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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

June 14, 2023

Via WebEx

Present: Attendees: John Pulgini, Todd Johnson, Teri McHugh, James Steenbruggen, Michael Kelley, Bernie Mulholland, Patrick Walsh, Stephen Falvey; Sheri Bowles – DIA Director, Bill Taupier – DIA Director of Administration, Senior Judge Omar Hernández – DIA Senior Judge, Acting General Counsel Gerard Pugsley, WCTF Director Holly Anderson, Alan Green - DIA Investigations Manager, DIA Attorney Timothy Foley, DIA Vinnie Lopes, Meghan Orio; Cara Toomey - WCRIBMA, Daniel Judson - WCRIBMA; Tiffany Benjamin - Massport; Roman Dolinschi- WCRI, Attorney Alicia DelSignore, Attorney Ana Mari DeGaravilla, Attorney Daniel Napolitano, Attorney Stacie Soboski, Attorney Ryan Benharris, one call-in user, and Maureen O'Connell.

Date: June 14, 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

4. ACTION ITEMS

- o Minutes - April 12, 2023
- o Minutes - May 10, 2023

5. COMMUNICATIONS

N/A

6. MISCELLANEOUS

LAFAYETTE CITY CENTER

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Chairman John Pulgini began the meeting at 9:02 am and asked Senior Judge Omar Hernández to provide an update on judicial activity.

Senior Judge Hernández indicated that the conciliation unit is doing well resolving cases, thank you to Dele Edibiri and his team. The numbers are consistently over a 51% resolved rate. The hearing queue is up a bit, conference queue is up, but the time between conciliation and conference is too quick, and I've made adjustments thanks to your feedback -pulled back one conference per day. With respect to the pending hearing decisions, 8 - removed a few of old ones, in really good shape, spoke to the Judges and there are valid reasons for 12-36 months. Reviewing board, 87 board numbers, this is why this number is high (109). Everything in dispute resolution is moving well. Happy with judges and staff. Lastly, Senior Judge Hernández the DIA Worcester Office is interviewing for a stenographer next week (Monday).

Council Member Stephen Falvey asked Senior Judge Hernández about the interviews for General Counsel. Senior Judge Hernández mentioned that he did not participate in interviews and deferred to administration.

DIA Director Sheri Bowles mentioned that the interviews for General Counsel and Director of Investigations are ongoing and to answer Council Member Falvey's follow-up question about how many candidates were in the review process, Director Bowles mentioned that there were 45 resumes received for both positions.

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

With respect to conciliations, In May, 450 cases were resolved (51.3% - up from last month)) and 428 were referred to conference. The average waiting period for a conference is 8-10 weeks. 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 7,354 continuances. For FY 2022, there were 6,860 continuances.

With respect to the hearing queue, there are 1534 (up from last month) with Conferences scheduled: 713, Hearings scheduled: 200, Orders issued: 490, and Appeals to reviewing board: 3. With respect to the pending hearing decisions, there were 8 (a decrease from the previous month - and 12-36 months down to 3 - last month it was 5). Senior Judge Hernández mentioned this is a result of pending cases either due to surgery, agreements, ADR or pro-se cases. Review Board inventory: 109, Fee waivers granted: 70, Exam fees collected: \$1,078,489 - no change since last month, Attorneys fees: \$87,230,435, 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.*

Mr. Taupier provided statistics on Compliance/Stop Work Orders: 127 - increase from last month, and 3 defaults. The DIA compliance unit sent 1,451 compliance letters in the month of May 2023, down from last month. Fine collection for the month of May \$65,313, an increase from last month with a FY 2023 total of \$712,907. Council Member Stephen Falvey asked about the leadership opening in the Office of Investigations - has that been filled. Mr. Taupier mentioned that the interviews are ongoing. Director Sheri Bowles added that they are in the interviewing process and will be making a decision shortly.

The DIA conducted 5,981 total compliance checks and 279 field investigations in April, an increase from previous month. In addition, since the beginning FY 2023, DIA has conducted 51,928 compliance checks with 3,740 employees now covered by workers' compensation insurance due to the efforts of the investigations unit. 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 April were 2,329, a decrease from previous month. Total FRIs filed for FY 2023 are 27,351. The total FRIs file for FY 2022 were 35,644. The number of Cases filed for April 2023 was 853, a decrease from last month. Total cases filed for FY 2023 are 8,715. Cases filed by type: 8,715 total cases, 7,023 employee claims, 1,676 in insurance discontinuances, and 16 third-party claims. Total cases 853, and 10 manual with 843 web online filing. 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.** The audio presentation by Mr. Taupier continued to cut in and out during the Trust Fund

presentation.

