

**MASSACHUSETTS
WORKERS' COMPENSATION ADVISORY COUNCIL
MINUTES**

July 19, 2017

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

Council Members Present: Todd Johnson; John Pulgini; Mickey Long; John Regan; Stephen Joyce; Stephen Falvey; James Steenbruggen, Frank Ruel, and Bernie Mulholland.

Also Present: Linda Edmonds Turner, Director; Kevin O'Leary, Deputy Director/General Counsel; Omar Hernandez, Senior Judge; Bill Taupier, Director of Administration; Alan Green, Deputy Director of Investigations; Robert Cronin, Director of Investigations; Dennis Johnson, Director of Diversity and Equal Opportunity of Executive Office of Labor and Workforce Development; Aaron D'Elia, CFO Executive Office of Labor and Workforce Development; Virginia McCarthy, Workers' Compensation Rating and Inspection Bureau; Daniel Judson, President of Workers' Compensation Rating and Inspection Bureau.

Advisory Council Staff: Maureen O'Connell, Executive Director

Absent: Teri McHugh; Michael Kelley; John Murphy of Massachusetts Insurance Federation, Diane Walsh, Administrative Assistant to Director and General Counsel; Executive Office of Labor and Workforce Development; and 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 – Linda Edmonds Turner

Action Items

- Minutes – April 12, 2017
- Minutes – May 17, 2017
- Minutes – June 14, 2017

Communication

Executive Director Update

Miscellaneous

CHAIRMAN'S WELCOME

Chairman Todd Johnson began the meeting at 1:00 P.M. by saying that the Council did not have a quorum, but we will get the meeting started. We are short one vote for a quorum, but are expecting two of our colleagues to join us. We will have to avoid votes at the outset of the meeting, but traditionally information has been presented to the Council from the DIA. We have a full agenda with an

Executive Session to follow, and some judicial interviews this afternoon. Thank you for the accommodation regarding the change of date and time for this meeting, it is appreciated.

The Chairman welcomed Senior Judge Omar Hernandez.

DIA UPDATE

Judicial Update

Senior Judge Omar Hernandez explained that the department was in great shape with regard to conference and hearing queues. They are running two and a half to three months in all regions; this is due to a full staff of judges. A few judges will be taking vacations over the summer, the queue may go up a little, but it is expected to go back down in September.

With respect to the Opioid Alternative Treatment Pathway program it is up and running, they've had a few people complete the forms online scheduling for conciliation, and that is progressing really well. It is with hope that there will be a few success stories. A Committee meeting will be held next Thursday, July 27, 2017 to discuss the progress of the opioid program and to review the care coordinator resumes. A list will be developed so that the claimants can review to see which coordinator is appropriate for their care. In response to Chairman Johnson's question about the coordinator, Senior Judge Hernandez said that the coordinators will direct the care, and make sure that the claimant is getting the right care. The coordinator will serve as a middle person between the claimant and the provider. In conversations Senior Judge Hernandez had with the medical providers, he learned that many times they ran out of options and just kept providing prescriptions. Many of the providers expressed that they were looking for this kind of help, and Senior Judge Hernandez' thoughts are that this will work nicely with the care coordinators.

In response to Vice-Chair Pulgini's question of whether there was a particular judge that will hear these cases, Senior Judge Hernandez indicated that Judge Heffernan and Judge Barrett will handle these cases in Boston, and mentioned that tomorrow morning, July 20, 2017 they are going to Quincy District Court to visit with Judge Heffernan's niece, Marybeth Heffernan who is the District Court Judge that operates the drug court in Quincy. The three judges plan to observe and see how these cases are handled. With respect to the other regions: in Lawrence, Judge Rosado will hear these cases; in Worcester, Judge Maher; in Springfield, Judge Rose, and in Fall River, Judge Bergheimer. Senior Judge Hernandez said that he would provide the Council with an update after his visit to Quincy District Court.

