

# MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

October 12, 2011  
Department of Industrial Accidents  
1 Congress Street, Suite 100  
Boston, MA 02114-2017

*CM Present:* Acting Chairman John Pulgini; Stephen Joyce; Stephen Falvey; Bernard Mulholland; Todd Johnson; John Regan; Antonio Frias (Ines Leonardo); Maydad Cohen, Executive Office of Labor and Workforce Development (EOLWD).

*Also Present:* Director Philip L. Hillman; Reuben Kantor, Director of Operations; William Taupier, First Deputy Director of Administration; Ray Marchand, Director of Investigations; Tim McMahon, Undersecretary of Administration, EOLWD; Bob Ford, Acting Budget Director, EOLWD, Yashira Pepin, EOLWD; Dan Crowley, Workers' Compensation Rating & Inspection Bureau of Massachusetts (WCRIB); Mike Kelley, AIM Mutual Insurance Company; Todd Huston, Esq.

*Advisory Council Staff:* Evelyn Flanagan, Christina Peura.

*Absent:* CM: Chairman Mickey Long; Vice-Chairman Edmund C. Corcoran, Jr.; William Corley; David Powell; Dennis Hines; Department of Business Development.

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## *Agenda:*

Chairman's Welcome

DIA Update

- Judicial Update – Philip L. Hillman, Director of Administration
- Vital Statistics - William Taupier, Deputy Director of Administration

Action Items

- Minutes – September 14, 2011

Safety Grant Revisions – Kathy Manson

Update on Executive Director Position

House Bill 468 Update – Stephen Joyce

Advisory Council Update

Miscellaneous

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## **CHAIRMAN'S WELCOME**

Acting Chairman John Pulgini began today's meeting at 9:00 a.m. The Acting Chairman asked Director Philip Hillman to provide the Judicial Update.

### Judicial Update

Director Hillman informed the Council that the DIA is hoping to have the new Senior Judge, as well as the new Executive Director, in place before the next Council meeting.

## **DIA UPDATE**

### Vital Statistics

Mr. Taupier updated Advisory Council members on the information contained within the DIA's vital statistic report for October 2011. Conference Queue: 778; Hearing Queue: 706; Reviewing Board

Inventory: 34; Impartial Exams for FY' 12 (to date): 306 (0 waivers); Exam Fees Collected for FY' 12: \$368,350. In fiscal year 2011 there were 4,295 Impartial Medical Examinations (48 waivers); Exam Fees Collected in FY' 11: \$1,560,963.

Council member Bernie Mulholland voiced concern regarding his belief that there was an increase in the time it takes to move a case from conciliation to conference. Mr. Mulholland stated that he was troubled with the time frames and the affect it could have on the operations of Dispute Resolution.

Director of Operations Reuben Kantor noted that, according to his conversations with the Central Scheduling unit, the queue had been set up for up to 8 cases per day in the regions, except recently in Fall River, where in an effort to clear up the queue they were temporarily receiving 14 cases per day. Mr. Kantor explained that he has been working with the Central Scheduling unit and they are making every attempt to keep the queue consistent. Mr. Kantor offered to look into this matter and provide a follow-up at the November Advisory Council meeting.

Mr. Bill Taupier updated Advisory Council members on the Stop Work Order (SWO) and Caseload Statistics. The DIA issued 227 SWOs in September (27 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'12 (to date): 708. Fine collection for September 2011: \$93,700; total fines in FY' 12 (to date): \$297,800; SWOs issued in FY' 11: 2,972; total fines collected in FY' 11: \$1,228,525; compliance checks for September 2011: 5,015; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 3,133 (FY'12).

Council member Stephen Joyce recommended that the agency begin publicizing the achievements of the Enforcement and Compliance unit. Mr. Joyce suggested that the agency follow Connecticut's example and have more press time to promote the great work that is being done on bringing workers under workers' compensation insurance coverage. Mr. Joyce stated that when it comes to budget time people want to hear the great job the agency is doing.

Mr. Taupier continued the update of the monthly vital statistics. Total number of cases filed in September 2011: 940; total number of cases filed in FY' 12 (to date): 3,022; total number of cases filed in FY' 11: 12,589; total number of First Report of Injury Forms (FRI) filed in September 11: 2,327; total number of FRI filed online in September 2011: 735 (32%); total number of FRI filed in FY' 12: (to date): 7,521 (910 online); total number of FRI filed in FY'11: 30,820 (9,482 online).

Acting Chairman Pulgini asked Mr. Taupier for a breakdown in November on the claims filed for the 110s, discontinuances, and third party claims so he better understand what triggers the actual number of filings.

