

# MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

December 14, 2011  
Department of Industrial Accidents  
1 Congress Street, Suite 100  
Boston, MA 02114-2017

*Council Members Present:* Mickey Long, Chairman; Edmund C. Corcoran, Jr., Vice-Chairman; Stephen Falvey; Stephen Joyce; Teri McHugh; David Powell (Kevin Hurstadt); John Pulgini; John Regan.

*Also Present:* Philip L. Hillman, Director; Omar Hernandez, Senior Judge; Reuben Kantor, Director of Operations; William Tattan, General Council; Jack Defina, CFO; William Taupier, First Deputy Director of Administration; Ray Marchand, Director of Investigations; Yvonne Vieira-Cardoza, Deputy General Counsel; Peter A. DiNardo, Provider Insurance Group, Inc.; Ellen Keefe, Workers' Compensation Rating & Inspection Bureau of Massachusetts; Michael Kelley, AIM Mutual Insurance Company.

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

*Absent:* William Corley; Antonio Frias; Dennis Hines; Todd Johnson; Bernard Mulholland; 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
- Redesign of DIA Website – Reuben Kantor, Director of Operations

Action Items

- Minutes – November 9, 2011

Amended Regulations on Open Meeting Law – William Tattan, General Counsel

FY'11 Annual Report – Discussion and Vote

Executive Director Update – William S. Monnin-Browder

Miscellaneous

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## **CHAIRMAN'S WELCOME**

Chairman Mickey Long began the meeting at 9:00 A.M. Chairman Long introduced the new Senior Judge, Omar Hernandez. The Chairman thanked the Senior Judge for taking the position and stated that Council members have a high regard for his work.

## **DIA UPDATE**

### Judicial Update

Senior Judge Omar Hernandez provided the Council members with the judicial update. The Senior Judge indicated that one of the issues that he was taking steps to improve was the amount of time between conference and hearing. To reduce that amount of time, Judge Hernandez indicated that he

has increased the number of conferences per judge from six to ten. As a result, he said, from November to December, the conference queues have decreased. He also noted that beginning February 6, 2012, the agency would revert to a twelve week cycle, which should further reduce the conference and hearing queues. The Senior Judge stated that it was important to address the conference queue first since it gives the parties an answer with respect to what the claim will be.

The Senior Judge informed Council members that the agency was in the process of seeking a fee increase to \$650 for impartial physicians. The Senior Judge stated that he believes that this would help retain and recruit doctors, while broadening the range of specialties represented. He stated that too few doctors participating in the system can lead to delays in the dispute resolution process.

Director Philip Hillman indicated that there is a process that the agency must follow to increase the fees. He stated that the proposal must be reviewed by A&F and then be considered at a public hearing.

Judge Hernandez informed Council members that the process of scheduling interviews for candidates for judicial vacancies has begun. He indicated that the packets have already gone out to the Nominating Panel.

Vice-Chairman Ed Corcoran requested that Senior Judge Omar Hernandez provide an update every six months on outstanding decisions.

The Senior Judge explained that he was in the process of reviewing this and trying to capture the information that will provide an accurate picture of what is going on. The Senior Judge explained that he intends to calculate the time from the close date of the record until the decision is written since there are many explanations for outstanding decisions, from continuances to the complexity of a case.

### Vital Statistics

Mr. Bill Taupier updated Council members on the information contained within the DIA's vital statistic report for December 2011. He offered the following statistics: Conference Queue: 440; Hearing Queue: 797; Reviewing Board Inventory: 27; Impartial Exams for FY' 12 (to date): 1,769 (21 waivers); Exam Fees Collected for FY' 12: \$610,713; 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 November: 193 (16 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY' 12 (to date): 1,135; fine collection for November: \$84,600; total fines in FY' 12 (to date): 473,150; SWOs issued in FY' 11: 2,972; total fines collected in FY' 11: \$1,228,525; compliance checks for November 2011: 4,756; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 4,230 (FY' 12).

Mr. Taupier continued the update of the monthly vital statistics by offering the following statistics: total number of cases filed in November 2011: 1,225; total number of cases filed in FY' 12 (to date): 5,285; total number of cases filed in FY' 11: 12,589; total number of First Report of Injury Forms (FRI) filed in November 2011: 2,753; total number of FRI filed online in November 2011: 827 (30%); total number of FRI filed in FY' 12: (to date): 12,688; total number of FRI filed in FY' 11: 30,820 (9,482 online).

Chairman Long asked when the agency would get closer to the 100% mark for online FRI filings.

Mr. Taupier stated that the agency is working with several entities using the EDI process. He stated that for the past month DIA has been conducting testing that must be completed before the system can go live. Mr. Taupier stated that online filings should be close to 75% in a year or so and that online filing is voluntary.

Chairman Long inquired as to reasons why the DIA could not make online filing mandatory. He asked if it was a matter of technology. The Chairman stated that when the investments were made in computer upgrades, it was his understanding that, in a few years, everybody would be filing online.

