispute, 15, legal, 28 WCTF, and 10 finance). Mr. Taupier mentioned that there was one resignation in December, and these numbers will reflect that in January 2024.

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' who mentioned that the DIA Springfield office would be undergoing construction in either January or February on the roof. This construction will impact the DIA office as well as other state offices in the building and she will keep everyone apprised of the construction, as well as an official date when it becomes available.

Council Member Steve Falvey asked Director Bowles about the vacant manager position in the Office of Investigations. Director Bowles indicated that the process was ongoing, and confirmed when asked by Chairman Pulgini if the job posting was still public.

Director Bowles did not have an update.

Chairman Pulgini directed the floor to Executive Director Maureen O'Connell. Thank you to Director Bowles and Council Members for reviewing and providing feedback on the FY'23 Annual Report. Once the report is viewed and approved by the Governor's office it will be available to publish on the WCAC website and the State House Library. Legislation is still pending in the Joint Committee on Labor and Workforce Development; HB 1880, HB1897, and SB 1159 An Act relative to permanent and functional loss and disfigurement under the Workers' Compensation Act - Legislative Session ended on November 15, 2023 and these bills pending will likely resume after the new year/winter break.

Council Member Stephen Falvey asked whether there were any updates on the open management position in the Office of Investigations. Director Bowles mentioned the hiring process is ongoing. Is there any urgency in filling this position asked Council Member Falvey to Director Bowles, who replied that the process is ongoing, the position and posting has remained open. Chairman Pulgini asked Director Bowles if they were conducting interviews to which Director Bowles replied in the affirmative. To Council Member Falvey's question said Chairman Pulgini, is there an estimate on when this position will be filled. Are you continuing with the hiring and interview process asked Chairman Pulgini to Director Bowles to which she applied in the affirmative, but that she is not in a position to discuss candidates as the process is ongoing. Council Member Falvey asked about the process of interviewing and hiring candidates. Director Bowles highlighted the process: when a position is ready to post, it goes to the Executive Office of Labor and Workforce Development Human Resources Department and a requisition is created and posted on the MassCareers website. Does the position have an end date, asked Council Member Falvey, to which Director Bowles indicated that it is open until the position is filled to my understanding - we go through the interview process until a candidate is selected, and that is all I'd like to mention about this said Director Bowles. The process is moving along said Director Bowles. Who would be responsible for this position being filled, asked Council Member Falvey. Once a candidate is selected and accepted, the process may go to the Governor's Office for a background check, and other steps in the office before the candidate starts, it's a very lengthy process, commented Director Bowles. Has anyone been offered the job, asked Council Member Falvey, the process is ongoing said Director Bowles and I do not wish to comment on this any further.

Executive Director O'Connell mentioned that there is an item left to discuss on the agenda regarding Workers' Compensation Drug Pricing Protocol, however the members in attendance did not wish to respond, they were only here to listen.

Without questions for Director O'Connell, Vice Chair Johnson asked the guests if they had any comments.

Vice Chair Johnson wanted to thank Council Member John Regan for his time on the Council, and he has been at this table for a long time. What we will always remember is that Council Member Regan always brought the betterment of the entire system for all stakeholders to the table and the approach to dealing with issues. We are appointed to this Council to represent a stakeholder group, but the Council functions because all sides work together for common need, and Council Member Regan demonstrated that better than past and present members. Thank you for your service, your approach will be missed. Over the difficult time that the

DIA, and the workers' compensation system faced challenges, you were one of the guys who kept the train on the tracks, and I wanted to express how grateful we are.

Council Member John Regan replied and said that this time on the Council was enjoyable, he appreciated the comments, and appreciates the work the DIA does to keep the Council informed. The act of reporting on a monthly basis keeps the organization on the straight and narrow. I would echo what Vice Chair Johnson said, replied Chairman Pulgini. You have been the most reasonable people I've met over my lifetime, and I have enjoyed working with you.

Enjoy the holidays everyone.

Without questions from the guests, Chairman Pulgini ended the meeting at 9:22am.

Webex meeting recording: Webex meeting recording: 2023 | December 13 Advisory Council Meeting-20231213 1349-1

Password: fBuU7pTB Recording link: <https://maureenococonnell.my.webex.com/maureenococonnell.my/jdr.php?>

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