

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

May 9, 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); Stephen Falvey; Bernard Mulholland; Maydad Cohen, Executive Office of Labor and Workforce Development.

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; Ray Marchand, Director of Investigations; 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; Michael Kelley, AIM Mutual Insurance Company.

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

Absent: Mickey Long; John Pulgini; Teri McHugh; David Powell; Todd Johnson; William Corley; 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, Deputy Director of Administration

Action Items

- Minutes – April 11, 2012

Executive Director Update

Miscellaneous

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 informed the Council that the number of cases assigned for hearing that remain open with a last meeting date over one year or a hearing with a closed record date over six months old is 32. He added that the number of cases scheduled for hearing from May 8, 2011 to May 9, 2012 was 3,939.

Senior Judge Hernandez noted that the conference and hearing queues have gone up. The Senior Judge explained that a number of factors have contributed to the increased queues, including slow download speeds associated with electronic filings; the new two to one ratio of judicial secretaries to judges; a judicial roster down four Administrative Judges; the upcoming judicial training; and the scheduling of vacation time by judges in the summer months. He noted that he could increase the number of conferences, but did not want to because doing so would overwhelm the staff. The Senior Judge stated that the technological issue involving electronic file download speeds is probably the largest contributing factor to the increased queues. The Senior Judge informed Council members that the secretaries are working diligently and have even come in on Saturdays to keep up with the workload. Judge Hernandez informed Council members that he continues to watch the queues very closely and expects the queues to decrease by the fall.

Director Philip Hillman noted that the DIA is working on a technological solution to the slow download speeds. He indicated that a T3 line will be installed, which is expected to resolve any issues. Director Hillman explained that while there is no financial impediment to the project, scheduling must be coordinated between the firm that DIA has lined up to do the work and Verizon. The Director offered to provide an update at next month's meeting.

Vital Statistics

Mr. Bill Taupier updated Council members on the information contained within the DIA's vital statistic report for May 2012. He offered the following statistics: Conference Queue: 981; Hearing Queue: 766; Reviewing Board Inventory: 61; Impartial Exams for FY'12 (to date): 3,396 (46 waivers); Exam Fees Collected for FY'12: \$1,265,913; 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 April: 256 (21 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'12 (to date): 2,207; fine collection for April: \$151,123; total fines in FY'12 (to date): \$1,188,299; SWOs issued in FY'11: 2,972; total fines collected in FY'11: \$1,836,225; compliance checks for April 2012: 7,046; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 7,218 (FY'12).

Council member Ed Corcoran noted that 21 SWOs have been reissued as a result of previous defaults. Mr. Corcoran asked what the process is for ensuring compliance at that point.

Mr. Ray Marchand, Director of Investigations, explained that when the Hearing Officer issues a default, a team of investigators go to the business the following day and issue a SWO. He indicated that if the business does not come into compliance, the company is shut down. Mr. Marchand explained that approximately 95% of the businesses pay and come into compliance immediately because they understand that if they do not, criminal action will be taken against them.

Council member Steve Falvey noted that the investigations report has a new category of information—the last policy date. Mr. Falvey noted that the information in the new column is jaw dropping, because there are people with substantial experience in his industry that have no history of being in compliance.

Chairman Regan noted that Council member Mickey Long had asked that this column be added to the report at the last meeting and stated that the Council appreciates it being included.

Mr. Taupier continued the update of the monthly vital statistics by offering the following statistics: total number of cases filed in April 2012: 1,004; total number of cases filed in FY' 12 (to date): 10,388; total number of cases filed in FY' 11: 12,589; total number of First Report of Injury Forms (FRI) filed in April 2012: 2,263; total number of FRI filed online in March 2012: 828 (37%); total number of FRI filed in FY' 12: (to date): 24,359; 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): 93; total amount of §65 claims paid by the Trust Fund in FY' 12 (to date): \$5,861,309; 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: \$910,976; total recovery efforts against uninsured employers FY' 11: \$1,242,706.

Chairman Regan, referring to a question that had been raised at a recent meeting of the Joint Task Force on the Underground Economy, asked if it was possible to determine the premium impact of uninsured employers on insured employers.

Mr. Taupier observed that the Trust Fund has paid out approximately \$5.8 million in benefits this fiscal year. He explained that this \$5.8 million, plus administration costs, would provide the total amount spent on uninsured claims, which is taken directly from employer assessments. Mr. Taupier explained that the effect of these costs would be on the assessment rate, which is on top of the premium. He added, however, that more compliance would mean lower premiums because the assessment would be shared among more employers. Mr. Taupier indicated that the direct cost to employers would be in that assessment.

