

# MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

March 11, 2015

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

*Council Members Present:* Stephen Joyce; Frank Ruel; Bernie Mulholland; Stephen Falvey; John Pulgini; Teri McHugh; Michael Kelley; Lisabeth Hosford-Walsh.

*Also Present:* Linda Turner, Acting Director; Omar Hernandez, Senior Judge; Bill Tattan, General Council; Bill Taupier, Deputy Director of Administration; Marc Joyce, Sr. Regional Services Manager; John Riordan, Deputy General Counsel; Karen Fabiszewski, Trust Fund Director; Alan Green, Acting Director, Investigations; Bob Ford, Budget Director, EOLWD; Melissa Butts, Program Coordinator, Underground Economy; Attorney Steve Buckley.

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

*Absent:* John Regan; Mickey Long; Bill Corley; Todd Johnson; Executive Office of Housing and Economic Development; Executive Office of Labor and Workforce Development.

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## *Agenda:*

Chairman's Welcome

DIA Update

- Judicial Update – Omar Hernandez, Senior Judge
- Vital Statistics – William Taupier, Deputy Director of Administration
- Budget Update – Bob Ford, Budget Director
- Directors Update – Acting Director Linda Edmonds Turner

Action Items

- Minutes – January 14, 2015
- Minutes – February 11, 2015

Executive Director Update – William Monnin-Browder

Miscellaneous

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## **CHAIRMAN'S WELCOME**

Chairman Stephen Joyce began the meeting at 9:00 A.M. The Chairman stated that Acting Director Linda Turner had to leave for another meeting at 10:00, so he would proceed with the agenda out of order. He asked Acting Director Turner to provide her update.

## **DIA UPDATE**

### Director's Update

Acting Director Linda Turner informed Council members that she had attended the Workers' Compensation Research Institute's (WCRI) Conference. She noted that during the conference, there had been a lot of discussion about the recently published ProPublica article titled "The Demolition of Workers' Compensation." She explained that the article suggests that during the past decade state

benefits for injured workers have been slashed.

Acting Director Turner informed the Council that additional WiFi access points have been installed in the building, which will provide improved access for attorneys.

### Judicial Update

Senior Judge Omar Hernandez informed Council members that the conference and hearing queues are at good levels. He stated that all regions except Springfield are under 2.5 months and Springfield is at 3 months. The Senior Judge explained that the Agency has worked hard to reduce the wait times.

Senior Judge Hernandez stated that he had recently run a 43 Report, which shows open cases, and asked all judges with decisions outstanding more than six months after the close date to explain why the decisions have not been written. The Senior Judge indicated that most judges have legitimate reasons, such as they are being held until the injured worker has surgery. Senior Judge Hernandez stated that he would continue to monitor outstanding cases on a weekly basis to ensure that problems do not arise.

Senior Judge Hernandez stated the new judges appear to be settling in well and that he has received good feedback about them.

Senior Judge Hernandez informed the Council that the Massachusetts Academy of Trial Attorneys (MATA) Workers' Compensation Bench/Bar dinner will be held on April 2, 2015 and that Judge Bean and Maureen Sullivan will be honored. He stated that the honor is well-deserved.

Council Member Bernie Mulholland inquired about recent reports that the state would be enacting an early retirement incentive program (ERIP).

The Senior Judge noted that the Governor had proposed an ERIP. He explained that the proposal would add five years to the person's age or years of service. He stated that if the proposal is adopted and it is determined that it applies to DIA employees, some of the sitting judges have indicated that they would participate. He noted that he has contingency plans in place to address the situation if the need arises.

The Senior Judge stated that one of the contingency plans is to take judges who have indicated that they may retire offline as of April 20<sup>th</sup>. He explained that cases are scheduled six weeks out, so he may be unable to wait for the plan to be finalized before taking action. He noted that he may have to increase the number of conferences each day for the remaining judges.

General Counsel Bill Tattan explained that there is language in the budget that specifically excludes agencies funded by federal money or trust funds. He stated that on the face of the bill it seems that the DIA would be excluded.

Council member Michael Kelley noted that applicants from the judicial pool could be appointed, so that the interview process would not have to begin at square one if an ERIP did include judges. He asked the DIA to provide an updated list of applicants that have already been approved and are in the pool.

Mr. Ford stated that at this point in time, the DIA is not eligible for the ERIP. Mr. Ford explained that the Agency is an assessed operation and there is no bottom line impact on the budget. He stated that there would be no benefit for the DIA to participate. He stated that if the situation changes and DIA is included, the Agency would have to live with the one in five replacement ratio.

### Vital Statistics

Bill Taupier updated Council members on the information contained within the DIA's vital statistics report for March 2015. He offered the following statistics: Conference Queue: 357; Hearing Queue: 647; Reviewing Board Inventory: 52; Impartial Exams for FY' 15 (to date): 2,516 (70 waivers); Exam Fees Collected for FY' 15 (to date): \$1,308,840; Impartial Medical Examinations in FY' 14: 4,376 (22 waivers); and Exam Fees Collected in FY' 14: \$2,018,883.

