

# MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

June 11, 2014

Department of Industrial Accidents

1 Congress Street, Suite 100

Boston, MA 02114-2017

*Council Members Present:* Edmund Corcoran, Jr.; Mickey Long; Stephen Falvey; Bill Corley; Bernie Mulholland; Teri McHugh; Todd Johnson; Mike Doheny, Executive Office of Labor and Workforce Development.

*Also Present:* George Noel, Director; Linda Turner, Deputy Director; Omar Hernandez, Senior Judge; William Tattan, General Counsel; William Taupier, Director of Administration; Robert Ford, Budget Director, EOLWD; John Riordan, Deputy General Counsel; Karen Fabriszewski, Trust Fund Director; Melissa Butts, Joint Task Force, EOLWD; Christina Blonde-Trenholm, EOLWD; Michael Kelley, Hub International, NE; Ellen Keefe, Workers' Compensation Research and Inspection Bureau (WCRIB); Robert McCarthy, WCRIB; Jim Dunlop, Mass Bay Self-Insurance Group.

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

*Absent:* Stephen Joyce; John Regan; Antonio Frias (Ines Leonardo); 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, Director of Administration
- DIA Assessment Discussion – Bob Ford, Budget Director, EOLWD

Action Items

- Minutes – May 14, 2014

Discussion of the Insurance Rate Stipulation – Robert McCarthy, WCRIB

Executive Director Update – William Monnin-Browder

Miscellaneous

---

## **CHAIRMAN'S WELCOME**

Council member Mickey Long began the meeting at 9:00 A.M. Mr. Long asked Senior Judge Omar Hernandez to provide the judicial update.

## **DIA UPDATE**

### Judicial Update

The Senior Judge stated that the average time frame from conciliation to conference in Boston and Lawrence is four months; Fall River is two and a half months; Springfield is one and a half months; and Worcester is three and a half months.

Senior Judge Omar Hernandez updated the Council with respect to the judicial appointment/reappointment process. He indicated that the AJ and ALJ positions have been posted again, with a close date of June 27<sup>th</sup>. The Senior Judge noted that once all applications have been received, the DIA will forward them to the Nominating Panel for a ballot vote. The Senior Judge stated his hope that the Nominating Panel will convene to conduct interviews the week of August 25<sup>th</sup>, with names forwarded to the Advisory Council the following week. The Senior Judge noted that this would be the week of Labor Day. He indicated that while this might pose scheduling difficulties, he hopes names will be submitted to the Governor's Office by the second week in September.

The Senior Judge stated that they were continuing to work on recruiting physicians for the impartial roster, which currently includes 150 physicians. The Senior Judge stated that the Impartial Unit and Scheduling Unit are in the process of merging and that Deborah Keefe would be managing both units.

Senior Judge Hernandez stated that he has been working with the Massachusetts Bar Association's Workers' Compensation Section to discuss best practices and other possible improvements to how the DIA conducts business. He stated that one item that has emerged from those discussions is a desire for standardization of the §19 form. He is hopeful that a standard §19 form will be online in the next week or two.

Council member Edmund Corcoran asked if the Senior Judge could, as he has in the past, provide feedback to the Advisory Council about the number of judges who have more than six months delinquency on cases with no decision.

#### Vital Statistics

Director of Administration Bill Taupier updated Council members on the information contained within the DIA's vital statistic report for June 2014. He offered the following statistics: Conference Queue: 953; Hearing Queue: 681; Reviewing Board Inventory: 87; Impartial Exams for FY'14 (to date): 3,906 (22 waivers); Exam Fees Collected for FY'14: \$1,822,125; Impartial Medical Examinations in FY'13: 4,838 (51 waivers); and Exam Fees Collected in FY'13: \$1,771,021; Cases resolved at conciliation: 45% (466).

