

**MASSACHUSETTS
WORKERS' COMPENSATION ADVISORY COUNCIL
MINUTES**

June 14, 2017

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

Council Members Present: Todd Johnson; Steve Joyce; Mickey Long; Bernie Mulholland; Michael Kelley; Frank Ruel; Teri McHugh.

Also Present: Linda Edmonds Turner, Director; Kevin O'Leary, Deputy Director/General Counsel; Omar Hernandez, Senior Judge; Bill Taupier, Director of Administration; Karen Fabiszewski, Trust Fund Manager, Bob Cronin, Director of Investigation; Aaron D'Elia, CFO Executive Office of Labor and Workforce Development; John P. Murphy, Massachusetts Insurance Federation; Diane Walsh, Administrative Assistant to Director and General Counsel.

Advisory Council Staff: Maureen O'Connell, Executive Director

Absent: Steve Falvey; John Pulgini; James Steenbruggen; John Regan; Executive Office of Labor and Workforce Development; and Executive Office of Housing and Economic Development.

Agenda:

Chairman's Welcome

DIA Update

- Vital Statistics – Bill Taupier, Director of Administration
- Director's Update – Linda Edmonds Turner
- Judicial Update – Omar Hernandez, Senior Judge

Action Items

- Minutes – April 12, 2017
- Minutes – May 17, 2017

Executive Director Update

Miscellaneous

CHAIRMAN'S WELCOME

Chairman Todd Johnson began the meeting at 9:00 A.M. by saying that the Council did not have a quorum and will begin in an informal manner. Chairman Johnson asked Bill Taupier to start the meeting off with his presentation.

DIA UPDATE

Vital Statistics

Director of Administration Bill Taupier updated Council members on the information contained within the DIA's vital statistics report for May 2017. Mr. Taupier said that the queue was slightly up, rescheduling is six weeks out, but in a manageable range.

Council Member Mickey Long spoke up and said that we don't like it in that range; that people are without money and prejudiced by these long delays. Council Member Michael Kelley asked if DIA pays attention to time between conference and hearing. Bill Taupier said that it's a known entity, but he doesn't know if he has a metrics for that, but it depends on the impartial exam scheduling and various matters (availability of doctor and claimant). Mr. Kelley said that he has a case in Springfield that it's been ten months since the impartial. General Counsel Kevin O'Leary asked Mr. Kelley who had the claimant he was referring to, if it involved Pellegrini. Mr. Kelley said that he didn't know. Mr. Long said that we're down in claims; delays are increasing not decreasing, and with technology we should see a much better case flow. Council Member Frank Ruel asked if DIA tracks cases at the conciliation level that are resolved. Mr. Kelley said that it's in the annual report that Maureen O'Connell sent out, close to 50% are resolved at this level. The monthly numbers hover in 45-49% said Mr. Taupier. Is that historical, asked Mr. Long. Mr. Taupier said it hovers in that amount for the past 7 years. Chairman Johnson said that the statistics were the same when he was ran the conciliation unit in the late 1980s. The delays are the delays because people aren't doing what they're supposed to do, suggests Mr. Long.

Mr. Taupier offered the following statistics: Regarding the pending hearing, DIA disposed of the Section 37 case in which the disposition ran over 37 months. Statistics are much improved and impressive said Mr. Long.

Mr. Taupier offered the following statistics: Conference Queue: 771; Hearing Queue: 552; Reviewing Board Inventory: 55; Impartial Exams for FY'17 (to date): 3,782; Exam Fees Collected for FY'17 (to date): \$1,718,647.

Mr. Taupier updated the Council on the Stop Work Order (SWO) and Caseload Statistics, including the following: SWOs issued in May: 209 SWOs, 12 SWOs were reissued as the result of defaults of previous orders. Mr. Taupier reminded everyone of the technical issues with WCRIB in April, system was down for 2.5 weeks with regard to SWO.

This number hovers in the 200s, the unit does a fantastic job of getting out there, but this is something that should be publicized, said Council Member Steve Joyce, you have to have workers' compensation insurance or there is a price to pay. Obviously folks aren't getting the message at different levels, because it continues to be a problem. Suggested double/triple the unit or get the message out there, it continues to be a problem. Mr. Joyce reiterated that the unit was doing a great job, but the same number is being hit every month. The message is not being received out there, said Mr. Joyce.

