

**NOT FOR
CIRCULATION OR QUOTATION**

**MASSACHUSETTS
WORKERS' COMPENSATION ADVISORY COUNCIL
MINUTES**

September 13, 2017
Department of Industrial Accidents
1 Congress Street, Suite 100
Boston, MA 02114-2017

Council Members Present: Todd Johnson; John Pulgini; Mickey Long; Stephen Joyce; Stephen Falvey; James Steenbruggen, Teri McHugh, Michael Kelley, 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; Virginia McCarthy, Workers' Compensation Rating and Inspection Bureau; John Murphy, Massachusetts Insurance Federation; and Diane Walsh, Administrative Assistant to Director and General Counsel .

Advisory Council Staff: Maureen O'Connell, Executive Director

Absent: John Regan, Frank Ruel, Aaron D'Elia, CFO Executive Office of Labor and Workforce Development; 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 – July 19, 2017

Communication

Executive Director Update

Miscellaneous

CHAIRMAN'S WELCOME

Chairman Todd Johnson began the meeting at 9:02 A.M. by saying that the Council will have a quorum today.

The Chairman welcomed Karen Fabiszewski, Director of the Workers' Compensation Trust Fund back to the Department of Industrial Accidents.

The Chairman commented that the Council did not meet in August so there a few updates to report. The Chairman offered the floor to Senior Judge Omar Hernandez.

DIA UPDATE

Judicial Update

Senior Judge Omar Hernandez explained the conference queue and the number increasing, due to summer vacations and attorneys requesting continuances. The department was in great shape with regard to conference and hearing queues. They are running six weeks, with seven judges handling conferences; this is due to a full staff of judges. Senior Judge is not concerned with the number, as the trend shows that the numbers peak in the summer and decrease in the fall. The hearing queue is low at this time.

With regard to the outstanding decisions, one case went over the twelve month mark, but Senior Judge plans on having a discussion with that Judge so that number will likely be removed in time for the next update. Senior Judge would like that number to be capped off at twelve months, ideally six to nine months, however he is pleased with the twelve month mark.

Council Member Long asked Senior Judge Hernandez a question regarding the conference queue and whether there was interest in having telephonic/videotaped conferences. Mr. Taupier responded by saying that it is possible to have these conferences telephonically, however with the volume of conferences every single day, it would be difficult to accommodate. Senior Judge commented that all parties want the injured worker to be present in the courtroom, including the insurers' point of view, in order to have a conversation about possible resolution, everyone is more invested. Senior Judge reiterated that the numbers increase during the summer months due to vacations.

When Council Member Long asked about the percentage of conferences, Senior Judge Hernandez stated that there were 40% of cases may resolve at the conference level. Council Member Long responded by saying 40% is high, and that argues for maintaining the status quo. Senior Judge Hernandez reiterated that these numbers are reflected in the number of summer vacations and will decrease in the fall.

Council Member Long said that he is seeing an increase in a trend to have these proceedings automated. The AFL-CIO attended an annual bar conference in 2016 and were informed by a Supreme Court Judge in New Hampshire announced that they were going to have a complete trial, all remote (pilot program). It appears that this is happening nationwide, if not worldwide, said Council Member Long. Senior Judge said that he could speak to that subject with respect to a video conference. He explained that he had spoken to a vendor CourtCall recently, whose fees were over \$100 per telephone call. In states like California where the travel distances are greater, this vendor may be more appropriate. It is not practical, at this time, but we will revisit at a later time.

Chairman Johnson asked Senior Judge Hernandez whether or not there is any discussion in other New England states about this remote technology. Not that I am aware of, said Senior Judge Hernandez.

Senior Judge Hernandez expressed to Council Member Long that he appreciated his view.

General Counsel O'Leary also expressed the concern of remote capability and not being able to view the injured worker and all parties in person.

Council Member Steenbruggen offered the comment: if you want to be in the business of workers' compensation, then you must have the proper equipment, and in order to practice here in Massachusetts, this is the equipment you need to navigate the system.