Senior Judge Hernandez said the Nominating Panel interviewed five candidates for the judicial position and all are considered fantastic candidates coming through to the Advisory Council for interviews. Senior Judge Hernandez is very pleased with the five candidates and feels they will be able to step right in to do a wonderful job in Springfield.

With regard to decisions, Senior Judge Hernandez said that he would like to keep it under six to nine months and he is staying aggressive on this. The prior lengthy decisions (12-36 months and 36+ months) have been resolved. Chairman Johnson said this progress was outstanding. Council Member Long congratulated Senior Judge Hernandez.

Chairman Johnson added that he knows that it is not lost on Senior Judge Hernandez with respect to the candidates' comments in their application about how to reduce these lengthy delays.

Senior Judge Hernandez mentioned that he was asked to speak to the workers' compensation department in New Hampshire due to their interest in Massachusetts' Opioid Alternative Treatment Pathway program. Senior Judge Hernandez' plan is to offer his assistance in helping them implement a similar program in their state equivalent to the program in Massachusetts, with hopes that it will be in place at the end of 2017.

Chairman Johnson asked the Council if they had any questions for the Senior Judge, to which Council Member Mulholland asked if there was going to be a multi-state conference in Foxboro, MA this year. Senior Judge Hernandez confirmed that there will be a meeting in September, possibly the third week of September, but would email the Chairman.

Without additional questions, the Chairman directed the floor to Bill Taupier, Director of Administration.

Vital Statistics

Director of Administration Bill Taupier updated Council members on the information contained within the DIA's vital statistics report for June 2017. Mr. Taupier provided information from the review board inventory: the impartial examinations were almost very close to where they were last year, close to 4,000. Since the waivers have been granted, the numbers are very similar: Exam Fees Collected for FY'17 (to date): \$2,000,000.

Mr. Taupier updated the Council on the Stop Work Order (SWO) and Caseload Statistics, including the following. SWOs issued in June: 181 SWOs for a total of 1,909 for FY 2017. Fines collected for the month of June \$98,676 with a FY 2017 total of \$1,047,400. The total fines collected for the year for SWOs were \$1,107,030.

Mr. Taupier offered the following statistics: total number of compliance checks for June, 2017: 7,426. The number of employees brought under workers' compensation insurance coverage in FY 2016 were estimated at 5,945. Chairman Johnson asked Mr. Taupier to go back one slide regarding the SWOs. Mr. Taupier indicated that there was a technology problem within DIA that caused the failure to link between the Workers' Compensation Rating and Inspection Bureau (WCRIB) system. Because of this issue, the DIA was unable to verify workers' compensation policies.

Mr. Taupier offered the following statistics: First Report of Injury filings for June, 2017 were 2,714. Total cases filed for 2017 were 11,924. The total number of cases in 2016 was 12,263. A case includes employee claims, an insurers request for discontinuance or a third party claim/lien.

Mr. Taupier offered the following statistics: the Trust Fund ended the year with 133 uninsured persons reporting injuries and \$7,898,408 was expended for these claims. The amount expended will likely change as the books for August do not close until August 31, 2017.

Aaron D'Elia, CFO explained that there are accounts payable for July and August and he was going to recommend to the Council that he prepare a presentation on post-mortem spending on FY 2017, similar to the presentation he did in January of this year. Chairman Johnson said that this would be great.

Council Member Long asked if the Council was going to get the severity of these 133 claims in the Trust Fund. Chairman Johnson responded by saying that this was going to be available at the next Council meeting.

General Counsel O'Leary indicated that he is in the process of gathering this information and wanted to confirm that he communicated this through Chairman Johnson who then informed Council members. General Counsel O'Leary said that he would present something at the meeting in August.

Mr. Taupier added that the collection (recovery efforts) against uninsured employers is \$2,420,626. Council Member Long congratulated DIA for the good job.

