

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

December 10, 2014

Department of Industrial Accidents

1 Congress Street, Suite 100

Boston, MA 02114-2017

Council Members Present: Stephen Joyce; Mickey Long; John Pulgini; Stephen Falvey; Teri McHugh; Bernie Mulholland.

Also Present: George Noel, Director; Linda Turner, Deputy Director; Omar Hernandez, Senior Judge; Bill Tattan, General Council; Bill Taupier, Deputy Director of Administration; John Riordan, Deputy General Counsel; Karen Fabriszewski, Trust Fund Director; Bob Ford, Budget Director, EOLWD; Michael Kelley, Hub International, NE; Ellen Keefe, Workers' Compensation Inspection Bureau (WCRIB).

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

Absent: John Regan; Frank Ruel; Todd Johnson; Dennis Hines; Bill Corley; Executive Office of Housing and Economic Development; Executive Office of Labor and Workforce Development.

Agenda:

Chairman's Welcome

DIA Update

- Judicial Update – Omar Hernandez, Senior Judge
- Vital Statistics – William Taupier, Deputy Director of Administration
- Update on 9C Budget Cuts and Preliminary Budget – Bob Ford, Budget Director
- Directors Update – George Noel, Director

Action Items

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

Discussion of Office of State Auditor Report

Discussion of the Draft FY'14 Annual Report

Executive Director Update – William Monnin-Browder

Miscellaneous

CHAIRMAN'S WELCOME

Chairman Stephen Joyce began the meeting at 9:00 A.M. Chairman Joyce took a moment to offer his condolences to Mr. Taupier and his family on his father's passing.

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 stated that the wait times between

conciliation and conference in Boston and Lawrence are at three months; and Fall River, Springfield and Worcester are at 3.5 months. Senior Judge Hernandez noted that he increased the number of conferences for all judges, which has had the intended effect of reducing the queue.

Senior Judge Hernandez noted that he is working with his counterpart in Rhode Island to plan a conference, to be held in October, with judges and practitioners from Massachusetts, New Hampshire and Rhode Island.

Chairman Steve Joyce suggested that Maine be included in the conference as well.

Senior Judge Hernandez informed the Council that he would be meeting with a newly created opiate task force in Worcester to discuss ways of addressing the problem of opioids, including what role the DIA can play in helping injured workers.

Council member Mickey Long suggested that the Advisory Council create a subcommittee on opioids. Mr. Long mentioned that the overprescribing of opiates is also an issue for the AFL-CIO.

Chairman Joyce asked the Executive Director to circulate a notice to the members to see who is interested in being part of a subcommittee discussing the opioid issue in workers' compensation.

Senior Judge Hernandez informed the Council that on Monday three current DIA judges (Judge Koziol, Judge Maher and Judge Benoit) were interviewed by the Governor's Council. He stated that he expects the Governor's Council to vote on the reappointments during the week of December 15th. The Senior Judge noted that the three new judges are tentatively scheduled to be interviewed on December 22nd.

Vital Statistics

Bill Taupier updated Council members on the information contained within the DIA's vital statistic report for December 2014. He offered the following statistics: Conference Queue: 654; Hearing Queue: 788; Reviewing Board Inventory: 90; Impartial Exams for FY'15 (to date): 1,521 (36 waivers); Exam Fees Collected for FY'15 (to date): \$654,000; 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 November: 144 (8 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'15 (to date): 933; fine collection for November: \$84,466; total fines in FY'15 (to date): \$475,728; SWOs issued in FY'14: 2,345; total fines collected in FY'14: \$2,018,883; compliance checks for November: 6,953; estimated number of workers now covered by workers' comp. insurance as the result of a SWO: 5,954 (FY'15, to date).

Mr. Taupier continued the update of the monthly vital statistics offering the following: total cases filed in November 2014: 932; total cases filed in FY'15 (to date): 5,071; total cases filed in FY'14: 11,960; total First Report of Injury Forms (FRI) filed in November 2014: 2,355 (2,038 filed electronically; 87%); total FRIs filed in FY'14: 31,384 (11,937 online). In November the number of employee claims filed: 771; number of employee claims filed in FY'15 (to date): 4,289; number of discontinuances filed: 159; the total number of discontinuances filed in FY'15 (to date): 769; the number of third party claims filed: 2; total number of third party claims filed in FY'15 (to date): 13.

Bill Taupier proceeded with his update on uninsured claims (§65), offering the following: total §65 claims reported in FY'15 (to date): 36; total amount of §65 claims paid by the Trust Fund in FY'15 (to date): \$3,277,816; 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): \$658,375; total recovery efforts against uninsured employers FY' 14: \$1,013,557.

