



MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

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 14, 2022

Via WebEx

Present: Attendees: John Pulgini, Todd Johnson, Stephen Joyce, Teri McHugh, John Regan, James Steenbruggen, Michael Kelley, Patrick Walsh, Stephen Falvey; Sheri Bowles – DIA Interim Director, Bill Taupier – DIA Director of Administration, Senior Judge Omar Hernandez – DIA Senior Judge, Kevin O’Leary – DIA General Counsel, WCTF Director Holly Anderson, Shamia Moore, Vinnie Lopes, Virginia McCarthy - WCRIB, Christopher Stark - Mass Insurance Federation; Roman Dolinschi- WCRI, Attorney Kerry Nero - City of Boston, Courtney Pidani, Ryan Benharris, Ana Mari DeGaravilla, Lori Favata, Patrick Francomano, David O’Connor, Maryann Calnan, and Maureen O’Connell.

Date: December 14, 2022

Location: Department of Industrial Accidents - via WebEx
Lafayette City Center
2 Avenue de Lafayette, Boston, MA 02111

Time: 8:30 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 Hernandez, 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 FY '22 Annual Report

LAFAYETTE CITY CENTER

PHONE: 857.321.7379

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4. ACTION ITEMS

- o Minutes - December 14, 2022

5. COMMUNICATIONS

N/A

6. MISCELLANEOUS

N/A

Chairman John Pulgini began the meeting at 8:30am to accommodate Advisory Council members scheduling. With a motion that was seconded and with a quorum, Advisory Council voted on minutes for November 9, 2022 and the FY'22 Workers' Compensation Advisory Council Annual Report. All in favor for both items, the minutes and FY'22 Annual Report were approved.

Chairman Pulgini asked Senior Judge Omar Hernandez to provide an update on judicial activity. Senior Judge Hernandez indicated that the unit is resolving cases and perform at a high level, thank you to Dele Edibiri and his team. With respect to the conference and hearing queue, both trending downward and going in the right direction. Credit to the Judges and full complement of judges help drive the queues down, happy with his team and the trend, hoping for the same in 2023.

Vice Chair Todd Johnson asked about the new judges on the roster. Senior Judge Hernandez mentioned that there are two judges: one new Administrative Judge, who does not have workers' compensation background and one new Administrative Law Judge. It will take them a bit of time to get on board, but having them on board will have an impact and bring the numbers down. With respect to timeframe, Vice Chair Johnson asked how long they will be in training before they are on the bench, a light caseload at first, sit on conferences and hearings, Senior Judge Hernandez is hopeful for a March or April timeframe.

Overdue decisions, in good shape. Council Member Stephen Joyce asked about the cases outstanding over four months. Senior Judge Hernandez said those cases involve retirement cases. Review board inventory has gone up a bit: 28. Impartial exams still being scheduled, attorneys fees on the rise.

Judges have been reappointed six and two more going before the Governor's Council today. Senior Judge Hernandez wanted to thank the Advisory Council for interviewing everyone. A great team. End of 2023 will be the next judicial reappointments.

Council Member Michael Kelley asked about if there were any updates on in-person conferences. Senior Judge Hernandez said that they will continue virtually and will let the Council know if and when they return in-person. Council Member Kelley asked why this wasn't an urgent issue and Senior Judge Hernandez confirmed that it is an urgent issue and he has been instructed that they will continue virtually.

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

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 3,211 continuances. For FY 2022, there were 6,860 continuances.

With respect to conciliations, 510 cases were resolved (49.5%) and 521 were referred to conference. The average waiting period for a conference is 10-16 weeks.

Conferences scheduled: 918, Hearings scheduled: 551, Orders issued: 338, and Appeals to reviewing board: 4. With respect to the pending hearing decisions, there were 7 (an increase from the previous month). Senior Judge Hernandez mentioned that these involved retirement cases.

Review Board inventory: 28 (an increase from the previous month), Fee waivers granted: 20, Exam fees collected: \$570,975, Attorneys fees: \$37,213,250, and Section 7/8 penalties: 0.