Mr. Taupier provided statistics on the Second Injury Fund: \$21,261,273 in reimbursements to insurance carriers and self-insureds. This number continues to rise as the DIA has an influx of cases in the last quarter, some are still being processed. The COLA reimbursements were \$5,239,741.

Mr. D'Elia commented that he looked into the trend of the Second Injury Fund and it could be in the \$25 million range, however once he does his presentation in September he would be better able to tell what the trends are. Chairman Johnson confirmed with Mr. D'Elia that the number he was just referring to had to do with the Second Injury Fund. Chairman Johnson asked Mr. D'Elia if he had any projections with regard to the COLA side, Mr. D'Elia said no, not at this time.

Chairman Johnson asked Mr. Taupier whether the \$5.2 million COLA reimbursement was up to the third quarter of 2017; Mr. Taupier said no that it was reported up until the end of June 30, 2017. These are numbers that are actually reported to the MMARS system for payables, said Mr. Taupier.

In response to Chairman Johnson's question about accounts payable, Mr. D'Elia said that State accounting is on a cash basis as opposed to an accrual basis. Mr. Taupier said that all invoices should be submitted by June 30, 2017 to be credited towards FY 2017, all invoices on or after July 1, 2017 will be credited towards FY 2018.

Mr. Taupier continued with a personnel update: 223 employees; one retirement in June, 2017. The employee spent her entire career in the Impartial Medical Unit of the DIA.

Mr. Taupier presented the statistics on the referral fees for FY 2017: \$4,189,725, these have been very steady said Mr. Taupier.

Mr. Taupier presented the statistics on the assessment collections for FY 2017: \$87,300,000. Chairman Johnson commented and said that's great.

Mr. D'Elia said that revenue came in as projected.

Chairman Johnson said that although this wasn't up on the screen, the Council Members have one more page in their handout pertaining to the DIA Assessment Rates for FY 2017 – FY 2018.

Deloitte and Touche report is in the process of being signed off said Mr. D'Elia and will be shared with the Council when it is available, definitely by the next Council meeting.

Chairman Johnson asked if there were any questions for Mr. Taupier.

Without any questions for the Mr. Taupier, Chairman Johnson directed the floor to Director Turner.

Director Update

Director Linda Turner welcomed Daniel Judson, the new President of the Workers' Compensation Rating and Inspection Bureau (WCRIB). Mr. Judson stated that he was the former Commissioner for the Division of Insurance.

Director Turner mentioned that at the last meeting there was discussion about getting more advertising and encouraging people to get workers' compensation coverage. Director Turner said that she had a meeting with the Director of Communications, Charles Pierce on how this could be executed. Director Turner indicated that she would introduce Mr. Pierce to the Council at a future meeting in order for the Council to meet and express their ideas directly.

Director Turner also mentioned the student intern, Jaclyn Rothenberg, who is doing a survey on customer satisfaction within the DIA. Director Turner said that she would send a copy of the survey to Council members after Ms. Rothenberg receives the data.

At this time, Director Turner said that she would give the floor to General Counsel O'Leary to present information regarding the budget.

General Counsel Update

General Counsel Kevin O'Leary said that he was in the process of responding to the collective email he received from the Council members regarding the Workers' Compensation Trust Fund and said that his department is doing the best that they can.

General Counsel O'Leary said that he has some news from the Administration and Finance agency regarding the budget shortfall of about \$350 million. A few months back there was a public trust fund sweep of \$409,000. The DIA has received a list of trust funds that will be swept totaling \$139 million, and the DIA Trust Fund is on that list for up to \$5 million (the Trust Fund and the Special Fund). It is not final, but it is on the list. It has been sent to the Ways and Means Committee as a part of the \$139 million. General Counsel O'Leary said that Director Turner has met with the new Secretary, Rosalin Acosta and visited the Executive Office of Labor and Workforce Development to express the DIA opinion, but unfortunately what was legal a few months back is still legal pursuant to Section 13A.

