



**CHARLES D. BAKER**  
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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**

February 9, 2022  
Via WebEx

**Present:** Attendees: Todd Johnson, Mickey Long, Stephen Joyce, Teri McHugh, 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, Interim Director WCTF Holly Anderson, Bob Cronin Investigations, Maryann Brunton, Vinnie Lopes, Shamia Moore; Sheila Tunny, Ginny McCarthy – WCRIBMA; Roman Dolinschi, Christopher Stark - MA Insurance Federation, Frank Rivera - MassPort; Attorney Kerry Nero - City of Boston, Attorney Alicia DelSignore, Lena-Kate Ahern - City of Boston, Julie Bowler - Atlantic Charter, Attorney James Ramsey, Attorney Peter Francomano, Attorney Ana Mari deGaravilla ; and Maureen O'Connell.

**Date:** February 9, 2022  
**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
  - Conference/Hearing/Reviewing Board Queue
  - Impartial Medical Exams/Physicians
- B. DIA Vital Statistics - Bill Taupier, Director of Administration
  - Cases Filed with DIA
  - Workers' Compensation Trust Fund
  - Personnel Update
  - Enforcement and Compliance
- C. Director's Update – Sheri Bowles, Interim Director

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**3. EXECUTIVE DIRECTOR'S UPDATE**

- o Legislative update

**4. ACTION ITEMS**

- o Minutes - February 9, 2022

**5. COMMUNICATIONS**

N/A

**6. MISCELLANEOUS**

N/A

Vice Chair began the meeting at 9:02am and asked Senior Judge Omar Hernandez, Senior Judge, DIA to provide an update on activity.

With respect to conciliations, 475 were referred to conference, 557 resolved, 54.09%. Regarding continuances there were 4,366 attorneys requests and 860 conferences - the average waiting time is between 10-22 weeks. Hearings queue is 1,995, 431 conferences scheduled, 242 orders issues, 324 hearings scheduled, 4 appeals to the reviewing board, and 5 pending hearing decisions in January 2022, we are in great shape in this area. There were 16 cases in the reviewing board inventory. There were 1,820 in impartial examinations, 32 fee waivers were granted (slightly higher, but not concerning), and \$658,276 in exam fees collected. With respect to 13A Attorneys fees, \$47,794,004 was collected.

Announcements from Senior Judge Hernandez, update on OATP 19A form after Cora Roelof's review - researcher from UMass Lowell. This form is more detailed, issued two weeks ago and is on the DIA website. Judge Rose had an injured worker is engaged with her life, OATP program is working. Two judges were nominated by the Governor's Office: Stephen Murray and Jamie Spiller Kaplan, hearings for March 9 with the Governor's Council. Vice Chair Johnson asked if there is a full complement of judges now, Senior Judge confirmed. These judges, when approved, will fill vacancies in Fall River and Boston office.

Lastly, Senior Judge Hernandez mentioned Kids Chance and the available scholarships. Looking to help identify students who are in need of a scholarship.

Vice Chair Johnson asked Senior Judge Hernandez about Covid-19 restrictions and forward-looking actions and changes. There are no specific timeframe in mind, proceeding cautiously said Senior Judge Hernandez. The peak needs to pass before looking at this matter. Mask mandates will continue in Boston MA.

Council Member Stephen Falvey asked about Kids Chance scholarships (high school + college) and whether there are restrictions. 48 out of 50 states have a Kids Chance chapter. Care packages are distributed to college students and Kids Chance follows the progress of students throughout their college experience, it's a process. Website: <https://www.kidschanceofma.org/>

Attorney Jim Ramsey asked Senior Judge Hernandez about reopening for conferences. Will this be looked at - any suggestion on this matter. Senior Judge Hernandez said that it is more of a long view, review the data, other workers' compensation agencies, it's a scheduling process and is quite detailed.

Council Member Mickey Long commented on the conference and hearing queue and wanted explanation on a hybrid-model + clarification on the delays now that we are in a remote capacity. Senior Judge Hernandez responded that the DIA courts were opened for the entire pandemic, Judge vacancy, very limited staff, and DIA doesn't have the bandwidth to do a hybrid model. The three-month is accurate, shorter queues extend more continuances.

Vice Chair Johnson commented that every stakeholder shares the goal of continuous improvement. The trends are indicative of getting these queues down and we will revisit when there is a full judicial roster.

Without any questions for Senior Judge Hernandez, Vice Chair Johnson directed the floor to Mr. Bill Taupier, Director of Administration.