Mr. Taupier noted that the DIA has the technology, but stated that matching DIA's system to other systems poses challenges. Mr. Taupier stated that the agency would look into requiring online filing, but, at this point, doing so would be difficult.

Council member John Regan stated that he believed DOR and DUA require employers to file online. Mr. Regan suggested that the agency talk to DUA and get an idea from that agency about how it manages mandatory online filing.

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): 49; total amount of §65 claims paid by the Trust Fund in FY' 12 (to date): \$2,756,363; 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: \$402,589; 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), stating the following: total amount of §37/37A petitions paid in FY' 12 (to date): \$4,921,852; total amount paid on these claims in FY' 11: \$19,582,396; total COLA reimbursements to insurers in FY' 12 (to date): \$879,966; total COLA reimbursements to insurers in FY' 11: \$14,917,381.

Deputy General Counsel Yvonne Vieira-Cardoza explained that, because of personnel issues, 37 quarterlies are down this fiscal year, particularly since the end of the first quarter. She indicated that alternative personnel arrangements were made during the first quarter, which enabled a significant number of 37 quarterlies to be processed. She indicated that since then, however, processing has decreased. She also indicated that the number on the Second Injury Fund Budget & Payments slide, which reflects amounts processed through MMARS, is lower than the Trust's numbers. She indicated that there have been delays between the processing of payments and entering them into MMARS.

Mr. Regan stated that if you go back to 2008, there is a difference of \$7 million a year between what was budgeted and what was paid. Mr. Regan stated that his question is not how is it paid out, but rather how is it budgeted.

Ms. Vieira-Cardoza explained that, when budgeting for the following year, she looks at the number of cases that were paid over the previous year or two, totals the amount paid and averages it out. She stated that the average payout is around \$5,500 on quarterlies. Therefore, she indicated, if you have 400 cases, she would multiply that 400 by \$5,500 to arrive at an estimate.

Chairman Long asked the DIA if they could explain to the Council the budgeted amounts for next year before locking them in.

Vice-Chairman Corcoran stated that while he understands the struggle to fill open positions, he has concerns that vacancies in the Trust Fund could create a backlog like there was in the past. The Vice-Chairman noted that the DIA is a very efficient operation and that the Council would like to maintain that efficiency.

Council member Steve Falvey asked if the agency could provide information at the next meeting concerning the DIA's rules and policies regarding medical leave. He asked if the agency could explain what action needs to be taken to fill a position when someone is on medical leave.

Chairman Long expressed concern about vacant positions and the impact of those vacancies on DIA operations. He encouraged the DIA to discuss the Council's concerns with the Secretariat. He asked if part of the problem was that F&A was no longer in this building.

CFO Jack Defina indicated that, while the agency is in the midst of a transition, most transactions are being processed.

Vice-Chairman Concoran suggested that the administration bring the Advisory Council's concerns regarding the budget, staffing and the backlog in the Trust Fund to the Secretary.

Director Hillman stated that he would bring the Council's concerns to the Secretary. He informed the Council members that he would come back and tell the Council what the intended response was to these concerns.

Mr. Regan suggested that representatives from Deloitte come to the next meeting to explain how the assessment is done, noting that it would be helpful to know the factors that are used to reach their conclusion. He requested that the following items be placed on the agenda for the January meeting: (1) a discussion of the backlog in the Trust Fund and the process for dealing with it; and (2) a discussion about the budgeted vs. actual amounts for COLA and SIF expenditures, including a discussion by Deloitte about the role that budgeted and actual numbers play in the assessment calculation.

Mr. Taupier reported that as of November 2011, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 245 (194 DIA employees, 51 WCTF employees). The DIA is authorized to have 283.2 payroll positions (including all full and part-time positions).

Regarding the employees that have already moved from the DIA to the EOLWD, Mr. Taupier reported that the DIA is charged only for the time that they are working on DIA matters. Mr. Taupier noted that there is a charge back paid by other departments for the work done for those departments.

Director Hillman explained that the agency is moving entire functions to the Secretariat. He stated that because of the consolidation, the agency has the ability to do more with less. He noted that once personnel are all in one place and they are cross-trained, there will be back-up personnel to fill all key roles in the event of an absence. He stated that this will allow the process to move more smoothly.

Vice-Chairman Corcoran asked if the number of employees listed in the statistics includes the people who have already moved or in the process of moving from DIA to the EOLWD. The Vice-Chairman stated that some of those 245 employees could be doing work for other departments that is not chargeable to the DIA. Vice-Chairman Corcoran stated that there are not really 245 full time, dedicated DIA employees.

Director Hillman explained that there are some people that are not included in the DIA headcount that could be supporting the DIA as part of the consolidation. He stated that the DIA was paying for labor and he believes that the cross-charge, at the end of the day, will be favorable for the DIA.