Mr. Taupier added that the compliance checks are 7,821. Total number of persons brought under workers' compensation insurance is 5,432.

Mr. Taupier offered claims administration statistics: 3,150 in the first quarter, bringing the annual total to 31,140. The claims that were filed was a little higher than last year 10,987. The total for FY 2016 was 12,263.

Council Member Long inquired as to the fiscal year, July 1. Mr. Long inquired as to the number of claims DIA is expecting before then, estimated 2,888. Mr. Taupier added that the numbers are consistent, exact same every year. Whether that has to do with building season, outdoor activity, almost every year we have an uptick in May/June numbers, said Mr. Taupier.

Mr. Taupier offered the next slide, cases filed by type. 962 employee claims; 208 discontinuances; and 5 third party claims for the month of May.

Mr. Taupier proceeded with the Trust Fund statistics: 128 uninsured injuries were reported to the Trust Fund. Mr. Long inquired whether that number would uptick past the number in 2016, Mr. Taupier said absolutely since there'd be an uptick in insured claims he would guess at the uptick in Trust Fund claims as well. Mr. Long further inquired as to the increased numbers and a trend downward, with the help of the Council and the Underground Economy, the bill passing in 2010 for privatized action and somehow beginning in November of 2015 there's been an increase. What's happened in the last two years that's projecting the increase in numbers? Mr. Long said that someone needs to look at it again because some of these claims go into the millions. If you have a paraplegic, as we've had in the past, a group of employers/insurers will have to pool their resources to pay for the injured worker. Somewhere that employer will be operating under a different name and putting us at risk again. We had the lowest premium for employers in the country in 2014. The AFL-CIO likes that because we can give more in wages, not insurance premiums. These are serious upticks that someone should say let's look at them, said Mr. Long. Mr. Joyce added that people should know that they have to have the insurance. We've been issuing approximately 200 SWOs monthly, for years. Some of the issues refer to people in the underground economy, uninsured, and not paying into the workers' compensation system. Mr. Joyce was happy that the Council on the Underground Economy was now housed in the DIA and asked if Deputy Director Alan Green could speak at the next Council meeting and provide a report of what's been going on with the other agencies. Council Member Bernard Mulholland asked if the industry would give us public service spots. Mr. Joyce said that part of the telecommunications act is to give agencies PSAs (public service announcement) at no or low cost. Mr. Joyce said it would net a return, more assessments coming in, and spending less on uninsured claims.

Chairman Todd Johnson offered two comments regarding the annual report and we've talked (Executive Director and Chairman) about refining areas of focus, as issues are identified and areas are made of concern, we should keep a tally sheet, the Council should speak to areas of concern, perhaps this, Trust Fund claims, becomes one of them. Chairman Johnson said that the number in the aggregate is concerning. The severity of the claims and the frequency of the claim should be identified to give a more complete picture. Chairman Johnson asked if the Trust Fund could distribute agency/industry reports that would show claim statistics.

Mr. Long mentioned the SWOs, who in the industry are getting these SWOs, he wanted to know. Have the employers, whose employees are in the Trust Fund, been cited, Mr. Long inquired. He'd like for the Governor to be aware of any correlation between those getting cited and the Trust Fund claims. Are these repeat customers, asked Mr. Long.

Mr. Long understands that there may be work involved with his and Chairman Johnson's requests; however, he is hopeful that the information could be taken off the computer and put in a report.

Chairman Johnson said that in the context of this meeting, the Council comes here month after month, for the most part the system is working, the DIA gets good credit, and we appreciate the positive work that's been done, but here is a blip on the screen (Trust Fund claims) and the Chairman wonders if there's something we need to know about with regard to these claims, but defers to the DIA's judgment on how best to present the information in the Council's request. The takeaway today is this is an area that we see a significant increase in claims and there's definitely data you could bring to the table to put some light on why this might be occurring or the nature of the claims driving this and the expense load that's tied into this. Put this as a follow up item, said Chairman Johnson as we move forward. If we are going to speak about this as an area of concern down the road, it's incumbent on all of us to get our arms around what's driving this increase in trust fund claims.

