

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

Wednesday, May 17, 2017
Department of Industrial Accidents
1 Congress Street, Suite 100
Boston, MA 02114-2017

Council Members Present: Todd Johnson, Teri McHugh, James Steenbruggen, Steve Falvey; Steve Joyce, Frank Ruel, Michael Kelley and Bernie Mulholland

Also Present: Kevin O'Leary, Deputy Director/General Counsel; Omar Hernandez, Senior Judge; Bill Taupier, Director of Administration; Aaron D'Elia, CFO;

Advisory Council Staff: Maureen O'Connell, Executive Director; Diane Walsh (temporary)

Absent: DIA – Linda Turner, Executive Office of Labor and Workforce Development; Executive Office of Housing and Economic Development: John Regan, John Pulgini and Mickey Long

Agenda:

Chairman's Welcome

DIA Update

- Judicial Update – Omar Hernandez, Senior Judge
- Vital Statistics – Bill Taupier, Director of Administration

Communications

Selection Subcommittee

Action Items

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

Executive Director Update

Miscellaneous

CHAIRMAN'S WELCOME

Todd Johnson started the meeting at 9:00AM. The Director is on vacation, hopefully having a good vacation. Welcome to everyone. First order of business is to introduce Maureen O'Connell as our new Executive Director. Many of you at the table were involved in the interview process. It's been a period of time but we are certainly pleased to have Maureen join us. Before I ask Maureen to introduce herself and to give some background information about herself I thought it would be helpful for each of us to do the same for her benefit, maybe just explain as a council member what constituency you represent and how long you have been on the council so that she has a better feel. I'm also going to ask other people that are regular attendees but are not council members to please join us in the introduction as well. I'll start off, Todd Johnson I've been on the council for 5 or 6 years now and I represent the self-insurers community and I am one of the voting members and now I'll turn to my right and ask you to go second. Hi, my name is Diane Walsh and I work at the DIA as the assistant to the Director and to the General Counsel and am temporarily filling in as the assistant for the Advisory Council while awaiting for the position to be filled and am happy to help out. The next person is Steve Joyce from New England

Carpenters Labor Management Program. Frank Ruel from Raytheon I represent the manufacturers in Massachusetts and I've been on the Advisory Council for a couple of years now. I'm Omar Hernandez and I am the Senior Judge and feels like I've been here forever. Bill Taupier, Director of Administration of the Department of Industrial Accidents and I've been here for more than 20 years. Kevin O'Leary I am the General Counsel/Deputy Director and I've been here for 7 months now and I think I represent the DIA. I'm Paul Przystarz and I am the Senior Regional Manager and the Regional Manager of the Fall River Office. John Murphy, Executive Director of the Massachusetts Insurance Federation. Hi I'm Ginny McCarthy and I am the General Counsel for the Workers' Comp Rating Bureau. Jim Steenbruggen I'm the business agent for the Council. Michael Kelley, Director of Claims Operations for HUB New England and I've been on the Council for two years but have been regularly attending meetings for about 15 years. Bernie Mulholland, I'm a practicing Workers' Comp Attorney and I represent the claimants. I've been on the council now for about 6 years as a non-voting member but giving input to the Bar on both sides. Steve Falvey, I'm a full time organizer from the Carpenter's Union and I represent injured workers and have been on the Council for about 12 years.

Hi I'm Maureen O'Connell and it's a pleasure to be here. For the past 20 years I've been working in the private sector at the Insurance Fraud Bureau. I've been an Investigator and my last role was a Lead Investigator where we did criminal investigations on all lines of insurance. I had a team of investigators and investigator trainees. Prior I spent 10 years with the Commonwealth Public Employee Retirement Administration where I conducted extensive workers' compensation investigations and prior to that I was a social worker. I also did Welfare Fraud Investigations. Communication is key. I look forward to working with all of you. Honesty is much appreciated with me. I would love to meet each and every one of you individually. You don't necessarily have to come here, I am happy to meet you wherever it is convenient for each of you. I don't have any business cards yet but I am happy to provide you with my phone number which is extension 7379. I am excited to be here and looking forward to working with all of you and I thank you for the vote of confidence. Todd Johnson then asked Maureen if she had an email address to provide. Yes an email account has been established but Maureen's computer is not working yet! Her email address is Maureen.O'Connell @ massmail.state.ma.us. Also a direct line to call Maureen is 857-321-7379.

Todd Johnson then resumed the meeting stating that for the purpose of the council members with a new Executive Director we are hopefully going forward with a new concept, with a fresh look, new chapter and filling the other position which is currently open which will then allow the Council to operate with a full complement of talent which we have enjoyed in the past. But please take advantage of Maureen's offer to meet with all of you and discuss any areas of concerns or observations that Maureen should be paying attention to or focusing on. Several folks have brought the annual report up for discussion looking at ways to modify some of the information possibly add some stuff and delete some items. So I encourage the council members to take advantage and meet with Maureen.

