



CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
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

June 8, 2022
Via WebEx

Present: Attendees: John Pulgini, Todd Johnson, Teri McHugh, Michael Kelley, Bernie Mulholland, 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, Shamia Moore, Vinnie Lopes; Dan Judson - WCRIB; Christopher Stark - Mass Insurance Federation; Attorney Ana Mari deGaravilla, Attorney Ryan Benharris, Attorney James Ramsey, Attorney Maryanne Calnan, Attorney Peter Francomano; and Maureen O'Connell.

Date: June 8, 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
 - 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 Legislative update

4. ACTION ITEMS

- o Minutes - February 9, 2022
- o Minutes - March 9, 2022
- o Minutes - April 13, 2022
- o Minutes - May 11, 2022

5. COMMUNICATIONS

N/A

LAFAYETTE CITY CENTER
PHONE: 857.321.7379

www.mass.gov/wcac

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, 54%, thank you to Dele Edibiri and his conciliation staff. Judges and Attorneys are working hard to get the queue down, moving in a positive direction. With respect to conferences and hearings, also moving in a positive direction. Judges are taking vacations over the summer, cases are a bit up, but are heading in the right direction. Pending Hearing decision queue will be down in July. Reviewing board inventory same over the past year, judges are writing good decisions. Impartial medical are progressing,

Four Judges were reappointed and will be sworn in over the next week, Judge Koziol, Judge Maher, Judge Barrett, and Judge Fitzgerald. Working on the next round over the next few months.

Vice Chair Johnson asked what slide 5 impartial and the fee waivers and wanted anecdotal information on the cause of this number. It is economic, according to Senior Judge Hernandez. is attributing to the numbers declining, Senior Judge Hernandez said that mediation is helping. Attorney Jim Ramsey wanted to know about impartial exams since last year - trending lower commented Senior Judge Hernandez.

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

Mr. Taupier indicated that there were two investigator resignations and will be working on hiring more.

Council Member Stephen Falvey asked if the cause of the investigative numbers are as a result is because of the investigator resignations. With respect to Council Member Falvey's question about open spots, General Counsel Kevin O'Leary indicated that two of the investigators who left were from the western part of Massachusetts. There are no hard-number correlations with the decrease of cases to resignations. There are 16 investigators.

With respect to conciliations, 503 were resolved and 457 were referred to a conference: 52.4%. During FY '22, attorneys have requested 6,293 continuances, an increase when compared to 5,681 in FY '21. The average waiting period is 10-22 weeks for a conference. The number of conferences scheduled: 757; hearings scheduled: 380; orders issued: 283, appeals to the reviewing board: 3, 5 pending hearing decisions.

With respect to Impartial medical exams: 3,007 were scheduled; 45 fee waivers were granted; \$1,193,634 was collected in exam fees; \$80,797,873 in attorney's fees; and \$3,274 in Section 7 + 8 penalties.

With respect to Compliance and Enforcement, there were 99 SWOs issued and 1 default; 4,575 compliance checks and 241 field investigations since the beginning of May 2022. During the

month of May, 1,263 compliance letters were sent, and \$93,300 fines collected (FY'22 total fines collected: \$683,164). DIA conducted 4,575 total compliance checks and 241 field investigations, and since the beginning of FY 2022 DIA conducted 55,628 compliance checks and 3,053 employees are now covered under workers' compensation insurance.

Vice Chair Johnson appreciated the telling numbers, happy to hear what has been taking place.

First Report of Injury (FRIs) cases, 805 cases filed in May of 2022, FRI filings: 2,986, total FRIs: 32,513 a decrease when compared to 37,060 in FY '21.

There were 7,726 insurance claims, 1,593 insurance discontinuances, 35 third-party claims, for a total of 9,354 cases. Covid-19 FRIs were 242 with healthcare 10,895. Lump sum: 78, 28 were withdrawn prior to conciliation, 48 were Section 19 agreements, and 21 were appealed to a hearing. Covid-19 stats will be tracked until it is declared over.

Vice Chair Johnson asked for clarification about 10 hearings scheduled, 28 appeal to hearing. Mr. Taupier explained that the appeal to hearing means conference order has been appealed, 10 hearings means a date has been scheduled.

With respect to the Workers' Compensation Trust Fund, there are 83 new Section 65 injuries, and \$6,533,836 payments made against open claims compared to \$5,761,538 in FY '21 (40 claims by industry: construction, and 25 laborer, 3 driver by occupation). The civil litigation unit has recovered \$641,820.

With respect to Slide #14, Council Member Patrick Walsh asked if the drivers and parcel delivery driver, according to what he has been told, gig economy drivers do not carry workers' compensation insurance if they independent contractors and asked if this could be looked into. Gig economy presents challenges if they are independent contractors, said Mr. Taupier. Council Member Falvey mentioned the ballot question about the gig economy.

The Second Injury budget is \$27,000,000 and payments made were \$23,996,423. COLA reimbursements were \$3,877,692, Section 34 budget \$10,900,000. Referral fees were \$3,770,811, and have exceed last year's number. Assessment collection budget is \$61,157,033 with collections standing at \$63,968,021. Personnel: 193 (66 Administration, 75 dispute, 15, legal, 27 WCTF, and 10 finance). Slide deck has been adjusted to reflect breakdown of personnel.

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

Director Bowles wanted to welcome the newest employees to the DIA: Claims - Kathuska Jose, Laurie DuLong, Springfield - Libby Hernandez, OEVR - Amanda Duffy, and Marionye Vieux, and thanked the recent retirees for their contribution to the DIA: Conciliation - Linda Delaney, and Investigator - Robert Cronin.

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 Petition 21-11/12. The case is before the Supreme Court in MA and the justices asked the parties to keep the language clear so that the public understands should this be on the ballot come November. This case must wrap up by July 1 so that the Secretary of State has enough time to prepare this for the election ballot. With respect to the Open Meeting Law, there have been no changes and the meetings will occur via WebEx until at least July 15, 2022 at which time it will be revisited. The legislative spreadsheet pertaining to the Joint Committee on Labor and Workforce Development has been updated to reflect bills that accompanied a study (S1194 - Covid presumption, H1945 - workers' compensation insurance, H1922 - modifying weekly compensation, H2035 - fairness in workers' compensation benefits, H2057 - consolidating definitions of an employee, and H2046 - prevailing wage). Director O'Connell requested that anyone interested in the legislative spreadsheet to email her after the meeting.

Director O'Connell asked Chairman Pulgini about meetings for July and August 2022, he requested an email be sent to the Advisory Council Members to ask for their availability.

Council Member Falvey asked for the Supreme Court dates again. Oral arguments were in May 2022, the discussion was not clear, and the case needs to be resolved by July 1 so that the Secretary of State can get it on the ballot by November election.

Chairman Pulgini asked if the guests today had questions. Without further questions for Executive Director O'Connell and without a quorum the meeting concluded at 9:33 am.