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MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL

LAFAYETTE CITY CENTER
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BOSTON, MASSACHUSETTS 02111

JOHN A. PULGINI
CHAIR

TODD R. JOHNSON
VICE-CHAIR

MAUREEN O'CONNELL
EXECUTIVE DIRECTOR

MINUTES

May 13, 2021 via WebEx
Department of Industrial Accidents
Lafayette City Center
2 Avenue de Lafayette
Boston, MA 02111-1750

Attendees: John Pulgini; Todd Johnson; Mickey Long; Stephen Joyce; Teri McHugh; James Steenbruggen; Patrick Walsh; Stephen Falvey; Michael Kelley; Bernie Mulholland; John Regan; Sheri Bowles, Interim Director; Bill Taupier, Director of Administration; Kevin O'Leary, General Counsel; Omar Hernandez, Senior Judge; Shamia Monroe, Regional Manager Fall River; Maryanne Brunton, Springfield Regional Manager; Timothy Foley; Roman Dolanschi, Workers' Compensation Research Institute (WCRI); Kathy Fisher, Workers' Compensation Research Institute; Virginia (Ginny) McCarthy, Workers' Compensation Rating and Inspection Bureau; Daniel Judson, Workers' Compensation Rating and Inspection Bureau; Attorneys Kerry Nero, Peter Francomano, Michael Akashian, Brendan McNally, Austin Powell, Lesa Stresamondo, D Napolitano, Meredith Rainey, Linda Shallop, Andrea Antonellis, Julie Bowler, Roger Doucette, John Keefe, Mary Ann Calnan, Ann Clarke, Alicia DeSignore, Ana Marie deGaravilla, Alan Pierce, Lisa Rocha, Martin Schneider, Morgan Gray, Justin Starr, James Ramsey, Griffin Hanrahan, and Maureen O'Connell.

AGENDA

CHAIRMAN'S WELCOME

DIA UPDATE

- DIA Judicial Update - Senior Judge Omar Hernandez
 - Conference | Hearing | Reviewing Board Queue
 - Impartial Medical Exams | Physicians
- DIA Vital Statistics - Bill Taupier, Director of Administration
 - Cases Filed with DIA
 - Workers' Compensation Trust Fund
 - Personnel Update
 - Enforcement and Compliance
- Director's Update - Sheri Bowles, Interim Director

EXECUTIVE DIRECTOR'S UPDATE

- Updated legislation

ACTION ITEMS

- Minutes – April 14, 2021

COMMUNICATIONS

- N/A

MISCELLANEOUS

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

Senior Judge Omar Hernandez mentioned that delays could be as a result of ADR, summons, not concerned with Pending Hearing Decisions. With respect to the impartial - slowly coming back, few shut down during Covid. His department is down four (4) judges, in process of interviewing candidates.

Chairman asked if there were questions for Senior Judge Hernandez.

Council Member Steve Joyce asked about auditor's report. Senior Judge Hernandez responded and said that he met with a Senator + Representative who inquired about the auditors report and after meeting with them they were satisfied with his response.

With respect to Conferences being done within the 28 days time request - this is the most important event in the due process and the practice has been in place for 30 years. The department must run effectively + efficiently, 50% of conferences are rescheduled.

Council Member Steve Joyce asked about the case management system and the deficiencies. Employees who leave had computer access revoked, lock out procedures are now in place according to Mr. Bill Taupier, Director of Administration.

With respect to the continuances, these are now being reported as a result of the auditor's report.

Council Member Steve Falvey asked about attorneys fees, after auditor's report recommendation that they be included in the Advisory Council report card. These are paid by the insurer to claimant's attorney, does not come to or is considered revenue by DIA, according to Mr. Taupier.

Thank you for the response said Council Member Joyce.

Council Member Mickey Long questioned Senior Judge Hernandez and shared his concerns with recommended information in auditor report. Senior Judge Hernandez said that to be inflexible is a disservice to injured worker. Council Member Long respectfully agreed with a speedy conference.

Chairman Pulgini asked for the members of the public that were present at today's meeting to speak in an effort to accommodate their schedules.

Attorney Alan Pierce was asked by Chairman Pulgini what his thoughts were on the speedy conference. Attorney Pierce hasn't requested this during Covid.

Attorney Mulholland mentioned that the conciliation process was helpful, process has improved considerably, and 28 days is advisory. All in all handled very well especially during pandemic.

Attorney Pierce read a letter - Mass Bar Association, Ana Marie deGaravilla - grateful that their cases were processed during the pandemic, business held by virtual platform. Commended Senior Judge Hernandez and members of the Council that represent their interests. Their concerns were expressed in a letter sent to Governor Baker + Advisory Council - **2 issues:** 1) positive virtual

solutions should be looked at skeptically; conciliators will no longer be in-person - concerns with injured worker being able to access virtual platform - return to in-person would be beneficial and 2) conciliators offices are not being utilized by DIA employees, including courtrooms. Concerned where this is going in the future.

A reminder from Attorney Pierce that the Employers fund this agency through assessments. We do not want to sacrifice how business was handled before the pandemic. The Massachusetts workers' compensation system is efficient, swift, and fair according to Attorney Pierce's statement.

Chairman Pulgini asked Attorney Pierce about Section 36 evaluations. He responded by saying that these conciliations involving Section 36 were postponed during the pandemic, much better to do in-person.

Attorney Garvavilla spoke and mentioned that she has worked for Atlantic Charter Insurance Co. since 2000. Conciliation is an important step and she echoes Attorney Pierce comments. Senior Judge deserves credit for having DIA continuing to operate during the pandemic. Face-to-face interaction is important.

