

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

April 11, 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.; Mickey Long; Antonio Frias (Ines Leonardo); John Pulgini; Teri McHugh; Stephen Falvey; David Powell (Kevin Hurstak); Todd Johnson; Bernard Mulholland.

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; Alex Ashcraft.

Absent: William Corley; Dennis Hines; 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

Discussion of Proposed Impartial Fee Increase

Discussion of Pending Legislation

Action Items

- Minutes – February 8, 2012
- Minutes – March 14, 2012

Executive Director Update

Miscellaneous

CHAIRMAN'S WELCOME

Chairman John Regan began the meeting at 9:00 A.M. by acknowledging the work of Mickey Long and Ed Corcoran as Chair and Vice Chair of the Council. Chairman Regan indicated that much of Council's success can be attributed to the collaborative tone set by Mickey and Ed and noted that the Council's ability to work together to make sure the workers' compensation system works efficiently is quite an achievement. Chairman Regan stated that Mickey and Ed are owed a debt of gratitude for their dedication and the manner in which they approached their leadership roles with the Council.

Chairman Regan informed the Council that he had had an opportunity to meet with the senior staff at the DIA, including the Senior Judge, for the purpose of gauging how well the Council was working

and whether there are things the Council could do to help the DIA do its work better. Chairman Regan noted that he would be asking for an opportunity to sit down and meet with each member individually to discuss how things are going, if there is anything the Council could do better, and if the meetings are serving their intended purpose. The Chairman stated that he appreciates the value of the members' time and wants to make sure it is used wisely and efficiently. He indicated that, depending on the feedback he receives, he might be looking to make some changes in the fall.

DIA UPDATE

Judicial Update

Senior Judge Omar Hernandez reported that the conference and hearing queues have gone up slightly. He explained that he is monitoring the queue closely because of the possible impact of 1) upcoming vacation time by judges in the summer months and 2) the new two secretaries to one judge ratio in Dispute Resolution. The Senior Judge noted that when he first came on board, the queue was high and that he had worked hard to bring it down. He indicated that he does not want to see the queues trending back up again.

Regarding the proposed impartial fee increase, Senior Judge Hernandez stated that the DIA is looking to have a public hearing in June on the proposal. The Senior Judge also noted that the DIA has staff members, as a result of the redeployment, who will be working to recruit physicians, particularly in the Springfield and Fall River areas.

Senior Judge Hernandez reported that the Governor's Chief Legal Counsel, Mark Reilly, had met with two of the judicial candidates for reappointment. The Senior Judge also informed the Council that there are six judges that will be coming up for reappointment this year. He indicated that those judge's terms start expiring in late May.

Senior Judge Hernandez stated that he would provide the list of judges who have late cases 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 April 2012. He offered the following statistics: Conference Queue: 774; Hearing Queue: 726; Reviewing Board Inventory: 52; Impartial Exams for FY' 12 (to date): 3,205 (41 waivers); Exam Fees Collected for FY' 12: \$1,123,922; 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 March: 237 (21 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY' 12 (to date): 1,951; fine collection for March: \$136,644; total fines in FY' 12 (to date): \$1,037,176; SWOs issued in FY' 11: 2,972; total fines collected in FY' 11: \$1,836,225; compliance checks for March 2012: 6,841; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 6,670 (FY' 12).

Council member Mickey Long requested that, beginning next month, Mr. Marchand add another column to the Investigations report showing the number of years companies have been operating without insurance.

Mr. Taupier continued the update of the monthly vital statistics by offering the following statistics: total number of cases filed in March 2012: 1,064; total number of cases filed in FY' 12 (to date): 9,384; total number of cases filed in FY' 11: 12,589; total number of First Report of Injury Forms (FRI) filed in March 2012: 2,321; total number of FRI filed online in March 2012: 599 (26%); total number of FRI filed in FY' 12: (to date): 22,096; 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): 77; total amount of §65 claims paid by the Trust Fund in FY' 12 (to date): \$5,117,961; 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: \$885,625; total recovery efforts against uninsured employers FY' 11: \$1,242,706.

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): \$10,825,807; total amount paid on these claims in FY' 11: \$22,299,988; total COLA reimbursements to insurers in FY' 12 (to date): \$14,235,648; total COLA reimbursements to insurers in FY' 11: \$15,632,451.

Mr. Taupier reported that as of March 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. Taupier stated that a revised personnel chart had been provided in the packets. Mr. Taupier explained that, as part of the consolidation, some full time employee salaries are not being fully paid by the DIA, because their time is not spent solely on DIA work. He indicated that the numbers on the revised slide reflect a more accurate count of where time is being spent.

Council member Ed Corcoran requested that the administration break down the personnel numbers even further, which will allow the Council members to see exactly how the numbers are charged for those employees who have been consolidated and are performing multiple tasks for different agencies.

Budget Director Bob Ford stated that if it would be helpful to the Council, he would break the figure down however the Council wants. He explained that when the consolidation began on the A&F side there were 76 people in that unit and they are currently down to 65 people, so the DIA is beginning to see the effects of the consolidation. He noted that they keep moving people around to best utilize staff and it seems to be working out quite well.

Chairman Regan explained that the concern with this issue is that the DIA employees are being paid through assessments on the employers, while the other agencies are being paid from the General Fund. He suggested that a discussion on the assessment be scheduled for next month's Council meeting.

