

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

June 10, 2015

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

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

Also Present: Linda Turner, Acting 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; Alan Green, Acting Director, Investigations; Bob Ford, Chief Financial Officer; Jessica Muradian, Legislative Director, EOLWD; Melissa Butts, Program Coordinator, Underground Economy; Ellen Keefe, WCRIB; Dan Crowley, WCRIB; Julie Bowler, Atlantic Charter; John Murphy, Massachusetts Insurance Federation; Frank Mancini, Massachusetts Association of Insurance Agents.

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

Absent: John Regan; Bill Corley; 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
- Assessment Rate Update – Bob Ford, CFO, EOLWD
- FY' 16 Budget Update – Bob Ford, CFO, EOLWD
- Auditing of Self-Insurers – Bob Ford, CFO, EOLWD
- Director's Update – Director Linda Edmonds Turner

Communications

Action Items

- Minutes – May 13, 2015

Stop Work Order Process Discussion

Legislative Discussion

Executive Director Update – William Monnin-Browder

Miscellaneous

CHAIRMAN'S WELCOME

Acting Chairman Stephen Falvey welcomed everyone and asked Senior Judge Omar Hernandez to provide his Judicial Update.

DIA UPDATE

Judicial Update

Senior Judge Hernandez stated that the conference queue has remained steady. With respect to the appointment process, the Senior Judge stated that one judge in the Boston office intends to retire at the end of July, but the two other judges who he had previously anticipated would retire, have decided not to. The Senior Judge stated that he had moved a judge from another region to Boston to address the expected gap created by the retirement. He explained that the DIA is waiting for the Nominating Panel to convene and consider applicants for the judicial opening. He stated that once the Nominating Panel goes through its process, he will forward the names of successful applicants to the Advisory Council for consideration.

Senior Judge Hernandez stated that he was meeting next Friday with representatives of New Hampshire and Rhode Island to discuss the agenda for the upcoming regional conference. The Senior Judge stated that per Council member Mickey Long's suggestion, he would suggest that the conference include a fraud component.

Vital Statistics

Bill Taupier updated Council members on the information contained within the DIA's vital statistics report for June 2015. He offered the following statistics: Conference Queue: 665; Hearing Queue: 667; Reviewing Board Inventory: 42; Impartial Exams for FY'15 (to date): 3,686 (88 waivers); Exam Fees Collected for FY'15 (to date): \$1,779,423; 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 May: 173 (10 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'15 (to date): 1,752; fine collection for May: \$62,400; total fines in FY'15 (to date): \$1,036,275; SWOs issued in FY'14: 2,345; total fines collected in FY'14: \$2,018,883; compliance checks for May: 6,963; estimated number of workers now covered by workers' comp. insurance as the result of a SWO: 5,022 in FY'15 (to date).

Mr. Taupier continued the update of the monthly vital statistics offering the following: total cases filed in May 2015: 926; total cases filed in FY'15 (to date): 10,943; total cases filed in FY'14: 11,960; total First Report of Injury Forms (FRI) filed in May 2015: 2,513 (2,268 filed electronically: 90%); total FRIs filed in FY'15: 30,733; total FRIs filed in FY'14: 31,384 (11,937 online). In May 2015 the number of employee claims filed: 762; number of employee claims filed in FY'15 (to date): 9,152; number of discontinuances filed: 159; the total number of discontinuances filed in FY'15 (to date): 1,744; the number of third party claims filed: 5; total number of third party claims filed in FY'15 (to date): 47.

Bill Taupier proceeded with his update on uninsured claims (§65), offering the following: total §65 claims reported in FY'15 (to date): 86; total amount of §65 claims paid by the Trust Fund in FY'15 (to date): \$6,541,171; 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): \$1,405,815; total recovery efforts against uninsured employers FY'14: \$1,013,557.

Council member Mickey Long requested that the minutes reflect that Trust Fund claims are at their lowest level in twenty 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): \$22,353,878; total amount paid on

these claims in FY'14: \$28,467,448; total COLA reimbursements to insurers in FY'15 (to date): \$8,483,763; 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): \$3,296,729; 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): \$70,746,674; 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.

AUDITING OF INSURANCE AND SELF-INSURANCE COMPANIES

CFO Bob Ford explained that the DIA has almost completed its process of auditing insurance company assessment payments from FY'06 through FY'11. He explained that he expects that \$7 million would be collected as a result of the process. Mr. Ford also explained beginning July 1st, the DIA would begin auditing self-insurers, who have never been audited.

Assessment Rate

Mr. Ford stated that this year's assessment rate is 5.8%. He explained that based on total revenue, the DIA will probably end the fiscal year with a Trust Fund balance of \$13 million. Mr. Ford noted that Deloitte forecasted the rate for next year providing the Agency with a low and a high figure. He explained that the DIA also did its own forecast. Mr. Ford stated that he is recommending a 5.8% assessment rate, the same rate as this year, which he expects the Agency will be able to hold level over the next several years.

DIA Budget and Expenses

Mr. Ford explained there is not a final budget number because the budget is still in the conference committee, but he expects it will be close to \$89 million. He stated that his projections suggest that the Agency will spend approximately \$85 million next fiscal year.

DIRECTOR'S UPDATE

Director Linda Turner informed Council members that she had been spending a good deal of time trying to hire for nine positions. She explained that they have been approved by HR and the Secretariat; and are now with Administration and Finance.

