

MASSACHUSETTS WORKERS' COMPENSATION ADVISORY COUNCIL MINUTES

December 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; Teri McHugh; Frank Ruel; John Regan; Mickey Long; John Pulgini; James Steenbruggen.
Also Present: Linda Edmonds Turner, Director; Kevin O'Leary, Deputy Director/General Counsel; Omar Hernandez, Senior Judge; Bill Taupier, Director of Administration; Marc Joyce, Senior Regional Services Manager; Bob Cronin, Director of Investigations; Alan Green, Deputy Director Investigation; Judith Atkinson, Legal Counsel WCTF; Aaron D'Elia, CFO; Virginia McCarthy, Workers' Compensation Rating and Inspection Bureau (WCRIB).
Advisory Council Staff: Evelyn Flanagan.
Absent: 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
- Director's Update
- Potential Changes in Self Insured Excess Insurance

Communications
Selection Subcommittee
Action Items

- Minutes – September 14, 2016
- Minutes – October 12, 2016
- Minutes – November 9, 2016

Executive Director Update
Miscellaneous

CHAIRMAN'S WELCOME

Chairman Steve Joyce began the meeting at 9:00 A.M. Chairman Joyce 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; Lawrence and Worcester are at 3 months, Springfield is at 3.5 months and Fall

River is at 4 months. The Senior Judge stated that the four reappointments have been confirmed and the Governor's Council has interviewed three new appointments. The Senior Judge stated that they are still working out some issues with the impartial roster but it is moving along. He stated that with respect to the hearing decisions it has bumped up a little bit but they are still in good shape.

Council member Mickey Long asked if the Senior Judge thought that this is because of the pressure between this Council and the Judge's office that this backlog has been significantly reduced. The only reason I am saying this on the record is that if it works let's keep it up so these numbers can be as low as they can possibly be. Congratulations.

Chairman Steve Joyce stated that if some judges are leaving this backlog could become a real problem. Chairman Joyce noted that earlier on he said that managing stuff was up to the Senior Judge and it wasn't important for the Council to know who is sitting on the late decision list but if cases sit and have to be reheard then maybe we do need names at some point. He stated that it is good to put pressure on but if folks are sitting and not getting things done and it is not a priority to get cases done then perhaps the judges have been sitting way too long. Mr. Joyce stated that to him this goes from a problem to disgraceful.

Vice-Chairman John Regan stated that this is something that companies experience all the time with people leaving but that there are ways and tools that are helpful in incentivizing people to behave properly and finish the work that they have committed to. Mr. Regan stated that he was not sure what those tools are but he invited the Senior Judge to think about what they might be and that they might be able to put it into the statute. He stated that he agrees with Steve that the fact that some of these might need to be reheard is disgraceful.

Senior Judge Omar Hernandez stated that Governor Baker approved the Opioid Pathway Treatment Program. He noted that last week they had a press conference and it went really well. He stated that he was very proud and can't wait to get this going. The Senior Judge stated that at the beginning of the New Year they will have the program up and running. He stated that they have had a real positive response from everyone and in another couple months he will provide an update.

Vital Statistics:

Director of Administration Bill Taupier updated Council members on the information contained within the DIA's vital statistics report for December 2016. He offered the following statistics: Conference Queue: 554; Hearing Queue: 736; Reviewing Board Inventory: 58; Impartial Exams for FY'17 (to date): 1,424 (28 waivers); Exam Fees Collected for FY'17 (to date): \$996,000; 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 November: 159 (11 SWOs were reissued as the result of defaults of previous orders); total SWOs issued in FY'17 (to date): 854; fine collection for November: \$99,197; total fines in FY'17 (to date): 493,060; SWOs issued in FY'16: 2,185; total fines collected in FY'16: \$1,107,030; compliance checks for November: 7,007; estimated number of workers now covered by workers' compensation insurance as the result of a SWO: 2,587 in FY'17 (to date).

Mr. Taupier continued the update of the monthly vital statistics offering the following: total cases filed in November: 1,067; total cases filed in FY'17 (to date): 4,895; total cases filed in FY'16: 12,263; total First Report of Injury Forms (FRI) filed in November: 3,072 (2,757 filed electronically: 90%); total FRIs filed in FY'17: 14,627; total FRIs filed in FY'16: 34,660 (30,559 online). In November the number of

employee claims filed: 913; number of employee claims filed in FY'17 (to date):4,153; number of discontinuances filed: 150; the total number of discontinuances filed in FY'17 (to date): 726; the number of third party claims filed: 4; total number of third party claims filed in FY'17 (to date): 16.