Chairman Joyce asked the DIA to provide a report next month showing the industries which have the most Trust Fund cases.

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): \$9,491,229; total amount paid on these claims in FY' 14: \$28,467,448; total COLA reimbursements to insurers in FY' 15 (to date): \$1,286,554; total COLA reimbursements to insurers in FY' 14: \$15,744,268.

Mr. Taupier reported that as of November 2014, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 242 (189 DIA employees, 53 WCTF employees).

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY' 15 (to date): \$1,663,970; 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): \$29,930,838; 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.

Update on 9C Budget Cuts and FY' 16 Preliminary Budget

Budget Director Bob Ford discussed the impact of 9C budget cuts on the FY' 15 budget and provided an overview of the FY' 16 preliminary budget submission. Mr. Ford explained that the DIA was asked to cut approximately \$350,000 from this year's budget. He noted that the DIA has a float in the salary budget of about a half million dollars because staffing is lower than what was budgeted. He indicated that the reduction will not impact the viability of the Agency. He indicated that the DIA will seek to exempt itself from future reductions, in the event that such reductions are proposed.

The Chairman said that the cut to DIA's budget seems nonsensical, because the cut does not impact the bottom line of the General Fund. In other words, he explained, a cut to the DIA's budget does not address the shortfall.

Council member Long observed that if the Secretariat needs to cut \$2 million across all its agencies, he could understand why the DIA's budget would be cut—it would avoid deeper cuts in other agencies. He suggested that the remedy to guarding against 9C cuts is to take the DIA out of the budget and make it an autonomous agency, like the Post Office.

Returning to the FY' 15 budget, Mr. Ford noted that assessment collections are down substantially in the second quarter. He explained that, when developing the assessment rate, they had forecast an expansion of the assessment base. He noted that for the last three or four years, the base had expanded about 5% annually. Mr. Ford explained that so far this year there has been no expansion. Mr. Ford stated that they need to look at the next two quarters, but right now they are projecting they will not meet the projected collection of \$73.0, instead collecting about \$67.5 million. He noted that the DIA would also derive significant revenue from an assessment audit process that is ongoing.

Mr. Ford explained that the DIA's expenses are down, which may offset the lower assessment collections. He noted that lower expenditures on COLAs and Section 37s are driving the lower expenses. He stated that they are projecting COLAs to be \$2.0 million less than budgeted and the §37s as well. He expects the Agency will carry over \$12.0 million this year which is about 15% of expenses. Mr. Ford stated that

revenue is going to jump substantially next year. He reminded the Council that first quarter collections are at the previous year's rate.

Council member Long asked why the Agency needs to be in the General Fund budget.

Mr. Ford stated that the General Fund fronts the DIA for the Agency's operating expenses, and the DIA repays the General Fund quarterly as it spends the money.

Mr. Long asked, hypothetically, if the assessment rate was increased and the DIA had a \$30.0 million buffer from year to year, whether the Agency could be removed from the General Fund budget and operate independently.

Mr. Ford stated that you have to be very careful with that because if all of a sudden you had an enormous insurance payment and did not have enough money as a buffer, you would have to turn to the state for emergency legislation to get a loan out of the General Fund.

Stop Work Order Collections Process Update

Mr. Ford stated that the stop work order (SWO) process has been revised. He explained the revision as follows: for the first 30 days after a SWO is written, DIA handles the collection process and noted that about 91% of the new SWOs are paid in the first 30 days. After 30 days the SWO is transferred to a collection agency which attempts to collect it for six months. He noted that after seven months the SWO plus fines are written off the books. He informed the Council that the collection agency can continue to pursue the debt for an additional six months. He noted that the DIA Legal Department has the right to collect all SWO debt with the 20 year statute of limitations.

Mr. Ford stated that previous to the implementation of the new process SWO debt remained on the books from FY'08 through FY'13 and that with the accumulated fines the debt had a value close to \$30 million. This debt was given to the collection agency for six months in which they collected only \$22,924 and the remaining SWO debt was written off. He explained that now, the DIA writes off the debt every month.

Mr. Long asked if there was somewhere in the Annual Report where we should recite that there is a 91% collection rate within the first 30 days, because this is really good news.

The Chairman stated that over the last seven to eight years, the Agency has dramatically increased the number of SWOs issued. He stated that the fact that people are becoming compliant and paying their fines is another good story to tell.

Mr. Long noted that from what the DIA has shown us they are looking at a 5-10% reduction, if the projection holds, in Trust Fund claims. He noted that this is very significant as one claim could be worth millions of dollars.

