

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

June 12, 2013
Department of Industrial Accidents
1 Congress Street, Suite 100
Boston, MA 02114-2017

Council Members Present: John Regan, Chairman; Stephen Joyce, Vice-Chairman; Stephen Falvey; Edmund Corcoran, Jr.; Mickey Long; Teri McHugh; John Pulgini; Todd Johnson; Antonio Frias (Ines Leonardo); Bernie Mulholland; Mike Doheny, General Counsel, Executive Office of Labor and Workforce Development.

Also Present: Philip L. Hillman, Director; Omar Hernandez, Senior Judge; George Noel, Deputy Director of the DIA; William Taupier, Deputy Director of Administration; Ray Marchand, Director of Investigations; Bob Ford, Budget Director, EOLWD; Paula Lyons, Deputy General Counsel, EOLWD; Ellen Keefe, Workers' Compensation Rating & Inspection Bureau of Massachusetts; Michael Kelley, AIM Mutual.

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

Absent: Dave Powell; Bill Corley; 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
- FY' 14 Assessment Rate

Action Items

- Minutes – May 8, 2013

Discussion of Pending Legislation

Executive Director Update – William Monnin-Browder

Miscellaneous

CHAIRMAN'S WELCOME

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

DIA UPDATE

Judicial Update

Senior Judge Hernandez updated Council members on the conference and hearing queues. He stated that there has been an increase in both, with the average wait time for a conference being between 10 and 16 weeks. He indicated that he would keep an eye on the queues and adjust if necessary. He noted that he expects to bring three new judges on soon, which will help bring down the queues.

The Senior Judge also mentioned that he and Diane Neelon have continued their efforts to recruit new impartial medical physicians.

Vital Statistics

Deputy Director of Administration Bill Taupier updated Council members on the information contained within the DIA's vital statistic report for June 2013. He offered the following statistics: Conference Queue: 906; Hearing Queue: 1,051; Reviewing Board Inventory: 37; Impartial Exams for FY'13 (to date): 4,456 (48 waivers); Exam Fees Collected for FY'13: \$1,630,100; Impartial Medical Examinations in FY'12: 3,667 (48 waivers); Exam Fees Collected in FY'12: \$1,474,788.

Mr. Taupier updated the Council on the Stop Work Order (SWO) and Caseload Statistics, including the following: SWOs issued in May: 218 (28 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'13 (to date): 2,431; fine collection for May: \$136,085; total fines in FY'13 (to date): \$1,263,558; SWOs issued in FY'12: 2,637; total fines collected in FY'12: \$1,381,085; compliance checks for May 2013: 7,574; estimated number of workers now covered by workers' comp. insurance as the result of a SWO: 6,324 (FY'13).

Mr. Taupier continued the update of the monthly vital statistics offering the following: total cases filed in May 2013: 1,187; total cases filed in FY'13 (to date): 11,193; total cases filed in FY'12: 12,646; total First Report of Injury Forms (FRI) filed in May 2013: 2,896; total FRI filed online in May 2013: 1,161 (40%); total FRI filed in FY'13: (to date): 27,285; total FRI filed in FY'12: 29,643 (9,034 online).

Mr. Taupier proceeded with his update on uninsured claims (§65), offering the following: total §65 claims reported in FY'13 (to date): 107; total amount of §65 claims paid by the Trust Fund in FY'13 (to date): \$4,845,856; total §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: \$1,250,465 total recovery efforts against uninsured employers FY'12: \$1,047,057.

Council member Ed Corcoran stated that the Trust Fund has been doing great work and should be applauded. Mr. Corcoran noted that there has been a dramatic change and suggested that Mr. Patrick Ronan be invited to a Council meeting in the next couple of months to discuss the Trust Fund.

Chairman Regan stated that it would be noted in the minutes to invite Mr. Ronan to a Council meeting sometime in the fall.

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'13 (to date): \$23,043,716; total amount paid on these claims in FY'12: \$24,198,415; total COLA reimbursements to insurers in FY'13 (to date): \$12,390,298; total projected expenses FY'13: \$15,500,000 total COLA reimbursements to insurers in FY'12: \$20,077,659.

Mr. Taupier reported that as of May 2013, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 242 (190 DIA employees, 52 WCTF employees).

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY'13 (to date): \$3,631,826; total referral fees collected in FY'12: \$3,774,237; total first report fines in FY'13 (to date): \$51,208; total first report fines in FY'12: \$115,000; total assessment collections in FY'13 (to date): \$59,827,041 (Consultant Cost = \$50,000); total assessment collections in FY'12: \$82,117,762; total SWO fines in FY'13 (to date): \$1,263,558; total SWO fines in FY'12: \$1,381,085.

Mr. Taupier informed Council members that the DIA had issued a circular letter last week indicating that beginning January 1, 2014, all First Report of Injury forms would need to be filed electronically.

Fiscal Year 2014 Assessment Rates

Budget Director Bob Ford discussed the assessment rates, including the rates over the last two years and the projected rate for next year. He noted that expenses this year were down dramatically. As a result, he projects that the Trust Fund balance will be \$44.7M, noting that this projection was made with data as of the end of May. Mr. Ford informed the Council that Deloitte had prepared two calculations—one on the high end, the other on the low—which he then compared to his own calculations. Mr. Ford explained that his figures were a little different because his data was more accurate. Mr. Ford stated that Deloitte was given the data as of the end of March.

Mr. Ford reminded the Council that the Trust Fund balance should end up being about 35% of what our total expenses were (\$71.6M). Mr. Ford stated that right now, unless there are some dramatic changes within the next couple of weeks, the assessment rate should be dramatically lower than it was last year. Mr. Ford noted that right now the assessment looks to be very close to the projected 3.34%.