Director Turner reported that she had met with Karen Holt and Evelina Radeva of the Workers' Compensation Research Institute (WCRI) on June 3rd. The Director stated that in August, the Institute will hold a meeting of its Massachusetts advisory committee at the DIA, which she plans to attend.

The Director stated that next Thursday, the Secretariat has a Performance Recognition Awards event scheduled at the DIA from 2:00 to 4:00. The Director invited members of the Advisory Council to the event. She stated that two DIA employees would receive Awards of Excellence in Performance: Karen Grippen, Stenographer Manager and Yafa Rachmany-Arkin, Senior Software Developer.

The Director welcomed Ms. Jessica Muradian, who is the new Legislative Director at EOLWD, to the meeting.

STOP WORK ORDER PROCESS DISCUSSION

Chairman Stephen Joyce introduced Mr. Frank Mancini, President and CEO of the Massachusetts Association of Insurance Agents (MAIA).

Mr. Mancini stated that he hoped to begin a discussion about the stop work order (SWO) process in situations where an employer has paid their workers' compensation insurance premium, but the payment is not yet reflected in the database that DIA investigators use to check coverage. He explained that this arises in situations where an employer receives a notice that their workers' compensation insurance is going to be cancelled for non-payment of premium. He noted that if the premium is paid prior to the cancellation date, the insurance company then has five days to report the reinstatement to WCRIB. In these situations, the reinstatement does not show up on the computer immediately. He stated that situations have occurred where an employer is issued a SWO, despite having paid the premium prior to the cancellation date. The effect, he explained, is that a SWO is issued when there is no lapse in coverage.

Mr. Mancini explained that this happened to one of his members recently. He stated that a DIA investigator was at an employer's location prepared to issue a SWO. Mr. Mancini stated that the insured called his insurance agent and advised him of the situation and the agency principal talked to the investigator and advised the investigator that the policy had been reinstated with no lapse of coverage. He stated that the investigator said that a SWO was going to be issued anyway and the insured could appeal it if they wanted to continue to operate. Mr. Mancini explained that the agent provided evidence that the employer had been reinstated and there was no lapse in coverage, but the SWO was issued anyway. Mr. Mancini stated that he would like to thank Bill Tattan for getting involved and helping resolve this issue with no penalty to the employer. Prior to the General Counsel's involvement, the insured decided to pay the \$500 fine to make it go away, even though coverage had never lapsed.

Council member Mickey Long asked how often this problem occurs.

Mr. Mancini stated that he did not have an exact number, but that he does get a lot of calls on similar issues. He stated that he knows WCRIB gets calls about this problem as well.

Chairman Stephen Joyce stated that he is a huge proponent of SWOs and the way the DIA has used the process since 2008. He explained that there are a lot of employers in Massachusetts operating without insurance or with short-term policies that they let lapse. He stated that while he didn't know the specifics of this case, the whole idea of the law is that you have to maintain insurance all the time.

Council member Mickey Long stated that the statute says nothing about payment, instead saying "non-coverage." He stated that his concern is that employees are getting laid off in cases where coverage exists. He asked whether there could be some mechanism by which the employer could have a little breathing room to show the investigators that they do, in fact, have coverage.

Mr. Joyce stated that there should be some mechanism to get information into the system so the information provided to investigators is accurate.

Council member Michael Kelley recommended that a simple tool be created like they have in Dispute Resolution for expedited conferences. Mr. Kelley noted that if the Worker's Compensation Rating and Insurance Bureau (WCRIBMA) receives notice of a situation like the one described by Mr. Mancini, they could contact Mr. Tattan and say this is a special exception where coverage was in place.

Chairman Joyce stated that this is the beginning of the discussion. The Chairman stated that, overall, he believes the system works, and asked to see some data on how many of these cases actually occur.

Council member Mickey Long suggested Mr. Mancini's organization provide a proposed administrative solution to the problem.

The Chairman stated that Council Member Todd Johnson, who was unable to attend the meeting, raised an additional issue with SWOs. He explained that Mr. Johnson was concerned about situations where an employer is issued a SWO and pays their fine, but does not fully understand the impact of debarment. Chairman Joyce suggested that the DIA do more public outreach to employers about their workers' compensation obligations, and the potential impact of failing to provide coverage.

COMMUNICATIONS

The Chair stated a new item titled "communications" had been added to the agenda. He explained that moving forward, when the Advisory Council receives communications from people seeking to bring an issue before the body, the Executive Director will raise it with the Council under this new heading. If, Chairman Joyce explained, further discussion is needed, it will be added to the agenda for the following meeting. He explained that in May, Council member Michael Kelley had received such an email.

Council member Michael Kelley stated he was contacted by an insurance advisor about issues that his client was having with their insurer and the WCRIBMA. Mr. Kelley stated that the gentleman had a client who was a landscaper who was also doing snow removal. He explained that the carrier went out and audited the books and found out the client was doing snow removal and charged him for snow removal on the roofing class. Mr. Kelley stated that the advisor did not think that this was appropriate, so he appealed to the WCRIB, who agreed with the carrier's position. Mr. Kelley stated that the advisor disagreed. He explained that the advisor believed that his client was being retaliated against by the bureau. Mr. Kelley indicated that he does not believe this is was an issue for the Advisory Council.

Chairman Joyce stated that he would ask the Executive Director to respond and inform the insurance advisor that the issue is not within the Advisory Council's purview.

Meeting adjourned.

The next meeting of the Advisory Council is scheduled for Wednesday, July 8, 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.