

# MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

September 12, 2012  
Department of Industrial Accidents  
1 Congress Street, Suite 100  
Boston, MA 02114-2017

*Council Members Present:* John Regan, Chairman; Stephen Joyce, Vice Chairman; Edmund Corcoran, Jr.; Antonio Frias (Ines Leonardo); Stephen Falvey; Teri McHugh; William Corley; David Powell (Kevin Hurstadt); Todd Johnson (Michael Kelley).

*Also Present:* Philip L. Hillman, Director; Omar Hernandez, Senior Judge; George Noel, Deputy Director of the DIA; William Tattan, General Counsel; Ray Marchand, Director of Investigations; Marc Joyce, Senior Regional Services Manager; Bob Ford, Budget Director, Executive Office of Labor and Workforce Development; Dan Crowley, Workers' Compensation Rating & Inspection Bureau of Massachusetts.

*Advisory Council Staff:* William S. Monnin-Browder; Evelyn Flanagan.

*Absent:* Mickey Long; Dennis Hines; John Pulgini; Bernie Mulholland; Executive Office of Labor and Workforce Development; Executive Office of Housing and Economic Development.

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## *Agenda:*

Chairman's Welcome

DIA Update

- Judicial Update – Omar Hernandez, Senior Judge
- Vital Statistics – Philip L. Hillman, Director
- Update on T3 Line Installation Project – Philip L. Hillman, Director
- Overview of Judicial Interview/Appointment Process

Action Items

- Minutes – June 13, 2012

Executive Director Update

Miscellaneous

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## **CHAIRMAN'S WELCOME**

Chairman John Regan began the meeting at 9:00 A.M. Chairman Regan asked the Senior Judge to provide his judicial update.

## **DIA UPDATE**

### **Judicial Update**

Senior Judge Omar Hernandez stated that the conference queue has trended downward over the last couple of months. He reported that he had made subtle changes to the schedules to address the queue, including adding a day of conferences to the week of hearings and eliminating a day of hearings. The Senior Judge noted that the current average waiting period of 10-16 weeks is based on

regions collectively.

Senior Judge Hernandez indicated that he is working closely with the Impartial Unit to reduce the time between the appeal and hearing. He stated that, despite delays with the proposed fee increase, Diane Neelon has done great work recruiting physicians, adding seven or eight new physicians to the roster. He stated that the proposed impartial fee increase was currently being vetted by Administration and Finance, but that he expects approval soon. He indicated that increasing the impartial roster should improve the conference and hearing queues.

Chairman John Regan asked if there is anything the Advisory Council can do to help advance the proposed increase.

Director Philip Hillman indicated if there is no movement by the end of the week, he would reach out to the Council regarding the Chair's offer.

Chairman Regan asked the Senior Judge what the ideal/target timeframe is from conciliation to conference.

The Senior Judge explained that there was no matrix for comparison, only historical knowledge. He stated that based on discussions with the Scheduling Unit, it appears that 8-10 weeks from conciliation to conference is ideal.

In response to a question, the Senior Judge indicated that the agency is still adjusting to the two to one ratio of secretaries to judges. He indicated that the agency is hopeful that new changes, including new computers and the T3 line, would speed up the processes and help cure the frustration associated with uploading files.

Council member Ed Corcoran stated that he recognizes that the situation in dispute resolution is still evolving, but asked if the agency has a rough idea of when a final assessment should be done to determine whether the agency needs to change course in any way.

Director Hillman explained that the first step is to make sure that systems, including the T3 line, have brought the agency up to normal operating speed. He explained that once that is done, they can begin to assess the real impact and whether or not the agency has a structural issue that needs to be resolved.

#### Judicial Appointment Status/Process

The Senior Judge stated that with respect to the judicial appointments and reappointments, Judge Harpin began work on Monday as an ALJ. The Senior Judge noted that given Judge Harpin's experience, this should be a very smooth transition. He also reported that Michael Williams is scheduled to begin on October 1, 2012 as an AJ. The Senior Judge stated that Mr. Williams will have intensive training, including sitting with all the judges across the DIA's offices.