Mr. Taupier updated the Council on the Stop Work Order (SWO) and Caseload Statistics, including the following: SWOs issued in February: 106 (5 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY' 15 (to date): 1,235; fine collection for February: \$58,095; total fines in FY' 15 (to date): \$727,491; SWOs issued in FY' 14: 2,345; total fines collected in FY' 14: \$2,018,883; compliance checks for February: 5,361; estimated number of workers now covered by workers' comp. insurance as the result of a SWO: 3,713 in FY' 15 (to date).

Council member Steve Falvey asked that the DIA provide a list of SWOs broken down by industry.

Council member Michael Kelley requested that the DIA also provide the number of open cases, whether they are indemnity or medical and the names of the businesses that the claims are filed against in the last two years.

Mr. Taupier continued the update of the monthly vital statistics offering the following: total cases filed in February 2015: 874; total cases filed in FY' 15 (to date): 7,771; total cases filed in FY' 14: 11,960; total First Report of Injury Forms (FRI) filed in February 2015: 3,010 (2,657 filed electronically; 88%); total FRIs filed in FY' 14: 31,384 (11,937 online). In February 2015 the number of employee claims filed: 717; number of employee claims filed in FY' 15 (to date): 6,536; number of discontinuances filed: 152; the total number of discontinuances filed in FY' 15 (to date): 1,210; the number of third party claims filed: 5; total number of third party claims filed in FY' 15 (to date): 25.

Bill Taupier proceeded with his update on uninsured claims (§65), offering the following: total §65 claims reported in FY' 15 (to date): 54; total amount of §65 claims paid by the Trust Fund in FY' 15 (to date): \$5,229,456; total §65 claims filed in FY' 14: 107; total amount of §65 claims paid by the Trust Fund in FY' 14: \$8,663,080; total recovery efforts against uninsured employers FY' 15 (to date): \$1,070,725; total recovery efforts against uninsured employers FY' 14: \$1,013,557.

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' 15 (to date): \$16,367,708; total amount paid on these claims in FY' 14: \$28,467,448; total COLA reimbursements to insurers in FY' 15 (to date): 7,352,378; total COLA reimbursements to insurers in FY' 14: \$15,744,268.

Mr. Taupier reported that as of February 2015, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 241 (185 DIA employees, 55 WCTF employees).

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY' 15 (to date): \$2,502,674; total referral fees collected in FY' 14: \$3,612,740; total first report fines in FY' 15 (to date): \$18,775; total first report fines in FY' 14: \$129,474; total assessment collections in FY' 15 (to date): \$47,905,935; total assessment collections in FY' 14: \$50,224,950; total SWO fines in FY' 15 (to date): \$104,720; total SWO fines in FY' 14: \$1,327,628.

### Budget Update

Budget Director Bob Ford updated the Council on the FY'16 budget. He noted that the current (FY'15) budget is \$19.5 million. He explained that the Governor's budget proposal would increase the Agency's budget next year \$19.8 million. Mr. Ford stated that he is forecasting that the DIA would only spend \$18.6 million of the \$19.8 million; therefore, he believes the Agency will have ample funds. Mr. Ford stated that the Agency is going to have to operate with a 245 FTE cap.

### **EXECUTIVE DIRECTOR'S UPDATE**

Executive Director William Monnin-Browder mentioned that he had also attended the WCRI conference, titled "Resilience or Renovation." He noted that the conference was very data-driven and included presentations on the impact of medical fee schedules and the unintended consequences that can develop when fee schedules are set too low. Mr. Monnin-Browder explained that the conference was an opportunity to see what is happening in workers' compensation not just in Massachusetts, but across the country.

The Executive Director informed the Council that the Legislature is beginning to make the text of newly filed legislation available. He indicated that Advisory Council staff would prepare summaries of the pending legislation as soon as possible, which will be provided to Council members.

### **MISCELLANEOUS**

Attorney Steve Buckley, who represents injured workers, requested to speak to the Council. Mr. Buckley provided two reports by ProPublica and OSHA. Mr. Buckley stated that these reports show how broken the workers' compensation system is. He expressed concerns that the reforms in 1991 were driven by insurer profits and that board rates are much too low, which prevents workers from getting quality care.

Council Member Michael Kelley explained that he was involved in the 1991 reforms of the workers' compensation statute and that one of the major focuses of that reform was to improve access to quality care for the injured worker. He stated that there is significantly better access to quality care today than in 1991.

Mr. Pulgini noted that the workers' compensation system is not perfect and that the Advisory Council works to address concerns. He explained that one issue that has come before the Advisory Council at times is the period of time that it takes to get from the filing of a claim to a conference. Mr. Pulgini noted that the Senior Judge has made tremendous strides in getting rid of the backlog. Mr. Pulgini encouraged Mr. Buckley to share his concerns about the system with the Council.

The Chairman requested that, for all future meetings, if someone from the public wants to speak at a Council meeting, they should ask to be placed on the agenda.

Meeting adjourned.

**The next meeting of the Advisory Council is scheduled for Wednesday, April 8, 2015, at 9:00 A.M., at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.**