Todd Johnson then asked Senior Judge Hernandez to provide the judicial update.

JUDICIAL UPDATE

Senior Judge Hernandez: Good morning, Well 7 judges are in and are all settled into their regions. Judge Maureen McManus has been nominated to a District Court which now leaves a vacancy in the Fall River Office. Ann McNamara will be transferring to Fall River which will leave a vacancy for Judgeship in the Springfield Office. We have posted the position in the local news outlets specifically covering the Springfield Office for a 6 week period which will expire on June 6. Ann will remain in the Springfield office until the Springfield Judge replacement is in place. I currently have traveling judges going out to the Springfield Office as well but need a permanent placement. We will be down one judge in Fall River

but that office I can currently carry 3 judges. We only have one Judge, Judge Rose, covering the Springfield Office and he has been covering this region for too long. With regards to Maureen McManus, we started together and I'm really excited for Maureen to be moving up. It's a great opportunity for her. Senior Judge was asked if he will be posting Judge Bean's position with this current posting but has declined to do so. Senior Judge Hernandez wants to primarily focus on the Springfield Candidate advertising in the western part of the state from Worcester out. Both Judge Bean's and Judge Hernandez's positions are up for reappointment in the fall and will be posting those positions at that time. Judge Hernandez added that he does not want to confuse the postings with different locations and is currently focusing on Springfield with the actual posting reading Judgeship Opening for the Springfield Office. There should be no confusion as to the work location.

Senior Judge then added that we are rolling out Direct Uploads. This is basically conference submissions that are currently being emailed to the judge's assistants which in turn they resubmit to another department for entering. This new process will eliminate the transfer of information and be directly downloaded and automatic responses will be issued stating your submission has been received. Another auto response will be issued with acceptance or rejection of downloaded materials. This process will be much more efficient. The training is being conducted by myself and Deborah Pierre. We are inviting all bar members to participate in this training and are offering training sessions at all five regions which will be posted at all locations.

Judge Hernandez then offered with respect to conferences, with the exception of Springfield, we are really doing well. We are at 2 ½ months, which is perfect. With respect to hearings we are at 4 hearings per day. With respect to conferences, depending on the region, we are currently at 5 to 8 per day. Fall River maybe at 10. Being at full capacity has really been helpful.

Todd Johnson asked the Judge Hernandez, what is the average hearing decision time after close of evidence for a decision to be written? On average about 60 days sometimes up to 90 days depending on the complexity.

Todd Johnson then asked Judge Hernandez if he wanted to touch base on the Opioid Project. Judge Hernandez responded yes we had our first committee meeting last month and it went really well. We got a lot of great ideas. We are currently in the testing phase of the documents and should be rolling this out by early next month. I'm actually traveling to Springfield tomorrow to meet to talk about a trial case with a claimant who is currently on 20 different medications and the doctor wants to add 4 more medications. The insurer is willing to offer the program and weed him off the medications. The impartial medical exam showed that he could be at high risk for opioid addiction or accidental overdose. So between myself and Judge Rose we are going to talk with employee's council and try to get the employee involved.

Judge Hernandez was asked, how are you going to identify people at risk. We are hopeful that council will be able to help identify these folks. The program is voluntary. Hopefully claimants will follow this path but if they choose not to then they will go the traditional path but the culture is changing. There are many that don't want help, but there are several that are willing and wanting to participate.

I received a call from a Member of the Advisory Council from Wisconsin asking about information on our Opioid Program. They are changing their program and are hoping for some input from us. Todd Johnson responded just what you need, another Council to deal with!

Judge Hernandez was asked is the opioid program to assist before or after? Right now it is being offered as a post lump sum case. I wanted to do this after case was settled. We are trying to create a level of trust between the claimants. We are here for your health; we are not here to take away any benefits but to help

assist you with taking another path to recovery. Ideally I would like to open this up at the front end but have to wait until we roll it out this way.

Bill Taupier then added that he would like to mention that during the past month with regards to our Investigations Unit we had a systems failure with the sight we use to verify workers' comp insurance policies which is called Spectrum. The Spectrum System which is connected through the WCRIB was down for approximately 3 weeks. I will say it was not the WCRIB's fault but because the system failed our investigations unit stop work orders were very low.

General Counsel Kevin O'Leary added with regards to the stop work orders that we should rebound and I would like to mention that currently our Investigations Unit has traveled to Martha's Vineyard. Allen Green reported that a team of 5 investigators have completed 300 compliance checks and issued 16 stop work orders in a 2 day period. They have checked in with all the local officials, police department, etc. we are not locals so we want to properly identify ourselves and make sure that everyone knows what we are doing. The people on the island have been operating without any compliance checks for approx. 11 years but we are doing our job and bringing these folks into compliance. Attorney Bill Brady will be in the Fall River Office next Thursday as a hearing officer for any businesses that want to appeal their stop work order. We want to work with these folks and make sure they are in compliance and if they decide to dispute the stop work order one of the Fall River Judges will be assigned to hear the case probably within the next month. Now onto Nantucket!

