

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

May 14, 2014

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

Council Members Present: Stephen Joyce, Chairman; John Regan, Vice-Chairman; Edmund Corcoran, Jr.; Mickey Long; Stephen Falvey; Bill Corley; Bernie Mulholland; Teri McHugh; Antonio Frias (Ines Leonardo); Todd Johnson; Dennis Hines.

Also Present: George Noel, Director; Linda Turner, Deputy Director; Omar Hernandez, Senior Judge; William Tattan, General Counsel; William Taupier, Deputy Director of Administration; Robert Ford, Budget Director, EOLWD; John Riordan, Deputy General Counsel; Rex Gerlach-Brown, Deputy Secretariat Director of Diversity; Michael Kelley, Hub International, NE; Michael Clingman, Workers' Compensation Research Institute (WCRI); Ellen Keefe, Workers' Compensation Research and Inspection Bureau (WCRIB).

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

Absent: John Pulgini; Executive Office of Labor and Workforce Development; 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
- DIA Assessment Discussion – Bob Ford, Budget Director, EOLWD

Action Items

- Minutes – April 9, 2014

Executive Director Update – William Monnin-Browder

Miscellaneous

CHAIRMAN'S WELCOME

Chairman Stephen Joyce began the meeting at 9:00 A.M. The Chairman asked Senior Judge Omar Hernandez to provide the judicial update.

DIA UPDATE

Judicial Update

Senior Judge Omar Hernandez reported that the average time frame from conciliation to conference in Boston is four months; Fall River is two and a half months; Springfield is one and a half months; and Lawrence and Worcester are three months.

The Senior Judge stated that the Impartial Unit is continuing its recruiting efforts and that there are currently 147 physicians on the roster.

The Senior Judge noted that the Agency is waiting to hear from the Governor's Office about when to schedule the Nominating Panel interviews for the judicial appointment/reappointment process. The Senior Judge reported that it looks like the process will begin towards the end of the summer.

Senior Judge Hernandez stated that he has been meeting with the bench-bar subcommittee of the Massachusetts Bar Association's workers' compensation section. The Senior Judge stated that one of the items discussed has been the possibility of adding a search engine to the DIA's website for decisions, which would make legal research easier.

The Senior Judge stated that the conciliators are resolving cases at about a 45% rate. He applauded the work of the conciliators in achieving this resolution rate.

Vital Statistics

Deputy Director of Administration Taupier updated Council members on the information contained within the DIA's vital statistic report for May 2014. He offered the following statistics: Conference Queue: 848; Hearing Queue: 770; Reviewing Board Inventory: 77; Impartial Exams for FY' 14 (to date): 3,595 (22 waivers); Exam Fees Collected for FY' 14: \$1,639,225; Impartial Medical Examinations in FY' 13: 4,838 (51 waivers); and Exam Fees Collected in FY' 13: \$1,771,021; Cases resolved at conciliation: 45% (466).

Mr. Taupier updated the Council on the Stop Work Order (SWO) and Caseload Statistics, including the following: SWOs issued in April: 204 (16 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY' 14 (to date): 1,777; fine collection for April: \$103,100; total fines in FY' 14 (to date): \$1,065,348; SWOs issued in FY' 13: 2,621; total fines collected in FY' 13: \$1,351,266; compliance checks for March: 8,537; estimated number of workers now covered by workers' comp. insurance as the result of a SWO: 5,090 (FY' 14).

Mr. Taupier continued the update of the monthly vital statistics offering the following: total cases filed in April 2014: 1,161; total cases filed in FY' 14 (to date): 9,990; total cases filed in FY' 13: 12,174; total First Report of Injury Forms (FRI) filed in April 2014: 2,880 (2,520 filed electronically; 88%); total FRI filed in FY' 14: (to date): 26,440; total FRI filed in FY' 13: 29,791 (11,937 online).

Mr. Taupier proceeded with his update on uninsured claims (§65), offering the following: total §65 claims reported in FY' 14 (to date): 87; total amount of §65 claims paid by the Trust Fund in FY' 14 (to date): \$6,800,332; total §65 claims filed in FY' 13: 126; total amount of §65 claims paid by the Trust Fund in FY' 13: \$5,920,979; total recovery efforts against uninsured employers FY' 14: \$860,339; total recovery efforts against uninsured employers FY' 13: \$1,368,849.

Council member Mickey Long asked if data exists showing the cost and severity of Trust Fund claims, which are funded by the honest employers who pay into the fund. He noted that if you go back a decade in payments, a significant amount of money has been paid out.

Council member Ed Corcoran added a suggestion that Mr. Patrick Ronan, Trust Fund Manager, be invited to Council meetings on a quarterly basis to give the Council an update on Trust Fund claims.

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' 14 (to date): \$19,131,296; total amount paid on

these claims in FY' 13: \$26,761,907; total COLA reimbursements to insurers in FY' 14 (to date): \$8,840,397; total COLA reimbursements to insurers in FY' 13: \$15,483,043.

Mr. Taupier reported that as of April 2014, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 247 (192 DIA employees, 55 WCTF employees).

