

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

July 8, 2015

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

Council Members Present: Stephen Joyce; John Regan; Stephen Falvey; Mickey Long; Frank Ruel; Bernie Mulholland; Bill Corley; Teri McHugh; Michael Kelley.

Also Present: Linda Edmonds Turner, Director; Omar Hernandez, Senior Judge; Bill Tattan, General Counsel; Bill Taupier, Deputy Director of Administration; Marc Joyce, Sr. Regional Services Manager; John Riordan, Deputy General Counsel; Karen Fabiszewski, Trust Fund Director; Roody Herold, IT Manager; Bob Ford, Chief Financial Officer; Jessica Muradian, Legislative Director, EOLWD; Melissa Butts, Program Coordinator, Council on the Underground Economy; Ellen Keefe, WCRIB; John Dunlop, Mass. Bay Self-Insurance Group; John Murphy, Massachusetts Insurance Federation; Evelina Radeva, WCRI.

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

Absent: John Pulgini; Todd Johnson; Executive Office of Housing and Economic Development; Executive Office of Labor and Workforce Development.

Agenda:

Chairman's Welcome

DIA Update

- Judicial Update – Omar Hernandez, Senior Judge
- Vital Statistics – William Taupier, Deputy Director of Administration
- Director's Update – Director Linda Edmonds Turner

Communications

Action Items

- Minutes – May 13, 2015
- Minutes - June 10, 2015
- Minutes – June 24, 2015

Legislative Discussion

Executive Director Update – William Monnin-Browder

Miscellaneous

CHAIRMAN'S WELCOME

Vice Chairman John Regan welcomed everyone and asked Senior Judge Omar Hernandez to provide his Judicial Update.

DIA UPDATE

Judicial Update

Senior Judge Hernandez stated that the conference queues are at good levels. He explained that the average wait times for conference are 2.5 months in Lawrence and Fall River; 3 months in Boston and Springfield; and 3.5 months in Worcester. With respect to the Impartial Physicians, the Senior Judge stated that DIA has received four more applicants and that the roster is moving in a very positive direction. Senior Judge Hernandez stated that the paperwork for the hiring of stenographers has been released and the DIA will be posting the positions soon.

The Senior Judge stated that with respect to the appointment process, he does not anticipate action by the Nominating Panel until later this summer or the fall.

In response to a question from Council Member Steve Falvey, the Senior Judge explained that the two judges with a high number of decisions issued in May had been taken off-line because they had indicated an intention to retire. He explained that as a result, they were not hearing new cases and had more time to work on writing decisions.

Mr. Falvey suggested adding another row of stats to the hearing decisions sheet showing how many cases are on the judges' desks compared to how many have been closed.

Senior Judge Hernandez stated that he plans to focus more on hearing decisions this year. He mentioned that he routinely receives an Outstanding Decision list for each judge. He stated that he requests an explanation of why a decision has not been written for any case that has closed anything above six months. He explained that this could be for a number of reasons, such as bankruptcy, waiting for approval, etc.

Vital Statistics

Bill Taupier updated Council members on the information contained within the DIA's vital statistics report for July 2015. He offered the following statistics: Conference Queue: 635; Hearing Queue: 710; Reviewing Board Inventory: 84; Impartial Exams for FY'15 (to date): 4,146 (94 waivers); Exam Fees Collected for FY'15 (to date): \$1,948,775; Impartial Medical Examinations in FY'14: 4,376 (22 waivers); and Exam Fees Collected in FY'14: \$2,018,883.

Mr. Taupier updated the Council on the Stop Work Order (SWO) and Caseload Statistics, including the following: SWOs issued in June: 186 (10 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'15 (to date): 1,938; fine collection for June: \$125,255; total fines in FY'15 (to date): \$1,161,530; SWOs issued in FY'14: 2,345; total fines collected in FY'14: \$2,018,883; compliance checks for June: 6,274; estimated number of workers now covered by workers' comp. insurance as the result of a SWO: 5,440 in FY'15 (to date).

