

# MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

January 14, 2015

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

*Council Members Present:* Stephen Joyce; Frank Ruel; Todd Johnson; John Pulgini; Stephen Falvey; Teri McHugh; Dennis Hines; Bill Corley; Lisabeth Hosford-Walsh; Michael Kelley.

*Also Present:* George Noel, Director; Linda Turner, Deputy 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 Fabriszewski, Trust Fund Director; Alan Green, Acting Director of Investigations; Bob Ford, Budget Director, EOLWD; Dennis Johnson, Diversity Director, EOLWD; Melissa Butts, Program Coordinator, Joint Task Force on the Underground Economy and Misclassification; Ellen Keefe, Workers' Compensation Inspection Bureau (WCRIB); Jim Dunlop, Mass. Bay Self-Insurance Group.

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

*Absent:* John Regan; Mickey Long; Bernie Mulholland; 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
- Directors Update – George Noel, Director

Action Items

- Minutes – October 8, 2014
- Minutes – October 28, 2014
- Minutes – November 12, 2014
- Minutes – December 10, 2014

Discussion of the Draft FY'14 Annual Report

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. He welcomed two new Council Members: Lisabeth Hosford-Walsh and Michael Kelley. The Chairman asked Senior Judge Omar Hernandez to provide the judicial update.

## **DIA UPDATE**

### Judicial Update

The Senior Judge stated that the conference queue has decreased. He informed members that the average

wait times between conciliation and conference in Boston and Springfield are at three months, Fall River and Worcester are at two and a half months and Lawrence is at two months.

The Senior Judge stated that three new judges were sworn in last week.

### Vital Statistics

Bill Taupier updated Council members on the information contained within the DIA's vital statistics report for January 2015. He offered the following statistics: Conference Queue: 673; Hearing Queue: 712; Reviewing Board Inventory: 85; Impartial Exams for FY'15 (to date): 1,840 (47 waivers); Exam Fees Collected for FY'15 (to date): \$1,020,174; 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 December: 160 (8 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'15 (to date): 1,093; fine collection for December: \$119,525; total fines in FY'15 (to date): \$588,417; SWOs issued in FY'14: 2,345; total fines collected in FY'14: \$2,018,883; compliance checks for December: 6,853; estimated number of workers now covered by workers' comp. insurance as the result of a SWO: 2,867 in FY'15 (to date).

Mr. Taupier continued the update of the monthly vital statistics offering the following: total cases filed in December 2014: 1,008; total cases filed in FY'15 (to date): 6,079; total cases filed in FY'14: 11,960; total First Report of Injury Forms (FRI) filed in December 2014: 2,674 (2,331 filed electronically; 87%); total FRIs filed in FY'14: 31,384 (11,937 online). In December the number of employee claims filed: 861; number of employee claims filed in FY'15 (to date): 4,437; number of discontinuances filed: 144; the total number of discontinuances filed in FY'15 (to date): 913; the number of third party claims filed: 3; total number of third party claims filed in FY'15 (to date): 16.

Bill Taupier proceeded with his update on uninsured claims (§65), offering the following: total §65 claims reported in FY'15 (to date): 44; total amount of §65 claims paid by the Trust Fund in FY'15 (to date): \$4,093,305; 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): \$917,070; total recovery efforts against uninsured employers FY'14: \$1,013,557.

Bill Taupier provided a new slide showing the Trust Fund claims by industry. Construction FY'15 to date: 20 (45.5%); FY'14: 53 (46.9%); FY'13: 66 (49.6%). Transportation: FY'15 to date: 8 (18.2%); FY'14: 18 (15.9%); FY'13: 26 (19.5%). Retail/Manufacturing FY'15 to date: 6 (13.6%); FY'14: 4 (3.5%); FY'13: 6 (4.5%). Home Services FY'15 to date: 5 (11.4%); FY'14: 4 (3.5%); FY'13: 6 (4.5%). Restaurant/Food FY'15 to date: 3 (6.8%); FY'14: 7 (6.2%); FY'13: 9 (6.8%). Landscaping/Tree Service: 2 (4.5%); FY'14: 10 (8.8%); FY'13: 6.8%. Services/Misc. FY'15 to date: 0 (0.0%); FY'14: 17 (15.0%); FY'13: 11 (8.3%). Total FY'15 to date: 44; FY'14: 113; FY'13: 11.

Chairman Joyce asked the DIA to provide a similar slide breaking down Stop Work Orders by industry.

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): \$12,757,624; total amount paid on these claims in FY'14: \$28,467,448; total COLA reimbursements to insurers in FY'15 (to date): 3,183,061; total COLA reimbursements to insurers in FY'14: \$15,744,268.

