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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

February 8, 2023

Via WebEx

Present: Attendees: John Pulgini, Todd Johnson, Teri McHugh, John Regan, James Steenbruggen, Michael Kelley, Bernie Mulholland, Stephen Falvey; Sheri Bowles – DIA Interim Director, Bill Taupier – DIA Director of Administration, Senior Judge Omar Hernandez – DIA Senior Judge, Acting General Counsel Gerard Pugsley, WCTF Director Holly Anderson, DIA Attorney Timothy Foley, Shamia Moore, Maryann Brunton, Dan Judson, WCRI; Christopher Stark - Mass Insurance Federation; Roman Dolinschi- WCRI, Frank Rivera - Mass-Port, Julie Bowler, Attorney Ryan Benharris, Attorney James Ramsey, Attorney Ana Mari DeGaravilla, Attorney Lori Favata, Attorney Patrick Francomano, Attorney Maryann Calnan, Brian (last name unknown), three call-in guests, and Maureen O'Connell.

Date: February 8, 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 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 2023-24 Legislative bills

4. ACTION ITEMS

- o Minutes - December 14, 2022
- o Minutes - January 11, 2023

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5. COMMUNICATIONS

N/A

6. MISCELLANEOUS

N/A

Chairman John Pulgini began the meeting at 9:02am and asked Senior Judge Omar Hernandez to provide an update on judicial activity. Senior Judge Hernandez indicated that the unit is resolving cases and performing at a high level (52%), thank you to Dele Edibiri and his team, they are doing really well. With respect to the conference and hearing queue, both trending downward and going in a positive direction. One thing in looking at these metrics, that was implemented over the last year and scheduling pre-hearing conferences, the timeline between conference and hearing was tight. Making a change to the 16-week cycle, taking out a conference week and adding in pre-hearing/status conference week. With that loss, nothing will be missing, conferences will go from 6 to 8 a day. Judicial support has more flexibility. Great feedback with pre-hearing conferences and memos resolving, the queue will go down even further.

With respect to the pending hearing decisions, there is an uptick in those numbers. One was a claimant who signed off comp, but the appeal is still pending. One was a pro-se employee with a fraud issue (and surgery). One was on Section 34 and put the hearing on hold due to a pending surgery. One was an ADR case, and the last one has an agreement, Judge is waiting on paperwork. Others are an assortment of ADR. Not waiting on hearing decisions, just outside source issues.

Vice Chair Todd Johnson asked where the cases fell in the pending hearing decision category, Senior Judge Hernandez mentioned the first case 6 months, the remainder fell in the 6-9 month category. Administrative Law Judge Carol Calliotte officially retired and Judge Kevin O'Leary has his first assignment this month. Judge Edward McGrath is on his own with conferences this week, diligent, and working with the other judges.

Vice Chair Johnson asked Mr. Taupier about attorneys fees and whether it involves lump sum settlements. Mr. Taupier confirmed it involves lump sum settlement and all fees at every stage.

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

With respect to conciliations, 464 cases were resolved (52.8%) and 414 were referred to conference. The average waiting period for a conference is between 8-12 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 4,670 continuances. For FY 2022, there were 6,860 continuances.

Conferences scheduled: 486, Hearings scheduled: 245, Orders issued: 323, and Appeals to reviewing board: 1. With respect to the pending hearing decisions, there were 13 (an increase from the previous month - November 2022 - 7; December 2022 - 11; January 2-23 - 13)). Senior Judge Hernandez mentioned that these involved a mixture of retirement cases and outside issues (awaiting paperwork).

Review Board inventory: 22 (up from previous month), Fee waivers granted: 31, Exam fees collected: \$821,904, Attorneys fees: \$56,060,832 (these fees include all proceedings), and Section 7/8 penalties: 0.

Mr. Taupier mentioned that this is a typical display of data, numbers are down due to the holiday season and vacations. Slides have been changed to make them easier to read. Covid-19 claims have been trending downward and these slides will be provided quarterly instead of monthly. If anyone would like this information please let us know. These numbers remained the same over the past 3 years and are from the healthcare industry.

Mr. Taupier provided statistics on Compliance/Stop Work Orders: 118 (an increase from the previous month), this includes 1 default. The DIA issued 117 Stop Work Orders (SWO) with 1 default and sent 1,232 compliance letters in the month of January. Fine collection for the month of January was \$47,695 with a FY 2023 total of \$388,564. For FY 2022 a total of 1,295 SWOs were issued, and total fines collected was \$814,654.

The DIA conducted 4,607 total compliance checks and 234 field investigations in January, a decrease from previous month. In addition, since the beginning FY '23, DIA has conducted 35,886 compliance checks with 2,566 employees now covered by WC insurance.