Mr. Taupier proceeded with his update on uninsured claims (§65), offering the following: total §65 claims reported in FY'17 (to date): 50; total amount of §65 claims paid by the Trust Fund in FY'17 (to date): \$3,569,523; 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): \$1,150,509; total recovery efforts against uninsured employers FY'16: \$1,746,315.

Council member Mickey Long asked why they were tracking close to last year and assumed that this is not a good thing. Mr. Long noted that they had been down to 99, which was historically low, and then it jumped up to 129 uninsured injuries and now we are tracking the same for this year and maybe worse. He stated he realizes there is more work going on but he did not know if there is more work than last year or when it was 99. He asked if there has been an attempt by the administration to figure out why this is happening. He suggested that the administration look into what injuries are resulting, what injuries are not insured, and what injuries resulted in people being issued a stop work order. Mr. Long noted that there were a series of questions that could be addressed by this and he stated that it would be helpful to get some answers by next month's meeting. Mr. Long stated that he would like to see the Annual Report make mention of what seems to be a two year trend after it was as low as 99 because that was some historic stuff.

Council member John Regan stated that as Mickey said is there a way to profile these cases to see what the similarities are? Are there any common denominators – is it the same individuals or the same industries what do these 50 cases share in common and how does that compare to the 129 from last year. Now you have a pathway to enforcement in the areas where right now we may be missing something. Chairman Joyce stated it would be helpful if we are getting on average ten a month if we could get as part of our report by industry what is happening.

Council member Michael Kelley asked for an inventory of the prior year by industry and severity just the top 15 or 20 cases what are the injuries and what is the expectation of that case and we have never seen anything. Mr. Kelley asked if they could provide how many actively open cases the trust fund has. Mr. Long stated that we should be able to do this on a monthly basis. He also asked why we cannot identify the employers and where they are from. He stated that he was not trying to shame people as much identify people who are out there costing other employers a ton of money.

Mr. Taupier stated it was certainly worth looking into and that he would provide the information noting that they can certainly give industry.

Mr. Long asked why the employer's name could not be given since the employer has no expectation of privacy when they go out and make money in commerce without carrying workers' compensation. He noted that they are required by a criminal statute to have coverage and when they don't then the criminal's name is entitled to be published in the newspaper whether it is a DWI or robbing a bank or by robbing from honest employers by not getting comp.

Council member Steve Falvey stated that there is a huge hole in the insurance requirements in that there is no penalty day to day for operating without insurance. That is a huge hole and we have some legislation being proposed for that. Mr. Falvey noted that in the context of this conversation this is evidence for a solution for that problem. Why would these contractors buy anything because until they get caught – a trust fund case is a hit and run the investigators can only hit one button that is a stop work order but nobody looks back.

Chairman Joyce stated that it would really be helpful to have this information. We should focus on the industries where the trust fund is most vulnerable.

Mr. Taupier stated that these are reported injuries and it will not necessarily end up being a case for the trust fund in some cases we find the general contractor and the case is joined to the trust fund. The 50 cases are the reported injuries and it does not necessarily translate into dollars being paid by the trust fund.

Mr. Long said he understood that going back of the 129 claims in 2016 he was assuming that that was the number that was uninsured. He noted that they are either trust fund cases or they are not. He stated that he can see them being logged in as a trust fund cases but somewhere along the line they are going to be thrown out as a trust fund case because they are covered so you might want to let us know what the real number is of the 129 because you found some to be covered after all.

Mr. Taupier stated that they would end up on this list and if they had insurance they would be taken out. He stated that he can look and try to identify over the past five years the number that was reported and the actual number of cases of uninsured.

Mr. Long stated that he would really appreciate an exact analysis because he uses these numbers as talking points. Sooner or later we need to know exactly how much of this Trust Fund is being expended on uninsured claims.

Mr. Kelley asked if they could provide how many actively open cases the Trust Fund has. Mr. Kelley also asked if the Chairman would have placed on next month's agenda a discussion of the potential changes in the Self Insured excess insurance.

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): \$7,262,617; total amount paid on these claims in FY'16: \$28,019,870; total COLA reimbursements to insurers in FY'17 (to date): \$581,892; total COLA reimbursements to insurers in FY'16: \$11,018,308.