Mr. Kelley said that we have asked for this information for a long time, even prior to General Counsel Kevin O'Leary coming on board and the Council has received nothing. Mr. Kelley inquired as to the requests that were made prior to General Counsel O'Leary with regard to claims over \$25,000, and the industry involving these claims. Mr. Kelley said that maybe it would be better to focus on one month instead. Mr. Kelley commented how great the Investigation Unit did on the Islands (Martha's Vineyard) based on the statistics. Mr. Kelley was concerned that one large employer (over 75 employees) went without insurance from September 1, 2016 until May 2017, while others haven't had insurance since 2011.

Mr. Long asked if the Executive Director could write down every time the Council requests something so that the Council is reminded of the open items. Chairman Johnson said that they are in the minutes and added that although there is some frustration this morning, the Administration (referencing DIA) has provided a lot of information and there's ample evidence of responsiveness and concern. There's room to grow. We should keep tabs with regard to areas of concern. There may be validity on why they haven't changed, but if the seas are changing, then the Council needs to be better informed, said Chairman Johnson.

Regarding the Trust Fund cases, Mr. Joyce said that Council Member Steve Falvey has been asking for a while regarding what industry the claimants are employed in. The recovery numbers keep improving, but the number that is spent on Trust Fund claims is a significant number. Mr. Joyce mentioned safety grants and are they being focused on the right place, areas of the state or out of state, communities, business community, a lot of ways to address this, but we need the information before making these suggestions. Who are the companies that are claimed against in the Trust Fund, asked Mr. Joyce for the next meeting.

Can your team take a collaborative step back, said Chairman Johnson to DIA Director Linda Turner, and look at type of claim, industry, commonality or trends, then collectively we can begin to focus our efforts. Director Turner said she'd take a look at it.

This is a criminal statute that they're violating and the privacy issue shouldn't matter, said Council Member Long. Mr. Long said that he wanted this information and wants to be on record that he's asked for it. The reason why it's valued in our industry, said Mr. Joyce, is that they will come back as a different employer down the line and Mr. Joyce wanted to have this information so that they may inform DIA before another accident happens.

General Counsel Kevin O'Leary directed his comments to Chairman Johnson and the four Council members who brought up the following issues: SWOs by industry; repeat offenders; safety grants; focused on the right areas of the state; specific employment. You're all speaking in generalities, if you want this addressed specifically through the Chairman, draft a letter to the Chairman and send it to me and I will respond. If we can do it, we will, and if we can't I will let you know. In the same vein there needs to be that give and take, Chairman Johnson said to General Counsel O'Leary who said he'd be happy to do it, if he can. There should be a collaborative effort between us (DIA and the Advisory Council) added General Counsel O'Leary.

Chairman Johnson directed the Council members to communicate with him regarding this takeaway.

Mr. Long was concerned with violating the Open Meeting Laws if he sent an email, but Chairman Johnson said that he will make the request part of the open record when we reconvene at the next Council meeting.

Moving on, said Chairman Johnson.

Mr. Taupier presented the statistics on the recovery efforts against uninsured employers: the monies collected was \$2,187,259, with two months left to go we are well above prior years, the highest DIA has ever received. With regard to potential areas of concern, this is something that we should add into the annual report, it should be highlighted in the annual report as a positive development in the last couple of years, said Chairman Johnson. Council Member Kelley asked if there were significant cases that contributed to that recovery jump. Mr. Taupier said yes. General Counsel O'Leary said that there was an outstanding recovery of \$90,000 that wasn't included in the report, a lot of cases were disposed of quickly and they're getting their money back. Chairman Johnson and Mr. Long praised them for their good work.

With regard to the recoveries trending up the last four years, is there any relationship from a staffing commitment, said Chairman Johnson. General Counsel O'Leary said that he was down four attorneys and a Deputy General Counsel in his unit, and they're doing a very good job with a reduced staff.

Mr. Taupier mentioned SWO fines are \$1.7 million and the recovery efforts are over \$3 million. Massachusetts is the national leader in the workers' compensation system, particularly on the satisfaction of employees injured and premiums charged to employers, it's a great system, said Mr. Long. Everyone recognizes the national leadership. Mr. Long said that it took a lot from the Council members to get things to change, and because of it we/DIA are getting national coverage. Is there an average recovery that shows some type of trend, commented Council Member Ruel. Mr. Taupier reminded the Council that the civil litigation unit is not strictly uninsured; it also includes companies who violated SWOs. General Counsel O'Leary said that they can also get money back in tort fees.