First Report of Injury (FRI) filings for January were 2,498, a decrease from previous month. Total FRIs filed for FY 2023 are 19,598. The total FRIs file for FY 2022 were 35,644. The number of Cases filed for January 2023 was 830, up from the previous month. Total cases filed for FY 2023 are 5,917.

Cases filed by type: 5,917 total cases, 4,878 employee claims, 1,0288 in insurance discontinuances, and 11 third-party claims. 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.

As of January 31, 2023, there are 51 new Section 65 injuries for January, down from previous month - and in FY '23 86 new Section 65 injuries were recorded. (Example: **Uninsured Claims by Occupation:** 4 carpenter, 4 delivery driver, 3 home health aide, 11 laborer, and **Uninsured Claims by Industry:** 19 construction, 3 moving & storage, 3 landscaping, and 3 restaurant). As of the end of last month, payments against open claims in FY 2023 stands at \$3,505,182. Recovery efforts: \$645,085.

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 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 \$12,348,402. 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 \$4,367,897 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.

Referral fees were \$2,240,539. Assessment collection budget is \$63,500,000 with a payment of \$41,445,183.

Personnel: 199 (69 Administration, 77 dispute, 15, legal, 28 WCTF, and 10 finance). A retirement and a few on boarding which reflects the numbers. 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 Johnson had a quick comment about budgeting for Second Injury Fund and COLA has been a wide discrepancy in budget amounts and year-end results and with the adjustments that have been made that are visible on the charts has a positive impact on the system. Vice Chair Johnson wanted to thank all those involved.

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

Director Bowles mentioned that there were no major updates at this time. The DIA is moving to their next IT project and digitize the microfilm that will be accessible by the DIA website. The process will begin later this week after a meeting with the vendor to map out a plan. The DiA will advise everyone how that may impact them shortly.

Council Member Michael Kelley asked for an update on in-person conferences. Not at this time, responded Director Bowles. Council Member Kelley asked if we should expect changes in the short-term. Director Bowles wishes to have additional conversations with the new Administration and would not have any updates in the short-term.

Council Member Stephen Falvey asked Mr. Taupier about the analyzing of the **uninsured injuries** by occupation and industry, and if there any way to segregate public work covered by the prevailing wage law. In construction, there were 11 classified as laborers. Mr. Taupier indicated that this is information received by the DIA from the claimant. Council Member Falvey is concerned with misclassification. Is it possible for the next meeting to identify to break out whether these claims involve public work. Mr. Taupier said that they'd refer his question to the investigation unit. When investigators go to the main office to check on Stop Work Orders, Mr. Taupier is not sure whether there is an ability to address this. But on a job site is clearly a public works job site, it could be

gleaned. Mr. Taupier said that he'd look into it. Council Member Falvey asked if the investigators could be asked to make a note if it was public work. There is a way around the system if they misclassify it's a much lower comp rate, claim rate, said Council Member Falvey. To be clear, the occupation information comes to the DIA by the claimant, said Mr. Falvey. I appreciate you looking into this, Bill, said Council Member Falvey.

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 2023-24 legislative session that were given docket numbers (Advisory Council is following 34 bills) involving funeral benefits, protecting injured workers by Senator Lovely, \$15,000 rate increasing to a 30 times the average weekly wage, supporting remote participation (4-5 bills relative to this issue) and HD 91 - scarring, and HD 89 increasing workers' compensation benefits from 60% to 66%.

There has been no members added to the Joint Committee on Labor and Workforce Development as of the time of this meeting. With respect to the State House, House members are meeting in-person to vote while Senate members are allowing members to vote remotely. This will likely impact the Advisory Council at some point when there is a more permanent decision on how meetings will be handled once the expiration of the remote participation ends on March 31, 2023.

If you would like a copy of the legislative spreadsheet and monthly report card please send me an email and I will forward along.

Lastly, I attended the Division of Insurance hearing this week as WCRIBMA has requested a 4% decrease in workers' compensation rates effective July 1, 2023. I am also on the Regulation Committee for the International Association of Industrial Accidents Boards and Commissions and will keep you posted on what is happening in other jurisdictions that may be of interest to the Advisory Council in Massachusetts.

Before concluding the meeting, Chairman Pulgini asked whether the guests attending the meeting had any questions for the presenters today. Without questions the meeting concluded, but before ending, Executive Director O'Connell asked Chairman Pulgini about voting on minutes. There were a few call-in users and Executive Director O'Connell wanted to see if Council Members Walsh, Joyce, or Long were on the call. Without responses, a roll call was conducted and there were only 6 voting members in attendance and a quorum requires 7, voting on December 2022 and January 2023 minutes could not occur.

Without questions for Executive Director O'Connell, or a quorum, Chairman Pulgini ended the meeting at 9:24am, see you next month.