Chairman Todd Johnson then responded, all right so let me get into our typical routine and turn this over to Mr. Taupier.

Bill Taupier, Director of Administration provided the DIA Update as follows:

VITAL STATISTICS

Director of Administration Bill Taupier updated Council members on the information contained within the DIA's vital statistics report for May, 2017. He offered the following statistics: Conference Queue:

617; Hearing Queue: 449; Reviewing Board Inventory: 64; Impartial Exams for FY'17 (to date): 3,464 (51 waivers); Exam Fees Collected for FY'17 (to date): \$1,617,226; 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 April: 68 (1 SWO was reissued as the result of a default of a previous order); total SWOs issued in FY'17 (to date): 1,451; fine collection for April: \$102,970; total fines in FY'17 (to date): \$927,531; SWOs issued in FY'16: 2,185; total fines collected in FY'16: \$1,107,030; compliance checks for April :3,694; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 4,804 in FY'17 (to date). *Please note: during April a critical information system used to verify workers' compensation policies was off-line for nearly 3 weeks. Hence, the investigation unit had no choice but to suspend issuance of SWOs as there was no way to confirm either the existence or absence of a policy.*

Mr. Taupier continued the update of the monthly vital statistics offering the following: total cases filed in April: 977; total cases filed in FY'17 (to date): 9,722; total cases filed in FY'16: 12,263; Total First Report of Injury Forms (FRI) filed in April: 2,409 (2,409 filed electronically: 100%); total FRIs filed in FY'17: 27,990; total FRIs filed in FY'16: 34,660 (30,559 online). In April the number of employee claims filed: 977; number of employee claims filed in FY'17 (to date): 9722; number of discontinuances

filed:140; the total number of discontinuances filed in FY'17 (to date): 1,486; the number of third party claims filed: 3; total number of third party claims filed in FY'17 (to date): 35.

Mr. Taupier proceeded with his update on uninsured claims (§65), offering the following: total §65 claims reported in FY'17 (to date): 104; total amount of §65 claims paid by the Trust Fund in FY'17 (to date): \$6,578,598; 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): \$2,001,665; 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): \$16,637,284; total amount paid on these claims in FY'16: \$28,019,870; total COLA reimbursements to insurers in FY'17 (to date): \$5,192,755; total COLA reimbursements to insurers in FY'16: \$11,018,308.

Mr. Taupier reported that as of April, 2017, the number of employees whose salary is paid by either the Special Fund or the Trust Fund was 221 (168 DIA employees, 53 WCTF employees).

Mr. Taupier presented the following accounting and finance statistics: total referral fees collected in FY'17 (to date): \$3,539,502; total referral fees collected in FY'16: \$4,154,786; total assessment collections in FY'17 (to date): \$70,061,641; total assessment collections in FY'16: \$83,503,309.

Bill Taupier reported that the May, 2017 Conference queue is at 617 cases, which is up when compared to the April figure of 564. Currently, the average waiting period for a conference is between 10 and 14 weeks. The May Hearing queue is at 449. This is up compared to the April figure of 430. Currently the Hearing Queue is 2-4 months.

Todd Johnson then asked Bill Taupier to discuss the CUE. Bill responded that the CUE is the Council on the Underground Economy which is now falling under the responsibility of the DIA. The Underground Economy is a multi-state effort to disrupt the underground economy by way of unfair legal practices, employment fraud, wage fraud, etc. The CUE works with several state agencies such as DIA, DUA, DOR, DLS and AG's Office. How it works is DOR may receive a tip on a company, they notify us to verify if the company has an active workers' comp policy, they will check with DUA for any employment fraud, etc.

Allan Green is the new Executive Director of the CUE and Brenda Thornton has been hired as an Administrative Assistant. They currently do not have a website. Their 2016 annual report is being compiled. Todd Johnson asked who the caretaker of this was prior to DIA. This was assigned to Department of Labor Standards (DLS) but the former Executive Director left state service so in light of this the executive office thought it is best to be re-assigned to DIA. Melissa Butts was the former administrative assistant and although she left state service as well she has been very helpful coming in on her own time to help get this project up and running.

ACTION ITEMS

Minutes – April 19, 2017 Meeting

No Quorum - cannot vote

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EXECUTIVE DIRECTOR UPDATE

Todd Johnson: We will spare our new Executive Director on her update until next month.

Motion was made to adjourn the meeting.

Meeting adjourned.

The next meeting of the Advisory Council is scheduled for Wednesday, June 14, 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.