

# MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

October 12, 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; Teri McHugh; 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; Aaron D'Elia, CFO; Jessica Muradian, Legislative Director EOLWD; Virginia McCarthy, Workers' Compensation Rating and Inspection Bureau (WCRIB).

*Advisory Council Staff:* Evelyn Flanagan.

*Absent:* John Pulgini; Frank Ruel; James Steenbruggen; John Regan; 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 – September 14, 2016

Executive Director Update

Miscellaneous

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## **CHAIRMAN'S WELCOME**

Chairman Steve Joyce began the meeting at 9:00 A.M. He stated that before asking the Senior Judge to provide his update he wanted to take a minute to congratulate Janine Senatore, Peter Treadway and Tom Vincequere on being the recipients of the Pride and Performance Award. He stated that the Council voted at the last meeting to provide letters recognizing and thanking them for their great work. The Chairman asked Senior Judge Omar Hernandez to provide his judicial update.

## **DIA UPDATE**

### Judicial Update

Senior Judge Omar Hernandez stated that the time between conciliation and conference is in good shape with Boston at 2.5 months; Springfield and Worcester are at 2 months. He noted that Fall River is up to four months because of building issues and a couple of judges being out sick. The Senior Judge stated

that extra conference weeks were added to help drive the numbers down. With respect to the hearing queue, Senior Judge Hernandez stated that the queue is in good shape. The Senior Judge stated that they are still working on the impartial roster but have had some issues with contracts.

Senior Judge Hernandez informed the Council that he had met with the Governor last week and a question came up about the length of time for hearings. He stated that beginning in November the hearing queue will go up to four hearings a day instead of three. Again, he stated that during his meeting with the Governor last week they reviewed the Opioid Pilot Program and the Governor approved it. They will announce it on Friday at the workers' compensation conference at Gillette and in November they plan to have a bigger rollout.

The Senior Judge stated that with respect to the pending decisions he has passed along the Council's comments and concerns about appropriate action being taken over pending decisions. The Senior Judge explained that he continues to tell the judges that this is important and he is not letting it go. They all have choices and every choice has consequences and if they choose not to write then there will be consequences.

Chairman Steve Joyce noted that with the focus that has been put on this issue of pending decisions he does not understand why they have not written the decisions. The Chairman stated that if the Senior Judge had come to them and said there are reasons why those cases are not done he could accept that. He stated that with all the focus both here and publicly he really does not understand it.

#### Vital Statistics

Director of Administration Bill Taupier updated Council members on the information contained within the DIA's vital statistics report for October 2016. He offered the following statistics: Conference Queue: 588; Hearing Queue: 715; Reviewing Board Inventory: 73; Impartial Exams for FY'17 (to date): 849 (19 waivers); Exam Fees Collected for FY'17 (to date): \$511,518; 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 September: 189 (13 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'17 (to date): 487; fine collection for September: \$62,830; total fines in FY'17 (to date): \$300,247; SWOs issued in FY'16: 2,185; total fines collected in FY'16: \$1,107,030; compliance checks for September: 7,706; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 1,605 in FY'17 (to date).

Mr. Taupier continued the update of the monthly vital statistics offering the following: total cases filed in September: 912; total cases filed in FY'17 (to date): 2,940; total cases filed in FY'16: 12,263; total First Report of Injury Forms (FRI) filed in September: 2,728 (2,416 filed electronically: 89%); total FRIs filed in FY'17: 8,807; total FRIs filed in FY'16: 34,660 (30,559 online). In September the number of employee claims filed: 748; number of employee claims filed in FY'17 (to date): 2,491; number of discontinuances filed: 157; the total number of discontinuances filed in FY'17 (to date): 441; the number of third party claims filed: 7; total number of third party claims filed in FY'17 (to date): 8.

Council member Mickey Long asked how many of these cases make it to hearing.

Mr. Taupier noted that only 5% to 10% of these cases make it to hearing decisions. He explained that the best way to see this is to look at the numbers from conciliation to conference and then from conference to hearing.

