

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

July 13, 2016

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

Council Members Present: Steve Joyce; Steve Falvey; Bernie Mulholland; Michael Kelley; Teri McHugh; Mickey Long; Frank Ruel; James Steenbruggen.

Also Present: Omar Hernandez, Senior Judge; Bill Taupier, Director of Administration; Marc Joyce, Senior Regional Services Manager; Robert Cronin; Director of Investigations; Aaron D'Elia, CFO; Melissa Butts, Underground Economy; Virginia McCarthy, Workers' Compensation Rating and Inspection Bureau (WCRIB).

Advisory Council Staff: Evelyn Flanagan.

Absent: Todd Johnson; John Regan; Bill Corley; 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 – Bill Taupier, Director of Administration
- Update on Regulatory Review Process
- Director's Update

Communications

Action Items

- Minutes – March 9, 2016
- Minutes – April 13, 2016
- Minutes – May 11, 2016
- Minutes – June 8, 2016

Executive Director Update

Miscellaneous

CHAIRMAN'S WELCOME

Chairman Steve Joyce began the meeting at 9:00 A.M. The Chairman welcomed Jim Steenbruggen who was appointed by the Governor as a new member of the Advisory Council. The Chairman then asked for a moment of silence in memory of Paul Meagher, President of the Worker' Compensation Rating and Inspection Bureau. Chairman Joyce asked Senior Judge Omar Hernandez to provide his judicial update.

DIA UPDATE

Judicial Update

Senior Judge Omar Hernandez stated that the conference queue is in really good shape and the hearing queue went up slightly. The average wait time between conciliation and conference for Boston is approximately two and a half months; Lawrence two months; Springfield and Worcester three months and Fall River went up a bit at four months. He stated that with respect to hearing decisions, last month there were 38 cases which he brought down to 25 cases awaiting hearing decisions. Senior Judge Hernandez noted that the impartial physician contracts are coming back signed so it appears that the roster is healthy and currently in good shape.

Senior Judge Omar Hernandez stated that the reappointment/appointment process continues and the deadline for the submission of applications is next Monday, July 18th. He noted that they still do not have the schedule with respect to the Nominating Panel but hopes to get together in August or September but it may be tough.

Vital Statistics

Director of Administration Bill Taupier updated Council members on the information contained within the DIA's vital statistics report for July 2016. He offered the following statistics: Conference Queue: 556; Hearing Queue: 848; Reviewing Board Inventory: 80; Impartial Exams for FY'16 (to date): 4,128 (71 waivers); Exam Fees Collected for FY'16 (to date): \$1,939,171; Impartial Medical Examinations in FY'15: 4,146 (94 waivers); and Exam Fees Collected in FY'15: \$1,967,550.

Mr. Taupier updated the Council on the Stop Work Order (SWO) and Caseload Statistics, including the following: SWOs issued in June: 197 (12 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'16 (to date): 2,185; fine collection for June: \$137,611; total fines in FY'16 (to date): \$1,065,142; SWOs issued in FY'15: 1,938; total fines collected in FY'15: \$1,188,541; compliance checks for June: 7,447; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 5,675 in FY'16 (to date).

Mr. Taupier continued the update of the monthly vital statistics offering the following: total cases filed in June: 1,022; total cases filed in FY'16 (to date): 12,263; total cases filed in FY'15: 11,837; total First Report of Injury Forms (FRI) filed in June: 2,888 (2,547 filed electronically: 88%); total FRIs filed in FY'16: 34,660; total FRIs filed in FY'15: 33,353 (29,290 online). In June the number of employee claims filed: 1,018; number of employee claims filed in FY'16 (to date): 10,331; number of discontinuances filed: 192; the total number of discontinuances filed in FY'16 (to date): 1,891; the number of third party claims filed: 6; total number of third party claims filed in FY'16 (to date): 41.

Mr. Taupier proceeded with his update on uninsured claims (§65), offering the following: total §65 claims reported in FY'16 (to date): 129; total amount of §65 claims paid by the Trust Fund in FY'16 (to date): \$7,218,592; total §65 claims filed in FY'15: 99; total amount of §65 claims paid by the Trust Fund in FY'15: \$7,620,855; total recovery efforts against uninsured employers FY'16 (to date): \$1,207,613; total recovery efforts against uninsured employers FY'15: \$1,556,069.

Council member Mickey Long asked if the increase in trust fund cases is primarily in one or two trades or industries and are those one or two industries a focus of the compliance checks. He stated that given that there is an increase in the number of cases he wondered if they should go back and figure out what industries are these cases coming from. Mr. Long noted that if someone says that 60% of the 129 cases are in construction that is interesting information for us to advise the Governor on in our Annual Report as to some efforts we may want to suggest.

Chairman Joyce stated that Mr. Taupier had pulled the information for the Council about a year and one-half ago and as expected construction is one of the high industries especially for the uninsured. He noted

that it showed that this is the typical place that you would expect accidents to happen for the insured and uninsured. He explained that this is where the investigations unit puts a focus on site visits and then the investigator also visits other industries on the same street and same town since they are there.

