

**MASSACHUSETTS
WORKERS' COMPENSATION ADVISORY COUNCIL
MINUTES**

October 11, 2017
Department of Industrial Accidents
1 Congress Street, Suite 100
Boston, MA 02114-2017

Council Members Present: Todd Johnson; Mickey Long; Stephen Joyce; Stephen Falvey; Michael Kelley, and Bernie Mulholland.

Also Present: Linda Edmonds Turner, Director; Bill Taupier, Director of Administration; Karen Fabiszewski, Director Workers' Compensation Trust Fund; Alan Green, Deputy Director of Investigations; Aaron D'Elia, CFO, and Diane Walsh, Administrative Assistant to Director and General Counsel .

Advisory Council Staff: Maureen O'Connell, Executive Director

Absent: John Pulgini, John Regan, Frank Ruel, James Steenbruggen, Teri McHugh, 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/Vital Statistics – Bill Taupier, Director of Administration
- Director's Update – Linda Edmonds Turner
- Workers' Compensation Trust Fund Update – Karen Fabiszewski, Director
- Assessment Update – Aaron D'Elia, CFO

Action Items

- Minutes – September 13, 2017

Communication

Executive Director Update

Miscellaneous

CHAIRMAN'S WELCOME

Chairman Todd Johnson began the meeting at 9:00 A.M. by saying that the Council will not have a quorum today.

In absence of Senior Judge Omar Hernandez, the Director of Administration Bill Taupier will provide the judicial update.

DIA UPDATE

Judicial Update

With the absence of Senior Judge Omar Hernandez, Director of Administration Bill Taupier explained that the conference queues decreased to 942 for the month of October, 2017 (the September figure was 1,034). He added that there has been a new judicial appointment that will be in effect in the next month or so. The department was in great shape with regard to conference and hearing queues, 554 for the month of October, 2017 which was up compared to 466 in September, 2017. The following statistics were provided: 472 conferences scheduled, 381 hearings, 325 orders issued, with 15 appeals to the reviewing board. The average waiting period for a conference is between 10 and 14 weeks.

With regard to the outstanding decisions, three cases went over the twelve month mark. However, Senior Judge has regular conversations with Judges who have outstanding decisions over twelve months in an inward effort to keep these cases at a minimum.

Vital Statistics

Director of Administration Bill Taupier updated Council members on the information contained within the DIA's vital statistics report for September 2017.

The review board inventory stayed fairly the same at 66. Impartial exams were at 1,019 for the year. The estimates within the first quarter are tracking very well with \$383,582 in fees collected.

With respect to Stop Work Orders (SWO), 160 were issued in the month of September (10 were defaults), with a total of 308 for FY 2018. Total fines for the year, \$212,764, with the month of September at \$62,445.

Council Member Joyce asked Mr. Taupier about the significant drop in the SWOs. Mr. Taupier said that he did not believe it dropped that much and referenced the next slide, with compliance checks. For the month of September, 6,816 compliance checks were conducted, and an estimate of 1,215 workers had been brought under workers' compensation insurance coverage.

Council Member Kelley asked Mr. Taupier to explain what a default was. Mr. Taupier provided the following response: it's a second SWO where the business has defaulted on their appeal. The investigation team returns to the business location at which time it is shut down. The fine remains at \$250.00 (from the date of the original SWO). All of this information is shared with the task force.

Council Member Joyce asked Deputy Director of Investigations Alan Green about the decreased SWOs for the month of September. Mr. Green confirmed that they are down one investigator and are interviewing two candidates for investigator positions. Computer issues have still impacted the investigative team. Mr. Green confirmed that the defaults have increased for the month of September.

Without additional questions on investigations, Mr. Taupier offered the following statistics on cases filed within DIA: the number of cases filed for September 2017 was 952. First Report of Injury (FRI) filings for August were 2,685. Section 37 numbers do not appear in this total as they are simply reimbursements to the board, and are typically resolves shortly after conciliation. Total FRIs filed for FY 2018 is 8,535. The total number of FRIs for FY 2017 was 33,854. Total cases filed for FY 2018 is 2,946. 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 September FY 2018 year with 26 uninsured persons reporting injuries and \$823,184 in payments against open claims. For FY 2017, a total of 133 new Section 65 injuries were recorded. 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 \$154,677 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. The unit's goal is to exceed this number in FY 2018.

Mr. Taupier provided statistics on the Second Injury Fund: \$1,049,845 in payments. The COLA reimbursements were \$31,932.

Council Member Long asked Mr. Taupier for clarification on the \$2 million recovered from the Trust Fund.

Mr. Taupier continued with a personnel update: 219 employees. There have been two new hires, attorneys for the Trust Fund. Chairman Johnson asked whether these two hires even out personnel. Mr. Taupier said that they were still down attorneys. There are still two open positions for staff attorneys.

Mr. Taupier presented the statistics on the referral fees for FY 2018: \$1,034,077. The final number for FY 2017 is \$4,473,611.

Lastly, Mr. Taupier provided statistics on the assessment collections: FY 2018 \$22,757,979 while the FY 2017 number was \$78,761,392.