Interim Director Sheri Bowles talking about reopening and mentioned that is a bit premature. Will notify all stakeholders when the process is finalized. Inaccurate statement by Attorney Pierce and she wanted it noted: the conciliators did not lose their offices, they moved to a different part of the DIA office.

Chairman Pulgini asked if there is there talk to do away with in-person conciliations. Senior Judge Hernandez mentioned that he may be turning toward a hybrid model, still exploring with the conciliation process. Business models are changing, virtual is efficient. 58% of conciliations are being rescheduled.

Chairman Pulgini asked if any other guests had comments.

Attorney Pierce said that he appreciated the information and asked if other agencies are using DIA space on a permanent basis. Interim Director Bowles stated that DLR is subleasing space from DIA and is charged a portion of the rent. Two of the nine courtrooms are being used by DLR, private work areas. Individual work stations are being utilized by the conciliators and this new work space be sufficient size to accommodate attorneys and injured worker said Interim Director Bowles.

Council Member Long asked about subleasing and Interim Director Bowles said that she is not anticipating to change schedules.

Senior Judge Hernandez mentioned that scheduling would change more when judges are hired. Not sure when scheduling will be lifted, government mandates with respect to capacity limits are still in place.

Attorney Jim Ramsey asked about the impact restrictions. Interim Director Bowles said she can't speak to this, not sure if there will be any capacity limits moving forward, and added that DLR hearings, not likely to be the same as DIA, uses seven (7) out of the nine (9) courtrooms.

Attorney Mike Akashian expressed his concerns: we want a seat at the table with whomever is making the decisions about conciliations.

Attorney Kerry Nero discussed her experience with time constraints, conciliation + conference cut off because of time. Both are important parts of the procedure. Conciliator spoke about resolving the case, conciliator had to leave due to a scheduling conflict. Difficulty logging on during another case. Judge had another case and ended their session prematurely. This is a disservice to all parties as we move into the future. Senior Judge Hernandez asked to speak to Attorney Nero offline to readdress this issue, this should not happen. Senior Judge Hernandez: Conferences rescheduling should not be happening, contact me offline and I will address this concern with Judges.

Vice Chair Todd Johnson mentioned that it is great to see 60 people in attendance and applauds and appreciates this. Please continue to attend these meetings, it's important for all stakeholders to be present. Vice Chair Johnson stressed that by any objective measurement, this workers' compensation system is an exceptional system. We will work through these issues. There are no decisions being made right now, and there is an opportunity to speak about them. Senior Judge Hernandez and the administration has addressed issues in the past. I encourage you all to communicate. The statute we operate under was a collaborative process. Appreciate the insights and input - hope you stay engaged.

Chairman Pulgini - thank you to the guests for attending. We will try to make a path forward. Thank you all for coming today and we welcome you to our meetings in the future.

Without questions or comments the floor was directed to Bill Taupier, Director of Administration.

With respect to SWOs - 16. In the month of April, 209 compliance letters. Office checks - 2,706 and 326 field investigations.

With respect to Claims administration: FRI - running high 31,657 / trending above average Claims remain steady, downward trend. There were 8,919 cases filed - closer to 10,000 as we end the FY. Breakdown: Form 110 employee claims, Third-party claims are uncommon, and 13 manual filings, with the vast majority are done online. With respect to date of injury: Covid claims reflect April of 2020 December 2020 and January 2021 spikes with the vast majority are in health care system 11,464.

With respect to the WCTF 75 - uninsured injuries. \$4, 257,966 payments against open claims - trends lower than last year. Uninsured injuries + job occupations: construction represents 25%.

Vice Chair Johnson had a quick question on uninsured injuries. Mr. Taupier said he'd get back to him with specific information. Financial implications, could he add this to his search, enlightening for the Council. General Counsel O'Leary mentioned that WCTF does have a few Covid claims.

Council Member Joyce asked about the injuries, primarily laborers said Mr. Taupier.

Council Member Long asked why roofer and carpenter wasn't under construction. Uninsured injuries are happening in a lopsided fashion. Council Member Joyce said he appreciates the separation of

occupations.

Mr. Taupier mentioned that he appreciates your feedback

With respect to Recovery efforts against employers, \$376,761. With respect to the Second Injury payments: \$16,558,297. With respect to COLA - tends to lag and is \$3,813,037. With respect to Personnel, this remains at 206. With respect to Referral fees - \$2,870,072. With respect to Assessments, these are through April 30, 2021. Assessments are paid quarterly - \$41,493,040.

Vice Chair Johnson asked about staffing and whether it is holding steady and wanted further discussion on how staff is handling the virtual format. Mr. Taupier responded by saying that he hasn't heard if anyone is retiring or leaving, Senior Judge Hernandez added that the only retirement in his unit is Judge Benoit.

Council Member Steve Falvey asked about the insurer penalties - Mr. Taupier referred back to that slide - Section 13 and Section 7 + 8 penalties. What does it entail asked Council Member Falvey. General Counsel Kevin O'Leary mentioned that it covers illegal discontinuances or late payment of an award, and failure to pay.

Without additional questions for Mr. Taupier, Chairman Pulgini directed the floor to Interim Director Sheri Bowles.

Interim Director Sheri Bowles, Director of DIA, provided a Future of Work update. The initiative that pertains to a hybrid-working model, in-person, in office work + virtual and is separate from the DIA office reopening. Will continue to deliver services to injured workers.

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

Executive Director Maureen O'Connell provided an update on legislative hearings within the Joint Committee on Labor and Workforce Development: H1986, S1155, H1956, and S1158.

Without questions for Executive Director O'Connell, Chairman Pulgini asked for a motion to adjourn and go into Executive Session at 11:00am, separate WebEx link. Motion to adjourn was seconded, meeting ended at 10:30am.