Council member Long suggested that this be articulated in the Annual Report. He stated that this is a very important point and suggested putting it in writing to help people see what is going on.

Chairman Joyce stated that the Massachusetts system works and noted that when there is something that is broken in the system everyone spends a lot of time hitting on that.

Mr. Taupier proceeded with his update on uninsured claims (§65), offering the following: total §65 claims reported in FY'17 (to date): 29; total amount of §65 claims paid by the Trust Fund in FY'17 (to date): \$2,492,582; 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): \$562,603; 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): \$1,712,512; 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 reported that as of September 2016, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 224 (169 DIA employees, 55 WCTF employees).

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY'17 (to date): \$935,010; total referral fees collected in FY'16: \$4,154,786; total assessment collections in FY'17 (to date): \$21,616,098; total assessment collections in FY'16: \$83,503,309.

Council member Michael Kelley stated that during the last meeting he had a question about the assessment. He stated that the Council was informed that the agency would be auditing the self-insurers and he wanted to know how that was going. He mentioned that they were told they were doing an audit of specific years since they have never done an audit of the self-insurer community before.

Mr. Taupier stated that it may a bit early to tell since they just started that process in August but he would find out where they are at.

Mr. Aaron D'Elia stated that he knows that there is considerable work being done there and will try to get some sort of timeline that would give some results on that.

Council member Mickey Long stated that he has a couple of questions on the Investigation Report. He stated that on the second page halfway down there are a couple of staffing agencies Expert Staffing and Expert Staffing Partners and he was wonder if (1) are they related and (2) do we know the industry they primarily staff? He explained his concern is that it is in one of the high premium codes like construction, asbestos, etc. He noted that there is a concern among AFL-CIO that some folks, to be more competitive, are using staffing agencies to be once removed and staffing agencies are helping them cheat. If they are in the construction industry he would be further suspicious that they are using them because it would be much cheaper.

Director Turner noted that the investigators were in court today but they should be at the next meeting to answer any questions.

#### Director Update

Director Turner stated that Circular Letter 348 that is now Circular Letter 350 has been issued. The Circular Letter addressed the assessment process and it went out about a week ago.

Director Turner informed the Council that they have hired a new General Counsel and he will be starting next Tuesday. She stated that his name is Kevin O'Leary and that he has had experience in workers' compensation in private practice for a number of years.

Director Turner stated that she wanted to take a minute to congratulate Judge Hernandez on the Opioid Pilot Program. She explained that he has worked on it for several years and it is really great that he got it through since it could be a life saver for many people. The Director stated that it will be announced at his Workers' Comp Conference on Friday but a larger announcement will be made later on and the DIA will let the Council know the details. Finally, she stated that as the Chair noted earlier it is the people that make this agency great and although during this last year the agency has been down key positions the people in this agency stepped up.

Chairman Joyce stated that 22 resumes and applications have been received for the Executive Director position. He suggested putting together a smaller committee to take a look and go through the process of weeding through them since 22 applicants is an awful lot to interview.

Council member Steve Falvey agreed that a smaller group be put together to go through the candidates to eliminate certain candidates and make recommendations to the full Council on who should be interviewed.

Council member Mickey Long stated that he liked the idea of a smaller subcommittee to weed out applicants. He recommended that the Council reserve the right to be able to reconsider an individual in spite of the subcommittee's recommendation. He stated that everyone should get to see the resumes and if the subcommittee says they would not consider this person but if any Council member wants this person to be considered then the subcommittee will.

Chairman Joyce asked that the resumes be sent to all Council members and asked for volunteers to be on the subcommittee. He stated after the subcommittee has been set then they can schedule a meeting to review the applicants. He noted that the actual interview process will be timely.

Three members of the Council agreed to be part of the subcommittee process: Steve Falvey, Todd Johnson and Bernie Mulholland.

Meeting adjourned.

**The next meeting of the Advisory Council is scheduled for Wednesday, November 9, 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.**