Council Member Long asked General Counsel O'Leary if this was the only trust fund that was privately funded. General Counsel O'Leary said that he would defer to Mr. D'Elia for the finance part of it, to which Mr. D'Elia responded that he did not know the answer to Council Member Long's question.

Vice-Chair Pulgini asked what will be left in the Trust Fund if this money is swept. General Counsel O'Leary said that there would be a carryover so that the Trust Fund is never with a zero balance.

Chairman Johnson said that this sweep effects the future assessment calculation.

Council Member Long said that it sheds a negative light on the great system we have here in Massachusetts. The workers' compensation system here in Massachusetts is looked at favorably on a national level. Council Member Long asked how this would be reflected in the Workers' Compensation Advisory Council Annual Report. This Trust Fund sweep compromises the integrity of the system and he is not sure how many people in state government know how the DIA is funded.

General Counsel O'Leary said that the final decision will be made in September or October of 2017.

Council Member Regan said that this was challenged in another state and successfully won, however he did not remember what state.

Council Member Long said that he did not know if this was legal (referring to the trust fund sweep). Currently that is how the statute reads, said General Counsel O'Leary in response to Council Member Long's statement.

The AFL-CIO is from the business community, said Council Member Long and they are taking from the front end of these businesses, and by sweeping the Trust Fund you are taking away from employers, so that they may negotiate that for wages.

Director Turner said that she has a one-on-one meeting with Secretary Acosta tomorrow and will bring up the Council's comments made at today's meeting.

Council Member Falvey asked if the trust fund sweep was on the table when the new assessment rates were set. Mr. D'Elia indicated that they set up a trust fund exercise, he mentioned this at a few meetings back, and he was notified approximately ten days ago about this being a potential sweep. Mr. D'Elia then notified Director Turner.

Council Member Falvey said that we are giving money back to the system.

Chairman Johnson said that he heard a motion from the Council expressing their concern about the trust fund sweep. Council Member Regan made the motion, seconded by Council Member Long, all members approved the motion: Chairman Johnson, Vice-Chair Pulgini, Mickey Long, Stephen Joyce, Frank Ruel, James Steenbruggen, John Regan, Bernard Mulholland, and Stephen Falvey, unanimous vote of eight members. Chairman Johnson said that a letter will be drafted and put in the hands of the Director.

Chairman Johnson mentioned the annual report and the prior trust fund sweep, there's a record of expressing concern for this particular area. Director Turner mentioned page 11 of the Executive Summary within the Workers' Compensation Advisory Council Annual Report and pages 16, 17.

Council Member Joyce said that the government can do cuts until Section 9C, but sweeping the accounts are different. Mr. Joyce said that he was under the impression that the statute said that surplus funds, unused, could be swept.

Chairman Johnson said that the Workers' Compensation Advisory Council Trust Fund subsidizes the assessment rate.

Chairman Johnson said that a letter would be drafted with Council Members concerns and sent around for comments or additional information to the Advisory Council.

In order to be clear, said Chairman Johnson, at the last meeting the Council requested information in writing about data around the Trust Fund and put this request to General Counsel O'Leary. Once this information becomes available we can have a substantive discussion on the matter. We appreciate the cooperation with the DIA, said Chairman Johnson.

Without any questions, Chairman Johnson offered the floor to Deputy Director of Investigations, Alan Green.

Deputy Director Update

Deputy Director Green provided an update on the Council on the Underground Economy (CUE). The CUE meets once a month on the second Wednesday of each month in the DIA. There is great collaboration within the investigative agencies that are members of the CUE, said Mr. Green. Since the meeting is closed, no announcements could be made regard the CUE activities; however Mr. Green informed the Council that they are updating and redesigning the CUE website. The CUE is also orchestrating an outreach program to visit communities, Chambers of Commerce, in an effort to assist them. The 2016 Annual Report is also in production and should be available within the next few weeks.