Looking at the Section 37, added Mr. Taupier, and COLA reimbursements statistics: \$19,412,000. DIA is expecting to come close to the \$31 million, outstanding liabilities are pending and there'll be a rush at the end of the fiscal year. The COLA reimbursements are \$5,195,702 and DIA expects to be close to \$11 million by the end of this month, June. Since 2012, DIA has trailed off in numbers with regard to COLA, a downward trend, said Mr. Taupier. They're actually pre-1985 claims, said Council Member Kelley.

Aaron D'Elia, CFO said that his office could do a post-mortem on the budget and all of the spending. Mr. D'Elia said that he could do a presentation, in August or September of this year, 2017; it would depend on the accounts payable over the summer.

Mr. Taupier continued with a personnel update: 224 employees; a couple of new hires in the regions, a few retirees in Springfield and replacements; Maryann Brunton for Marc Joyce in Springfield; Ms. Brunton comes from the Massachusetts Commission Against Discrimination (MCAD); a stenographer to replace in Springfield, and a replacement for a retiring clerk in Worcester. Paul Przystarz, the Fall River Regional Manager was promoted to Regional Service Manager's position. When Chairman Johnson asked about Mr. Przystarz' position, Director Turner said that they sent a notice out, Mr. Taupier said February 2017, and Director Turner said that she would send out another notice.

Mr. Taupier mentioned that the referral fees for the year were \$3,816,115 and roughly the same as last year. With regard to the assessment fees, the DIA collected \$87,300,000, more than the projected amount, and the quarter is still calculating. Mr. Long asked if that number would be over \$90 million, Mr. Taupier responded probably.

Mr. Kelley asked Mr. Taupier if they were delving into the self-insured world. Mr. D'Elia said that they were doing audits, but not in the self-insured world currently. The audits are in the works for the self-insured world, said Mr. Taupier.

Mr. Kelley said that previously there was no consistency when it came to the audits. Mr. Taupier said that this is in the process. Mr. Long asked about the self-insured group of six. The self-insured, are they getting audited, asked Mr. Long. Mr. Kelley interjected and said that there are two groups; the self-insured and the self-insured group. Mr. Kelley is concerned with both not getting audited. Mr. Long mentioned that they have construction groups who are self-insured, and by doing so they manipulate premiums, and assessments, that's why AFL-CIO is interested in self-insured groups.

Mr. Kelley addressed Chairman Johnson and suggested that the self-insured audits be added to the list of open items, given to the Executive Director, and have Mr. D'Elia update Council members.

Judicial Update

Chairman Johnson spoke to Senior Judge Omar Hernandez about moving around the agenda, and gave him the floor. Senior Judge explained that the Opioid Alternative Treatment Pathway was now live, went live on Monday June 12, 2017. Also, live, as of Monday, was the direct upload system where conference packets are directly uploaded into the virtual bin, this is a much more efficient system. Senior Judge Hernandez updated the Council on Judge McManus in Fall River who was confirmed as a District Court Judge and will probably leave by the end of June. Judge McNamara will take over in Fall River after a new judge is appointed in Springfield. Senior Judge Hernandez said that an Administrative Judge position is open in Springfield (Springfield only position) and he hopes to have the Nominating Panel review candidates by the end of the month so that the Senior Judge can give this to the next Advisory Council before the July 12 meeting. Senior Judge Hernandez said that his target is early fall to have the new Administrative Judge in place.

Chairman Johnson asked about the new judges and if they were all hearing cases, Senior Judge Hernandez confirmed that they were. Senior Judge Hernandez added that it's been all positive feedback, the Judges have extensive workers' compensation backgrounds, and the Senior Judge is very happy.

Lastly, Senior Judge Hernandez said that he was adding language to the lump sum form, the reflective change to be effective by the end of the week, June 16, 2017.

Without any questions for the Senior Judge, Chairman Johnson directed the floor to Director Turner.

Director Update

Director Linda Turner welcomed the new Executive Director, Maureen O'Connell. Director Turner mentioned that the Executive Office of Labor and Workforce Development (EOLWD) will have a new Secretary effective July 1, Rosalin Acosta, and she has a background in banking.