Council Member Long asked Mr. Taupier for clarification about the assessments. Mr. Aaron D'Elia, CFO confirmed that they brought in more money than was budgeted.

Council Member Kelley asked if there were any updates on the audits that were going to be conducted on self-insurers on the assessment. Chairman Johnson asked DIA for a status update on this issue.

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

Director Update

Director Linda Turner informed the Council about her attendance to the International Association of Industrial Accidents Boards and Commissions (IAIABC Conference) in Portland, Oregon. The two national issues that were mentioned in this conference: the opioid crisis and the use of marijuana as treatment in medical situations. While federal law controls marijuana, individual state laws are starting to change.

Director Turner mentioned that several of these cases involving marijuana as a medical treatment have come through the Commonwealth's workers' compensation system; however only one case was at the reviewing board. With regard to the other cases, no benefit awards have been made on these cases.

Council Member Long asked what the issue was with the award. Director Turner stated that issuing an award depends on whether the marijuana treatment is reasonable as a medical treatment.

Council Member Long cited the *Barbuto* case and asked Council Members whether the WCAC has an opinion on this matter.

According to Director Turner, it appeared that the states had more liberal laws with regard to marijuana tended to expect have more tax revenue from its sale.

Council Member Long asked whether Massachusetts insurers were required to pay for marijuana treatment to injured workers. Council Member Mulholland said that the Massachusetts court has opinions regarding this issue. Council Member Kelley commented that one of the cases is pending before the DIA reviewing board.

Director Turner said that she would provide the Executive Director information on this matter as it becomes available.

Council Member Long expressed his concern with this issue and said that it would cost employers a lot of money to legally fight these marijuana claims. The more money that is expended on fighting claims at the AFL-CIO, the less money there is available in wages to the employee.

Council Member Joyce asked Director Turner regarding the opioid issue and whether there were discussions about using alternative non-opioid treatments, citing the *Dr. Scott Sigman* case in Lowell, MA. Director Turner did not hear of any specific treatments being used at the IAIABC, but that the discussion in general surrounded alternative treatments.

Director Turner mentioned recently attending Governor Baker's opioid meeting. After some additional research, Director Turner found out through the Workers' Compensation Research Institute that there are nine states within the United States that have drug formulary laws with regard to workers' compensation cases, while there are another nine states looking to do that. Governor Baker requested more information on whether Massachusetts should be one of the states looking to obtain a formulary law for workers' compensation cases in order to address the opioid issue from the front end as well as the pilot program, DIA's Opioid Alternative Treatment plan which is on the back end.

Council Member Long asked where Massachusetts is on the opioid formulary issue. Director Turner responded by saying that she is in the process of setting up a meeting with Health and Human Services (HHS). HHS has a drug formulary with MassHealth and Director Turner has put in an inquiry to work with them. As soon as more information is available, Director Turner said that she would provide the Council with an update.

Council Member Long asked for a definition of a formulary. Mr. Taupier said that it is either done by regulation or statute and states that you are only allowed to prescribe certain types of drugs in certain amounts, a much stricter policy. In response to Council Member Long's question on whether DIA could regulate this formulary, Mr. Taupier answered yes and is subject to public review.

Director Turner also mentioned the article in *WorkCompCentral* surrounding DIA's Pilot Opioid Program (Senior Judge Hernandez' program). The article will be sent to the Council. As more information is learned during this process, Director Turner said that she would update the Council.

As we begin to draft the next annual report, said Chairman Johnson, opioids is one of the top four concerns of the Council, and if there is some way to provide updates on an incremental fashion, the Council will incorporate that into the annual report, to highlight Council Member Long's point about what steps are being taken.

Council Member Joyce mentioned the July 28, 2017 article in the Lowell Sun (alternative treatment) and asked if the Executive Director could send this article to the Council.

Council Member Kelley informed the Council that all insurance companies have a pharmacy benefit management program (PBM) and they have created their own formularies.

Director Turner mentioned Governor Baker's statement in which he asked who would be opposed to this formulary. Council Member Long interjected and said that the physicians most likely would be opposed to it.

Chairman Johnson asked Director Turner if she would keep the Council updated and she indicated that she's working with two different departments and is waiting on information, but will keep the Council apprised of all developments.

Chairman Johnson thanked Director Turner for her update and offered the floor to Karen Fabiszewski, Director of the Workers' Compensation Trust Fund who is providing the Legal update for Kevin O'Leary, General Counsel.

General Counsel Update

In the absence of General Counsel Kevin O'Leary, Director Karen Fabiszewski provided the following snapshot into the Workers' Compensation Trust Fund, in response to Council Members' questions.

Director Fabiszewski stated that the Trust Fund is not an insurance company; therefore the information is not organized in the same format as an insurance company. The objective is different: the trust is there to pay claims and keep costs down.

In terms of the handout before you, Tab A is the active cases within the trust fund, open cases are defined as liability that has been established since 1985. Payments have been made on these claims within the last three years. Director Fabiszewski provided the following statistics: 445 active cases, of those cases 147 had been paid in the range of \$25,000 and \$100,000, while 59 have been paid greater than \$100,000.