The Senior Judge stated that they have begun the recruiting process for eight AJs and one ALJ and that applications are due at the end of September. He informed the Council that there are six AJs up for reappointment. The Senior Judge explained that once the applications are received, resumes and ballots will be forwarded to the Nominating Panel. If the applicant receives six votes, interviews will be scheduled for the applicant to meet with the Panel. If the applicant receives seven votes from the

Panel following the interview, then the applicant will move on to the Advisory Council for further consideration.

In response to an inquiry, the Senior Judge Hernandez explained that Judge Harpin was taking the spot previously occupied by Judge Costigan and that Judge Williams will be taking the spot previously occupied by Judge Tirrell. He added that no other names have been sent to the Governor's Council for consideration at this time.

Mr. Michael Kelley indicated that there are some very qualified people in the pool. He expressed a desire to expedite the appointment process to avoid gaps and ensure that that judges are up and running on a timely basis.

### Vital Statistics

Director Philip Hillman updated Council members on the information contained within the DIA's vital statistic report for September 2012. He offered the following statistics: Conference Queue: 896; Hearing Queue: 556; Reviewing Board Inventory: 36 Impartial Exams for FY' 13 (to date): 755 (10 waivers); Exam Fees Collected for FY' 13: \$238,850; Impartial Medical Examinations in FY' 12: 3,667 (48 waivers); Exam Fees Collected in FY' 12: \$1,474,788.

Director Hillman updated Council members on the Stop Work Order (SWO) and Caseload Statistics, including the following: SWOs issued in August: 207 (14 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY' 13 (to date): 430; fine collection for August: \$111,383; total fines in FY' 13 (to date): \$225,187; SWOs issued in FY' 12: 2,637; total fines collected in FY' 12: \$1,415,534; compliance checks for August 2012: 7,397; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 667 (FY' 13).

Director Hillman continued the update of the monthly vital statistics by offering the following statistics: total number of cases filed in August 2012: 1,777; total number of cases filed in FY' 13 (to date): 2,038; total number of cases filed in FY' 12: 12,646; total number of First Report of Injury Forms (FRI) filed in August 2012: 2,995; total number of FRI filed online in August 2012: 1,222 (40%); total number of FRI filed in FY' 13: (to date): 5,153; total number of FRI filed in FY' 12: 29,643 (9,034 online).

Director Hillman proceeded with his update on uninsured claims (§65), offering the following numbers: total number of §65 claims reported in FY' 13 (to date): 14; total amount of §65 claims paid by the Trust Fund in FY' 13 (to date): \$483,211; total number of §65 claims filed in FY' 12: 111; total amount of §65 claims paid by the Trust Fund in FY' 12: \$7,810,128; total recovery efforts against uninsured employers FY' 13: \$434,616; total recovery efforts against uninsured employers FY' 12: \$1,047,057.

General Counsel William Tattan stated that he expects that DIA will pay out less for §65 cases this fiscal year. He explained that one reason for this is the number of SWOs and the effect that enforcement efforts have had on business culture.

Chairman Regan noted that as fraudulent behavior and financial rewards come down, there may be a danger that the enforcement pace will slacken. The Chairman suggested that the agency continue with the correct level of enforcement activities irrespective of the financial reward. He asked what the Council should be looking for as the right number of enforcement activities on a monthly basis.

Mr. Corcoran stated that although he applauds the decrease in cases, the total payout is high. He noted that the Trust Fund is a quasi-insurance company and that good claims management could keep \$65 costs down. He stated that this is still a significant amount that, basically, was being paid from employer assessments.

Mr. Tattan reported that they were in the process of hiring two new investigators as well as two new attorneys for the Trust Fund. Mr. Tattan informed the Council that they are looking into using a consultant with medical expertise to manage cases and claims.

Mr. Corcoran stated that both Raytheon and AIM Mutual have very sophisticated programs and the luxury of having Vocational Rehabilitation people, which allow them to control cost. Mr. Corcoran stated that he would welcome the opportunity to have the agency look at what Raytheon is doing.