Council member Michael Kelley stated that he would like to emphasize what Mickey said and to specifically ask Director Turner and the current administration of the DIA to provide us with some sort of executive summary of the last two years on the 228 cases such as how many are open, how many have a value greater than \$25,000 and what are the top five major industries where they come from. He noted that it doesn't have to be a twenty-five page report but a summary.

Mr. Long asked the DIA to provide in the summary the number of high-value claims especially catastrophic injury claims. He stated that we may know the majority of these claims are high value claims since we are insiders to the industry but the Governor doesn't know that. He noted that the summary should explain why this is important since these are not your small cases but rather these are major cost driving cases that other employers have to pick up the tab for.

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' 16 (to date): \$22,988,843; total amount paid on these claims in FY' 15: \$30,682,389; total COLA reimbursements to insurers in FY' 16 (to date): \$8,950,762; total COLA reimbursements to insurers in FY' 15: \$14,344,261.

Mr. Taupier reported that as of June 2016, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 229 (172 DIA employees, 57 WCTF employees).

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY' 16 (to date): \$3,728,857; total referral fees collected in FY' 15: \$3,888,246; total assessment collections in FY' 16 (to date): \$83,305,758; total assessment collections in FY' 15: \$70,934,257.

Mr. Taupier explained that the assessment rate as of July 1st was set at 5.6%. He stated that annually the agency has an actuary do this for them. He reported that they recommended that a rate be set within a range of 5.5% to 5.7% and that the agency chose to go with 5.6%. Mr. Taupier explained that because of the way the algorithm was written they also recommended a slight increase for the self-insured and the self-insurance group but the agency made the conscious decision not to lower one rate and cause consternation to the other groups. He stated that they decided to hold steady with no increase or decrease.

Council member Mickey Long asked if we could get an answer next month why it is not discriminatory that the assessment rate is not the same for the insurer, self-insurer and the self-insurance group. He stated that it may be good policy but he would like to know the reason why it is good policy. Mr. Long asked if it would be too difficult for the actuaries to say "if there were no Trust Fund cases, this would be the projected assessment rate..."

Mr. Taupier stated that this was actually straight forward since all you have to do is zero out the \$7M. Mr. Taupier noted that he was only guessing but the employer would probably save close to a full point.

Mr. Long stated that was a big deal for that one page summary that Mr. Kelley mentioned and hoped the Council would get it. He noted that in addition to costing employers higher assessments this is what they would have saved had there have been no claims. He explained that putting those important stats in front of the legislature and the Governor to show the importance of compliance speaks volumes to the compliance efforts to laws that provide enforcement.

Chairman Joyce stated that looking at where these costly accidents happen is really worth doing and making sure that is a focus of the enforcement side. He noted that there have been nearly 200 SWO a month and although the investigators are out there doing a great job there are still employers that are not in compliance. The Chairman stated that he believes it is important to advertise that you have to have workers' compensation in the Commonwealth.

Ms. Melissa Butts, Council on the Underground Economy, stated that they do outreach through the Department of Revenue. She stated they send out a "Welcome to Massachusetts" package whenever a new business opens up which tells them that they need to pay unemployment and have workers' compensation if they have any employees.

Regulatory Review Update

Mr. Taupier explained that with the status of the regulations they have issued letters which starts the clock. He explained that they are looking for the end of August for our hearing. He reminded the Council that this is the entire set of regulations that have been reviewed. He noted that the hearing will take place in Boston but they do not have a date or time yet.

Director Update

Mr. Taupier reported that as far as current posting of positions the agency has received several resumes in and we will be working with the Council in the review process. Mr. Taupier added Ms. Flanagan on the Mass Careers job site as a collaborator so she should be able to review all the resumes now.

Communications

Chairman Joyce stated that Council member Mickey Long had forwarded to members a decision regarding SWO and Debarments. The case involved a company issued a SWO for no insurance and is debarred. The company said that the DIA had to prove that the company did not have insurance so they could lower their premiums. The Court said that not paying a premium is worse than lowering your premium.

The Council discussed the problem of not having a quorum. It was suggested that in the e-mails to members we could remind them it has now been six consecutive meetings without a quorum.

Chairman Joyce reminded everyone that the judicial process is going to get moving within the next two months so it will put a lot of time constraints on turn around meetings and we have to have a quorum if we want to participate in that process. He noted that after that we will be moving towards the annual report so the next few meetings are pretty important. He encouraged everyone to attend and if they cannot attend to give plenty of notice and if they find they cannot attend the majority of meetings, he suggested that perhaps they should decide whether or not they want to be on the Council so someone else could be appointed.

Executive Director Update (Acting)

Ms. Flanagan stated that there are only 18 days left before the formal session ends.

Meeting adjourned.

The next meeting of the Advisory Council is scheduled for Wednesday, August 10, 2016, at 9:00 A.M., at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.