Council Member Joyce asked Deputy Director Green if there was going to be any press surrounding these issues, and claims that nothing comes out of the task force.

Director Turner said that she also mentioned the CUE press during her discussions with Mr. Pierce.

Chairman Johnson asked if there were questions for Deputy Director Green.

Chairman Johnson said to Deputy Director Green that he heard that his team was successful on Martha's Vineyard and asked him to explain his observations. Deputy Director Green said that they issued 26 SWOs in two and a half days, with over 300 compliance checks. This year they conducted the hearings over on the island and only two individuals failed to show.

Director of Investigations, Robert Cronin informed the Council that they checked in with local police departments to inform them of the visit.

Director Turner asked Deputy Director Green the last time the investigation unit visited Martha's Vineyard, and he responded with 2006 or 2007. Deputy Director Green agreed that it needed to be addressed.

Council Member Falvey asked Deputy Director Green how many of the 26 SWOs were from the building trades, and without being sure, Director Cronin indicated probably two-thirds. This circles back to the need for the industry information relative to the Trust Fund, said Mr. Falvey. They involve temporary workforces, said Mr. Falvey.

Even though there's laughter around the room, said Mr. Long, it is a little outrageous that an affluent community would have a culture of an underground economy. Someone is making a lot of money and driving wages underground. I appreciate your efforts out there, said Mr. Long.

Our goal is to make this an annual event, said Director Cronin, rotate with Nantucket, and circle around with Martha's Vineyard with the brick and mortar businesses.

Council Member Joyce said that he commended the investigation unit for always doing a good job, but with the thought that the unit may go back to certain communities may keep them in compliance for awhile.

Council Member Falvey also commented about the good work the investigation unit is doing.

Without any further communication, Chairman Johnson mentioned the three sets of minutes.

A motion was made to approve the April 19, 2017 minutes. A motion was made and seconded. The minutes for April were approved.

A motion was made to approve the May 17, 2017 minutes. A motion was made and seconded. The minutes for May were approved.

A motion was made to approve the June 14, 2017 minutes. A motion was made and seconded. The minutes for June were approved. The motion was made to approve the revised minutes. A motion was made and seconded. The revised minutes for June were approved.

Chairman Johnson offered the floor to Executive Director Maureen O'Connell.

Executive Director Update

With regard to the bills brought forward to the Labor and Workforce Development Committee, Executive Director O'Connell said that the bills were still in Committee, but that a printout will be given out at the next meeting in order to determine which bills are still in motion.

Having been customary in the past, the Council may provide commentary on said bills if need be, said Chairman Johnson.

Chairman Johnson asked for the Council's consensus on taking the month of August off for a meeting. If there is a reason to meet, Chairman Johnson will leave that in the hands of Director Turner. If not, the Council will come back to meet in September.

Chairman Johnson said that the next meeting will be on September 13, 2017 at 9:00 AM.

As the Council is aware, we have struggled with quorums, said Chairman Johnson. One of our members has recused themselves from the interview process for judicial interviews and this compounds the problem. While there have been some terms that have expired, in context of your availability to attend meetings on a regular basis, we are unable to conduct the business we are charged in doing without a quorum.

Council Member Long asked if the Executive Director could provide a list to members of the current members and their terms. Executive Director O'Connell said that she had that available.

Council Member Falvey also asked if the attendance could be noted for the last year. Chairman Johnson said that information could be pulled together, Executive O'Connell agreed.

Council Member Long asked if attendance could be held moving forward, in fairness.

Council Member Joyce said that attendance is a public record.

Chairman Johnson said that there are three Council positions available: one is a voting position (labor), while the remaining two are non-voting (medical and vocational rehabilitation).

The meeting is adjourned.

A motion was made to move into Executive Session. The motion was made and seconded. A motion was made to recess until 2:30 PM.

The next meeting of the Advisory Council is tentatively scheduled for Wednesday, September 13, 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.