Mr. Taupier proceeded with his update on uninsured claims (§65). Total number of §65 claims reported in FY' 12 (to date): 33; total amount of §65 claims paid by the Trust Fund in FY'11 (to date): \$1,729,806; total number of §65 claims filed in FY' 11: 118; total amount of §65 claims paid by the Trust Fund in FY'11: \$7,666,940; total recovery efforts against uninsured employers FY' 12: \$355,407; total recovery efforts against uninsured employers FY' 11: \$1,329,919.

Mr. Taupier proceeded with the vital statistics for the Second Injury Fund (§37/37A). Total amount of §37/37A petitions paid in FY'12 (to date): \$1,192,294; total amount paid on these claims in FY'11: \$19,582,396; total COLA reimbursements to insurers in FY'12 (to date): \$187,773; total COLA reimbursements to insurers in FY'11: \$14,917,381.

Attorney Todd Huston stated that a big problem with the Section 37s was that the quarterly payments were years behind and that there is no mechanism in place to get interest on these payments or to force the insurer to pay.

Council Member John Regan stated that for the last several fiscal years the budgeted amount for the Trust Fund and Section 37s are above the amount that is actually spent and that the trend of over budgeting during the last five fiscal years has been consistent. Mr. Regan was curious to know the reason behind the agency's decision to keep the numbers so high and added that although the actual money spent is under budget, the employer's assessments are not going down to reflect this trend.

Director Hillman informed the Council members that Mr. Jack Defina, DIA's CFO was unable to attend today's meeting. Director Hillman suggested that Mr. Defina provide the Council members with an explanation for the reasoning behind the decision to budget the Trust Fund and Section 37s at the next Council Meeting.

Mr. Taupier reported that as of September 2011, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 243 (194 DIA employees, 49 WCTF employees). The DIA is authorized to have 283.2 payroll positions (including all full and part-time positions).

Council member Bernie Mulholland stated that there were rumors floating around that the agency intended to layoff stenographers and administrative assistants. Mr. Mulholland explained that many people as well as the Bar are concerned about how the reduction in staff could jeopardize the smooth operations of the agency. He added that he would much rather see the agency be overstaffed than understaffed where the delays could cost millions of dollars and the savings only a few hundred thousand.

Director Hillman stated that it would be premature to discuss this matter at this time but he explained that no decision has been made yet on any possible layoffs at DIA.

Council member John Regan stated that although he is not as current with these rumors as some others, he believes the overall concern is pretty consistent. Mr. Regan explained that the agency is almost entirely funded by employers and, to that extent, this funding benefits everyone since the DIA is a very efficient and well run operation. He noted that one bright spot in Massachusetts has been the workers' compensation system since the 1991 reforms. Mr. Regan stated that any action that threatens the system needs to be considered carefully and needs to be done in a consultative fashion because there is wide agreement among all parties that when the system works quickly and efficiently it is better for everyone.

Mr. Regan explained that what the administration was hearing from the Council was of concern, that when rumors indicate that there might be some tinkering of the system, everyone goes into panic mode. Mr. Regan suggested that one of the ways to deal with this situation is to provide more information on what is going on. Mr. Regan noted that the DIA should be aware that he does not believe that there is any desire in the business community to see the agency change radically, with the exception of those areas where there is over budgeting. Mr. Regan added that the general message since he has been at AIM, applies to this situation, "it's fixed so don't break it." Mr. Regan suggested that it would be helpful to the agency if they kept that as their mantra.

Council Member Stephen Joyce reiterated Mr. Regan's sentiment of "if it works, don't break it" and stated that he believes that everyone at the meeting was on the same page. Mr. Joyce indicated that if the DIA is trying to reduce people in an effort to reduce the assessment or because it would make the agency more efficient, the Council would understand that, but he is not sure that is the case.

Acting Chairman Pulgini asked if the 243 FTE figure referenced on the slide included the employees that were loaned or being charged back. Mr. Pulgini wanted to know if the 243 figure was inclusive of those employees that had been transferred to other state agencies and requested further clarification on the headcount and if they believed the count would be coming down further.

Acting Budget Director Bob Ford stated that when individuals are consolidated in a group, there will be a reduction in overall staff with individuals taking on additional responsibilities. Mr. Ford explained that if an employee transfers into the consolidated group and they spend only 60% of their time on DIA activity, this would be only 6/10<sup>th</sup> of a head count. Mr. Ford added that the last slide of the presentation shows the beginning of those consolidated savings. He stated that the consolidation will not affect the efficiency in performance since the employee will continue to perform all the work that is required but the head count will be coming down since people will no longer be charging 100% of their time to the DIA.

