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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

May 11, 2022
Via WebEx

Present: Attendees: Todd Johnson, Teri McHugh, Michael Kelley, Bernie Mulholland, Jim Steenbruggen, 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, Maryann Brunton, Shamia Moore, Gina Knight, Timothy Foley; Ginny McCarthy – WCRIBMA; Roman Dolinschi, Virginia McCarthy - WCRIBMA; Attorney Kerry Nero - City of Boston, Attorney Alicia DelSignore, Julie Bowler - Atlantic Charter, Attorney Peter Francomano, Attorney Lori Favata, Attorney Ann Marie Calnan, Attorney David O'Connor, Attorney Ana Mari deGaravilla, Attorney Ryan Benharris, Attorney Kharissa Meo; and Maureen O'Connell.

Date: May 11, 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

5. COMMUNICATIONS

N/A

6. MISCELLANEOUS

N/A

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Vice Chairman Todd Johnson 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, 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, also moving in a positive direction.

Vice Chair Johnson asked what is attributing to the numbers declining, Senior Judge Hernandez said that mediation is helping.

Council Michael Kelley asked about the average waiting period for the regions (conciliation to conference): Fall River 5-5 1/2 months, 3-4 months for all other regions.

Vice Chair Johnson asked about the need for more judges, Senior Judge Hernandez indicated they now have a full roster of judges.

Council Member Kelley asked when will the conferences go back in-person, Senior Judge Hernandez indicated that possibly September is the goal to go back in person, but that depends on what happens with the pandemic. Council Member Kelley asked to make in-person a priority, Senior Judge Hernandez indicated it was, but that the safety of the employees, injured workers, and attorneys are important given the recent uptick in Covid-19 cases.

Pending hearing decisions are in great shape. Reviewing Board is writing new decisions. Scheduling impartial examinations, we'd like to have new doctors. Dr. Naris has not been writing reports, and if that is in your case, petition the judge to open up the record and DIA will refund your fee. Exams have not been scheduled with Dr. Naris. New doctors are on board and will be utilized moving forward. Council Member Teri McHugh mentioned that Dr. Naris indicated it will be 10-12 weeks to get a report.

Judge Jamie Spiller Kaplan will return to the office in August-September 2022. We wish her well and she will be in Boston at the end of the summer.

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

With respect to conciliations, 557 were resolved and 461 were referred to a conference: 54.7%. During FY '22, attorneys have requested 5,443 continuances, the hearing queue is 1,526. The average waiting period is 10-22 weeks for a conference. The number of conferences scheduled: 663; hearings scheduled: 300; orders issued: 208 hearings scheduled, 4 pending hearing decisions, 6 appeals to reviewing board, 14 in dispute resolution inventory. Impartial medical exams: 2,656; fee waivers granted: 43; exam fees collected: \$1,632,421; attorneys fees collected: \$72,183,315; and Sections 7/8 penalties: \$3,271.

With respect to Compliance and Enforcement, there were 118 SWOs issued; 1,546 compliance letters sent during the month of April, and \$93,300 fines collected (FY'22 total fines collected: \$683,164). DIA conducted 4,438 total compliance checks and 297 field investigations, FY 2022

DIA conducted 46,615 compliance checks.

General Counsel Kevin O'Leary mentioned the large construction site visits: 318 compliance checks with 1 stop work order, 362 compliance checks with 2 stop work orders. The unit will conduct an insurance check, the larger construction sites have insurance, certificates are valid, but the subcontractors. Safety and coverage have always been a priority in the DIA investigation unit.

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

Council Member Steve Falvey mentioned Amazon and their claims, this accounts for some of the increase in workers' compensation claims. If we can examine large construction sites, how about adding in the largest employer, Amazon, a large company that generates much of the claims. Are we making a special effort in this, especially workers who are being hurt on the job, an outrageous increase.

Director of Administration Bill Taupier appreciated Council Member Falvey's comments and mentioned that the DIA investigative duties are bound by Chapter 152, no authority to investigate a company of any size if they are compliant with Chapter 152. General Counsel O'Leary confirmed. Amazon is insured. When the third party claim (Sedgwick) comes to the DIA and the investigative unit will review.

First Report of Injury (FRIs) cases, 2,807, FRI 3,728, and in FY 2022 FRI were 29,527. There were 7,072 employee claims and 8,549 total cases. Covid-19 FRIs were 203 with healthcare 10,652 (73%). Lump sum: 74, and Section 19: 48.

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 64 new Section 65 injuries and \$5,954,037 payments against open claims (38 claims by industry: construction, 23 laborer and 9 carpenter. The civil litigation unit has recovered \$641,820.

Vice Chair Johnson asked about open and active trust fund claims that attribute for the whole payments. General Counsel O'Leary asked if he wanted a breakdown, Vice Chair Johnson said no.

The Second Injury budget is \$27,000,000 and payments made were \$19,123,631. COLA reimbursements were \$3,539,775, Section 34 budget \$10,900,000. Referral fees were \$3,537,725 and have exceed last year's number. Assessment collection budget is \$61,157,033 with collections standing at \$48,254,327. Personnel is at 194 (65 Administration, 75 dispute, 15, legal, 29 WCTF, and 10 finance). Slide deck has been adjusted to reflect breakdown of personnel.

Vice Chair Johnson asked where the investigators fall under, Mr. Taupier indicated the trust fund.

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

Director Bowles has one quick update, a reminder, the safety grant program and the application has opened up and is open until August 31, 2022. Director Bowles also welcomed Gina Knight, the executive assistant to the director.

Without questions for Director Bowles, Vice Chair Johnson asked the participants in the meeting if they had any questions. Without any questions, Vice Chair Johnson directed the floor to Executive Director Maureen O'Connell.

Executive Director O'Connell reminded the Advisory Council members and participants at the meeting today that pursuant to Open Meeting Law, meetings will be on WebEx until at least July 15, 2022 at which time it will be revisited. Director O'Connell is also monitoring Joint Committee on Election Laws about hybrid and remote meeting opportunities. The legislative spreadsheet pertaining to the Joint Committee on Labor and Workforce Development is the same, no changes since our April meeting. Will keep everyone apprised of changes.

Without further questions for Executive Director O'Connell and without a quorum the meeting concluded at 9:33 am.