There are 79 new Section 65 injuries for April 2023 - an increase from the previous month, (Example: **Uninsured Claims by Occupation**: 20 laborer, 9 carpenter, 4 home health aide, and **Uninsured Claims by Industry**: 36 construction, 5 healthcare, 4 landscaping. As of the end of last month, payments against open claims in FY 2023 stands at \$5,602,451. Recovery efforts: \$727,270, same as previous month. 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 \$21,420,130 - an increase from last month. 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 \$5,232,505 with a \$6,000,000 budget - we are above budget, but have funds to handle this - trending higher than expected. 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 \$3,074,914 - same as previous month. Assessment collection budget is \$63,000,000 with a payment of \$53,158,152 - same as last month.

Personnel: No change since last month - 199 (67 Administration, 80 dispute, 15, legal, 27 WCTF, and 10 finance). Slide deck has been adjusted to reflect breakdown of personnel. A few new hires not reflected in this slide: OEVR review officer and two new investigators coming on board in Springfield area, those numbers will be reflected in next month's slide with a pending retirement in June. *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.* Council Member Michael Kelley asked about the assessments, does the surplus carry over to the next fiscal year, Mr. Taupier said yes. Final numbers are pending.

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

Chairman John Pulgini asked Executive Director Maureen O'Connell about Council Member attendance, she responded there is no quorum.

Council Member Falvey asked about the COLA reimbursements and what was driving the number up. There could be a lag during the pandemic. According to WCTF Director Holly Anderson indicated that the staff couldn't handle the filings during the pandemic, short-staff, now coming back to normal. The time limit, according to statute, is two years.

Director Bowles mentioned that she went out of turn and that the only update provided is about the interviews for the General Counsel and Director of Investigations positions.

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

Executive Director Maureen O'Connell provided her update. Since we last met, there have been a few updates to the legislative spreadsheet - a hearing will be held at the Massachusetts State House with the Joint Committee on Labor & Workforce Development on June 20, 2023 at 1:00pm - hearing will be in-person in room A-1 or virtual (see next page for bill information). If you would like a copy of the spreadsheet and today's report card, please email me after the meeting and I'd be happy to send those along.

Without questions for Director O'Connell, Chairman Pulgini asked the guests if they had any comments. Without questions from the guests, and without a quorum, Chairman Pulgini ended the meeting at 9:19am.

Webex meeting recording: 2023 - June 14 | Advisory Council Meeting-20230614 1245-1

Password: **DdeHrAj6** Recording link: <https://maureenocconnell.my.webex.com/maureenocconnell.my/jdr.php?RCID=b2e82886abe862c726a5f5a49f98e8c4>

Bills moving to a June 20, 2023 Hearing at the Joint Committee for Labor & Workforce Development

Bill No.	Sponsor	Title
H1876	Finn, Michael J. (HOU)	An Act relative to acts of violence
H1880	Garballey, Sean (HOU)	An Act providing benefits for permanent functional loss and disfigurement under the Worker's Compensation Act
H1895	Hendricks, Christopher (HOU)	An Act providing worker compensation protection to emergency response and medical personnel related to COVID-19 infection
H1896	Hendricks, Christopher (HOU)	An Act to modify weekly workers' compensation disability benefits
H1897	Hendricks, Christopher (HOU)	An Act relative to fairness in worker's compensation disfigurement benefits
H1898	Hendricks, Christopher (HOU)	An Act relative to workers' compensation disfigurement benefits concerning scarring
H1903	Jones, Jr., Bradley H. (HOU)	An Act relative to fairness in workers' compensation benefits
H1907	Jones, Jr., Bradley H. (HOU)	An Act relative to workers' compensation
H1910	Kerans, Sally P. (HOU)	An Act relative to workers' compensation funeral benefits
H1921	Mendes, Rita A. (HOU)	An Act establishing equality and safety in the workplace
H1927	Nguyen, Tram T. (HOU)	An Act to protect injured workers
H1928	Nguyen, Tram T. (HOU)	An Act relative to occupational presumption and COVID-19
H1949	Sabadosa, Lindsay N. (HOU)	An Act relative to worker compensation protections for certified medical cannabis patients and their caregivers
H1958	Uyterhoeven, Erika (HOU)	An Act relative to consolidating multiple definitions of employee
S1159	DiDomenico, Sal N. (SEN)	An Act relative to fairness in workers' compensation disfigurement benefits
S1165	Eldridge, James B. (SEN)	An Act to protect injured workers
S1176	Feeney, Paul R. (SEN)	An Act relative to occupational presumption and COVID-19
S1189	Jehlen, Patricia D. (SEN)	An Act consolidating multiple definitions of employee to prevent misclassification
S1202	Lovely, Joan B. (SEN)	An Act relative to workers' compensation funeral benefits