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY' 14 (to date): \$3,171,005; total referral fees collected in FY' 13: \$3,971,991; total first report fines in FY' 14 (to date): \$105,850; total first report fines in FY' 13: \$55,758; total assessment collections in FY' 14 (to date): \$41,864,423; total assessment collections in FY' 13: \$60,111,617 (Consultant Cost = \$50,000); total SWO fines in FY' 14 (to date): \$1,065,348; total SWO fines in FY' 13: \$1,351,266.

Council member Ed Corcoran referenced the Second Injury Fund budget, stating that appears that expenditures will exceed the amount budgeted, and that expenditures appear to be at the highest level in the last five years. He asked what is driving the cost up.

General Counsel Bill Tattan stated that when an insurance company becomes insolvent, a court orders them into liquidation and the Massachusetts Insurers' Insolvency Fund (MIIF) takes over and starts paying their claims. He explained that as of the date of the court order into liquidation, the Trust Fund has always held the position that they are no longer entitled to COLA and Second Injury Fund reimbursements, since they are not insurers as defined by the statute. Mr. Tattan noted that there has been litigation on issues relating to this issue both before the Board and in Superior Court. He indicated that one of the matters has recently been appealed to the Appeals Court.

Mr. Tattan noted that the Agency has studied the issue and has adopted a policy that the Trust Fund will pay pre-liquidation claims of insolvent insurance companies, meaning 1) the request for reimbursement is for claims paid before the date of the court-ordered liquidation and 2) the petition to the DIA for reimbursement was made prior to the date of the court-ordered liquidation. He indicated that this will cause and has caused an upsurge in payments out of the Trust Fund. He indicated that the Agency has previously held these requests in abeyance.

Mr. Michael Kelley asked if the DIA has any idea what the arrearage would be if the Appeals Court or the SJC disagrees with the Trust Fund's position.

The General Counsel explained that, while difficult to quantify, if the Trust Fund loses the case and has to pay all reimbursements to insolvent insurers, the Trust Fund would have to make significant expenditures. He indicated that he would expect such a decision to impact the assessment rate.

DIA Assessment Rate Discussion

Budget Director Bob Ford provided an overview of the DIA assessment rate for next fiscal year. He noted that in FY' 12, the Trust Fund ended with a significant balance, triggering the 35% rule. Mr. Ford explained that the next year, FY' 13, the assessment rate was decreased in order to bring the account balance down. He stated that they were somewhat successful in reducing the end-of-year balance, but the Agency did not spend as much as it was forecast to spend. For FY' 14, the assessment was reduced further.

With regard to income and expenditures for FY' 14, Mr. Ford noted that there is approximately \$24M still in play, as the Agency is forecasting that it will need to spend \$9M in Section 37s and \$7M more in COLA and should collect another \$8M in revenue. He indicated that expenditures are expected to exceed what was forecast for FY' 14, which will leave the account balance somewhat lower than desired.

Mr. Ford noted that the Agency knew the rates had to come back up because they purposely drove the Trust Fund balance down. He explained that based on models prepared by Deloitte and a separate DIA model, it looks like the assessment rate will probably be around 5.5%. Mr. Ford indicated, however, that before setting a rate, he would like to see what happens with income and expenditures over the next four weeks and whether the Agency will truly spend the amount forecast for COLA and Section 37s. Mr. Ford noted once they have more actual data they would do the calculation again to arrive at a rate. Mr. Ford stated he would provide more information at the June meeting.

Director's Update

Director George Noel stated that the Agency/Secretariat intends to release a press release regarding the Council's Annual Report in the coming days.

The Director also reported the Agency's wifi has gone live and that an alternative view of the Document Management System (DMS) has been developed to improve compatibility with smart phones, iPads, Android tablets and other mobile devices. The Director explained that while only live for a few days, the "Basic View" of DMS has already received great reviews. He applauded the work of IT, particularly Yafa Rachmany-Arkin, who spearheaded the innovation.

EXECUTIVE DIRECTOR UPDATE

Executive Director William Monnin-Browder noted that the Senate is expected to release their version of the budget today and that Advisory Council staff would review the proposal.

The Executive Director reminded Advisory Council members that the House's Minimum Wage/Unemployment Insurance reform legislation included two workers' compensation provisions. He indicated that he expects the House and Senate to form a conference committee in the coming weeks to sort out differences between the House and Senate versions of the legislation. Mr. Monnin-Browder indicated that Advisory Council staff would continue to monitor this process.

MISCELLANEOUS

Chairman Steve Joyce noted that as part of the rate stipulation, average rates were held at the same rate, but there were going to be changes to individual classes. The Chairman suggested that someone from WCRIB come to the next meeting and discuss this.

ACTION ITEMS

A motion was made to approve the April 9, 2014 minutes.

Motion seconded and carried.

Director George Noel introduced Mr. Michael Clingman from the Workers' Compensation Research Institute.

A motion was made to adjourn the meeting.

Motion seconded and carried.

Meeting Adjourned.

The next meeting of the Advisory Council is scheduled for Wednesday, June 11, 2014, at 9:00 A.M., at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.