



**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**

January 11, 2023

Via WebEx

**Present:** Attendees: John Pulgini, Todd Johnson, Teri McHugh, 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, WCTF Director Holly Anderson, Timothy Foley, Shamia Moore, Vinnie Lopes, Maryann Brunton, Dan Judson, WCRI; Christopher Stark - Mass Insurance Federation; Roman Dolinschi- WCRI, Frank Rivera - MassPort, Julie Bowler, Attorney Kerry Nero - City of Boston, Courtney Pidani, Attorney Ryan Benharris, Attorney James Ramsey, Attorney Ana Mari DeGaravilla, Attorney Lori Favata, Attorney Patrick Francomano, Attorney David O'Connor, Attorney Dan Napolitano, Attorney Gary Orlacchio, Attorney Maryann Calnan, and Maureen O'Connell.

**Date:** January 11, 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
  - 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

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

- FY '22 Annual Report

LAFAYETTE CITY CENTER

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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 9:02am to accommodate Advisory Council members scheduling.

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 a positive direction. One thing that was implemented over the last year was the timeline between conference and hearing, bringing it down in all of the regions, six months over one year ago. The timeline between conciliation and conference is 8-10 weeks. All metrics are trending in a positive direction. Credit to the attorneys for doing their work. Our office has implemented in the last few years has really shown positive results.

With respect to the pending hearing decisions, there is an uptick in those numbers. Three cases are ADR and one decision is being written at the moment. ADR cases takes longer. Senior Judge Hernandez is comfortable with these numbers. Review board wrote a few decisions, inventory decreased, again, positive direction. Attorneys fees are trending at \$92m an increase over the last 3 years, trending in a positive direction.

Senior Judge Hernandez added that this last month was busy with onboarding. Judge McGrath (AJ) is in training and will be assigned to the Boston office. Judge O'Leary (ALJ) will be assigned to Boston office as well. In addition, eight judges were also reappointed to AJ and ALJ positions.

Lastly, we lost Judge Heffernan over a week ago. He was a mentor to me and to the office. A big loss to the DIA family and will be dearly missed, a gentleman. Council Member Stephen Falvey said that he shared in Senior Judge Hernandez grief.

Vice Chair Todd Johnson mentioned that there is good news on the conference queue, a real significant drop. When you look at the historical data, there are no big changes in the numbers until January, 150 cases came off. Could you add some context to the number. Senior Judge Hernandez mentioned that there are new judges at that time, Judge Murray and Judge Spiller-Kaplan now have full caseloads. With Judge McGrath the number will come down further. Less continuances, cases are moving through, not tying up future spots, and effective for our scheduling unit. Things are trending downward because cases are being resolved smoothly. All 2021 cases are gone. Senior Judge Hernandez is really happy with the metrics, in a really nice spot, and continue to trend that way. Vice Chair Johnson said that it was a really big drop in one month he wanted to ask.

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

With respect to conciliations, 493 cases were resolved (50.1%) and 473 were referred to conference. The average waiting period for a conference is 8-16 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 3,866 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 11 (an increase from the previous month). Senior Judge Hernandez mentioned that these involved retirement cases.

Review Board inventory: 19, Fee waivers granted: 24, Exam fees collected: \$615,530, Attorneys fees: \$46,206,638, 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: 89 (down from the previous month), 3 were defaults. The DIA issued 86 Stop Work Orders (SWO) with 3 default and sent 1,146 compliance letters in the month of December. Fine collection for the month of December was \$7,595 with a FY 2023 total of \$340,869. For FY 2022 a total of 1,295 SWOs were issued, and total fines collected was \$814,654.

The DIA conducted 4,790 total compliance checks and 253 field investigations in December. In addition, since the beginning FY 2023, DIA has conducted 31,279 compliance checks with 2,233 employees now covered by WC insurance. There were a total of 60,435 compliance checks and 2,506 employees newly covered in FY 2022.

First Report of Injury (FRI) filings for December were 2,548. Total FRIs filed for FY 2023 are 17,100. The total FRIs file for FY 2022 were 35,644.

The number of Cases filed for December 2022 was 759. Total cases filed for FY 2023 are 5,087.