Mr. Taupier continued the update of the monthly vital statistics offering the following: total cases filed in June 2015: 894; total cases filed in FY'15 (to date): 11,837; total cases filed in FY'14: 11,960; total First Report of Injury Forms (FRI) filed in June 2015: 2,779 (2,441 filed electronically: 89%); total FRIs filed in FY'15: 33,353; total FRIs filed in FY'14: 31,384 (11,937 online). In June 2015 the number of employee claims filed: 723; number of employee claims filed in FY'15 (to date): 9,875; number of discontinuances filed: 162; the total number of discontinuances filed in FY'15 (to date): 1,906; the number of third party claims filed: 9; total number of third party claims filed in FY'15 (to date): 56.

Bill Taupier proceeded with his update on uninsured claims (§65), offering the following: total §65 claims reported in FY'15 (to date): 99; total amount of §65 claims paid by the Trust Fund in FY'15 (to date):

\$7,125,858; total §65 claims filed in FY'14: 107; total amount of §65 claims paid by the Trust Fund in FY'14: \$8,663,080; total recovery efforts against uninsured employers FY'15 (to date): \$1,588,723; total recovery efforts against uninsured employers FY'14: \$1,013,557.

Council member Mickey Long stated that with respect to the Trust Fund and Recovery Efforts the record should reflect these two positive, record setting years.

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'15 (to date): \$25,725,700; total amount paid on these claims in FY'14: \$28,467,448; total COLA reimbursements to insurers in FY'15 (to date): \$9,916,778; total COLA reimbursements to insurers in FY'14: \$15,744,268.

Mr. Taupier reported that as of June 2015, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 237 (183 DIA employees, 54 WCTF employees).

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY'15 (to date): \$3,771,301; total referral fees collected in FY'14: \$3,612,740; total first report fines in FY'15 (to date): \$18,775; total first report fines in FY'14: \$129,474; total assessment collections in FY'15 (to date): \$71,405,249; total assessment collections in FY'14: \$50,224,950; total SWO fines in FY'15 (to date): \$104,720; total SWO fines in FY'14: \$1,327,628.

DIRECTOR'S UPDATE

Director Linda Turner informed Council members that she had a meeting at 10:00 a.m. with Dr. Dean Hashimoto, Chair of the Health Care Services Board, to discuss some of the initiatives that the board is working on. She stated that one of the things they have spent a great deal of time on is an Opioid/Controlled Substance Protocol, which is currently out for review. She stated that there is quite a bit of interest in the subject from Governor Baker and his administration.

ACTION ITEMS

A motion was made to approve the May 13, 2015 minutes.

Motion seconded and carried.

A motion was made to approve the June 10, 2015 minutes.

Motion seconded and carried.

A motion was made to approve the June 24, 2015 minutes.

Motion seconded, but did not carry.

LEGISLATIVE DISCUSSION

Chairman Joyce stated that the Council members would now review the workers' compensation bills filed for the 2015-2016 Legislative Session. He noted that if there were any questions or concerns the Executive Director would summarize the bill.

Chairman Joyce explained that House Bill 1427 would penalize employers that participate in public contracts when they are debarred. He explained that there is currently no penalty for doing so. He

explained that the only way to deal with such a situation now is for the Attorney General to file an injunction to stop the employer from working on the public project. He explained that with respect to the construction industry, this places the penalty on the city or town, as the construction schedule will be thrown off. He stated that this bill would penalize the appropriate party.

A motion was made to support House Bill 1427

Motion seconded and carried.

With respect to House Bill 1684/Senate Bill 976, Senior Judge Hernandez noted that the translation services aspect of the bill would impose an administrative burden on the DIA.

A motion was made to oppose House Bill 1684.

Motion seconded and carried.

A motion was made to oppose Senate Bill 976.

Motion seconded and carried.

With respect to House Bill 1685, Council Member Mulholland explained that this bill appears designed to address situations where a self-insurer goes bankrupt and the bonds are insufficient to cover claims. He explained that there are a couple of large examples of this happening. He explained that in some of these cases, the bond has been exhausted and excess insurance carriers have refused to pay claims as they argue that they are only obligated to reimburse paid claims. He explained that the result is that some claimants are left without a party willing to pay their claims. He explained that there are a number of cases pending, including one with the Review Board, that focus on the issue of whether the Trust Fund should have to pay these claims.

