

# MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

September 14, 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; Todd Johnson; John Pulgini; Mickey Long; Frank Ruel; James Steenbruggen.

*Also Present:* Linda Edmonds Turner, Director; Omar Hernandez, Senior Judge; Bill Taupier, Director of Administration; Marc Joyce, Senior Regional Services Manager; Pasqua Scibelli, Civil Litigation Manager; Virginia McCarthy, Workers' Compensation Rating and Inspection Bureau (WCRIB); John Murphy, Massachusetts Insurance Federation.

*Advisory Council Staff:* Evelyn Flanagan.

*Absent:* Teri McHugh; John Regan; Executive Office of Labor and Workforce Development; Executive Office of Housing and Economic Development.

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## *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
- Minutes – July 13, 2016

Executive Director Update

Miscellaneous

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## **CHAIRMAN'S WELCOME**

Chairman Steve Joyce began the meeting at 9:00 A.M. The Chairman asked Mr. Bill Taupier to provide the Vital Statistics.

## **DIA UPDATE**

### **Vital Statistics**

Director of Administration Bill Taupier updated Council members on the information contained within the DIA's vital statistics report for September 2016. He offered the following statistics: Conference

Queue: 424; Hearing Queue: 752; Reviewing Board Inventory: 85; Impartial Exams for FY' 17 (to date): 509 (12 waivers); Exam Fees Collected for FY' 17 (to date): \$309,352; Impartial Medical Examinations in FY' 16: 4,128 (71 waivers); and Exam Fees Collected in FY' 16: \$2,128,638.

Mr. Taupier updated the Council on the Stop Work Order (SWO) and Caseload Statistics, including the following: SWOs issued in August: 181 (15 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY' 17 (to date): 338; fine collection for August: \$234,397; total fines in FY' 17 (to date): \$237,418; SWOs issued in FY' 16: 2,185; total fines collected in FY' 16: \$1,107,030; compliance checks for August: 8,232; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 936 in FY' 17 (to date).

Mr. Taupier continued the update of the monthly vital statistics offering the following: total cases filed in August: 1,142; total cases filed in FY' 17 (to date): 2,028; total cases filed in FY' 16: 12,263; total First Report of Injury Forms (FRI) filed in August: 3,438 (3,030 filed electronically: 88%); total FRIs filed in FY' 17: 6,079; total FRIs filed in FY' 16: 34,660 (30,559 online). In August the number of employee claims filed: 978; number of employee claims filed in FY' 17 (to date): 1,743; number of discontinuances filed: 164; the total number of discontinuances filed in FY' 17 (to date): 284; the number of third party claims filed: 0; total number of third party claims filed in FY' 17 (to date): 1.

Mr. Taupier proceeded with his update on uninsured claims (§65), offering the following: total §65 claims reported in FY' 17 (to date): 19; total amount of §65 claims paid by the Trust Fund in FY' 17 (to date): \$1,283,252; total §65 claims filed in FY' 16: 129; total amount of §65 claims paid by the Trust Fund in FY' 16: \$7,913,457; total recovery efforts against uninsured employers FY' 17 (to date): \$215,024; total recovery efforts against uninsured employers FY' 16: \$1,746,315.

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' 17 (to date): \$0; total amount paid on these claims in FY' 16: \$28,019,870; total COLA reimbursements to insurers in FY' 17 (to date): \$31,932; total COLA reimbursements to insurers in FY' 16: \$11,018,308.

Mr. Taupier explained that due to the lag time of §37s currently not all are registered in the payments. He stated that he knew that several have already been approved and the Council will see more numbers on this next month since they are not registered payments through the MMARS system as yet. Mr. Taupier said that this was due to the approval process for settlements. Mr. Taupier stated that the settlements have been approved but have to be signed off by finance to execute payment. The paperwork just has not made it through the process yet.

