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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

September 14, 2022

Via WebEx

Present: Attendees: John Pulgini, Todd Johnson, John Regan, 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, WCTF Director Holly Anderson, Attorney Timothy Foley, Shamia Moore, Vinnie Lopes, Maryanne Brunton; Virginia McCarthy - WCRI, Dan Judson - WCRI, Christopher Stark - Mass Insurance Federation; Roman Dolinski- WCRI, Attorney James Ramsey, Kerry Nero, Ryan Benharris, Ana Mari DeGaravilla, Lori Favata, David O'Connor, Julie Bowler, Maryann Calnan, Alicia Delsignore, Frank Rivera - Massport, and Maureen O'Connell.

Date: September 14, 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
 - Conference/Hearing/Reviewing Board Queue
 - Impartial Medical Exams/Physicians
- B. DIA Vital Statistics - Bill Taupier, Director of Administration
 - Cases Filed with DIA
 - Workers' Compensation Trust Fund
 - Personnel Update
 - Enforcement and Compliance
- C. Director's Update – Sheri Bowles, Interim Director

3. EXECUTIVE DIRECTOR'S UPDATE

- Legislative update
- Open Meeting Law
- Council Member terms of appointment

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4. **ACTION ITEMS**

- o Minutes - August 24, 2022

5. **COMMUNICATIONS**

N/A

6. **MISCELLANEOUS**

N/A

Chairman John Pulgini began the meeting at 9:03am and asked Senior Judge Omar Hernandez to provide an update on judicial activity. Senior Judge Hernandez indicated that the unit is resolving cases and perform at a high level, 55%, highest ever, thank you to Dele Edibiri, even with the short staff in his unit (retiring or leaving the unit). With respect to the conference and hearing queue, both trending downward. Successful mediations, pre-hearing conferences, are contributing factors. Vice Chair Todd Johnson asked last month to compare the statistics pre and post pandemic, we are at a good level. Credit to the Judges and full complement of judges help drive the queues down. Vice Chair Johnson appreciated Senior Judge Hernandez making the comparisons and providing the information to the Advisory Council. Average waiting period: 10-16 weeks. Pending hearing decisions: 12-36 months (ADR), agencies are running behind. Review board inventory: 18-19 for the past year. Impartial fees are within normal range.

Attorneys fees are at \$90 million dollars, again, credit to everyone in moving the cases. Senior Judge Hernandez wants to continue to move cases, it's about the injured worker, and move forward. MBA has started best-practices committee and Senior Judge Hernandez would like to try to implement the needs of everyone. The judges cycle is also going to be adjusted. The mediation week may be removed and introduce a pre-hearing conference week. This allows the judges to take care of cases. An all-staff meeting will be occurring in October with Senior Judge Hernandez and his staff. Consistency will be the focus of the meeting (uniformity).

Lastly, the Executive Office is reviewing the virtual conference policy and Senior Judge Hernandez is waiting for a response. Virtual proceedings will continue until the Executive Office makes a determination. The communication change, if any, will be shared with the Advisory Council.

Judge Jamie Spiller Kaplan is doing well in Boston and has helped with the queues. Judge Stephen Murray is also doing well in Fall River.

The deadline for reappointments of two administrative law judges and two administrative judges postings on the DIA website will close this week (9/16).

Reopening of conferences was a question asked by Council Member Michael Kelley. Senior Judge Hernandez reiterated that the Executive Office will be making the determination. Attorney James Ramsey asked who in the Executive Office was making the decision, Senior Judge Hernandez said that the office would be making a determination.

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

Mr. Taupier provided statistics on Compliance/Stop Work Orders: 136, one was a default. Final fiscal 2022 numbers are pending.

Mr. Taupier indicated that this is the beginning of the fiscal year and the numbers are low. With respect to conciliations, 599 were resolved and 499 were referred to a conference: 54.6%, an increase since last month. During FY '23, attorneys have requested 667 continuances and during FY'22 there were 6,293 continuances. The average waiting period is 10-16 weeks for a conference, a decrease when compared to last month.

The number of conferences scheduled: 798; hearings scheduled: 557; orders issued: 274, appeals to the reviewing board: 1, and 6 pending hearing decisions. Reviewing board inventory: 22.

With respect to Dispute Resolution: 1 fee waiver was granted; \$142,149 was collected in exam fees; \$6,966,392 in attorney's fees; and zero dollars in Section 7 + 8 penalties.

First Report of Injury (FRIs) cases, 841 cases filed in July, 2022, FRI filings: 2,872. Total cases: 841, employee claims: 726, insurance discontinuances: 113, and 2 third-party cases.

With respect to Covid-19 FRIs, 295 were filed with 11,350 in healthcare (73%) and 915 in social services (6%). Lump sum agreement: 84, Section 19 agreement: 50, Withdrawn prior to conciliation: 30, Hearing scheduled: 16, and Appeal to hearing: 15.

With respect to the Workers' Compensation Trust Fund, there are 86 new Section 65 injuries (same for August). Refer to the chart on next page. Payments made against open claims in FY '23 - \$913,924. Recovery efforts for the month were zero.

The Civil Litigation Unit make every effort to recover monies owed by utilizing the authority of MGL Chapter 152 to recover money paid on uninsured claims through legal action against the employer in question.

Workers' Compensation Trust Fund Uninsured Claims	Occupation	Industry
	5 - Laborer	6 - Construction
	2 - Delivery Driver	2 - Parcel delivery
	2 - Carpenter	1 - Painting
	1 - Trainer	1 - Building Maintenance

The Second Injury budget is \$28,000,000 and payments made were \$2,570,149. Second Injury Fund and Payments (Section 37/37A) - these are claims filed by insurers who are seeking reimbursement of up to 75% of benefits paid for a second injury per the statute.

COLA reimbursements were zero. Referral fees were \$754,497. Assessment collection budget is \$63,500,000 with a payment of \$5,458,163.

Personnel: 197 (69 Administration, 76 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 provided information for the Fall River lease, the proposal are due tomorrow (9/15). Thank you to Linda Delaney and Thomas Rashid for their service, long term conciliation employees who recently retired. And Welcome aboard to Susan Welby in claims administration and Kendra Jones in WCTF.

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 the annual report process which is underway. Outstanding financial data and Office of Safety and Claims Administration is pending and will receive in early October. It is recommended that we stay on the same timeline with production of the report to be before calendar year end. Council Member appointments are outstanding and Executive Director O'Connell reached out to the Executive Office and Boards of Commissions. Open Meeting Law, reminder. Governor Baker extended some pandemic-related policies, and remote meetings were one of them. The Advisory Council will operate in a virtual environment (via WebEx) until March 31, 2022. Slide deck presentations are public record and available to attendees.

Without a quorum, Advisory Council could not vote on minutes.

Without further questions for Executive Director O'Connell and without a quorum Chairman Pulgini concluded the meeting at 9:35 am.