Director Turner mentioned, also in the area of personnel, that the DIA has a summer intern, Jaclyn Rothenberg, an intern from the Governor's Office Internship program. Director Turner said that she will coordinate with the Executive Director to have Jaclyn meet Council members.

Director Turner said that she heard the theme of the meeting about education regarding workers' compensation and will be having a meeting with the new Communications Director, Charlie Pierce about what sorts of blogs, tweets, and advertising that DIA can do on a constant basis. Director Turner said that she does not have a Communications Director within DIA, but is looking to carve out more proactive communications.

Director Turner addressed the Council and said I am hearing you, with regard to the concerns the Council has mentioned in today's meeting.

Mr. Joyce said that after he read about the SWOs and saw the landscaping companies without insurance (one company last had insurance in 2007); that is scary. Not sure if there's a tree association out there, but you need to get the message out there. Mr. Joyce said to Director Turner that he appreciates her help.

Director Turner said that the DIA would have an internal team meeting to get the Council members' questions answered.

Director Turner said that the DIA does not have the authority to issue PSAs (public service announcements) on its own, and mentioned that the DIA will be interviewing for a Director of Operations who will include communications and strategic planning as part of the job description. Since it's a whole system, DIA needs to take a look at all parts.

No quorum so we cannot vote on the minutes finished Chairman Johnson and offered the floor to the Executive Director.

Executive Director Update

Executive Director Maureen O'Connell mentioned that she touched base with Senator Jason Lewis' office regarding the 28 bills in the Labor and Workforce Development Committee. There was a public hearing on May 2, 2017 and she plans on touching base with the Committee once a month in order to update the Council.

Mr. Kelley asked if they could have a copy of the bills, Executive Director said the Council had copies, but would provide them again. Mr. Joyce said that he doesn't remember seeing a list of bills for this year. When do we normally review them and make our recommendations, asked Mr. Kelley. Mr. Joyce said that usually Council members weigh in on this at the beginning of the two year session. Even though the hearing has happened, it doesn't mean the Council can't still weigh in, said Mr. Joyce. Some bills have been supported, some have been opposed.

Chairman Johnson asked Executive Director O'Connell to get a list together and circulate it to the Council members about the 28 bills. This will be put on the agenda if Council thinks it's appropriate to speak on the bills, said Chairman Johnson.

Chairman Johnson addressed the Council and said that a few members had said that based on the past a July meeting was canceled because there doesn't appear in the statute to have a need for twelve meetings. However, in light of what the Senior Judge said, we may need to get together for purposes of a Judicial interview. Senior Judge Hernandez said that he needed to make sure the Nominating Panel was on board for the end of June, if not, the interviews would be conducted in the fall.

Chairman Johnson said that the Council has a meeting that is scheduled tentatively for July 19 (error, it's July 12), second Wednesday of the month. Is there a consensus of a July meeting, asked Chairman Johnson; members said yes. Chairman Johnson added that it's a game time decision, keep that date open.

Chairman Johnson addressed Mr. D'Elia about any finance related information he wanted to offer. Mr. D'Elia mentioned that his office is still working with Deloitte & Touche on the assessment rate. Mr. D'Elia said that the report will be completed by July 1 and emailed to Council members.

Mr. Kelley asked Mr. D'Elia if there were any expectations on where the report findings were headed. Mr. D'Elia said that he thinks will be good news, and that his office will do a presentation and will share the materials in the report. As soon as the Deloitte & Touche report is in paper, he will share with the Council.

Mr. Kelley commented that he knows Virginia (Ginny) McCarthy from the Workers' Compensation Rating and Inspection Bureau (WCRIB) is not here, but mentioned that every two years there's a mandatory filing for rates as it relates to workers' compensation so there will be some discussion after the first of the year.

Historically, Mr. Long said that the Council weighed in to the previous Executive Director(s) on workers' compensation rates.

Chairman Johnson asked Executive Director O'Connell to check with Ginny McCarthy regarding that process. Mr. Long suggested that the Executive Director check with Andrew Burton (prior Executive Director) regarding the process and recommendations.

No need for a motion of a vote, said Chairman Johnson, the meeting is adjourned.

The next meeting of the Advisory Council is tentatively scheduled for Wednesday, July 12, 2017 at 9:00 A.M., at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.