Director Turner mentioned that she was attending the Industrial Accident Board conference in Oregon and will see what other states are utilizing remote capability. What I am hearing today in the room is that it is impractical today, but it may not be impractical forever.

With respect to the Opioid Alternative Treatment Pathway program it is up and running, since June 2017. Two people have expressed interest in the treatment program in Fall River. Once case received a lump sum settlement in 2004, one in 2009. Hopefully it will be a successful turnout. Senior Judge Hernandez indicated that they have a few more interested parties in Springfield, Worcester, Lawrence, and Boston. With these stories out, hopefully it will encourage more people to participate in the program. Some injured workers have expressed no interest in the program so the traditional path will be taken regarding the conciliation and conference. For those that are interested in the program, there has been some success thus far. Senior Judge Hernandez said that his focus is post lump sum cases where individuals may have fallen through the cracks while the treating physician continued to prescribe opioids.

Council Member Long asked about the cases that were on the DIA Efficiencies, Process Improvements, and Savings Report memorandum to the Governor. Out of the 102 individuals on opioids, about 20 individuals are interested in the program. It is a voluntary program.

Director Turner informed the Council that there is an Advisory Board relative to the Opioid Alternative Treatment Pathway program assigned to analyze the program after its initial launch.

Council Member Steenbruggen asked Senior Judge Hernandez whether the program was paid for by the insurance carrier. No, responded Senior Judge, it is a private program, and customized on a case-to-case basis added Council Member Kelley.

With respect to the Springfield Administrative Judge position, the Governor's office is getting close to recommending an individual to the Governor's Council. Hopefully, within the next few weeks we will know more. Chairman Johnson asked if this would bring Springfield to a full judge's roster, Senior Judge Hernandez confirmed this.

Chairman Johnson asked the Council if it had any questions for the Senior Judge, without any 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 August 2017. Mr. Taupier provided information from the review board inventory: cases on appeal for the month of September were 60; the impartial examinations were 717. At the end of August there were 18 waivers. Exam Fees Collected for FY'18 (to date): \$273,000.

Mr. Taupier updated the Council on the Stop Work Order (SWO) and Caseload Statistics, including the following: 160 SWOs issued in August: for a total of 308 for FY 2018. Fines collected for the month of August \$106,971 with a FY 2018 total of \$150,319. For FY 2017 a total of 1,909 SWOs were issued and total fines collected was \$1,067,449. Mr. Taupier reminded the Council that the fiscal year books closed on August 31, 2017 (FY 2017).

Council Member Joyce asked Mr. Taupier about the compliance numbers and the computer issues and whether there was a correlation to the decreased SWOs. Mr. Taupier indicated that a few tasks had to be conducted manually. Council Member Joyce commended the staff for doing a good job despite the computer issues. Mr. Taupier offered the following statistics: total number of compliance checks for August, 2017: 6,919. The number of employees brought under workers' compensation insurance coverage in FY 2017 was estimated at 431 during the current fiscal year. During FY 2017 an estimate of 5,945 workers were brought under workers' compensation insurance coverage.

Without additional questions on investigations, Mr. Taupier offered the following statistics on cases filed within DIA: the number of cases filed for August 2017 was 1,138. First Report of Injury (FRI) filings for August were 3,320. Total FRIs filed for FY 2018 is 5,850. The total number of FRIs for FY 2017 was 33,384. Total cases filed for FY 2018 is 1,994. The total number of cases filed for FY 2017 was 11,924. Please note: a case is an employee claim, an insurers request for discontinuance, or a third party claim/lien.

Mr. Taupier offered the following statistics: the Trust Fund ended the month of August FY 2018 year with 18 (11 in July, 7 in August) uninsured persons reporting injuries and \$436,779 in payments against open claims. The Workers' Compensation Trust Fund made \$8,484,448 in payments against open claims during FY 2017.

Mr. Taupier continued with statistics on the recovery efforts against uninsured employers: for FY 2018 \$147,245 has been recovered by the Civil Litigation Unit and the Workers' Compensation Trust Fund.