General Counsel Bill Tattan suggested that the Council look at the issue that has arisen where bonds are exhausted and only other policies are “excess” policies. He noted that the effect of the argument of the excess carriers is to make the Trust Fund the insurer of last resort for self-insurers. He explained that the Massachusetts Insurers Insolvency Fund (funded by insurer assessments) becomes the insurer of last resort for claims in the commercial market.

Council Member Mulholland said that it might be worth seeing what the courts do, and then decide whether legislation is necessary to further address the situation. He noted that there are probably 25 or 30 similarly situated cases in the system at this point, but it is possible that other self-insurers will go bankrupt and exhaust their bonds.

No action taken on House Bill 1684.

With respect to House Bill 1686, Council Member Teri McHugh noted that the statute already addresses the issue raised by the bill, and that the bill would add confusion to the issue.

A motion was made to oppose House Bill 1686.

Motion seconded and carried.

With respect to House Bill 1694/House Bill 1765, Chairman Joyce explained that the bill had been filed on the Advisory Council’s behalf six or seven years ago. He explained that this would penalize

employers operating without workers' compensation insurance three times the premium that should have been paid for the period of noncompliance. He explained that the bill reduces the incentive to cheat.

Motion made to support House Bill 1765.

Motion seconded but did not carry.

With respect to House Bill 1699, Council Member Mulholland noted that §35E has rarely been used against employees. He noted that many people work after they retire and are collecting a pension. He stated that to apply §35E to permanent total disability cases would go too far.

Council Member Frank Ruel noted that there is no provision in M.G.L. c. 152 that allows the offset of benefits to account for a situation where someone is permanently disabled and collecting a pension as well as checks from insurers for the workers' compensation injury.

Motion made to oppose House Bill 1699.

Motion seconded but did not carry.

With respect to House Bill 1707, the Chairman explained that the bill would: 1) remove the limitation in existing law that scarring appear on the hands, face or neck in order to be compensable and 2) index the maximum benefit at 30 times the State Average Weekly Wage.

Motion made to support House Bill 1707.

Motion seconded but did not carry.

With respect to House Bill 1726, Council Member Mulholland said that case law says that intoxication must play some role in the accident.

Council Member Mickey Long noted that this bill would essentially make intoxication a strict liability situation.

Motion made to oppose House Bill 1726.

Motion seconded and carried.

With respect to House Bill 1774, Vice Chairman Regan says that the company supporting this bill argues that it is a premium avoidance detection tool.

Motion made to support House Bill 1774.

Motion seconded but did not carry.

With respect to House Bill 1775/Senate Bill 1003, Chairman Joyce explained that Profession Employee Organizations (PEOs) are looking for the same exclusive remedy as their client company.

Motion made to oppose House Bill 1775 and Senate Bill 1003.

Motion seconded but did not carry.

With respect to Senate Bill 1021, the Chairman stated that he believes the bill would create a lot of problems, including investigative issues as to when the employer began working in Massachusetts.

Motion made to oppose Senate Bill 1021.

Motion seconded but did not carry.

The Council did not take action on any other bills.

COMMUNICATIONS

The Chair noted that the meeting materials include a communication from a gentleman asking the Council to review a classification issue. He reminded Council members that we had discussed this briefly at our last meeting and he had asked the Executive Director to write back explaining that the issue is not in the Advisory Council's purview.

EXECUTIVE DIRECTOR UPDATE

Executive Director Monnin-Browder stated that the budget conference committee came out yesterday and appropriated \$19,144,105 (\$19.14M) for the operations of the DIA. The Executive Director stated that the Governor had proposed \$19.8M, the House proposed \$19.14M, the Senate proposed \$19.8M and the conference committee ended up with the \$19.14M number. He stated that the FY'15 number was \$19.8M.

The Executive Director stated that he had recently sent around the DIA's Assessment Rate letter for FY'16. He noted that the new assessment rate is 5.75% for private insured.

The Executive Director stated that Peter Rousmaniere, who writes a lot on workers compensation issues and blogs sent him a copy of a new report that Mr. Rousmaniere put out with CompPharma titled "We are beating back Opioids – now what?" and would circulate an electronic copy to anyone interested in reading it.

Motion made to adjourn the meeting.

Motion seconded and carried.

Meeting adjourned.

The next meeting of the Advisory Council is scheduled for Wednesday, August 12, 2015, at 9:00 A.M., at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.