

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

February 12, 2014

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

Council Members Present: Stephen Joyce, Chairman; Mickey Long; Stephen Falvey; Teri McHugh; John Pulgini; Bernie Mulholland; Mike Doheny, General Counsel, Executive Office of Labor and Workforce Development.

Also Present: Philip L. Hillman, Director; George Noel, Deputy Director; Omar Hernandez, Senior Judge; William Tattan, General Counsel; William Taupier, Deputy Director of Administration; Ray Marchand, Director of Investigations; Bob Ford, Budget Director, EOLWD; Mark Joyce, Senior Regional Services Manager; Patrick Ronan, Trust Fund Manager; John Riordan, Civil Litigation Manager; Julie Bowler, Atlantic Charter.

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

Absent: John Regan, Vice-Chairman; Edmund Corcoran, Jr.; Antonio Frias; Bill Corley; Todd Johnson; Dennis Hines; Executive Office of Housing and Economic Development.

Agenda:

Chairman's Welcome

DIA Update

- Judicial Update – Omar Hernandez, Senior Judge
- Vital Statistics – William Taupier, Deputy Director of Administration
- Quarterly Update on FY' 14 Initiatives

Action Items

- Minutes – November 13, 2013
- Minutes – January 8, 2014

Discussion of the Draft FY' 13 Annual Report

Executive Director Update – William Monnin-Browder

Miscellaneous

CHAIRMAN'S WELCOME

Chairman Stephen Joyce began the meeting at 9:00 A.M.

Director Philip Hillman announced that Secretary Rachel Kaprielian was unable to attend today's meeting, but planned to attend a future meeting.

DIA UPDATE

Judicial Update

Senior Judge Omar Hernandez stated that with respect to the conference queue, it has increased slightly, though, more importantly, the average wait time between conciliation to conference has remained

consistent. He explained that the wait times in Lawrence, Fall River and Worcester currently stand at 3.5 months; Springfield is at 1.5 months; and Boston is at 4 months. The Senior Judge stated that the Agency is bringing additional judges to Boston in March to help bring down the queue. He added that he would also be increasing the number of conferences in Lawrence and Boston.

Senior Judge Omar Hernandez stated that early this spring, the Agency plans to place the Impartial Unit under the direction of the Central Scheduling Unit. The Senior Judge explained the functions of the two units go hand and hand, so the change should help speed up the process.

Senior Judge Hernandez informed the Council members that the Governor's Office requested that the DIA extend the deadline for judicial appointment/reappointment applications to February 24, 2014. He stated that they have received about twenty applications so far. The Senior Judge noted that once the date is closed, they will begin the review process.

Vital Statistics

Deputy Director of Administration Taupier updated Council members on the information contained within the DIA's vital statistic report for February 2014. He offered the following statistics: Conference Queue: 876; Hearing Queue: 802; Reviewing Board Inventory: 39; Impartial Exams for FY' 14 (to date): 2,546 (22 waivers); Exam Fees Collected for FY' 14: \$41,148,625; Impartial Medical Examinations in FY' 13: 4,838 (51 waivers); and Exam Fees Collected in FY' 13: \$1,771,021.

Mr. Taupier provided an update on Conciliation Statistics. Total scheduled conciliation: 948; Total resolved at conciliation: 410; Mr. Taupier updated the Council on the Stop Work Order (SWO) and Caseload Statistics, including the following: SWOs issued in January: 161 (20 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY' 14 (to date): 1,399; fine collection for January: \$90,381; total fines in FY' 14 (to date): \$771,865; SWOs issued in FY' 13: 2,621; total fines collected in FY' 13: \$1,351,266; compliance checks for January: 6,306; estimated number of workers now covered by workers' comp. insurance as the result of a SWO: 3,603 (FY' 14).

Mr. Taupier continued the update of the monthly vital statistics offering the following: total cases filed in January 2014: 989; total cases filed in FY' 14 (to date): 6,890; total cases filed in FY' 13: 12,174; total First Report of Injury Forms (FRI) filed in January 2014: 3,076 (2,317 filed electronically; 75%); total FRI filed in FY' 14: (to date): 18,226; total FRI filed in FY' 13: 29,791 (11,937 online).

Mr. Taupier informed the Council members that beginning on January 1, 2014, the DIA made online filing of FRIs mandatory, which increased in the percentage filed electronically to 75%. He explained he expects the rate of online filings to climb further. Mr. Taupier applauded the Claims Manager and IT Programmer who are working on the project, explaining that the system went from nothing to what the DIA has now in a very short amount of time.

Mr. Taupier proceeded with his update on uninsured claims (§65), offering the following: total §65 claims reported in FY' 14 (to date): 58; total amount of §65 claims paid by the Trust Fund in FY' 14 (to date): \$4,472,317; total §65 claims filed in FY' 13: 126; total amount of §65 claims paid by the Trust Fund in FY' 13: \$5,727,787; total recovery efforts against uninsured employers FY' 14: \$497,873; total recovery efforts against uninsured employers FY' 13: \$1,368,849.

Mr. John Riordan, Civil Litigation Manager, provided insight into the civil litigation process. Mr. Riordan stated civil litigation efforts were on track from previous years, noting the average collections for the last five years was \$1.15 million. Mr. Riordan noted that the Agency's efforts do not result in a linear

recovery pattern. He indicated that a big settlement could bring the numbers up significantly, when it may have looked like a down year the previous month.

