

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

February 13, 2013
Department of Industrial Accidents
1 Congress Street, Suite 100
Boston, MA 02114-2017

Council Members Present: John Regan, Chairman; Edmund Corcoran, Jr.; William Corley; Mickey Long; Bernie Mulholland; Todd Johnson; Mike Doheny, General Counsel, Executive Office of Labor and Workforce Development.

Also Present: Philip L. Hillman, Director; Omar Hernandez, Senior Judge; George Noel, Deputy Director of the DIA; William Tattan, General Counsel; William Taupier, First Deputy Director of Administration; Ray Marchand, Director of Investigations; Bob Ford, Budget Director, EOLWD; Ellen Keefe, Workers' Compensation Rating & Inspection Bureau of Massachusetts; Cathy McKeever, AIM Mutual.

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

Absent: Stephen Joyce, Vice Chairman; Stephen Falvey; John Pulgini; Teri McHugh; Antonio Frias (Ines Leonardo); David Powell; Dennis Hines; Executive Office of Housing and Economic Development.

Agenda:

Chairman's Welcome

DIA Update

- Judicial Update – Omar Hernandez, Senior Judge
- Vital Statistics – William Taupier, First Deputy Director of Administration

Action Items

- Minutes – January 9, 2013

Executive Director Update – William Monnin-Browder

Miscellaneous

CHAIRMAN'S WELCOME

Chairman John Regan began the meeting at 9:00 A.M.

DIA UPDATE

Judicial Update

Senior Judge Omar Hernandez updated Council members on the conference queue. The Senior Judge stated that the queue has increased slightly to approximately ten to fourteen weeks. The Senior Judge provided the Council with a breakdown by region, noting that the Boston and Fall River queues are holding at 2½ months, the Lawrence and Worcester queues are at 3 months, and the Springfield queue is 3½ months. The Senior Judge explained that Springfield only has two judges currently online and that he is attempting to move people around to address the issue. He stated that he would schedule additional conferences in Lawrence and Worcester because he has the personnel to do so.

The Senior Judge reported that, with respect to the judicial reappointment process, the applicants are scheduled to meet with the Governor's General Counsel, Kate Cook, over the next two weeks.

Senior Judge Hernandez informed the Council that the Impartial Medical Unit continues to recruit doctors. He also indicated that the unit continues to push the online, paperless system. Senior Judge Hernandez reported that come July 1st, the DIA will only contract with doctors willing to go paperless.

The Senior Judge informed the Council that next edition of the Massachusetts workers' compensation reporter would be dedicated to Judge Emily Novick, who passed away recently.

Vital Statistics

First Deputy Director Bill Taupier updated Council members on the information contained within the DIA's vital statistic report for February 2013. He offered the following statistics: Conference Queue: 483; Hearing Queue: 923; Reviewing Board Inventory: 34; Impartial Exams for FY'13 (to date): 2,844 (26 waivers); Exam Fees Collected for FY'13: \$924,000 ; Impartial Medical Examinations in FY'12: 3,667 (48 waivers); Exam Fees Collected in FY'12: \$1,474,788.

Mr. Taupier stated that the impartial medical exam fees are not fully reflective of the new fee increase yet. Mr. Taupier explained that the new fee was effective for appeals perfected as of January 17th. He noted that any appeals perfected before that date would be subject to the old fee.

Mr. Taupier updated the Council on the Stop Work Order (SWO) and Caseload Statistics, including the following: SWOs issued in January: 255 (39 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'13 (to date): 1,573; fine collection for January: \$145,326; total fines in FY'13 (to date): \$813,770; SWOs issued in FY'12: 2,637; total fines collected in FY'12: \$1,381,085; compliance checks for January 2013: 6,768; estimated number of workers now covered by workers' comp. insurance as the result of a SWO: 4,102 (FY'13).

Mr. Taupier continued the update of the monthly vital statistics offering the following: total cases filed in January 2013: 1,666; total cases filed in FY'13 (to date): 7,043; total cases filed in FY'12: 12,646; total First Report of Injury Forms (FRI) filed in January 2013: 2,760; total FRI filed online in January 2013: 975 (35%); total FRI filed in FY'13: (to date): 17,258; total FRI filed in FY'12: 29,643 (9,034 online).

