

# MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

August 12, 2015

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

*Council Members Present:* Stephen Joyce; John Regan; Stephen Falvey; Mickey Long; Frank Ruel; Bernie Mulholland; Todd Johnson; John Pulgini; Michael Kelley.

*Also Present:* Linda Edmonds Turner, Director; Omar Hernandez, Senior Judge; Bill Tattan, General Counsel; Bill Taupier, Deputy Director of Administration; John Riordan, Deputy General Counsel; Karen Fabiszewski, Trust Fund Director; Roody Herold, IT Manager; Bob Ford, Chief Financial Officer; Dennis Johnson, Director of Diversity, EOLWD; Karen L. Haynes-Clifton, Deputy Director of Diversity, EOLWD; Melissa Butts, Program Coordinator, Council on the Underground Economy.

*Advisory Council Staff:* Evelyn Flanagan.

*Absent:* Bill Corley; Teri McHugh; 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
- Director's Update – Director Linda Edmonds Turner

Communications

Action Items

- Minutes – June 10, 2015
- Minutes – June 24, 2015

Legislative Discussion

Executive Director Update

Miscellaneous

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## **CHAIRMAN'S WELCOME**

Chairman Stephen Joyce welcomed everyone and asked Senior Judge Omar Hernandez to provide his Judicial Update.

## **DIA UPDATE**

### Judicial Update

Senior Judge Hernandez stated that the wait times for conference are about 2.5 months in all regions.

The Senior Judge stated that the workers' compensation conference bringing together stakeholders from Rhode Island, New Hampshire, and Massachusetts has been set for October 23<sup>rd</sup>. Senior Judge Hernandez stated that this is an educational program for anyone involved in workers' compensation. He

explained that they will highlight the differences in the three states and identify best practices. The Senior Judge stated that he had contacted both Paul Meagher and Anthony DiPaolo and both have agreed to be on the agenda to discuss the fraud component of workers' compensation. The Senior Judge noted that their equivalents from the other states will be on the panel as well.

Senior Judge Hernandez stated that he received the OK to hire stenographers. He stated that they have begun receiving resumes and have some very good candidates they hope to begin interviewing soon.

Responding to a question from Chairman Steve Joyce about the status of the Boston office, General Counsel Bill Tattan informed the Council that there has been no official notification from the landlord to either the DIA or DCAM about vacating the office.

### Vital Statistics

Bill Taupier updated Council members on the information contained within the DIA's vital statistics report for August 2015. He offered the following statistics: Conference Queue: 427; Hearing Queue: 571; Reviewing Board Inventory: 58; Impartial Exams for FY'16 (to date): 384 (6 waivers); Exam Fees Collected for FY'16 (to date): N/A; Impartial Medical Examinations in FY'15: 4,146 (94 waivers); and Exam Fees Collected in FY'15: \$1,967,550.

Mr. Taupier updated the Council on the Stop Work Order (SWO) and Caseload Statistics, including the following: SWOs issued in July: 212 (19 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'16 (to date): 212; fine collection for July: \$64,924; total fines in FY'16 (to date): \$64,924; SWOs issued in FY'15: 1,938; total fines collected in FY'15: \$1,189,530; compliance checks for July: 6,877; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 496 in FY'16 (to date).

In response to a question from Council Member Michael Kelley, Mr. Taupier stated that the number of defaults was higher than usual.

General Council Bill Tattan explained in some situations, the business subject to the SWO might secure workers' compensation insurance the day after issuance, but then not show up for the hearing. He explained that when a default occurs, the DIA sends investigators to the place of business the very next day and noted that the situation is usually resolved very quickly. He explained that the people give a number of different explanations for why they failed to appear at the hearing.

Chairman Joyce asked whether there has been an influx of out-of-staters without insurance that could be bumping up the numbers.

Council member Mickey Long stated that he is seeing companies from other states, especially in construction, bidding for jobs in Massachusetts and importing unlawful working environments. He said this puts Massachusetts employers and employees at risk of losing work. Mr. Long suggested that anecdotal evidence of this situation should be included in the record or the Council's Annual Report.

Council member John Pulgini asked if these situations are arising solely with subcontractors on these jobs or the general contractors as well.

Chairman Joyce explained that they see some general contractors, but typically they see subcontractors or subcontractor to subcontractor. He noted that the good thing is that although it can take time, the Trust Fund will dig down through the tiers and will eventually find liability. He stated that for the workers, this

is a difficult situation, because when somebody gets hurt, the chase is on to find out who is their employer.

Council member Long stated that if you are a general contractor and you are getting bids from employers in Massachusetts for \$100,000 and bids from employers in states like Alabama or Vermont for \$50,000, and you have a union person say the general contractor cannot take the lower bid because it is illegally deflated, the general contractor will tell the person to tell the Attorney General's office or the DIA, and will take the \$50,000 savings on the job.

Council member Steve Falvey stated that it is the same group of labor brokers that have been doing this for years and they just change the names of their businesses. Mr. Falvey stated that this is an ongoing problem and no matter how much progress we make, as our economy expands, fraud will expand as well.