Mr. Riordan noted that the efforts of the investigators have resulted in fewer claims and thus a smaller pool from which to recover. Mr. Riordan stated that uninsured claims are down to 12,000 from the high of 17,000-18,000 claims ten years ago. Mr. Riordan also explained that the chart shows the hard dollar amount taken in right now in civil recoveries, lawsuits and settlements, but not some of the other savings that DIA attorneys are achieving through §37s, §35C, and §65 from negotiated final settlements.

Mr. Taupier proceeded with the vital statistics for the Second Injury Fund (§37/37A), stating the following: total amount of §37/37A petitions paid in FY' 14 (to date): \$13,957,277; total amount paid on these claims in FY' 13: \$26,761,907; total COLA reimbursements to insurers in FY' 14 (to date): \$5,873,296; total COLA reimbursements to insurers in FY' 13: \$15,483,043.

Mr. Taupier reported that as of January 2014, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 244 (189 DIA employees, 55 WCTF employees).

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY' 14 (to date): \$2,157,812; total referral fees collected in FY' 13: \$3,971,991; total first report fines in FY' 14 (to date): \$57,750; total first report fines in FY' 13: \$55,758; total assessment collections in FY' 14 (to date): \$29,120,593; total assessment collections in FY' 13: \$60,111,617 (Consultant Cost = \$50,000); total SWO fines in FY' 14 (to date): \$771,865; total SWO fines in FY' 13: \$1,351,266.

Quarterly Update on FY' 14 Initiative

Mr. Bill Taupier stated that the Agency is getting closer to completing a couple of initiatives. Mr. Taupier explained that Wi-Fi is being installed and the Agency is in the process of testing it to be sure it is working properly. Mr. Taupier stated that the Agency was hoping to test their other initiative, allowing mobile device access to DMS, next week.

Director Hillman Departure

The Chairman stated that he wanted recognize Director Hillman, who would be leaving the Agency soon. Chairman Joyce thanked the Director for his service, stating it had been a pleasure to work with him. Mr. Joyce noted that the Director has always been open and accessible and that the Council congratulates him and wishes him well.

Director Hillman stated that he greatly appreciated the well wishes and that it had been a pleasure to work with the Council. He mentioned that he had spoken to Secretary Kaprielian about the Council and its role. Director Hillman stated that he had also told Secretary Kaprielian that the Council has been very supportive to him in offering its assistance on a variety of issues.

The Director stated that whenever his successor comes in, he would advise the person to make sure they engage with the Council. The Director noted that he has always tried to, because he finds the Council's input to be extremely important.

DISCUSSION OF FY'13 ANNUAL REPORT

Chairman Joyce stated that there would be no discussion or vote on the Annual Report because there was no quorum present. He asked that voting members make an effort to show up at the next meeting so the report could be approved and sent out. The Chairman stated that there is a lot of good news in the Annual

Report and getting it out is important, so that people know about the good work that is being done by the Agency. He explained that you often hear that Massachusetts is a horrible place to do business, but, when it comes to workers' compensation, Massachusetts is a very friendly place to do business compared to other states.

EXECUTIVE DIRECTOR UPDATE

Executive Director William Monnin-Browder stated that House Bill 1771, An Act to Provide Incentive to Productive Workers' Compensation Audits, had been ordered to second reading in the House. He noted that the Advisory Council had not taken a position on the legislation.

The Executive Director stated that he and Evelyn Flanagan attended the Division of Insurance's public hearing on the WCRIB's rate filing. He stated that a representative from the Attorney General's office was there and spoke in opposition to the rate filing. The Executive Director noted that they would be monitoring this process, since it would be ongoing for months.

Attorney Ellen Keefe of WCRIB explained that the cross-examination of the bureau witnesses would begin on March 4, 2014. She stated that the State Rating Bureau and the Attorney General must file their briefs by March 28, 2014. Ms. Keefe stated that she believed that the cross-examination of those witnesses will begin after April 17, 2014.

MISCELLANEOUS

Council member Stephen Falvey stated that he had a question in reference to a conversation from the last meeting. He noted that it was his understanding that there are two cases against the DIA pending at the Massachusetts Commission Against Discrimination (MCAD), including one with judges questioning their pay rate. He asked if there was any change in the status or number of pending cases. Mr. Falvey asked that if the information about these types of cases is public, that the DIA share it with the Council.

Council member Mickey Long asked that public documents related to these cases be shared with the Council. He indicated that the potential financial implications of these complaints to the Agency are significant. He indicated that he should not have to go to MCAD to get these documents. He indicated that he is not interested in litigation or settlement strategy. He would like to know when any filing is made against the DIA and when any settlements have been finalized, if a public record.

Mike Doheny, EOLWD General Council, stated that there were four separate claims by the judges and he believed that there were two or three other employees who have open cases at MCAD. Mr. Doheny agreed to provide public documents in the pending cases to Council members, but indicated that discussion is necessary regarding the extent to which complaints are provided moving forward.

Meeting Adjourned.

The next meeting of the Advisory Council is scheduled for Wednesday, March 12, 2014, at 9:00 A.M., at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.