Acting Chairman Pulgini stated that it appeared that the DIA was looking to drop 50 employees from the DIA payroll, which is a significant amount of employees considering the DIA is budgeted for 283.2. Mr. Pulgini noted that he did not know how far along the administration was in the process of cutting personnel, and the Council can only express that people have been extremely happy with the way things were going, with the exception of the conference queue getting pushed out.

Director Hillman explained that the subject of DIA layoffs was on the table but that no decision has been made and that it would be premature to discuss at this time.

Acting Chairman Pulgini explained that he understood that they were attempting to make a determination on where to cut and where not to cut, but from the practitioners' perspective, sometimes it is the soldier on the ground that makes this place run. Mr. Pulgini added that he realizes that we are only an advisory council, but this situation is very serious and the Council would like to be included in the process and be able to express our concerns on what the impact of layoffs would have on the adjudication of cases before the DIA.

Council member Ines Leonardo stated that the economic situation in this state is definitely improving and the improvements can be seen in the construction industry. Ms. Leonardo noted that the recovery of the economic situation is evident at S&F Concrete where business has grown and there are a lot more construction jobs all over town. She added that with the increase in jobs, there will be an increase in injuries, and there will be more of a need for all of the judges and their staff.

Council member Teri McHugh stated that right now the conference queue is out at three months and if there is a reduction in stenographers and a reduction in judicial assistants, it is a given that the queue will be kicked back even further. Ms. McHugh added that the Bar was really troubled by these intended reductions, especially where there is no Senior Judge in place now and the Senior Judge is a part of Dispute Resolution. Ms. McHugh stated that the rumors going around are very unsettling, especially since no one knows what is happening and that the consequences of these cuts could prolong cases and could create a backlog.

Council member Bernie Mulholland stated that this system has never run better. Mr. Mulholland explained that currently you can get a transcript within days of having finished a hearing, which allows everyone to decide whether or not to appeal. Mr. Mulholland noted that to be told that the administrative assistant and stenographer pools must be reduced will result in an increase in the time frames. He stated that he sees this decision as being "penny wise and dollar foolish," ultimately

costing the business community and the insurer, who pay these assessments, more money for a less efficient system.

Council member Todd Johnson suggested that the DIA add another slide that would break down the 243 employees into two numbers – the administrative side and the dispute resolution side. Mr. Johnson explained that this would go a long way to the transparency of what is occurring in the Division of Dispute Resolution with some of the concerns that have been raised.

Acting Chairman Pulgini suggested that this be done by the next meeting, before any layoffs take place. Mr. Pulgini explained that he has heard that the layoffs were imminent and it is not something that is just being floated out there or just being looked at. Mr. Pulgini informed the DIA that the rumors indicate that the decision has been made, so much so, that the morale in the agency is very low. Mr. Pulgini stated that, as Mr. Regan had pointed out earlier, this agency is an employer funded agency and although there is pain felt within other agencies, this agency is self sufficient in the sense that it is funded by employers and is operating smoothly.

Director Hillman stated again that the issue of layoffs was just under consideration. He explained that some discussions with the union have been held, but that no final decisions have been made.

Acting Chairman Pulgini stated that unions are great, but that from his understanding, according to the union contract, it means “last in, first out” and this is a real concern since the agency could be losing some superstars. Mr. Pulgini explained that performance, rather than the time they were hired should be a deciding factor. Mr. Pulgini added that the Council would appreciate it if the administration would take into consideration the efficiency of the agency.

Council member Stephen Joyce noted that dealing with people every day, he has witnessed that when morale drops because employees are dealing with rumors, this can create a problem that worsens if the situation is prolonged. Mr. Joyce added that everybody talks about smaller government, and it is great as a sound bite, but if you want a more efficient government sometimes that means more people doing the job and doing it right.

Chief of Staff Maydad Cohen noted that he hears what is being said by the Council members and stated that he would take their concerns back to the Executive Office as part of the feedback from the people who utilize the system.

Acting Budget Director Bob Ford stated that he would provide a slide showing the exact 30 people they began with in this consolidation in Administration and Finance. He explained that they are forecasting being able to run the agency with 10% fewer employees. Mr. Ford stated that is what the salary payroll expense savings are on the last slide. He noted that because of the efficiencies with a larger group of people to spread the workload, the DIA would be sharing in those savings. He informed the Council members that the only units affected by Article 87 are the support people, finance, human resources and operations.