Mr. Taupier updated the Council on the Stop Work Order (SWO) and Caseload Statistics, including the following: SWOs issued in May: 176 (11 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'14 (to date): 2,157; fine collection for May: \$97,531; total fines in FY'14 (to date): \$1,162,879; SWOs issued in FY'13: 2,621; total fines collected in FY'13: \$1,351,266; compliance checks for May: 7,326; estimated number of workers now covered by workers' comp. insurance as the result of a SWO: 5,523 (FY'14).

Mr. Taupier continued the update of the monthly vital statistics offering the following: total cases filed in May 2014: 900; total cases filed in FY'14 (to date): 10,890; total cases filed in FY'13: 12,174; total First Report of Injury Forms (FRI) filed in May 2014: 2,396 (2,103 filed electronically; 88%); total FRI filed in FY'14: (to date): 28,836; total FRI filed in FY'13: 29,791 (11,937 online).

Council member Mickey Long suggested that it would be worth noting in the Annual Report that claims continue to decrease, even as the economy has improved. He stated that it is a good reflection of the service the DIA provides.

Mr. Taupier proceeded with his update on uninsured claims (§65), offering the following: total §65 claims reported in FY'14 (to date): 98; total amount of §65 claims paid by the Trust Fund in FY'14 (to date): \$7,766,790; total §65 claims filed in FY'13: 126; total amount of §65 claims paid by the Trust Fund in

FY' 13: \$5,920,979; total recovery efforts against uninsured employers FY' 14: \$1,001,629; total recovery efforts against uninsured employers FY' 13: \$1,368,849.

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): \$20,660,413; total amount paid on these claims in FY' 13: \$26,761,907; total COLA reimbursements to insurers in FY' 14 (to date): \$10,069,742; total COLA reimbursements to insurers in FY' 13: \$15,483,043.

Mr. Taupier reported that as of April 2014, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 246 (192 DIA employees, 54 WCTF employees).

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY' 14 (to date): \$3,447,649; total referral fees collected in FY' 13: \$3,971,991; total first report fines in FY' 14 (to date): \$122,250; total first report fines in FY' 13: \$55,758; total assessment collections in FY' 14 (to date): \$49,875,792; total assessment collections in FY' 13: \$60,111,617 (Consultant Cost = \$50,000); total SWO fines in FY' 14 (to date): \$1,162,879; total SWO fines in FY' 13: \$1,351,266.

#### DIA Assessment Rate Discussion

Budget Director Bob Ford provided an overview of the DIA assessment rate for next fiscal year. He noted that there have been a number of discussions with Deloitte, mostly about the premium base. He indicated that Deloitte thinks the base is going to jump higher than what the DIA has projected. He noted that Deloitte initially recommended \$1.3B as the premium base, but that the DIA will use \$1.225B as the base. The \$1.3B premium base proposed by Deloitte would have yielded an assessment rate of 6.05%, but the DIA is going with an assessment rate of 5.8%. He stated that recommending 5.8% leaves the DIA with a Trust Fund balance surplus of about 20% of expenses rather than 35% at the end of next year, which is workable.

Mr. Ford explained that when the rate is set at 5.8% the Agency only gets three quarters at that rate because the first quarter, July-September, is at the old rate. He stated that it also means in that next year the DIA will be at the higher rate in the first quarter and then, if the rate goes down, at the lower rate for the remaining three quarters of the fiscal year.

Council member Mickey Long asked that Mr. Ford provide an explanation of the rate increase to include in the Council's Annual Report, since there is a good rationale for it.

#### Director Noel Update

Director George Noel stated that a task force was formed to address the judicial compensation issue. The Director stated that it was clear that the DIA needed to be more transparent and consistent in the way judges were compensated. The Director explained that the task force developed a proposal that was approved by the Secretary and the Human Resources Department.