Mr. Taupier added that the FY 2017 recovery effort was a record breaking recovery with \$2,481,274 in collection fees. Council Member Kelley asked whether that was the result of one or two cases in recovery, General Counsel O'Leary confirmed this. Council Member Long commented that this was impressive collection effort. Chairman Johnson said that it was a great year for the DIA.

Mr. Taupier provided statistics on the second injury fund: \$0 in reimbursements to insurance carriers and self-insureds. Mr. Taupier confirmed that this number is small and will likely adjust in the next report. The COLA reimbursements were \$31,932.

Council Member Kelley asked Mr. Taupier if the numbers for the Second Injury Fund and COLA were the final numbers for the year, Mr. Taupier indicated that they were. Council Member Kelley commented that the second injury fund figures were lower than 2012, and while the budget went up for COLA he does not understand why the numbers do not reflect this.

Mr. Taupier continued with a personnel update: 219 employees. There are several open positions (backfill positions) so that number will likely change in the future.

Vice Chair Pulgini asked Mr. Taupier what a good number would be for DIA personnel. The fourteen backfill positions would put us at a full complement of staff.

Mr. Taupier presented the statistics on the referral fees for FY 2018: \$672,670. The final number for FY 2017 is \$4,473,611.

Lastly, Mr. Taupier provided statistics on the assessment collections: FY 2018 \$22,352,691 while the FY 2017 number was \$78,761,392.

Council Member Long asked Mr. Taupier why the number was decreasing. Mr. Taupier stated that this was a result of the fluctuating assessment rate. Council Member Kelley responded by saying that the assessment rate went down this year.

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

Director Update

Director Linda Turner informed the Council about the Council on the Underground Economy (CUE) presentation that DIA put together for the Governor; however the presentation has been canceled.

Director Turner mentioned that she was invited to attend the Governor's opioids committee which is continuing to focus on new strategies for opioids reductions in the Commonwealth.

Director Turner mentioned the Industrial Accident Board National conference that she will be attending. Although the DIA is one of the best workers' compensation systems in the United States, she will seek out information from various states in order to improve the DIA system.

Regarding the computer system, Chairman Johnson inquired as to the assistance DIA was getting for the issue. Director Turner informed the Council that DIA was receiving internal and external assistance regarding the computer system issues.

Mr. Taupier added that although the system was infected, it was contained relatively quickly and at this time DIA has no knowledge whether identifying information/data was extracted. An investigation is ongoing.

General Counsel O'Leary mentioned Chapter 93H (breach) however DIA has no reason to believe that personal identifying information or financial information has been compromised.

On behalf of the Council, the DIA quickly advised the Advisory Council members that the computer issue transpired and we appreciate it, said Chairman Johnson.

Chairman Johnson asked Director Turner about the DIA Efficiencies, Process Improvements, and Savings Report that Council Member Long referenced and whether an explanation could be given regarding the genesis of this request. Director Turner indicated that the Governor requested an efficiency report by each of the Secretariats on their agencies.

Chairman Johnson indicated that he would like the information on the DIA Efficiencies Report to be highlighted in the Advisory Council's annual report along with the increase in trust fund claims, and the

success in recovery efforts. These are areas that change year over year, and as a Council we would like to try and capture the significant events, wealth of information and concepts in the Workers' Compensation Advisory Council Annual Report.

General Counsel O'Leary commended Diane Walsh, Administrative Assistant to Director Turner and General Counsel O'Leary for cost savings relative to the use of Westlaw.

Chairman Johnson stated that although Mr. D'Elia was not present at the meeting, he was informed that Mr. D'Elia will be making his presentation regarding the budget and assessment at the October meeting. Director Turner confirmed that there was no more dialogue regarding the potential sweep of the trust fund.

General Counsel Update

General Counsel Kevin O'Leary said that he was in the process of completing the Council's request for information regarding the trust fund and said that his department will have something for the Council in October. Resources were dedicated elsewhere due to the computer virus.

Chairman Johnson

Chairman Johnson commented that the Council had a quorum and that voting on the July minutes will be conducted. Council Member Long proceeded with the motion to adopt the July minutes, motion was made and seconded. Without any opposition, a unanimous vote was taken on the minutes.