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY' 12 (to date): \$2,652,023; total referral fees collected in FY' 11: \$3,730,233; total first report fines in FY' 12 (to date): \$80,500; total first report fines in FY' 11: \$137,905; total assessment collections in FY' 12 (to date): \$59,618,723; total assessment collections in FY' 11: \$81,610,102; total SWO fines in FY' 12 (to date): \$1,037,176; total SWO fines in FY' 11: \$1,836,225.

Council member Mickey Long noted that conferences were clearly trending upward and that the wait time is now 8-12 weeks. Mr. Long asked if this could be a reflection of the consolidation. He stated that, although time is needed to prepare for cases, prolonged time frames can hurt both the employee and the employer. Mr. Long asked whether the trend would be a concern if it continued to June or July.

Senior Judge Hernandez stated that the consolidation could be a factor. The Senior Judge noted that the redeployment was put in place in March and he intends to watch the queues closely for the next couple months, recognizing that this is a concern of the Council and long time frames are not helpful to anyone.

Responding to a question from Council member John Pulgini, the Senior Judge explained that the DIA is currently down three judges.

Chairman Regan suggested that for the June meeting, the Senior Judge establish what he thinks is the appropriate benchmark with regard to the queues for next fiscal year. Chairman Regan stated that if the number is below that benchmark, then the Council and DIA would know that something really terrific is happening, but if the number is above that level then the Council and DIA would know that the queues really need to be looked at.

Council member Bernard Mulholland asked if the Senior Judge had received any feedback on the two to one ratio of administrative assistants to judges. Mr. Mulholland asked if there was any feedback on how happy both the administrative assistants and the judges are with the redeployment.

Senior Judge Hernandez indicated that the morale of the administrative assistants is low, because the redeployment has increased their workload and the computer system has been a bit slow. He also noted that the Agency is attempting to improve the internal servers to help the assistants get their work done more quickly. He indicated that the assistants know that this is the new reality and are working hard to make it work. Senior Judge Hernandez informed the Council that he had sent an internal memo to the assistants letting them know that he supports them and asking them to share any suggestions they have for improving the process.

Council member John Pulgini suggested that it might have been better if the redeployment decision had been made further down the road, because a new computer system had just been implemented. He explained that the new system requires everything to be on disc or by email. He stated that the assistants, who are just learning the new system, must now use it for two judges instead of one.

IMPARTIAL EXAMINATION FEE INCREASE

Executive Director Will Monnin-Browder stated that, although the impartial fee increase had been discussed on a few occasions at Council meetings, the Council had yet to formally express support for the increase.

Chairman Regan asked if the regulations were drafted and available for the Council to review. He stated that if the administration could provide a copy of the regulations, then perhaps at the next meeting the Council could opine as to their appropriateness.

PENDING LEGISLATION

Executive Director Monnin-Browder reported that there had been one interesting development late yesterday when the Senate Committee on Ways and Means recommended that Senate Bill 915 ought to pass with an amendment. Mr. Monnin-Browder explained that the bill would increase criminal penalties for failing to provide workers' compensation coverage and noted that the legislation is supported by the Advisory Council. He explained that it was reported and placed on order of the day for tomorrow.

The Executive Director reported that the House Ways and Means was expected to release their budget sometime today. He indicated that he and Evelyn Flanagan would be reviewing the recommendations as well as proposed amendments.

Executive Director Monnin-Browder informed the Council that he and Chairman Regan had discussed sending letters to the Chairs of Ways and Means, reiterating the testimony the Council had given before the Joint Committee on Labor and Workforce Development.

Chairman Regan agreed and stated that the Ways and Means Committee often has a file in front of them regarding the bills to be heard and it would be helpful for them to know what this Council had endorsed.

ACTION ITEMS

A motion was made to communicate with the various Committees for whom the Council had endorsed legislation and where the bills now sit.

Motion Seconded and Carried.

Chairman Regan stated that the Executive Director will draft a letter to the committee Chairs and circulate it to Council members.

A motion was made to approve the February 8, 2012 minutes.

Motion Seconded and Carried.

A motion was made to approve the March 14, 2012 minutes.

Motion Seconded and Carried.

EXECUTIVE DIRECTOR UPDATE

Executive Director Will Monnin-Browder informed the Council members that he and Evelyn Flanagan had attended the Insurance Rate Filing Hearing at the Division of Insurance.

Attorney Ellen Keefe of the Workers' Compensation Rating and Inspection Bureau (WCRIB) stated that the State Rating Bureau, which is the Division of the Department of Insurance that oversees the filing, expressed no real opinion as to whether it was too high. Attorney Keefe stated that the Attorney General's office took a different position saying that the 19% increase was not warranted.

Council member Mickey Long stated that the AFL-CIO is generally in support of the increase, explaining that an employer who has a great record on safety will be in a position to be suited by carriers and will be able to adjust their workers' compensation rate downward, but those employers with very bad records will be stuck paying very high rates, essentially incenting them to have safer jobs. Mr. Long stated that there were other provisions in the filing that the AFL-CIO strongly supports, particularly one regarding prevailing wage pensions. Mr. Long indicated that a significant increase could increase the incentive to cheat, so it is something the Council should monitor.

Chairman Regan explained that with respect to the rates, they are down 65% from 1991. He stated that he was not sure how that translates to numbers in the workers' compensation system, but indicated that it is a pretty significant change in total cost. The Chairman noted that even if this rate is approved the rate will still be 53% off the 1991 rate.

MISCELLANEOUS

The Executive Director reminded members that the next scheduled Advisory Council meeting will be held on Wednesday, May 9, 2012.

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

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