Mr. Defina stated that overall the DIA is benefitting because the payroll is down. Mr. Defina explained that some employees have been moved over and split their time. He stated that of those 245 employees, 35 have been moved. Mr. Defina explained that Article 87 requires HR, F&A, and IT be consolidated in the same facility. He noted that this happens in corporations where all functions are processed in one building. Mr. Defina stated that the idea of the consolidation is to facilitate the processes and get rid of the redundancy, which provides a more efficient operation.

Chairman Long asked if these employees keep track of what they do, like a lawyer would track billable hours, and, if so, whether there is someplace that this was articulated or would be after the transition. Chairman Long stated that the agency is financed by the employer community and that there are constitutional issues about using money by the employers for any other purpose than the DIA.

Mr. Defina indicated that employees do track hours. He also explained that the authorized number of personnel listed on the personnel slide, is from the budget and that the budget was put together before Article 87 became law. He explained that when the budget is being put together for 2013, it will take the consolidation into account.

Vice-Chairman Corcoran stated that in the corporate world, financial shared services are important and that he applauds the fact that there is a shared services approach. He stated that his concerns are accountability, given that the operation is employer-funded, and efficiency.

Chairman Long asked if the transition issues would be completed by February and, if that is the case, indicated that he would hold further questions until March.

Director Hillman indicated that he would confer with Bob Ford about the completion of the transition.

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY' 12 (to date): \$1,329,246; total referral fees collected in FY' 11: \$3,730,233; total first report fines in FY' 12 (to date): \$43,200; total first report fines in FY' 11: \$137,905; total assessment collections in FY' 12 (to date): \$43,645,065; total assessment collections in FY' 11: \$80,880,887; total SWO fines in FY' 12 (to date): \$575,987; total SWO fines in FY' 11: \$1,836,225.

### **ACTION ITEMS**

A motion was made to approve the November 9, 2011 minutes.

Motion Seconded and Carried.

Chairman Long suggested that a subcommittee be established to study workers' compensation issues in the construction industry. Chairman Long informed the Council members that according to WCRIB, the construction industry represents 47% of premium payroll dollars in the assigned risk pool and 30% of premium payment dollars in the voluntary pool. He stated that there are several issues to consider, including the construction credit, the premium charge for public works projects

and the increase of self insured funds. He noted that he expected the subcommittee to meet for a couple of months. Chairman Long then asked if anyone would like to make a motion.

A motion was made to establish a subcommittee to study the construction industry.

Motion Seconded and Carried.

Chairman Long informed the Council that any member interested in volunteering for the subcommittee was welcome. He encouraged members to email the Executive Director if they would like to be on the subcommittee. Chairman Long noted that the Subcommittee would probably meet after the holidays, sometime at the end of January.

Council member Steve Joyce suggested that all subcommittee meetings be placed on the Advisory Council website.

### **AMENDED REGULATIONS ON OPEN MEETING LAW**

Executive Director Will Monnin-Browder reported that the Attorney General recently promulgated a new regulation 940 CMR 29:10 regarding remote participation. The Executive Director explained that up until November there had not been a regulation in place allowing remote participation in open meetings, but that this regulation would do so. The Executive Director introduced General Counsel Bill Tattan to further discuss the regulation.

General Counsel Bill Tattan stated that the Attorney General had amended 940 CMR 29:10, the open meeting law, so that, in certain circumstances, members of public bodies can participate remotely. He stated that conditions that would allow a member to participate remotely include: (a) personal illness; (b) personal disability; (c) emergency; (d) military service; or (g) geographic distance. Mr. Tattan explained that the type of participation is also set out in the regulations as (1) telephone, internet or satellite enabled audio or video conferencing; (2) any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another.

Mr. Tattan explained that the regulation sets up a method pursuant to which a public body could adopt remote participation. Mr. Tattan stated that a motion to allow remote participation requires a majority vote. He noted that if the Council chooses to adopt this, he will report it to the Attorney General, who wants to keep the statistics on all public bodies that have voted to adopt remote participation.

A motion was made to adopt remote participation for Council meetings.

Motion Seconded and Carried.

### **REDESIGN OF WEBSITE**

Director of Operations Reuben Kantor provided a demonstration on the new redesign of the DIA and WCAC web pages. Mr. Kantor explained that the new design was very clean, as well as easy to access. He stated that bookmarks to the old site will no longer work and will need to be redone. Mr. Kantor noted that the DIA is still in the transition phase and that any suggested changes should be forwarded to the Executive Director.

### **FY'11 ANNUAL REPORT VOTE**

A motion was made to adopt the FY' 11 Annual Report as prepared.

Motion Seconded and Carried.

**EXECUTIVE DIRECTOR UPDATE**

Mr. Monnin-Browder mentioned that the Council has a relatively short amount of time to meet and interview candidates for the judge positions once the Nominating Panel forwards their list of candidates to the Council. The Executive Director stated that he would email all members and forward the applications once he has the information.

**MISCELLANEOUS**

Chairman Long wished everyone a happy holiday and reminded them that the next meeting is scheduled for Wednesday, January 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, January 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.**