First Report of Injury (FRIs) were 3,168 filings and 804 cases (1,005 insurers discontinuances, 4,913 employee claims, 5,137 total cases. With respect to Covid-19 FRIs there were 597 in January with the health care industry being the highest, 10,243 (74%).

With respect to Compliance and Enforcement, there were 116 SWOs issued (3 defaults) 1,353 compliance letters sent, and \$58,553 fines collected (FY 2022 total fines collected: \$417,020). There were 6,292 total compliance checks and 277 field investigations (FY 2022 total compliance checks: 34,256).

Is there anecdotal information on the numbers driving up, asked Vice Chair Johnson. Three new investigators indicated General Counsel Kevin O'Leary.

Council Member Stephen Joyce asked about numbers that are adjusting back to pre-pandemic levels of SWOs and asked how many workers were covered to enforcement action is no longer on the slide, if we could put this back on the slide, it is an important data slide.

Council Member Long asked about first report of injury slide - reporting injuries. Are documents public to see if employers are reporting injuries, asked Council Member Long. DIA does not release identifying information. Public record is employer + date of injury. Unfair to employers who have good records to be paying excessive premium while others escape premium - skews actuarial tables said Council Member Long. It is a competitive concern.

Regarding the Workers' Compensation Trust Fund (WCTF) there were 40 uninsured injuries, \$4,451,516 in payments against open claims (industries: 15 laborer, 9 carpenter, and 28 con-

struction). With respect to recovery efforts: \$508,150 was received.

Vice Chair Johnson asked if there was a large recovery, good hits said General Counsel O'Leary and mentioned that he was proud of the team for their work on recovery efforts.

Council Member Falvey asked Bob Cronin about how investigators were assigned their work/cases, prioritizing the construction industry. Mr. Cronin mentioned that they are assigned cases based on the area they are in or tips. Council Member Falvey offered suggestions to check building permits based on or over a certain dollar amount or timeframe with high-profile jobs. What Council Member Falvey sees in SWOs is a lot of sidewalk-type business and there should be a better way to prioritize construction sites - a systematic way of tracking frequent flyers and will continue to ask this question next month.

Council Member Long seconded all of the comments made by Council Member Falvey about prioritizing investigations. Continued concerns around the underground economy is what Council Member Long is hearing from the insurance industry. Thank you Council Member Falvey for the comments. General Counsel O'Leary indicated that this is what they do, investigators are experts in what they do, and we appreciate the comments and suggestions.

Disproportionate numbers in the construction industry, Council Member Long asked what is driving this number. How to get the construction number down would help the construction industry. Who finances the trust fund, the insurers, the employers. The system is from employer assessment premiums drives the employer payroll. All great comments from Advisory Council members said Vice Chair Johnson. We look forward to insights.

The Second Injury Fund budget was \$27,000,000 and payments were made in the amount of \$12,861,637. The COLA budget was \$10,900,000 (a significant reduction) while payments were made in the amount of \$767,445. Referral fees collected were \$2,379,336. Assessment budget was \$61,157,693 with payments made in the amount of \$31,529,693.

Vice Chair Todd Johnson provided positive feedback to Mr. Taupier regarding the significant decrease in the COLA budget.

With respect to personnel, there are 191 employees, a few retirements in December 2021 + January 2022. What areas are impacted asked Vice Chair Johnson: claims administration, safety director, and conciliation.

General Counsel O'Leary welcomed Holly Anderson as the current Acting Director WCTF.

Without any questions for Senior Judge Hernandez the floor was directed to Interim Director Bowles. No major updates. Even though the City of Worcester mask mandate is rescinding, but there is still a February 28 mask mandate by Commonwealth of MA.

Without any questions for Interim Director Bowles, the floor was directed to Executive Director Maureen O'Connell.

Executive Director Maureen O'Connell provided the Advisory Council an update on legislation. Three bills left the Joint Committee on Labor and Workforce Development (S1162, S1182, H2046), remaining bills are in committee. Open Meeting Law has not changed, will revisit in April 1, 2022. Executive Director O'Connell addressed Council Member Stephen Falvey on his November 10, 2021 request about OSHA and Amazon warehouses and is working on this. Council Member Falvey followed up with a status update request on Petitions 21-11/21-12 (independent contractor rules) with the Attorney General's office. Executive Director O'Connell will look into this. Lastly, focus for FY 2022 annual report, fiscal year ends on June 30, 2022.

Without further questions for Executive Director O'Connell the floor was directed back to Vice Chair Johnson. Without a quorum the meeting concluded at 9:55 am.