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

Executive Director Update

With regard to the Program Coordinator II position, Executive Director O'Connell informed the Council that she is in the process of reviewing resumes for this position.

Regarding the September 19, 2017 hearing with the Joint Committee on Labor and Workforce Development Committee, Executive Director O'Connell said that she will be attending the public hearing on HB 1015, An Act Relative to the Economic Impact of the Increasing the Minimum Wage.

In the packet before you are the bills that are in the Joint Committee which pertain to Chapter 152.

A few of the Council members have inquired into the appointment process. While some terms have expired, there are many Boards and Commissions in the same position and they are working their way down the list. The Executive Office is aware of this issue and in the meantime you will continue to serve in the capacity of Council member.

In the packet before you are the DIA Efficiencies, Process Improvements, and Savings Report.

Lastly, I have met with a few of the Council members individually; however I would still like to get on your calendar for the remaining members I have not met with individually.

Chairman Johnson asked if the Council had any additional questions. That said, Council Member Long mentioned that the Workers' Compensation Rating and Inspection Bureau (WCRIB) participated in a rate filing for Audit and Noncompliance. The filing indicated that if you failed to comply with an audit you will be charged double in your annual premium. The Attorney General's office had some concerns also. Council Member Long asked if the Council would consider getting involved in the future by sending a letter to the Office of the Attorney General Maura Healey. Council Member Long asked if the Executive Director could inquire as to the nature of the Audit and Noncompliance rate filing.

Council Member Long added that honest employers make themselves available for audits, but some employers fail to show their payroll.

Council Member Falvey asked the Council if they understood the process and whether they knew what happened to employers if they failed to submit to an audit. Without a response, Council Member Kelley said that he would like to see the rate filing and what was proposed and added that if employers fail to complete an audit (from a practical perspective), a voluntary audit, there is no fine, their payroll is doubled and included in their annual premium.

Council Member Long is concerned with employees who either are laid-off or are not able to receive raises because they are competing against employers who are clever enough to avoid these audits, and as a result are saving millions on premiums.

Council Member Long added that forty other states adopted an audit/noncompliance charge.

Council Member Steenbruggen commented that his insurance company does not allow for a voluntary audit, Council Member Kelley added that it's because of the size of your business. Council Member Steenbruggen inquired whether it was the smaller business that complied with voluntary audits, to which Council Member Kelley affirmed.

Chairman Johnson directed his attention to Council Member Joyce who asked to view the memorandum, if available, regarding the audit and compliance issue. Council Member Joyce commented that after the audit and compliance complaint was issued, he was wondering if the Insurance Fraud Bureau would receive a referral for investigation on these employers.

Chairman Johnson informed Council Member Long that a representative from WCRIB was at the meeting today and asked if Virginia McCarthy, Legal Counsel could speak to this topic.

According to Legal Counsel McCarthy, the filing was made in September 2016. WCRIB was required to make that filing; the Attorney General's office participated in the proceeding, along with the Division of Insurance. Both the AG and DOI had some objections to the charge and referring to it as a possible windfall to the insurance carriers. It was at that time WCRIB withdrew the filing.

Council Member Long said in response to Council Member Joyce's original point, can Executive Director O'Connell extract the audit and compliance endorsement so that the Council members can see what occurred within that filing, in that transcript. Legal Counsel McCarthy added that there was no transcript.

Legal Counsel McCarthy informed Executive Director O'Connell that she would send along the information pertaining to the filing.

Council Member Falvey asked Chairman Johnson and Executive Director O'Connell for the number of available seats on the Council. Executive Director informed the Council that there were three available positions. Council Member Falvey mentioned that he would like to invite Secretary Acosta to a Council meeting so that she may observe what the Council does and to highlight the Council's unique status.

Chairman Johnson mentioned that there is one voting position (Labor) and two non-voting positions (Medical and Vocational Rehabilitation).

Chairman Johnson said that he will extend the invitation to Secretary Acosta to attend a future Council meeting.

Chairman Johnson asked if there were additional comments, without a response, the meeting is adjourned.

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