Mr. Taupier reported that the DIA will send out a notice requiring all First Reports of Injuries be filed online either using EDI or an online account as of July 1st. Mr. Taupier stated that this system will also allow for a whole set of other reports to be filed online and give those with an online account access to their accounts and the information contained therein.

Mr. Taupier proceeded with his update on uninsured claims (§65), offering the following: total §65 claims reported in FY'13 (to date): 72; total amount of §65 claims paid by the Trust Fund in FY'13 (to date): \$2,729,332; total §65 claims filed in FY'12: 111; total amount of §65 claims paid by the Trust Fund in FY'12: \$7,810,128; total recovery efforts against uninsured employers FY'13: \$761,147; total recovery efforts against uninsured employers FY'12: \$1,047,057.

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'13 (to date): \$13,702,623; total amount paid on these claims in FY'12: \$24,198,415; total COLA reimbursements to insurers in FY'13 (to date): \$4,721,577; total projected expenses FY'13: \$14,500,000 total COLA reimbursements to insurers in FY'12: \$20,077,659.

Mr. Taupier reported that as of December 2012, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 240 (190 DIA employees, 50 WCTF employees).

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY' 13 (to date): \$2,313,317; total referral fees collected in FY' 12: \$3,774,237; total first report fines in FY' 13 (to date): \$32,408; total first report fines in FY' 12: \$115,000; total assessment collections in FY' 13 (to date): \$34,036,540; total assessment collections in FY' 12: \$82,117,762; total SWO fines in FY' 13 (to date): \$813,770; total SWO fines in FY' 12: \$1,381,085.

Chairman John Regan suggested that someone come in and educate the Council members, perhaps at the next meeting, on what the Office of Education and Vocational Rehabilitation (OEVR) does, how it functions and how well it works. He requested that OEVR be put on the agenda for the next meeting.

Director Hillman stated that the DIA could provide an overview of OEVR next month and bring in Bill Harney, the Director of OEVR.

EXECUTIVE DIRECTOR UPDATE

Executive Director Will Monnin-Browder introduced Dan White. The Executive Director explained that Dan is a student at the New England School of Law and will be working with the Council this semester as an intern.

The Executive Director stated that Governor Patrick's FY' 14 budget recommendation (House 1) was recently filed. He explained that the proposed budget would appropriate \$19,522,203 for the operation and administrative expenses at the DIA. The Executive Director stated that this was an increase of approximately \$400,000 over last year's GAA. Mr. Monnin-Browder explained that the Council's staff has reviewed the budget proposal and its outside sections for potential workers' compensation implications. He explained that Outside Section 7 proposes to eliminate a number of personal income tax exemptions, including the amounts excluded as workers' compensation under Section 104 of the Internal Revenue Code.

Council member Mickey Long noted that this was not good for employees. Mr. Long stated that it did not make sense that the injured worker would be taxed thousands of dollars, which would take that money out of local economies. He stated that he believes that the current rate system is fair and that this tax would throw benefit levels off kilter.

Council member Bernie Mulholland stated that, having been involved in the 1991 reform, the rationale for cutting back from 66 $\frac{2}{3}$ rds to 60% with no taxes taken out was that it better reflected the actual take home pay, after taxes, of the worker. Mr. Mulholland stated that the argument was that when you throw in transportation costs, clothing and other extra expenditures, 60% was more fair than the 66 $\frac{2}{3}$ rds. Mr. Mulholland noted that the effect of taxing the benefits would be as if the worker is being double taxed.

Chairman Regan stated that he believes putting this history on the table is critical. He explained that there are not many people who were around in 1991, so providing the history is essential. Chairman Regan stated that since it is the role of the Council to advise the DIA and oversee the system, he believes that putting a letter together where the Council expresses concern about the impact of this exemption elimination is appropriate.

Council member Ed Corcoran reminded the Council that there is also a state maximum for high wage earners, who, therefore, do not receive anything close to their take home pay.

Chairman Regan asked that the Executive Director draft a letter to discuss and to vote on at the next meeting. The Chairman directed the Executive Director to draft a letter and circulate it.

The next meeting of the Advisory Council is scheduled for Wednesday, March 13, 2013, at 9:00 AM, at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.