Council Member Long asked if there was an increase in uninsured claims. Director Fabiszewski indicated that this number fluctuates. The numbers reflect claims that were filed during the fiscal year; however they do not reflect claims that were paid during the fiscal year.

Director Fabiszewski provided the following statistics: Tab B reflects claimants that receive weekly benefits: 89 claimants that receive weekly indemnity benefits. Liability has been established in 53 cases, with 36 liability has been disputed. Even though liability has been established it does not mean that litigation is not pending.

With regard to Tab C, just to give you a perspective as to where the money is spent in the actual fiscal year, the top 20 cases have been provided; the date of injury and amount has been itemized. Some of the claims have received lump sum settlements and the sizeable amounts reflect those settlements being made in that particular fiscal year.

All of these payments were expended in FY 2017, asked Chairman Johnson, to which Director Fabiszewski replied yes.

Discussion surrounded lifetime payments for the top 20 cases. Chairman Johnson mentioned cash-flow commitments with regard to these cases and asked if it was reasonable to look at claims within the last 3-5 years in order to see what severe claims look like, cumulatively.

Further explanation was made by Chairman Johnson as to lost date, date of injury, and specifically looking for claims paid during this time period, specifically for loss data analysis.

Council Member Long said that he was specifically looking for a breakdown to show people in the general public the optic of these uninsured claims and the amount that was paid.

Council Member Kelley commented on the \$6 million dollar claim that was paid saying that it does impact the community.

Council Member Joyce wants the Council to focus more on uninsured claims where large payments are being made.

With respect to Tab D; the industry codes are reported by the employee on the claim form. Reports were provided for the last three fiscal years on the uninsured claims. The date of injury, employer, and the industry/job description was provided in the handout.

Council Member Falvey said that this information provided was critical since these are individuals who are considered to be ones that come and go.

The final Tab E; was the list of self-insured groups from the Division of Insurance (DOI). DOI licensed these groups.

Chairman Johnson commented on the fact that DIA does not have a claims management system that provides this information and he appreciated the time it took to for Director Fabiszewski, General Counsel O'Leary, and the Trust Fund group that manually provided the information in the Council's request. Chairman Johnson requested that the Council digest the material provided and at the next Council meeting if there are other elements to be discussed. Chairman Johnson indicated that the Trust Fund information provided was an ongoing discussion.

Director Turner thanked Director Fabiszewski and her team for the work that was put into the Council's requests.

Executive Office Finance Update

CFO Aaron D'Elia discussed the Trust Fund potential sweep and that no decision had been made at this moment. The Comptroller closes the books on October 31, so more information should be known at that time.

Chairman Johnson asked Mr. D'Elia if the uniqueness of the Trust Fund and the impact it would have on assessments for the employer community could be relayed to Governor Baker.

Mr. D'Elia highlighted the revenue and expense report, with the Trust Fund beginning balance of \$45.1 million. Assessments, COLAs, and Section 37 were discussed. The trend for COLAs is decreasing for FY18. The assessment rate has dropped to 4.56%. From a fiscal point the agency is fiscally sound. On an appropriation basis the spending is more 1.4% more in FY17 than FY16.

Chairman Johnson asked Mr. D'Elia about the safety grants, noticing \$86,000 less was given each fiscal year, and wondered if there were fewer applicants. Mr. Taupier responded by saying that the budget was less for safety grants in FY17. Chairman Johnson said that in his opinion the grants should provide more resources for employers and should not be restricted.

Mr. D'Elia provided the DIA Operational Expenses to the Council in March 2017, but clarified that the report before you today has the total amounts appropriated either to the special fund, the private trust fund, and the grand total of DIA operating costs. The number has increased by 10% in FY18 due to additional spending in FY17.

Without additional questions for Mr. D'Elia, Chairman Johnson directed the floor to Council Member Joyce who inquired as to the lease on the Congress Street building.

Mr. Taupier indicated that the DIA lease for One Congress Street expires on July 10, 2020. According to discussions with the landlord, DIA will reach the full term of that lease. The reviewing process has begun in terms of needs for a new facility. The requirements are specific in terms of the DIA layout. In terms of technology the plan is to move all of the information to the cloud. The goal is to stay in Boston proper to be close to the parent organization of EOLWD, to service the public, to be near two subway lines, and reasonably close proximity to a major highway. Another factor is DCAMM; the agency is in control of leases for the Commonwealth. There is an option to extend the lease, if needed, but Mr. Taupier is not sure how that landlord will approach this since there is a construction project depending upon it.

Chairman Johnson asked Mr. Taupier to keep the Council informed if anything changes.

Without further questions, Chairman Johnson thanked Karen Fabiszewski , Aaron D'Elia, and Bill Taupier for their presentations to the Council.

Chairman Johnson

Chairman Johnson commented that the Council did not have a quorum and that voting on the September minutes will not be conducted.

Executive Director Update

Due to time constraints no update was provided.

The next meeting of the Advisory Council is tentatively scheduled for Wednesday, November 8, 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.