Mr. Taupier continued the update of the monthly vital statistics offering the following: total cases filed in July 2015: 1,149; total cases filed in FY'16 (to date): 1,149; total cases filed in FY'15: 11,837; total First Report of Injury Forms (FRI) filed in July 2015: 3,226 (2,846 filed electronically: 88%); total FRIs filed in FY'16: 3,226; total FRIs filed in FY'15: 33,353 (29,290 online). In July 2015 the number of employee claims filed: 994; number of employee claims filed in FY'16 (to date): 994; number of discontinuances filed: 150; the total number of discontinuances filed in FY'16 (to date): 150; the number of third party claims filed: 5; total number of third party claims filed in FY'16 (to date): 5.

Bill Taupier proceeded with his update on uninsured claims (§65), offering the following: total §65 claims reported in FY'16 (to date): 7; total amount of §65 claims paid by the Trust Fund in FY'16 (to date): \$183,524; total §65 claims filed in FY'15: 99; total amount of §65 claims paid by the Trust Fund in FY'15: \$7,447,206; total recovery efforts against uninsured employers FY'16 (to date): \$91,850; total recovery efforts against uninsured employers FY'15: \$1,556,069.

Council member Mickey Long stated that the Trust Fund and Recovery Efforts numbers are remarkable. He noted that for the first time the number is under 100 for injuries recorded and the amount recovered is at very high levels. Mr. Long explained that this is an important employer cost and both the employers and workers are benefitting from this trend, which he hopes will continue.

Council member Todd Johnson stated he believes a lot of progress has been made with respect to trust fund claims. Mr. Johnson suggested that the Annual Report be drafted in such a way as to highlight this information.

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'16 (to date): \$0; total amount paid on these claims in FY'15: \$29,059,946; total COLA reimbursements to insurers in FY'16 (to date): \$59,704; total COLA reimbursements to insurers in FY'15: \$11,500,461.

Mr. Taupier reported that as of June 2015, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 235 (182 DIA employees, 53 WCTF employees).

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY'16 (to date): \$238,945; total referral fees collected in FY'15: \$3,888,246; 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'16 (to date): \$7,72,656; total assessment collections in FY'15: \$70,934,025; total SWO fines in FY'15 (to date): \$104,720; total SWO fines in FY'14: \$1,327,628.

CFO Bob Ford stated that he had a few things from the financial perspective to report. He stated that with respect to Section 65s and COLAs, payments were down \$6M from the amount budgeted. He noted that when calculating the assessment rate, the Agency forecasted that spending would be down \$6M.

Mr. Ford stated that the new tightening of the SWO process has allowed the Agency to get rid of uncollectable debt and that for the first time in history the Agency does not have an overhang. He explained that the Agency's books are now clean.

Mr. Ford stated the Secretariat's internal audit group has expanded and has been focusing on auditing insurance companies. He stated that they have collected \$3M in assessments with \$1.7M in bills out there and are preparing to send out bills next week for \$1.9M. He explained that the group expects to collect approximately \$6M to \$6.5M from the insurance companies. He stated that they are also going to get started on auditing self-insured companies within the next few months.

Council member Mickey Long stated that the AFL-CIO is concerned about self-insurance groups, primarily in the construction industry, that are getting together and self-insuring as a group because they are getting cheaper rates. He explained that it is theorized that they are getting cheaper rates because they are not reporting some codes or a certain percentage of codes because nobody is watching the store.

Council member Todd Johnson explained that every self-insurer is required to have reinsurance or excess insurance. In that underwriting process the carrier is taking the risks on the catastrophic claims and insuring they use the right codes because they are collecting premiums on that self-insurer for the risk itself. He stated that while it is not a perfect system there is a level of scrutiny because Carrier A is not going to want to insure self-insurer A if they are playing this game.

Council member Falvey noted that WCRIB collected over \$1.0M for multiple years of misclassification and the only difference was between a roofer and a carpenter. He stated that by calling someone a carpenter who does roofing all the time is a huge savings. He explained that there are multiple kinds of iron workers and they have different class codes and not using the correct code can be a real budget savings item.

Chairman Joyce asked General Counsel Tattan to address the memo that he had sent to Advisory Council members from the Attorney General's Office.

Mr. Tattan stated that members of the Council should have received a hold letter relating to litigation filed against a number of parties, including the Executive Office of Labor and Workforce Development. He explained that the Agency is subject to discovery and that the other side can demand that records be produced whether they are electronic, hardcopy, oral conversations or writings.

### **DIRECTOR'S UPDATE**

Director Linda Turner stated that, to follow-up on the earlier comment from Council Member Pulgini about whether the Governor is aware of the DIA's successes, the Governor is very aware. She explained that when the new team came on board with the Governor's Office, all of the departments and the divisions within the state had to do transition reports and presentations. The Director noted that the DIA received very high marks on its reports and that some of the other agencies are adopting similar data systems to those employed by the DIA.

Director Turner mentioned that the Executive Director has begun the process of gathering data for the Advisory Council's FY'15 Annual Report.

Chairman Joyce stated that if any members have suggestions or additions to the Annual Report, they should reach out to the Executive Director.

Council member Long suggested having a section heading “Positive Record Setting Milestones.”

**COMMUNICATIONS**

Chairman Joyce stated that the Members’ packets include copies of the letters sent to legislative committees communicating the Council’s legislative positions. He reminded Council members that the body had voted to support one piece of legislation, oppose three pieces, and took no action on the others.

**ACTION ITEMS**

A motion was made to approve the June 24, 2015 minutes.

Motion seconded and carried.

A motion was made to approve the July 8, 2015 minutes.

Motion seconded and carried.

Motion made to adjourn the meeting.

Motion seconded and carried.

Meeting adjourned.

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