Mr. Taupier reported that as of November 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): \$1,695,455; total referral fees collected in FY'16: \$4,154,786; total assessment collections in FY'17 (to date): \$45,275,758; total assessment collections in FY'16: \$83,503,309.

Director Update

Director Turner congratulated the Senior Judge on his Opioid program. She thanked the Council members who attended the press conference also. Director Turner stated that she is currently working on the paperwork to get the people replaced that were lost through the retirement program. Director Turner stated that for the holidays the DIA supports a shelter. She explained that this year they support a shelter in East Boston for Children and 26 families. In closing the Director thanked Ms. Flanagan for her work. Chairman Joyce stated that at the last meeting there had been discussion about the Public Trust Fund money being moved and the Council had asked for someone to give us an explanation of how that is authorized.

Mr. D'Elia stated that they had talked about it briefly and that it is pretty clear that they are allowed to do it under chapter 29, §13A. He stated that the statute gives them the authority to sweep trust funds. He

explained that he does not believe they will touch the private trust fund and the only reason the public Trust Fund was considered was that it sat idle for six plus years. He stated that there was no outstanding liability and we did not have an easy method to transfer those funds to any of the other trust funds. Chairman Joyce stated that he gets that this was dormant but it is a horrible way to start balancing budgets by robbing from Peter to pay Paul. There are other ways for doing this and there are purposes for things to be in certain pockets and it is a dangerous precedent.

Vice Chairman John Regan stated that the other thing they discovered was that if there were charges against the Public Trust Fund the state would have to come up with the money anyway. Chairman Joyce agreed to Mr. Kelley's request that a discussion of the potential changes in the Self Insured excess insurance be placed on the January 11, 2017 Agenda.

SELECTION SUBCOMMITTEE REPORT

Council member Todd Johnson provided an update on the subcommittee actions. He stated that they have narrowed their candidates to five. He noted that one of the candidates lived out of state. It was decided that the Acting Executive Director would contact the candidates and schedule interviews with the full Council on Wednesday, December 21, 2016 starting at 9:00 AM. It was also suggested if possible to schedule a meeting with one of the candidates remotely.

Council member Mickey Long asked if the subcommittee could provide the candidate since Ms. Flanagan would be leaving in two weeks.

Council member Falvey stated that during the subcommittee meetings that Mr. Taupier and Director Turner had been left out of the loop and that may be a problem.

Council member Long stated that he had a problem with that which goes back to when Executive Director Burton was let go which bothered a lot of us and we took the position that this position is a Council position and the decision should be the Council's decision.

Chairman Joyce noted that the statute says and the Administration is part of the Council (Secretary of Labor) but when it comes to a final vote it is up to the voting members of the Council. The statute says that the Council shall appoint staff to carry on the functions of the Council. The Secretary of Labor has veto power of any person we choose. The appointment would come from the Council and the Secretary of Labor can either approve it or disapprove it but all discussion includes everyone who is a Council member.

Council member Steve Falvey asked that the Administration provide a person in the interim from when Evelyn leaves and someone is placed in the Executive Director position. He requested that the Administration send out to the Council members the name of the person who will be the point person. Director Turner stated that she would appoint someone as the point person to coordinate meetings and other Advisory Council requests.

ACTION ITEMS

Motion was made to approve the September 14, 2016 minutes.

MMS

Motion was made to approve the October 12, 2016 minutes.

MMS

Motion was made to approve the November 9, 2016 minutes with the suggested correction by CFO Aaron D'Elia changing the wording to assessments rates.

MMS

ACTING EXECUTIVE DIRECTOR UPDATE

Ms. Flanagan stated that she has left the judicial recommendation book with Senior Judge Hernandez since the Council's recommendations are recorded in the book. Ms. Flanagan stated that with respect to the Annual Report she has forwarded the word copy to Director Turner if any edits by the Council needed to be made. Ms. Flanagan stated she would really miss the Council members and thanked everyone stating that she really enjoyed working with them.

Chairman Joyce stated that Ms. Flanagan has been fantastic with your wealth of information and has been so easy to work with. The Chairman thanked Ms. Flanagan for making his life easier by dealing with a lot of this stuff and presented her with a plaque in recognition for her service. Mr. Joyce stated that with regard to the Annual Report that has been something that has been done by two people and Ms. Flanagan had to pull it off by herself and did a fantastic job.

Motion was made to adjourn the meeting.

MMS

Meeting adjourned.

The next meeting of the Advisory Council is scheduled for Wednesday, January 11, 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.