

# MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

June 13, 2012  
Department of Industrial Accidents  
1 Congress Street, Suite 100  
Boston, MA 02114-2017

*Council Members Present:* John Regan, Chairman; Stephen Joyce, Vice Chairman; Edmund C. Corcoran, Jr.; Antonio Frias (Ines Leonardo); Mickey Long; Stephen Falvey; Bernard Mulholland; John Pulgini; David Powell (Kevin Hurstadt); Todd Johnson; Dennis Hines.

*Also Present:* Philip L. Hillman, Director; Omar Hernandez, Senior Judge; Reuben Kantor, Director of Operations; William Tattan, General Counsel; William Taupier, Deputy Director of Administration; George Noel, Deputy Director of the DIA; Marc Joyce, Senior Regional Services Manager; Bob Ford, Budget Director, Executive Office of Labor and Workforce Development; Ellen Keefe, Workers' Compensation Rating & Inspection Bureau of Massachusetts; Cathy McKeever, AIM Mutual Insurance Company.

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

*Absent:* Teri McHugh; William Corley; Executive Office of Labor and Workforce Development; Executive Office of Housing and Economic 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
- Update on T3 Line Installation Project – Philip L. Hillman, Director

Action Items

- Minutes – April 11, 2012
- Minutes – May 9, 2012

Discussion of Employer Assessment Calculation – Bob Ford, Budget Director

Discussion of Electronic Distribution of Conference and Hearing Decisions

Executive Director Update

Miscellaneous

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## **CHAIRMAN'S WELCOME**

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

## **DIA UPDATE**

Judicial Update

Senior Judge Omar Hernandez reported that both Judge Bean and Judge Rose have been reappointed, having received unanimous votes in favor of their reappointments from the Governor's Council. The Senior Judge stated that a strong effort will be made during the next round of interviews and appointments to fast track the process. He explained that there are seven judges coming up for reappointment this year, including himself.

Chairman Regan stated that the Council was also concerned about the speed of the appointment/reappointment process. He noted the Council's support for a more predictable, swifter process and asked the Council's view be shared with the Administration. He expressed concern that uncertainty by the judges of their status could potentially affect work attitude and lower morale.

The Senior Judge noted the increase in conference and hearing queues and stated that there were a number of factors contributing to the increase, including summer vacations, the redeployment of secretaries from a one to one ratio of judges to secretaries to a two to one ratio, and a judicial roster down four Administrative Judges. The Senior Judge noted that the DIA is developing a process to automate rescheduling, designed to reduce the workload of the secretaries, who must now reschedule all cases manually. He also noted that new computers are currently being phased in to help address slow processing speeds.

Senior Judge Hernandez informed the Council members that another issue impacting the queues is impartial fees. He indicated that the proposed impartial fee schedule increase is awaiting approval by the Governor's Office. The Senior Judge indicated that he is trying to expedite the process, noting that the pool of doctors is dwindling. The Senior Judge informed the Council that the pool currently stands at less than 200, while at one time it had been as high as 300. He stated that he was bringing on a new impartial manager with good skills and contacts, who he expects will help increase the roster.

The Senior Judge stated that the judges' yearly training is scheduled for June 14<sup>th</sup> and June 15<sup>th</sup>. He informed the Council that he has created a rules committee to make sure procedures are uniform throughout DIA offices and that processes are streamlined and run more smoothly. He agreed to share the results of that committee's work with the Council to get some feedback from the Council's practitioners.

Council member Mickey Long suggested that when advocating for the solutions proposed to decrease the queues, it is important to focus on the cost impact to employers of the increased queues. He suggested that the best argument is that, if you want to lower employers' costs to create employment opportunities, you may want to fix the queue, because employers are paying claims that they believe are disingenuous. He expressed interest in knowing the dollar cost to employers of the increased queues.

Chairman Regan stated that the Council has been patient as this problem has continued to grow. He noted that the Council recognizes that there are many factors involved, but as that problem gets larger, they are beginning to see the frustration level go up. The Chairman stated that at a certain point there needs to be progress.

Council member Long noted that the queues had previously been down so low that even the claimant's attorneys were asking for more time to get their cases together. Mr. Long stated that the bottom line is that the system was working and now it is going the other way where it is not working. He indicated that the people at the meeting, including members of the Advisory Council, are the

people on watch and who need to have answers. Mr. Long stated that this is about the end product and that he does not care how the higher queues got here as long as they are reduced.

Chairman Regan stated that in prior meetings there was talk about setting some goals and objectives for what is the right level for the queues. He explained that coming up with a standard that everyone agrees is appropriate and using that standard to measure against is the way to keep things on track. The Chairman noted that if you look at June of last year and June of this year the numbers increased from 469 to 1,180. The Chairman stated that something is happening here and it is important to know what it is and how we can deal with it.

Vice Chairman Steve Joyce agreed that it would be helpful to hear from people as to what is the right length for the queues, because if the number is too low or too high, it is not helpful to either side.