Council member Michael Kelley stated that he is beginning to get a lot of rumblings through carriers on the inefficiencies of the Second Injury Fund. He asked if this is because the DIA does not have a General Counsel or if there is another reason. Mr. Kelley stated that he believes that this is something that needs to be addressed because the grumblings have gotten louder.

Council member Todd Johnson stated he is having the same conversation with the self-insured as well. He noted that the problem is the timing of payments being issued after settlement. He stated that he has heard it is even taking time to execute agreements since the General Counsel's retirement.

The Director asked if this is recent or have these conversations been growing the last several months. The Director explained that they are working with Mr. Mike Doheny, General Counsel for the Secretariat until the General Counsel's position is filled which should be shortly. The Director thanked Council members for their comments and letting her know what was being said. The Director informed the Council that she was hearing internally about the problem but had not heard that it had gotten to the outside. The Director

stated that they should have someone in the General Counsel spot shortly, perhaps within the next month or two from what she is hearing.

Mr. Mike Kelley stated that he wanted to go on record to say that he thinks it is way too long for that key position to be filled and that this is something that needs to be done now. Mike Kelley asked if the COLA figure was being impacted by the fact that there is no General Counsel and was this impacting the whole industry.

Mr. Taupier stated although COLA is different this does have an impact.

Mr. Todd Johnson stated he is a believer in conservative budgets but if we finish FY' 16 at \$11 million what goes into the thought process for \$14.3 million COLA budget?

Mr. Taupier stated that it is based on what we believe is outstanding liability but he is not familiar with that calculation since the Trust Fund folks do that.

Mr. Kelley noted that Bob Ford stated that he expected the COLA to go down for 2017 for the first time ever as these are pre-1985 claims but now the budget number is actually higher so there has been a change from what was actually proposed from the budget number. Mr. Kelley asked if it would be possible to get a better understanding of that budget at some point.

The Chairman stated that Mr. D'Elia was not present today but he would appreciate it if we could get some sort of explanation next month of where that is at and what the expectation is.

Mr. Taupier reported that as of August 2016, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 222 (167 DIA employees, 55 WCTF employees).

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY' 17 (to date): \$607,579; total referral fees collected in FY' 16: \$4,154,786; total assessment collections in FY' 17 (to date): \$21,613,169; total assessment collections in FY' 16: \$83,503,309.

### Judicial Update

Senior Judge Omar Hernandez stated that the conference and the hearing queues are in really good shape with both coming down. He noted that they are currently in the midst of the reappointment process and hopes to provide the names of those moving forward soon. He stated that the Impartial Physician contracts they have been sent out and are beginning to be returned. Finally, with respect to the Opioid Program it is on its final approval leg and hopefully they will be announcing something at the workers' comp conference at Gillette on October 14th.

Chairman Steve Joyce noted that two of the pending decisions have come off the list which is a good but his concern is that the number of decisions beyond three years has moved up to five. He explained that he had hoped that the judges would have concentrated on getting more decisions out the door. Mr. Joyce stated that with the upcoming review of judges one of the things we should see is if these judges have long term cases when they come in to talk about it. He noted the importance of getting the decisions done and out the door.

The Senior Judge stated that he has spoken to the judges who have pending decisions and that he sends out monthly memos. The Senior Judge stated that some judges have indicated that they have written the decisions but they have not been filed yet and that he does not take them off the list until they are filed. He noted that he had passed it along to the judges that this issue is a serious concern of this Council and at

reappointment time they will have to answer for it. He informed the Council that he has taken away their privilege of writing outside the office and that short of firing them, which he can't, there is not much he can do.

Council member Todd Johnson suggested the Council consider adding this concern to the annual report in the general context. He explained that it would be a way of saying that we are paying attention to it. Mr. Johnson noted that if this time next year things haven't improved we take a more drastic approach to it. We have to start with something and acknowledging the issue is a good starting point.

The Chairman agreed that this should be added to the concerns in the annual report, especially with the *Mancini* case that came down this year.

