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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

November 8, 2023

Via WebEx

Present: Attendees: Todd Johnson, Stephen Joyce, Teri McHugh, James Steenbrugge, Bernie Mulholland, Michael Kelley, Patrick Walsh, and Stephen Falvey; Sheri Bowles – DIA Director, Bill Taupier – DIA Director of Administration, Senior Judge Omar Hernández – DIA Senior Judge, General Counsel Philip Imbrescia, WCTF Director Holly Anderson, DIA Investigations Deputy Director Alan Green, DIA Vinnie Lopes, Shamia Moore; Cara Toomey - WCRIBMA, Dan Judson - President WCRIBMA; Roman Dolinschi- WCRI; Frank Rivera - Massport; Attorney AnaMari deGaravilla, Attorney Stacie Sobosik, Attorney David O'Connor; Julie Bowler,, and Maureen O'Connell.

Date: November 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, Director

3. EXECUTIVE DIRECTOR'S UPDATE

- o 2023-24 Legislative bills
- o FY'23 Annual Report
- o Workers' Compensation Prescription drug pricing protocol

4. ACTION ITEMS

- o Minutes - July 12, 2023
- o Minutes - September 13, 2023
- o Minutes - October 11, 2023

5. COMMUNICATIONS

N/A

6. MISCELLANEOUS

N/A

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Vice Chair Todd Johnson chaired the meeting today as Chairman John Pulgini had a conflict and will be arriving later. Vice Chair Johnson began the meeting at 9:01 am and asked Senior Judge Omar Hernández to provide an update on judicial activity.

Senior Judge Hernández indicated that the conciliation unit is doing incredible work resolving cases, thanks to Dele Edebiri and his team. The conference queue and hearing queue are in good shape, time running between 8-10 weeks. With respect to the pending hearing decisions, 11, an increase from last month, but the department is in good shape. Reviewing board, 29. Everything in dispute resolution is moving well, credit to the staff and attorneys. Without any questions for Senior Judge Hernández the floor was directed to Bill Taupier, Director of Administration.

Vice Chair Johnson asked Senior Judge Hernández if there was a full roster of judges, Senior Judge Hernández confirmed there was a full roster of judges.

With respect to conciliations, In September, 503 cases were resolved (46.7% - up from last month) and 574 were referred to conference. The average waiting period for a conference is 8-14 weeks - up from last 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 7,354 continuances. For FY 2022, there were 6,860 continuances.

With respect to the hearing queue, there are 1,747 (up from last month) with conferences scheduled: 519, Hearings scheduled: 209, Orders issued: 281, and Appeals to reviewing board: 3. 110 filed 51% and no 110 filed 87%. 87% hearing and 83% no. With respect to the pending hearing decisions, there were 9. Senior Judge Hernández mentioned this is a result of pending cases either due to surgery, agreements, ADR or pro-se cases. Review Board inventory: 36, Fee waivers granted: 22, Exam fees collected: \$0, Attorneys fees: \$22,469,752, 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's microphone was not working, cutting in and out, and it was difficult to hear his update. Vice Chair Johnson asked Mr. Taupier to repeat.

First Report of Injury (FRI) filings for October were 2,847 (41% for sprain/strain). Total FRIs filed for FY'24: 11,0806. The number of Cases filed for October 2023 was 952. Cases filed by type: 3,653 total cases, 2,965 employee claims, 676 in Insurance discontinuances, and 12 third-party claims.

Mr. Taupier provided statistics on compliance letters for the month of October: 5,608, office checks: 12,056, field investigations: 12,972, and 1,417 employees covered under workers' compensation. Compliance/Stop Work Orders: 110 with 7 defaults - increase from last month, 445 for FY'24. There were 6,026 field investigations in August, 1,190 compliance letters sent out. Fine collection for the month of September \$89,850 and for FY'24: \$229,975. 42 uninsured by occupation: 14 other occupations, 9 laborer. For industry: 22 other occupations, and 10 construction. Out of a budget of \$7,500,000 there were \$2,004,429 in payments against open claims and there was \$288,427 recovered by the Civil Litigation Unit. ***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.***

Council Member Steve Joyce asked about the SWOs numbers and if they were correct. Mr. Taupier indicated that they are an average, but that they would look into it for accuracy.

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 Second Injury budget is \$31,000,000 (budget increase) and payments made were \$6,601,836. 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 \$2,152,877 with a \$8,700,000 budget. 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.* Assessment collection budget is \$79,000,000 with a payment of \$3,697,751.

Mr. Taupier mentioned that there are issues with the MMARS system in finance, and that these numbers were not accurate, but once the issues have resolved the numbers will be updated. This impacts the numbers in the Second Injury Fund, COLA, and Assessment collections.

Personnel: No change since June 2023 - 199 (67 Administration, 79 dispute, 15, legal, 28 WCTF, and 10 finance). Slide deck has been adjusted to reflect breakdown of personnel. *Staff: 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.*

Without questions for Mr. Taupier the floor was directed to Director Sheri Bowles. Director Bowles' who mentioned that the DIA Springfield office would be undergoing construction in either January or February on the roof. This construction will impact the DIA office as well as other state offices in the building and she will keep everyone apprised of the construction, as well as an official date when it becomes available.

Council Member Steve Falvey asked Director Bowles about the vacant manager position in the Office of Investigations. Director Bowles indicated that the process was ongoing, and confirmed when asked by Vice Chair Johnson if the job posting was still public.

Without questions for Director Bowles, Vice Chair Johnson directed the floor to Executive Director Maureen O'Connell. Legislation is still pending in the Joint Committee on Labor and Workforce Development; HB 1880, HB1897, and SB 1159 An Act relative to permanent and functional loss and disfigurement under the Workers' Compensation Act - Legislative Session will end on November 15, 2023 for break. FY'23 annual report process is ongoing. In October, Executive Director O'Connell attended a public hearing on the workers' compensation prescription protocol that was held with the Attorney General's Office, Assistant AG Glenn Kaplan facilitated the meeting. Attendees were from CareMark, private pharmacists, Healthe Systems, and letters were sent in from AAPAN. If anyone is interested in commenting on this subject, they are recommended to send their comments to insurance@mass.gov

Without questions for Director O'Connell, Vice Chair Johnson asked the guests if they had any comments. Without questions from the guests, without a quorum, Advisory Council members were unable to vote on minutes for July 12, September 13, and October 11, 2023, and Vice Chair Johnson ended the meeting at 9:24am.

Webex meeting recording: 2023 - Nov 8 Advisory Council meeting-20231108 1355-1

Password: Mrfzcri3

Recording link: <https://maureenocconnell.my.webex.com/maureenocconnell.my/jdr.php?RCID=f986b7f3467f1554bef9f04b7704deec>