Director Noel stated that another important statistic is the number of people brought under workers' compensation as a result of DIA investigations.

Mr. Long noted that workers' compensation rates in Massachusetts are among the lowest in the country, in part because we have a good fraud component. He suggested that the Annual Report reflect this fact.

Executive Director Will Monnin-Browder noted according to the Oregon premium study, Massachusetts premiums are the fourth lowest in the country.

DISCUSSION OF OFFICE OF STATE AUDITOR REPORT

Mr. Ford noted that the State Auditor's recent report included two findings. The first, he explained, is that DIA's process for establishing and verifying the accuracy of workers' compensation insurance assessments needs improvement. Mr. Ford stated that they added two additional staff to the audit group, bringing the headcount to three. He noted that they are auditing eight years (2004 through 2012) this year and next year they will be auditing two years. He indicated that they expect to recover at least \$4,000,000.

Mr. Ford noted that another corrective action they are working on is limiting the number of years back the DIA will accept revisions to previously filed assessments. The DIA is also in the process of revising the filing process. Mr. Ford stated that this can all be done by regulation. He noted that they were waiting for approval from the Secretary.

Mr. Ford noted that the other finding was that DIA audits on self-insurers are currently done annually, rather than semi-annually as required by the statute. He indicated that the DIA is attempting to amend the statute to annually audit them rather than semi-annually.

DISCUSSION OF DRAFT FY'14 ANNUAL REPORT

Chairman Joyce asked for comments on the draft report previously circulated.

Mr. Long referred to page 18 of the draft report and stated his continued concern about the time between conciliation and conference. He stated that he would like to see a subcommittee explore the efficacy of a priority system for employees not getting benefits. Mr. Long noted that everybody is getting paid in this system except the injured worker. Mr. Long suggested that the Council could include a sentence in the Annual Report that the Advisory Council is reviewing the efficacy of a priority system for employees waiting in line that are not receiving benefits.

Chairman Joyce stated that he would be open to getting a group together to discuss this issue and asked the practitioners for their thoughts.

Council member Bernie Mulholland explained that by the time an injured worker comes to him, they have been told they are not going to be put on workers' compensation. Mr. Mulholland stated that in many cases they have already gone three, four or five weeks without any compensation before they realize that their claim is being contested. Mr. Mulholland stated that then you have to go to conciliation and at the conciliation you do not yet have medical records or an independent medical exam because those things take time. He noted that even if you tell the examiner this is a priority you will still have to wait two or three weeks at the minimum to get the report. Mr. Mulholland stated that traditionally eight to ten weeks is the ideal scenario.

Mr. Mulholland explained that getting medical records with the magic words "is disabled, it is causally related, a major cause" takes time. Mr. Mulholland further explained that sometimes rushing is the worst thing because then it goes to a conference and it may be a year before we get a hearing decision. He noted that if it is rushed, the employee may get a temporary denial, which can be a disaster. He explained that he thought there might be ways of improving the process though.

Mr. Long explained that this is what the subcommittee would go over before making a recommendation. Mr. Long stated that he did not know if they could come up with a better process, but that he would like to see if they could come up with a small group of members to discuss this and see if there are adjustments that could be made.

Council member Pulgini stated that there are issues with the statute itself that cause delays. He explained that if someone is injured at work and they get denied, they have to wait 28 days to file a claim. He noted that this has nothing to do with the DIA, but rather is the way the statute is written. He said addressing these issues would require an amendment to the statute. Mr. Pulgini stated that he gives Judge Hernandez credit for increasing the number of conferences and reducing the backlog.

Council member Teri McHugh stated that there are also issues on the insurer's side as well. She explained that the insurer is handicapped in the discovery process where the employee has the medical records and they are unable to get them without a subpoena or court order. She also noted that when the employee prevails at conference and the insurer has to pay benefits, and then the impartial report says the employee is not disabled, the insurer has been paying benefits in the interim period. Ms. McHugh stated that there has been talk of the DIA having a post impartial conference prior to the hearing to try to work it out.

Chairman Joyce suggested that these topics would be important for the subcommittee to consider.

Chairman Joyce asked if there were any other comments on the Annual Report. He stated that the Executive Director can make changes and circulate a new draft to vote on at the next meeting. The Chairman stated that we will send a working copy to the current administration, the transition team and the Governor elect. The Chairman stated that this Agency is doing a tremendous job.

MISCELLANEOUS

Meeting adjourned.

The next meeting of the Advisory Council is scheduled for Wednesday, January 14, 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.