The Director explained that because judges are classified by statute as M9 and M10 employees and paid within a salary range, there is currently a significant variance in salaries. Director Noel stated that determining the salary of a new DIA judge has often been based on a lengthy and complicated salary analysis. Going forward, the Director explained, a similar methodology used by the Appellate Tax Board will be used for determining judicial salaries at the DIA. The Director stated that effective July 1, 2014, there will be a new salary range used to determine the compensation for new DIA Judges. Director Noel explained that Administrative Judges at the DIA will earn 70% of the salary of an Associate Judge at the Trial Court, Administrative Law Judges will earn 75% of an Associate Justice's salary and the Senior

Judge will earn 3% more than the ALJs. He explained that judges whose salaries are currently below these amounts will be adjusted upward, but that judges already above these salaries will not have their salaries reduced.

Director Noel explained that applicants for DIA judicial positions will now know exactly what their salary would be if appointed.

In closing, Director Noel stated that this is a stand-alone solution and does not have anything to do with any possible settlement or solution to any outstanding litigation regarding judicial salaries.

### **DISCUSSION OF THE INSURANCE RATE STIPULATION**

Mr. Rob McCarthy, WCRIB Chief Actuary, addressed the Council on the recent workers' compensation rate stipulation.

#### *Average Rates*

Mr. McCarthy explained that while the average overall rate in Massachusetts was not changing, there were changes within individual classifications. Mr. McCarthy explained that it is possible to end up with an average change of zero when some class rates go up and others go down.

Mr. McCarthy then explained the term "average rate." Mr. McCarthy stated that for the purposes of an illustration, assume that the projection made at the rating bureau for losses and expenses is \$1,050. He noted that in total, insurers need rates where they will collect premiums to get \$1,050. He explained that there is a variable component that is a function of the exposure of the payroll and a fixed component that is an expense constant. Mr. McCarthy stated that if the total premium has to equal that \$1,050 and we have \$50 for that fixed component, we need to come up with another \$1,000 to make the system work. So if the exposure out there is \$100, effectively we are saying we need a rate that is \$10 per unit exposure. This would be the average rate.

Mr. McCarthy explained that average rates are not manual rates. He explained that in Massachusetts, like most states, the manual rate is modified by a number of elements such as experience rating and ARAP before you get down to this final variable premium. In Massachusetts, he continued, the variable premium component is exposure times that manual rate times that experience modification and then there may be an ARAP factor as well.

Mr. McCarthy stated that the bureau figure outs what average rate is needed and then works backwards to the manual rate. In other words, he explained, the bureau determines what we need in total and then we have to make some estimates of what is going to be the impact of some of these other things, such as the impact of the ARAP and the impact of the experience rating, so that we can calculate the manual rate.

#### *Construction Credit Program*

Mr. McCarthy explained that the intent of the Construction Credit Program was to provide a premium credit for those construction employers who paid relatively high wages. He explained that when initially implemented the credit would begin to apply once an employer started paying an average hourly wage of \$18.00. Mr. McCarthy stated that until the change April 1<sup>st</sup> of this year, it still kicked in at \$18.00/hr. He indicated that it now begins to apply around \$30.00/hr.

He said the impact of the change is that some people will pay a little more and some will pay a little less. He indicated that the construction credit is one factor that goes into the calculation of manual premium for

construction industry classifications. With respect to the construction credit, he explained, that the goal is to make the change revenue neutral. He explained that total construction credits are going to be lower, as it will be more difficult to reach the threshold. He explained further that because the impact of the credit has been reduced, so too has the manual rate.

### **EXECUTIVE DIRECTOR UPDATE**

Executive Director William Monnin-Browder noted that language that would increase the burial allowance to eight times the SAWW is currently included in two legislative vehicles. The first, he explained, is the minimum wage/UI bill currently being conferenced. He also noted that just a few days ago the House passed a stand-alone burial allowance bill, which has now moved over the Senate Ways and Means.

The Executive Director noted that language from the scarring bill has also made it into the House version of the minimum wage/UI bill.

The Executive Director stated that staff will continue to monitor legislative actions.

### **MISCELLANEOUS**

A motion was made to adjourn the meeting.

Motion seconded and carried.

Meeting Adjourned.

**The next meeting of the Advisory Council is scheduled for Wednesday, July 9, 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.**