Council member Ed Corcoran asked if the 35% rule, which requires any trust fund balance exceeding 35% of the previous year's disbursements be factored in to reduce the assessment rate, seems to be set at the right percentage.

Mr. Ford stated that 35% is a pretty large buffer to carry over from year to year.

Chairman Regan noted that given the management that has been imposed across the board, the 35% might look more conservative than it needs to be.

Director Hillman stated that they were planning a press release announcing the lower assessment.

ACTION ITEMS

A motion was made to approve the May 8, 2013 minutes.

Motion seconded and carried.

DISCUSSION OF PENDING LEGISLATION

Chairman Regan stated that at the last meeting it was suggested that if anyone had any bills they wanted to bring to the Council for consideration, they should contact the Executive Director. Since no additional bills have been raised, he stated, we will only endorse the roster of bills we discussed at the May meeting.

Chairman Regan stated that the only further discussion that remains is the suggestion to index the burial allowance by tying it to the state average weekly wage (SAWW), rather than having a fixed number. The Chairman stated that once the Executive Director explained his research, the Council could discuss whether to support such a change going forward.

Executive Director Will Monnin-Browder stated that there were four states that currently index burial allowance to SAWW or their equivalent, including Hawaii, Iowa, Oregon and Washington. Mr. Monnin-Browder explained that he had drafted legislation that changed the \$8,000 allowance pending in the filed legislation to “seven times the maximum weekly compensation rate.”

Council member Ed Corcoran stated that this legislation goes back four or five legislative sessions and noted that he was instrumental in bringing this to the table because the rates were so low. Mr. Corcoran added that it is sad that this legislation has not even been considered. Mr. Corcoran explained that the \$8,000 came about years ago when comparing the average price of a funeral at that time. Mr. Corcoran suggested that a higher number should be chosen like \$10,000. He noted that it was a maximum benefit and the \$10,000 would not be paid without receipts. He explained that tying the amount to the SAWW did not strike him as a true measurement. Mr. Corcoran stated that he did not want to open up the door to all benefits being tied to SAWW.

Vice Chairman Steve Joyce stated that he did not mind increasing the amount up to \$10,000, but argued that by not tying the allowance to an index, it will mean going back to the legislature periodically to request increases.

Chairman Regan asked that since most of the statute is tied to the SAWW, would it make sense to tie this to it, but instead of the seven times the SAWW, we could use eight or nine times the SAWW bringing the allowance closer to \$10,000? Mr. Regan noted that the benefit cost is insufficient as to what we believe is the average cost of a funeral. Mr. Regan explained that he was struggling with what is the right linkage.

Council member Long stated that he liked the idea of putting it to ten times, sending a message to the legislature saying that it was \$8,000 for a half of decade and it will probably be another half decade before you are going to do anything so we may as well jump to \$10,000 now. Mr. Long expressed frustration that since he has been on the Council nothing has been passed by the legislature except the private right of action bill, which took seven years. Mr. Long noted that the Council has done some great work and he does not think that the board is being taken seriously, as reflected by the fact that these bills are not getting passed. Mr. Long noted that Massachusetts is a leader in workers' compensation when it comes to rates and combatting insurance fraud, but we are the losers when it comes to getting anything passed for injured workers.

Mr. Corcoran stated that seven times the SAWW might be insufficient since it would only be \$500 away from the 2009 average cost of a funeral. He suggested that the cost for a funeral in 2011-2012 might be higher and suggested increasing it to \$10,000, although it may have to be revisited in the future.

Chairman Regan stated that his fear about the \$10,000 is that at some point we will be right back in this position again, pushing for an increase.

Council member Pulgini stated that it was unfortunate that this bill has not been passed since it is supported by all sides.

Chairman Regan agreed and noted that the hearing is not until October. He stated that he wants to know what number everyone is comfortable with. He stated that he thinks that it should be tied to the SAWW, because SAWW usually goes up. The Chairman noted that he thinks this approach makes the most sense, but he wants to represent the true consensus. Chairman Regan noted that everyone was in agreement that the current benefit is too low and it ought to be raised to reflect the cost.

Vice Chairman Joyce stated that he believes the burial allowance should be indexed to something. Mr. Joyce noted that by the time you get the requested number, you have to begin chasing a higher number almost immediately.

Chairman Regan stated that since the hearing is not until October and he did not sense a consensus the Council should table this topic for now. Mr. Regan stated that everyone should think about this and then come back next meeting and have another conversation about what we think is the right approach. Mr.

Regan noted that he himself was not quite sure and would like more time to think about the right approach and number. He stated that he believed that everyone was in agreement that the \$8,000 was too low but that the Council needs to further discuss the right number.

EXECUTIVE DIRECTOR UPDATE

Executive Director Will Monnin-Browder noted that the protocols for getting into the building had changed. The Executive Director stated that you have to scan your card when you come in and stated that if anyone needs a new card, please let staff know.

MISCELLANEOUS

Mr. Regan stated that he and the Executive Director had been discussing whether the Council should have a July meeting and no meeting in August. Mr. Regan noted that Council members who do lobbying would probably be around on July 10th. He suggested that the Council tentatively have a July meeting and definitely no August meeting. He stated that if the tentative turns to really tenuous the Council will cancel the July meeting as well.

Motion made to adjourn the meeting.

Motion seconded and carried.

The next meeting of the Advisory Council is scheduled for Wednesday, July 10, 2013, at 9:00 A.M., at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.