The Senior Judge stated that, speaking as a practitioner and as a judge, the ideal number was usually between ten or eleven weeks from conciliation to conference and five to six months from conference to hearing.

Chairman Regan suggested that the Council meet in July and skip August. Chairman Regan asked if it would be possible for the Senior Judge to have a written description on what he believes is the appropriate numbers for that July meeting.

The Senior Judge stated that he could provide a written description of what the appropriate numbers should be and present it at the July meeting. He also noted that he is seeing more requests for speedy conference.

Council member Edmund Corcoran noted that the concerns raised about the delays and requests for speedy conference are of the same kind heard years and years ago, which were fixed.

Chairman Regan suggested that he and the Vice Chairman call the Secretary's Office to express some of these concerns. The Chairman stated that he would like to take the minutes from the meeting and share them with the Secretary. He indicated that now that we are up over 1,000 and the trend line is bad going back to the first of the year, it was time to let the Secretary know that the Council is getting nervous and that it is time to get together and try to fix this. If this continues along this trajectory, he said, the system will start to teeter out of control and we will all regret that.

### Vital Statistics

Mr. Bill Taupier updated Council members on the information contained within the DIA's vital statistic report for June 2012. He offered the following statistics: Conference Queue: 1,180; Hearing Queue: 653; Reviewing Board Inventory: 44; Impartial Exams for FY' 12 (to date): 3,667 (48 waivers); Exam Fees Collected for FY' 12: \$1,367,353; Impartial Medical Examinations in FY' 11: 4,295 (48 waivers); Exam Fees Collected in FY' 11: \$1,560,963.

Mr. Taupier updated Council members on the Stop Work Order (SWO) and Caseload Statistics, including the following: SWOs issued in May: 228 (16 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY' 12 (to date): 2,435; fine collection for May: \$109,499; total fines in FY' 12 (to date): \$1,297,798; SWOs issued in FY' 11: 2,972; total fines collected in FY' 11: \$1,836,225; compliance checks for May 2012: 8,666; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 7,576 (FY' 12).

Mr. Taupier continued the update of the monthly vital statistics by offering the following statistics: total number of cases filed in May 2012: 1,220; total number of cases filed in FY' 12 (to date): 11,608; total number of cases filed in FY' 11: 12,589; total number of First Report of Injury Forms (FRI) filed in May 2012: 2,775; total number of FRI filed online in May 2012: 1,066 (38%); total number of FRI filed in FY' 12: (to date): 27,224; total number of FRI filed in FY' 11: 30,820 (9,482 online).

Mr. Taupier proceeded with his update on uninsured claims (§65), offering the following numbers: total number of §65 claims reported in FY' 12 (to date): 103; total amount of §65 claims paid by the Trust Fund in FY' 12 (to date): \$6,483,823; total number of §65 claims filed in FY' 11: 118; total amount of §65 claims paid by the Trust Fund in FY' 11: \$7,668,940; total recovery efforts against uninsured employers FY' 12: \$963,288; total recovery efforts against uninsured employers FY' 11: \$1,242,706.

General Counsel Bill Tattan introduced Mr. Patrick Ronan at this time. Attorney Tattan informed the Council members that Mr. Ronan is the new Trust Fund Manager.

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' 12 (to date): \$19,650,029; total amount paid on these claims in FY' 11: \$22,299,988; total COLA reimbursements to insurers in FY' 12 (to date): \$17,868,464; total COLA reimbursements to insurers in FY' 11: \$15,632,451.

Mr. Taupier reported that as of May 2012, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 239 (194 DIA employees, 45 WCTF employees). The DIA is authorized to have 258 payroll positions (including all full and part-time positions).

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY' 12 (to date): \$3,355,673; total referral fees collected in FY' 11: \$3,730,233; total first report fines in FY' 12 (to date): \$104,800; total first report fines in FY' 11: \$137,905; total assessment collections in FY' 12 (to date): \$82,504,390; total assessment collections in FY' 11: \$81,610,102; total SWO fines in FY' 12 (to date): \$1,297,798; total SWO fines in FY' 11: \$1,836,225.

#### Update on T3 Line Installation Project

Director Philip Hillman noted that the DIA still does not have an affirmative date from Verizon. He explained that the vendor is ready to go. He stated that this is a priority for IT because they are having this issue with other agencies as well.

Chairman Regan suggested that this item be placed on the agenda for the July meeting.

#### **ACTION ITEMS**

A motion was made to approve the April 11, 2012 minutes.

Motion Seconded and Carried.

A motion was made to approve the May 9, 2012 minutes.

Motion Seconded and Carried.

## **DISCUSSION OF EMPLOYER ASSESSMENT CALCULATION**

Budget Director Bob Ford stated that the DIA is going into next year with a Trust Fund balance of around \$43M or \$43.5M, which is higher than the \$35M projected. He noted that the DIA has collected an additional \$8M, including \$7M in prior assessments. He noted that this would impact the assessment rate.