Council member Ed Corcoran stated that the costs being discussed are those associated with the good guys paying for the bad guys. He noted that the reason the Council keeps asking if the DIA has enough resources is because these costs are affected by the quality of the DIA's claims management. Mr. Corcoran explained that the claims program has to have enough resources to adjudicate these claims, settle them or investigate them. Mr. Corcoran stated that the Council has always been 110% behind giving Mr. Marchand and the investigators what they need to catch these uninsured employers before a problem occurs.

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): \$13,062,315; total amount paid on these claims in FY' 11: \$22,299,988; total COLA reimbursements to insurers in FY' 12 (to date): \$17,835,650; total COLA reimbursements to insurers in FY' 11: \$15,632,451.

Mr. Corcoran asked why there had been such an increase in May for the Second Injury Trust Fund payments, opposed to where the numbers were in the first nine months.

Budget Manager Bob Ford stated that he expects Second Injury Fund payments to go up about \$7 million more in May. He indicated that the General Counsel's group has been working diligently to clean up the backlog and now the payments need be put into the system. He reported that a number of payments came in at the end of April and that some of them have been put in the system. He added that the rest of the payments will be put in within the first ten days of this month. Mr. Ford reported that they are not current on COLA payments. He explained that the number was \$3 million

to \$4 million in March and by the end of May he expects the amounts paid to be close to \$19.5 million.

Director Hillman noted that the COLA payment process is another case where a technology change is helping the DIA's efficiency.

Mr. Taupier reported that as of April 2012, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 243 (198 DIA employees, 45 WCTF employees). The DIA is authorized to have 258 payroll positions (including all full and part-time positions).

Mr. Ford noted that in the last couple meetings, the Council asked about the Article 87 consolidation. Mr. Ford stated that this year's fiscal budget budgeted for 53 people for the accounting and revenue group, the personnel group, the IT group and the administrative services group. He indicated that when the consolidation began in July of 2011 there were 43 people in these groups and now there are under 39 FTEs. Mr. Ford noted that there has been a reduction of approximately a 10% of the staffing through termination and retirement. Mr. Ford stated the agency has budgeted 43 employees for next fiscal year, which is a drop of eleven people in these groups. He indicated that he expects the actual number of employees to be closer to 37. Mr. Ford reported that across the Secretariat, there should be about a 10% reduction of staff and the DIA will share in this without any impact in performance.

Council member Ed Corcoran thanked Mr. Ford for his invaluable insight and for the information he provides every month. Mr. Corcoran asked if the 42 FTEs budgeted for next year on the slide include employees who share services and other responsibilities.

Mr. Ford explained that the 42 FTEs listed are mostly DIA employees, but seven or eight of the staff members only charge 50% of their time to DIA because their skill set allows them to also support DCS. He also noted that the Secretariat has some employees from other agencies supporting the DIA. He indicated that the slide refers to FTEs, rather than bodies.

Chairman Regan stated that part of his goal for the assessment conversation at the June meeting is to crosswalk this efficiency into its impact on what employers pay.

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY'12 (to date): \$3,014,523; total referral fees collected in FY'11: \$3,730,233; total first report fines in FY'12 (to date): \$95,800; total first report fines in FY'11: \$137,905; total assessment collections in FY'12 (to date): \$61,783,129; total assessment collections in FY'11: \$81,610,102; total SWO fines in FY'12 (to date): \$1,188,299; total SWO fines in FY'11: \$1,836,225.

EXECUTIVE DIRECTOR UPDATE

Executive Director Will Monnin-Browder informed the Council members that the insurance rate filing is still ongoing. He stated that there are hearings scheduled for May 13, 14 and 18.

The Executive Director stated that Senate Bill 915, which was engrossed in the Senate, was transferred to the House and referred to House Ways and Means. Mr. Monnin-Browder stated that he would send a letter to the Chair of House Ways and Means reiterating the Council's support for that piece of legislation.

The Executive Director noted that the Senate's version of the budget is expected to come out soon. He stated that he and Evelyn would review it and any amendments.

MISCELLANEOUS

Council member Bernie Mulholland requested an update on the status of the judicial candidates.

Executive Office of Labor and Workforce Development Chief of Staff Maydad Cohen noted the Governor's review is in the final stages and perhaps by next week, there will be an announcement as to who will be advancing in the process. He observed that there were many new people involved in the review process this time and expects that the next round will move faster. He stated that as soon as the news becomes public, an announcement will be sent out.

The Executive Director reminded members that the next Advisory Council meeting is scheduled for Wednesday, June 13, 2012.

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

The next meeting of the Advisory Council is scheduled for Wednesday, June 13, 2012, at 9:00 AM, at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.