Cases filed by type: 5,087 total cases, 4,211 employee claims, 868 in insurance discontinuances, and 8 third-party claims. With regard to Covid-19 FRIs: 82 were filed in November. Under the MA law, a First Report of Injury must be filed by the employer once an employee is out of work for 5 days or more days due to a work-related injury or illness. The employer must report the injury/illness to the

DIA within 7 days of being notified by the employee. Filings are listed by date of injury as reported. For all COVID-19 cases reported to DIA, 37 were fatalities.

Healthcare and Medical labs: 12,180 FRIs (74% an increase from prior month). Lump sum agreement: 95 (same as last month), Section 19 agreement: 50, Withdrawn prior to conciliation: 31. Note: No appeal indicates that a Conference Order has been issued, but neither party has filed an appeal of that order. Adjusted indicates that the parties have agreed to terms and adjudication is no longer necessary. There have been 307 total cases filed (276 Employee Claims and 31 Insurance Discontinuance Requests). Several individuals have had more than one case filed, hence the total number of workers represented is 252.

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.

Vice Chair Johnson asked about the \$2.8m paid to date, that's all injuries regardless of loss date, correct? Mr. Taupier confirmed that it is all benefits paid for the fiscal year.

There are 41 new Section 65 injuries for November (Example: **Uninsured Claims by Occupation:** 8 laborer, 4 carpenter, 4 delivery driver, 3 kitchen staff and **Uninsured Claims by Industry:** 16 construction, 3 moving & storage, 3 landscaping), trending about 82 so far. As of the end of last month, payments against open claims in FY 2023 stands at \$2,882,965. The WCTF issued \$6,883,155 in payments against open claims during FY 2022. Recovery efforts: \$479,420.

***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 \$9,359,269. 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 \$2,906,750 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 \$1,656,013. Assessment collection budget is \$63,500,000 with a payment of \$35,751,196.

Personnel: 200 (68 Administration, 79 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.*

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

Director Bowles mentioned that she appointed Attorney Gerard Pugsley as the DIA Acting General Counsel and Deputy Director and he assumed this role as Kevin O'Leary was sworn in. Attorney Pugsley is not with us today as he had a previous commitment, but will be attending meetings moving forward. Attorney Pugsley will oversee the Office of Legal Counsel, Trust Fund, and Investigations. Lastly, the DIA document management system will go through an upgrade with a roll out date of January 24. There should be minimal or no interruption to outside users and stakeholders.

Council Member Michael Kelley asked for an update on in-person conferences. Senior Judge Hernandez mentioned that the conferences are open, they are being held virtually, that is the update. Council Member Kelley asked if this was indefinitely. Senior Judge Hernandez said that he has not had a chance to meet with the new administration, but that the virtual conferences will be continuing.

Attorney James Ramsey mentioned that he spoke with his State Representative in September who spoke with the Governor's Office mentioned the reason we are meeting virtually was the pandemic backups and their significances. Now that the backups have been resolved, Attorney Ramsey asked if there will be a review of the in-person conferences.

Senior Judge Hernandez said that part of the reason the DIA is doing so well is because of the virtual conferences, less continuances, all our metrics are trending in a positive directions. That's the update I have, said Senior Judge Hernandez. You are welcome to contact your State Representative, Attorney Ramsey. My job here is to assure that the employee gets an efficient system and before a judge quickly. That is the update, said Senior Judge Hernandez.

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

Chairman Pulgini asked Executive Director Maureen O'Connell whether there was a quorum in the room to vote on minutes, there was not.

Executive Director O'Connell updated the Advisory Council on the 2023-24 legislative session that were given docket numbers and were carried over from the previous legislative session. These bills are fairness in workers' compensation benefits, scarring, workers' compensation benefit to emergency personnel, disability benefits (Rep Chris Hendricks), prevailing wage (Rep Jeffrey Roy) and HD 120 remote participation in state meetings filed by Rep Lindsay Sabadosa. This bill authorizes any public body to allow remote participants to vote. Once these bills are rolled over

with bill numbers and will be followed. Anyone who wishes the legislative spreadsheet along with the Report Card let me know.

Lastly, some of you have asked for FY '22 annual report. It was my understanding that the EO and Governor's office reviewed it for release before the Council voted on. I am not allowed to put this on the website or release to public until it gets approval. Once it has been approved I will release.

Without questions for Executive Director O'Connell, Chairman Pulgini ended the meeting at 9:27am, see you next month.