Mr. Ford explained that there are a number of variables still at play, including the insurers' requested rate increase. Mr. Ford stated that the insurers are requesting a 19.3% rate increase. He noted that for the last thirteen years there has been no correlation between what is asked for and what actually happens. He indicated that he asked Deloitte to provide six different scenarios assuming: no increase, a 2% increase, a 4% increase, a 6% increase, an 8% increase and then a 19% increase. He stated that Deloitte has been responsive and the final report should be out by the end of this week.

Mr. Ford stated that they were also expecting the assessment base to grow next year even if there is no rate increase, because the economy is getting a little better. He also indicated that they are projecting a \$100M-\$200M increase in the annual base for FY'13. He explained that he expects expenses to be down \$4.0M, driven by a cleanup of the COLA and \$37 backlogs. He stated that when you net this all out, he is proposing that the assessment drop down to 4.23% next year.

Chairman Regan asked if the assessment becomes effective July 1<sup>st</sup> and coincides with the state fiscal year, rather than when the rate is set in August or September. The Chairman asked if it would make any sense to do this calculation to coincide with when the rates are adjusted, like in September. He stated that perhaps they could leave the old rate in place until September 1<sup>st</sup>.

Mr. Ford stated that the projection is that the Trust Fund balance at the end of FY'13 will be around \$28M, which is about 35% of the expenses. He stated that he was comfortable with this number.

Chairman Regan asked, in terms of the history of the Trust Fund, what has 35% meant for the system—is it the right number, because it feels high to him.

Council Member Corcoran noted that no one seems to be able to explain the 35% number. He stated that it was in the statute but he does not know where it came from.

Chairman Regan stated that perhaps a little research could be done on whether the assessment can be set using the actual rate rather than estimate. Mr. Regan stated that if you are collecting more than you need, that is money not running around the economy and if you are collecting less, then the system could be at risk so we would like to strike the right balance if we can.

Council member Corcoran asked how far back the agency was now going with the assessment audits, what years are involved and do they have external auditors still. Mr. Corcoran explained that he was an advocate on a return on investment product, that is, if you put more auditors on, the recovery can become a win-win situation.

Mr. Ford explained that they are working on 2006-2007. He stated that he believes that more revenue could be generated if he had additional people to do the audits. He noted that they are using only two external audit firms.

**DISCUSSION OF ELECTRONIC DISTRIBUTION OF CONFERENCE AND HEARING DECISIONS**

Council member Todd Johnson explained that he had asked that this topic be put on the agenda. He asked for an explanation of a change that had come to his attention with regard to the distribution of orders and hearing decisions. Mr. Johnson explained that this was very concerning to the insurer community, since there did not appear to be a communication process.

Mr. Bill Taupier stated that they had made a change to the distribution of decisions. He noted that the only person who is now receiving a hard copy of the decision is the claimant. He stated that the DIA had been paying a lot of money in postage and it made more sense to send them electronically. Mr. Taupier stated that insurers could sign up for online accounts, which cost nothing. He stated that the moment anything is filed it is online and available.

Mr. Taupier stated that the DIA had emailed everyone who had an account to notify them of the change. He indicated that insurers who did not have an account would not have received an email. He noted that he would discuss placing a notice on the DIA website or posting the information in each office. Mr. Taupier stated that for all those insurers that have an account, the agency can turn it on decision notifications automatically, even if they have not been requested. He suggested that this possibility be discussed internally.

Mr. Johnson stated that it was an issue of communication. He explained that, right now, as an insurer or self-insurer, they are dependent upon Counsel to bring that notification to them. He explained that ultimately the carrier is the payer for the benefits and the penalties and the statute goes against the insurer. He indicated that at the end of the day, we have to make sure that the communication is really solid.

Mr. Long suggested a drop dead date be established by which time all participants in DIA matters be online.

**EXECUTIVE DIRECTOR UPDATE**

Executive Director Will Monnin-Browder stated that Senate Bill 915 is still in House Ways and Means.

Chairman Regan stated that the Attorney General is weighing in with House Ways and Means on penalties bill.

Mr. Monnin-Browder informed the Council that a conference committee had been formed to resolve differences in the House and Senate versions of the budget. He explained that the allocation for DIA operations in the final Senate budget was a couple hundred thousand dollars more than that in the House's budget.

**MISCELLANEOUS**

Director Hillman stated that this would be the last meeting for his Director of Operations, Reuben Kantor. The Director explained that Mr. Kantor had been accepted at the Kennedy School of Government and wished him the very best. The Director informed the Council that the agency would

be replacing Mr. Kantor with Mr. George Noel as of July 1<sup>st</sup>. He stated the Mr. Noel would be the Deputy Director of the DIA.

Chairman Regan reiterated his suggestion that the Council hold a July meeting and not an August meeting, rather than sticking with its customary pattern of not holding a July meeting. He informed members that the next Advisory Council meeting is scheduled for Wednesday, July 11, 2012.

A motion was made to adjourn the meeting. Motion Seconded and Carried.

**The next meeting of the Advisory Council is scheduled for Wednesday, July 11, 2012, at 9:00 AM, at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.**