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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

March 8, 2023

Via WebEx

Present: Attendees: John Pulgini, Stephen Joyce, Teri McHugh, Michael Kelley, Stephen Falvey; Sheri Bowles – DIA Interim Director, Bill Taupier – DIA Director of Administration, Senior Judge Omar Hernández – DIA Senior Judge, Acting General Counsel Gerard Pugsley, WCTF Director Holly Anderson, DIA Vinnie Lopes, Shamia Moore, Maryann Brunton, Dan Crowley, WCRI; Christopher Stark - Mass Insurance Federation; Roman Dolinschi- WCRI, Frank Rivera - MassPort, Kerry Nero - City of Boston, Attorney Alicia DelSignore, Attorney Ana Mari DeGaravilla, Attorney Alice Lang, Attorney Lena Ahearn, Attorney Lori Favata, Attorney Patrick Francomano, Attorney Maryann Calnan, one call-in guest, and Maureen O'Connell.

Date: March 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 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, 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
- o Minutes - February 8, 2023

5. COMMUNICATIONS

N/A

6. MISCELLANEOUS

N/A

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Chairman John Pulgini began the meeting at 9:02am and due to a conflict asked Executive Director Maureen O'Connell to provide her update. The Advisory Council is following 34 bills related to workers' compensation, labor, and remote meetings. No members have been added to the Joint Committee on Labor and Workforce Development as of this moment. I am following the Division of Insurance hearing where WCRIB-MA is requesting a 4% decrease in workers' compensation premiums - will keep you updated on this hearing and will provide information on relevant jurisdictional issues as I am on the Regulation Committee for the IAIABC (International Association of Industrial Accidents Boards & Commissions). There are no changes to the legislative spreadsheet, once docket #s have been given bill #s I will update the Council. There have been reports within the legislature that the remote extension is being pushed out to 2025, but as of this moment in time, there have been no changes to the Open Meeting Law with respect to remote meetings, which expires on March 31, 2023.

Without questions for Executive Director O'Connell, the floor was directed to Senior Judge Omar Hernández to provide an update on judicial activity.

Senior Judge Hernández indicated that the unit is resolving cases and perform at a high level, thank you to Dele Edibiri and his team, and to the attorneys for getting the work done. With respect to the conference and hearing queue, both trending downward and going in a positive direction. Increased conferences per day. Mediation week has been impactful on the reduction. 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 6-14 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, 14, and is a result of pending cases either due to surgery, agreements, ADR or pro-se cases. Senior Judge Hernández is comfortable with these numbers. One case had 83 board numbers. Judge Kevin O'Leary is doing well. Fee waivers are great. Attorneys fees will likely go past 2022 numbers. Dispute resolution unit is in really great shape.

Council Member Michael Kelley asked about in-person conferences. The metrics have been good and the office will continue with remote conferences, said Senior Judge Hernández.

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

With respect to conciliations, 535 cases were resolved (57.6%) and 393 were referred to conference. The average waiting period for a conference is 6-14 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 5,304 continuances. For FY 2022, there were 6,860 continuances.

Conferences scheduled: 558, Hearings scheduled: 250, Orders issued: 304, and Appeals to reviewing board: 90 (one case had 83 board numbers). With respect to the pending hearing decisions, there were 14 (an increase from the previous month). 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 (a considerable increase from prior month), Fee waivers granted: 44, Exam fees collected: \$1,277,043, Attorneys fees: \$61,099,381, and Section 7/8 penalties: 0.

Mr. Taupier provided statistics on Compliance/Stop Work Orders: 107, 2 defaults. The DIA issued 117 Stop Work Orders (SWO) with 1 default and sent 1,614 compliance letters in the month of February 2023. Fine collection for the month of January was \$47,695 with a FY 2023 total of \$554,456. For FY 2022 a total of 1,295 SWOs were issued, and total fines collected was \$814,654.

The DIA conducted 4,735 total compliance checks (increase from last month) and 528 field investigations in February, a decrease from previous month. In addition, since the beginning January 2023, DIA has conducted 40,621 compliance checks with 2,904 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 January were 2,546, an increase from previous month. Total FRIs filed for FY 2023 are 22,144. The total FRIs file for FY 2022 were 35,644. The number of Cases filed for January 2023 was 853, up from the previous month. Total cases filed for FY 2023 are 6,770. Cases filed by type: 6,770 total cases, 5,537 employee claims, 1,221 in insurance discontinuances, and 112 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.

There are 58 new Section 65 injuries for February 2023, (Example: **Uninsured Claims by Occupation:** 5 carpenter, 2 delivery driver, 3 kitchen staff, 3 home health aide, 13 laborer, and 3 maintenance, and **Uninsured Claims by Industry:** 24 construction, 3 healthcare, 3 moving & storage, 3 landscaping, and 4 restaurant). As of the end of last month, payments against open claims in FY 2023 stands at \$3,941,659. Recovery efforts: \$727,270. 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 \$14,408,471. 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 \$2,957,797. Assessment collection budget is \$63,500,000 with a payment of \$52,902,440.

Personnel: 210 (69 Administration, 79 dispute, 15, legal, 28 WCTF, and 10 finance), increase in personnel since last month. A few on boarding which reflects the numbers. Mr. Taupier indicated that the DIA expects employee retirements over the summer 2023. 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.*

Council Member Stephen Joyce asked whether employees were back in the office - a lot is missed with individuals not being in the office, he said. Interim Director Bowles responded by saying that the DIA was operating with a hybrid-work model. Since the start of the pandemic there have been no changes to DIA operations, and the conferences would be staying remote indefinitely. This work model came under the prior administration with the Future of Work Initiative. Director of Administration Bill Taupier added that employees who work remotely have the same access to the DIA system as office employees do.

Employees are in the office as needed, added Director Bowles. Public-facing employees are in the office.

The disbarment list had not been updated Council Member Joyce expressed concern, and as of March 2023, 314 people have been added to the list that was not published and these individuals were allowed to operate in the Commonwealth when they shouldn't be, this could be caught if employees were in the office. Director Alan Greene mentioned that the list lags one month behind, but will check to see where that stands.

Council Member Kelley asked what hybrid means. Director Bowles mentioned that job functions allow for full-time working remotely while other units are under the discretion of their manager and the decision on what days or how many to work in the office.

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

Director Bowles reported no changes since the February 8, 2023 meeting.

Without questions for Director Bowles, Chairman Pulgini asked the guests if they had any questions. Without questions or a quorum Chairman Pulgini concluded the meeting at 9:20am.