Mr. Taupier reported that as of December 2014, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 240 (185 DIA employees, 55 WCTF employees).

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY'15 (to date): \$2,018,163; 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): \$30,131,837; 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.

### Director's Update

#### *Proposed Regulatory Changes*

Director George Noel began his update by discussing the proposed revisions to the DIA's regulations (452 CMR). He explained that stakeholders had approached the Agency and Secretariat with concerns regarding translation services, specifically that they believe the Agency's practices are inconsistent with the Governor's Executive Order 526 and Title VI of the Civil Rights Act. He explained that stakeholders also shared concerns about the Average Weekly Wage (AWW) calculation for workers being paid far less than legal wages. Director Noel stated that the proposed regulations are the Agency's attempt to address these concerns.

Director Noel stated that since the notice for a public hearing on the proposed regulatory change had been posted, he had heard concerns expressed by some stakeholders about the proposed changes. He stated that he would hold a roundtable discussion on Thursday, January 15<sup>th</sup> at the DIA to hear concerns. He stated that he was remiss that the process was not more inclusive and the Agency would work to correct that.

Chairman Joyce noted that when he received the hearing notice, he was concerned that there had not been conversations about the proposed regulatory changes with the Advisory Council. Chairman Joyce noted that the Council's role is to be advisory and that if regulations were being put together, he believes that coming before the Council to get feedback would be very helpful. He also noted that the timing of the proposed changes is not great, as the changes were proposed at the very end of one administration, with the hearing to be held during the next administration.

Director Noel noted that the Massachusetts Bar Association has had committees to address these types of issues in the past and, while nothing has been decided for sure, one solution might be to slow the process down and convene such a group.

Council member Todd Johnson echoed the Chairman's view and stated that he believes the corrective action is to slow things down and bring the parties together to discuss the four or five proposed changes. He expressed concern that the Thursday meeting is being held on such short notice.

Council member Teri McHugh stated that the last time the Agency made a significant regulatory change, a committee was set up consisting of three representatives for the employee's bar; three representatives for the defense bar; three administrative judges; and one legal counsel from the Review Board, whose role was to mediate and monitor this fairly extensive process. She explained that she has received many calls with concerns about the proposed regulations. She noted that she understands that the DIA is considering the employee's interest; however, she argued that some of the changes would violate due process for the insurer's side. She added that there is also concern that these changes appear to have come out of nowhere.

Council member Michael Kelley stated that he too had received several calls expressing concerns about the proposed changes to the regulation. He suggested the public hearing be postponed. He asked if a small business impact study had been done and asked that it be made available.

General Counsel Bill Tattan stated that a small business impact report has been done and it was filed with A&F.

*Boston Lease*

Director Noel noted that over the last few years, there had been some reports that the 1 Congress Street building housing the DIA's Boston office would be redeveloped. He stated that General Counsel Bill Tattan recently received a call from DCAM, who had received a call from the DIA's Boston landlord asking that the Agency be out of the building by the end of the year. Director Noel explained that the Agency had signed a ten year lease in 2010. Director Noel stated that the Agency has not yet received anything in writing and that he will keep the Council informed of any developments.

*Transition*

Director Noel informed the Council that he had a met with Secretary Walker, the incoming Secretary of Labor and Workforce Development, and provided a brief overview of the DIA's operations and noted how the Massachusetts workers' compensation system stacks up compared to other states.

*Budget*

Budget Director Bob Ford informed Council Members that he expects the Secretariat will experience a substantial budget reduction in the coming weeks, as the incoming administration works to address the budget shortfall. He noted that this reduction could impact the Agency. He explained that the Secretariat has \$332 million in revenue, but only \$44 million is from the state, the rest being from the federal government or trust funds. He expects that he will be able to explain to members where reductions were made at the next Advisory Council meeting.

**ACTION ITEMS**

A motion was made to approve the October 8, 2014 minutes.

Motion seconded and carried.

A motion was made to approve the October 28, 2014 minutes.

Motion seconded and carried.

A motion was made to approve the October 28, 2014 executive session minutes.

Motion seconded and carried.

A motion was made to approve the November 12, 2014 minutes.

Motion seconded and carried.

A motion was made to approve the December 10, 2014 minutes.

Motion seconded and carried.

A motion was made to approve the Fiscal Year 2014 Annual Report.

Motion seconded and carried.

**EXECUTIVE DIRECTOR'S UPDATE**

Executive Director William Monnin-Browder stated that he would work to finalize the Annual Report and release it as soon as possible. He noted that he hopes to have copies for members by the next meeting.

**MISCELLANEOUS**

Motion made to adjourn the Meeting.

Motion seconded and carried.

**The next meeting of the Advisory Council is scheduled for Wednesday, February 11, 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.**