Director Hillman proceeded with the vital statistics for the Second Injury Fund (§37/37A), stating the following: total amount of §37/37A petitions paid in FY' 13 (to date): \$984,831; total amount paid on these claims in FY' 12: \$24,198,415; total COLA reimbursements to insurers in FY' 13 (to date): \$170,852; total COLA reimbursements to insurers in FY' 12: \$19,914,485.

Mr. Michael Kelley indicated that the Second Injury Fund, from a payment perspective, is functioning better than he has ever seen it function throughout his career. He indicated that the DIA is responsive and efficient in administering the fund.

Director Hillman reported that as of August 2012, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 239 (192 DIA employees, 47 WCTF employees). The DIA is authorized to have 255 payroll positions (including all full and part-time positions).

Director Hillman presented the following accounting and finance statistics: total referral fees collected in FY' 13 (to date): \$681,604; total referral fees collected in FY' 12: \$3,774,237; total first report fines in FY' 13 (to date): \$8,508; total first report fines in FY' 12: \$115,000; total assessment collections in FY' 13 (to date): \$17,846,778; total assessment collections in FY' 12: \$82,117,762; total SWO fines in FY' 13 (to date): \$225,187; total SWO fines in FY' 12: \$1,381,085.

Vice-Chairman Steve Joyce stated that there have been budget discussions in the past after the budget is submitted to the legislature. Mr. Joyce stated that it would make more sense to sit down before the Governor's budget is filed to discuss it and address concerns.

Mr. Bob Ford, Budget Director, noted that he would be working on the budget this week and he would be happy to sit down with members at some point in the next couple weeks.

Mr. Regan asked the Executive Director to work with Mr. Ford to find a date and time for the discussion and that those members who are interested may participate.

#### Update on T3 Line Installation Project

Director Hillman stated that installation was complete on the T3 line, but that he did not necessarily expect it to be a magic bullet solving all of the DIA's technological issues. He informed the Council that he had requested that the agency be allowed to bring in a consultant to evaluate the problem if

the new line does not resolve the issues. He indicated that the agency is committed to fixing the problem.

### **ACTION ITEMS**

A motion was made to approve the June 13, 2012 minutes.

Motion seconded and carried.

### **EXECUTIVE DIRECTOR UPDATE**

Executive Director Will Monnin-Browder reminded Council members that on Friday, September 14, 2012, the DIA's Office of Health Policy was having an informational session about chronic pain and the problem of opiates in workers' compensation.

Mr. Monnin-Browder informed members that the WCRIB's rate filing had been disapproved by the Division of Insurance (DOI), but that DOI had declined to exercise its authority to order a rate reduction.

Mr. Monnin-Browder provided a legislative update. He indicated that a few pieces of legislation were passed that could impact the workers' compensation system. He reminded the members that the Article 87 reorganization was approved at the beginning of the session. He also mentioned the "Temporary Workers' Right to Know" bill, which requires staffing agencies to provide certain notice and information to their employees, including the name of the employer and workers' compensation carrier. Given recent discussions by the Council about the opioid issue, Mr. Monnin-Browder also noted that legislation strengthening the Prescription Monitoring Program had been signed into law.

Mr. Monnin-Browder informed Council members that seven out of the eight pieces of legislation the Council sponsored were initially referred to the Joint Committee on Labor and Workforce Development (JCLWD). Executive Director Monnin-Browder stated all of those bills moved favorably out of JCLWD and moved to either the House Ways & Means (HWM) or the Senate Ways & Means (SWM). The Executive Director noted that the only bill that emerged from SWM was S.915, which increases criminal penalties. The bill was engrossed in the Senate and sent to HWM, where no further action was taken. He also noted that one piece of Council-supported legislation, H.468, which was initially referred to the Joint Committee on the Judiciary, was sent to study.

### **MISCELLANEOUS**

A motion was made to adjourn the meeting. Motion seconded and carried.

**The next meeting of the Advisory Council is scheduled for Wednesday, October 10, 2012, at 9:00 AM, at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.**