Mr. Taupier provided statistics on Compliance/Stop Work Orders: 110 (down from the previous month), 2 were defaults. In the month of November, 1345, compliance letters were issued. Fine collection for the month of November was \$26,500 and a total of \$333,274 in FY '23. With respect to Compliance & Enforcement, 4,033 total compliance checks were completed by the DIA and 167 field investigations were conducted in November. Since the beginning of the fiscal year, DIA conducted a total of 60,435 compliance checks and 2,011 uninsured employees are now covered under workers' compensation insurance.

With respect to cases filed, 779 were filed in November, 2,847 first report of injury filed, and the total number of FRIs in FY '23 is 14,552. Cases filed by type: 4,328 total cases, 3,586 employee claims, 735 in insurance discontinuances, and 7 third-party claims. With regard to Covid-19 FRIs: 72 were filed in November. Healthcare and Medical labs: 12,037 FRIs (74% an increase from prior month). Lump sum agreement: 95 (increase from last month), Section 19 agreement: 50, Withdrawn prior to conciliation: 31.

With respect to the Workers' Compensation Trust Fund, there are 35 new Section 65 injuries for November (**Uninsured Claims by Occupation**: 5 laborer, 4 delivery driver, 3 kitchen staff and **Uninsured Claims by Industry**: 12 construction, 3 moving & storage, 2 restaurant). Payments made against open claims in FY '23 - \$2,198,105 with a \$8,200,000 budget. Recovery efforts for the month were \$296,079.

The Civil Litigation Unit make every effort to recover monies owed by utilizing the authority of MGL 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 \$7,573,204. Second Injury Fund and Payments (Section 37/37A) - these are claims filed by insurers who are seeking reimbursement of up to 75% of benefits paid for a second injury per the statute.

COLA reimbursements were \$2,144,066 with a \$6,000,000 budget. Referral fees were \$1,532,916. Assessment collection budget is \$63,500,000 with a payment of \$12,511,528.

Personnel: 201 (69 Administration, 79 dispute, 15, legal, 28 WCTF, and 10 finance). 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.*

Without questions for Mr. Taupier the floor was directed to Interim Director Sheri Bowles. Director Bowles echoing Senior Judge Hernandez commented on the great work the dispute resolution team has done. The agency overall has done great this fiscal year. FY '24 budget is due in March and DIA will be working with the finance team. Upgrades on the technology will be completing in January. Safety grant process will be automated.

Council Member John Regan wanted to mention that when a new administration comes on to make sure that the administration is aware of the DIA and that it is funded by employer contributions.

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

Executive Director O'Connell updated the Advisory Council on the workers' compensation trust fund data from WCTF Director Holly Anderson, this information will be emailed to the Council members after the meeting. Executive Director O'Connell wanted to thank the Advisory Council members for their feedback, and to Director Bowles and the DIA staff for their contributions. After triple checking, the report will be on the website this week.

Council Member Stephen Falvey asked Executive Director O'Connell whether the explanation of the DIA funding policy is listed in the annual report, Director O'Connell confirmed that it was in one of the first three pages. Thanks for your good work, Maureen, and your persistence, said Council Member Falvey.

Chairman Pulgini concluded the meeting. Thank you Maureen for your work over the years, you've raised the bar here and we are appreciative of all you've done. Happy Holidays.

Before the meeting ended, Council Member Michael Kelley wanted to express his frustration with the lack of progress and the DIA on the in-person conference, doesn't find this policy explanation acceptable. Chairman Pulgini asked if this could be on the agenda and have someone for the EOLWD speak to this concern. Attorney Maryann Calnan agreed with Council Member Kelley's statement on in-person conferences.

Vice Chair Johnson added that it is always good to have a conversation, but wanted the Council to keep in mind that there is a new administration and that asking the office to comment may not be the appropriate time.

Chairman Pulgini ended the meeting at 9:02am, stay safe and see you in the new year.