Council member Long stated that the *Mancini* case a few months ago had another judge saying that this was not right. He stated that the *Mancini* case should be cited in the annual report noting a judge complained and the Council supports that complaint. He stated that to him that is a step in the right direction. The case states that there is something that can be done to remove a judge even though it is a long process.

The Chairman stated that he would just like to see the cases moved off the pending decision list. The issue has been brought up in the public as well as here. Mr. Joyce stated that there are certain things we can do and one is discuss them and put them in the public record. The most desired outcome is people writing decisions.

Todd Johnson asked to review the Assessment Collection numbers again and asked for clarification on the last assessment collections page. Mr. Johnson asked if the FY'17 figure of \$21,613,169 is what has been collected for the fiscal year and are any of those audited assessments included in these numbers.

Mr. Taupier explained that this amount is anything collected after July 1. He stated for example if we issued an audit finding on June 15<sup>th</sup> and after going through the process if it is paid on July 5<sup>th</sup> it is applied to fiscal year 2017.

Todd Johnson asked if Mr. Taupier was specifically involved in that audit process and if he had information in terms of size and scope since they have people asking what is collected and what is perceived to be outstanding. Mr. Johnson asked that from a historical point of view what drives that process and could the Council get some education on that since it would be helpful

Mr. Taupier stated that they had an internal audit group that handles that.

Mr. Kelley stated that he was under the impression that when Bob Ford was here Mr. Ford indicated that they were going to audit certain years like 2006-2012 and he was expected to bill an additional \$10M. Mr. Kelley stated that they were also going to begin doing the self-insurers which have never been audited at all. He noted that he thought that they were going to do that first time block and then they were going to do 2012-2015.

Mr. Taupier stated that the intention with that process was that they would be essentially caught up.

Mr. Johnson stated that it would be helpful if we had a time check on that, where we are and what has been collected and what has been audited at this point.

Director Update

Director Turner stated that Circular Letter 348 now called Circular Letter 350 regarding the assessment process will be issued shortly.

Director Turner stated that with respect to the Workers' Comp Conference this is the third year we are doing it and we have increased the number of states which include Maine, Vermont, New Hampshire, New York, Rhode Island and Massachusetts. The conference is scheduled to take place on October 14<sup>th</sup> at Gillette Stadium. She stated that as soon as the information was available she would send it to the members.

Director Turner informed the Council that on September 22, 2016, the Department of Labor and Workforce Development will be honoring the recipients of the Pride and Performance award. It will be held here from 2:00 to 4:00. She noted that three DIA employees were winners of the award – Janine Senatore, Tom Vincequeiri, and Peter Treadway.

Mr. Todd Johnson stated that with respect to the Pride and Performance Award, when he was the Conciliation Manager back in 1989-1990 he worked very closely with Janine Senatore and she is an invaluable employee here. He suggested that the Council provide her with a letter of congratulations.

Mr. Kelley stated that when he had to deal with Janine Senatore in the past when employers would be fined when they should not have been she was a saint.

Mr. Taupier stated that he has been Janine's supervisor for the past 15 years he stated that there is nobody more professional and probably one of the best employees in state government.

Chairman Joyce suggested that all three recipients be invited to the next Council meeting and we will provide letters and congratulate them at that time and it will be in the official record.

Director Turner stated that her last update was that the hearing on the revised regulations is September 21<sup>st</sup> at 10:00 AM here in Boston in Court Room 1.

### **ACTION ITEMS**

Mr. Long moved that all five months of Minutes (March, April, May, June and July) be approved

MMS

### **MISCELLANEOUS**

Chairman Steve Joyce stated that before the meeting ends the Council should select dates to conduct judicial interviews since we have a limited amount of time.

Council members decided to hold the interviews on Friday, September 30<sup>th</sup> and Monday, October 3<sup>rd</sup> with a start time of 8:00 AM.

Meeting adjourned.

**The next meeting of the Advisory Council is scheduled for Wednesday, October 12, 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.**