Mr. Ford stated that the slide would include the 30 FTEs and the salaries associated with them and what they are forecasting it will cost for the year. Mr. Ford explained that they would break the cost down to the total savings for the agency for the 30 FTEs merged into the consolidation. Mr. Ford added that about five employees took the early retirement program and they were able to move people around and the DIA would share in the efficiency savings of about 10%.

Upon inquiries from the Council members regarding employees being relocated to the Hurley Building leaving the DIA with extra space, Mr. Ford stated that currently they were discussing with another agency the possibility of relocating to this space when their lease was up.

Mr. Taupier presented the accounting and finance statistics. Total referral fees collected in FY' 12 (to date): \$648,878; total referral fees collected in FY' 11: \$3,730,233; total first report fines in FY' 12 (to date): \$29,500; total first report fines in FY' 11: \$137,905; total assessment collections in FY' 12 (to date): \$20,732,429; total assessment collections in FY' 11: \$80,880,887; total SWO fines in FY' 12 (to date): \$388,847; total SWO fines in FY' 11: \$1,836,225.

### **ACTION ITEMS**

A motion was made to approve the September 14, 2011 minutes.

Motion Seconded and Carried.

### **SAFETY GRANT REVISIONS**

Ms. Kathy Manson, Director of Safety, provided an update on the Safety Grant revisions. Ms. Manson stated that the new process removes the deadline for applications and evaluates the grants on a monthly basis, which has proved to be tremendously successful. She added that the revision will provide ongoing training throughout the year and a new website would provide the names of training companies.

Ms. Manson noted that the revisions will also allow the DIA to insure funding of the programs and have more compliance in the field. Ms. Manson added that the time line from application to approval takes approximately one month and all the grants that were not funded will go into a queue until funding is available. Ms. Manson stated that the Office of Safety is implementing a Partnership Initiative program, which partners training providers that have the experience and credentials to address the employers and organizations looking to avoid workplace injury and illness.

Ms. Manson explained that although DOS has been merged, the DIA gathers data from other sources, including DPH. Ms. Manson stated that every Monday morning she receives a printout of the First Report of Injury and she and her staff go through the report. The report focuses on companies that are having safety problems and allows them to reach out to those companies to attempt to figure out what the problem is and help them find a solution. She stated that they have had an excellent response from small and medium size businesses that do not have the resources to access safety training.

### **HOUSE BILL 468**

Council Member Stephen Joyce reported that he had been to the Joint Committee on the Judiciary when a workers' compensation bill (House Bill 468) supported by the Council came up at the hearing. Mr. Joyce stated that the Attorney General had included House Bill 468 while she testified on a companion bill. Mr. Joyce suggested that the Council draft supporting testimony and forward the testimony to the Committee, upon the Council's approval.

Maydad Cohen offered to have EOLWD work with the Council on this matter if the Council was interested.

Motion made to have Mr. Joyce work with Ms. Flanagan to draft a letter for Council approval.

Motion Seconded and Carried.

Council member Stephen Joyce requested that the DIA provide an update on the progress of making the Debarment List more user-friendly. Mr. Joyce explained that he had found a number of cases where people were working, although they had been debarred for three year after receiving a stop work order. Mr. Joyce suggested that the list be broken down into two sections, the construction industry and the service industry and have the information posted where it would be easily accessible for people to check.

Mr. Joyce stated that one concern he had was with trying to access the people who are debarred. He explained that if you do not know where to look, you will not find the list. He explained that it is hard to take action against someone that claims they did not know they were debarred and suggested that a letter go out after the appeal time has passed stating “we want to make you aware that you cannot do state or public works for the next three years.”

Mr. Ray Marchand, Director of Investigations, stated that the SWO includes a statement on being debarred. He added that previously there had been talk about putting all the agencies online in one location for easy access. Mr. Marchand noted that there are about five agencies that have the ability to debar companies – the Attorney General, DCAM, DOT and a couple smaller agencies. Mr. Marchand explained that there were issues on how to design the website with about 8,000 names and some with problems with DBAs or companies with multiple names. He noted that he was supportive of what Mr. Joyce was saying, but it is how to do it technically and he has no knowledge of that.

#### **MISCELLANEOUS**

Acting Chairman Pulgini stated that in each of the Council Members packages was a draft of the concerns and recommendations. Mr. Pulgini asked that the members review these for discussion at the November 9, 2011 meeting.

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

**The next meeting of the Advisory Council is scheduled for Wednesday, November 9, 2011, at 9:00 AM, at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.**