

**MASSACHUSETTS
WORKERS' COMPENSATION ADVISORY COUNCIL
MINUTES**

December 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 Falvey; Michael Kelley, Frank Ruel, James Steenbruggen, and Bernie Mulholland.

Also Present: Linda Edmonds Turner, Director; Bill Taupier, Director of Administration; Kevin O'Leary, General Counsel; Karen Fabiszewski, Director Workers' Compensation Trust Fund; Paul Przysztarz, Regional Director Fall River; Robert Cronin, Director of Investigations; Aaron D'Elia, CFO; John Murphy, Executive Director, Massachusetts Insurance Federation; Virginia McCarthy, General Counsel, Workers' Compensation Rating and Inspection Bureau; Daniel Crowley, Vice-President Workers' Compensation and Rating Inspection Bureau; Paul Donovan, Kearney Donovan & McGee; John Burke, American International Group (AIG) and Diane Walsh, Administrative Assistant to Director and General Counsel .

Advisory Council Staff: Maureen O'Connell, Executive Director

Absent: John Regan, Teri McHugh, Stephen Joyce, and Executive Office of Housing and Economic Development.

Agenda:

Chairman's Welcome

DIA Update

- Judicial Update – Senior Judge Omar Hernandez
- Vital Statistics – Bill Taupier, Director of Administration
- Director's Update – Linda Edmonds Turner
- Workers' Compensation Trust Fund Update – Karen Fabiszewski, Director

Action Items

- Minutes - November 8, 2017

Executive Director Update

Communication

Miscellaneous – WCRI

CHAIRMAN'S WELCOME

Chairman Todd Johnson began the meeting at 9:03 A.M. by saying that the Council will not achieve a quorum today.

Chairman Johnson offered the floor to Senior Judge Omar Hernandez to provide the judicial update.

DIA UPDATE

Judicial Update

Senior Judge Omar Hernandez explained that the conference queue is running between three and four months. The December conference queue is 906, which is down compared to the November queue, 1,021. The hearing queue is 503 which is down compared to the October figure, 548. The number of orders issued was 440 with five appeals to the reviewing board.

With regard to the Opioid Pathway Alternative Treatment Program, Senior Judge Hernandez provided an update. There are 21 candidates in the program. Senior Judge recently conducted a seminar at Zurich Insurance Company; the staff at Zurich was pleased with the program.

Senior Judge Hernandez said that the outstanding decisions number had been decreased to single digit numbers (8) and is trending in the right direction of fewer outstanding decisions.

Council Member Long interjected and said that he appreciated the efforts of Senior Judge Hernandez and his staff.

With respect to the impartial unit, Senior Judge Hernandez said there will be a few doctors coming on board to the DIA: an ophthalmologist has expressed interest. Two impartial doctors have outstanding reports and Senior Judge Hernandez indicated that those physicians have been spoken to and their reports should be submitted by the end of the year.

Chairman Johnson inquired as to whether all the new judges are operating at full capacity; Senior Judge confirmed that they were. Judge Daniels is in Springfield and is doing well with a full caseload. In the New Year there will be three reappointments (Senior Judge Hernandez, Judge Williams, and Judge Harpin) and one retiree (Judge Solomon) at the end of January.

Without additional questions, Chairman Johnson directed the floor to Mr. Taupier.

Vital Statistics

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

The review board inventory is 72 cases and is slightly up from the November inventory, 58. The impartial medical examinations were 1,625, the number of fee waivers granted was 32 and \$705,429 was collected in examination fees.

With respect to Stop Work Orders (SWO), 149 were issued in the month of November (11 were defaults) for a total of 774 for FY 2018. Fine collection for the month of November was \$87,394 with a FY18 total of \$389,523. For FY 2017 a total of 1,909 SWOs were issued with total fines collected at \$1,067,449.

Mr. Taupier provided the following statistics for SWOs: for the month of November, 6,278 compliance checks were conducted, and an estimate of 2,327 workers had been 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 November 2017 was 1,019. First Report of Injury (FRI) filings for November were 3,204. Total FRIs filed for FY 2018 is 14,403. Total cases filed for FY 2018 is 4,956. 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 WCAC Trust Fund ended the month of November FY 2018 year with 51 uninsured persons reporting injuries. A total of 133 new Section 65 claims were recorded. As of today, payments against open claims are \$2,195,177.

Mr. Taupier continued with statistics on the recovery efforts against uninsured employers: for FY 2018 \$419,789 has been recovered by the Civil Litigation Unit and the Workers' Compensation Trust Fund.

Mr. Taupier provided statistics on the Second Injury Fund: \$7,647,627 in payments. The COLA reimbursements were \$1,792,684. These reimbursements generally come quarterly and the numbers will reflect this in the months to come.

Mr. Taupier continued with a personnel update: 221 employees. One new attorney will be starting on Monday in the Trust Fund. Executive Director O'Connell announced another new hire (assistant) in the Advisory Council. General Counsel O'Leary said that he's still waiting on a start date for the fourth attorney in the Trust Fund.

Mr. Taupier presented the statistics on the referral fees for FY 2018: \$1,848,406.

Lastly, Mr. Taupier provided statistics on the assessment collections: FY 2018 \$43,319,450 while the FY 2017 number was \$78,761,392.

In response to Counsel Member Long's question on assessment trends, Mr. D'Elia mentioned that he would be doing his six month post-mortem presentation in February 2018.

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

Director Update

Director Linda Turner asked Mr. D'Elia to make an announcement about the budget. Mr. D'Elia said that the WCAC trust funds were not swept during the budget period.

Council Member Falvey thanked Mr. D'Elia for providing the information and expressed the need to inform the Governor of the distinction within the DIA budget (funded by employer assessments).

Council Member Long also expressed his appreciation to Mr. D'Elia.

Director Turner updated the Council on the drug formulary for opioids. Since the last Advisory Council meeting, Governor Baker has had a press conference and filed legislation for the DIA to establish a formulary. Director Turner will provide the Advisory Council with monthly updates.

Director Turner expressed her appreciation to Mr. D'Elia.

Without additional questions for Director Turner, Chairman Johnson offered the floor to Executive Director O'Connell.

Executive Director Update

As previously mentioned, Executive Director O'Connell announced that her new assistant would be starting on Monday December 18, 2017. Executive Director O'Connell provided an update on House Bill 1014 the Council opposed in 2016. A hearing was held on May 2, 2017. House Bill 3151 was also heard on May 2, 2017, left the Joint Committee favorably and as of October 19, 2017 is before the Health Care Finance Committee. Regarding House Bill 1039, an additional hearing was held on November 13, 2017, however it is still in the Joint Committee. Executive Director O'Connell will provide an update to these bills should they move out of the Joint Committee.

With regard to the FY 2017 Annual Report, Council Members Ruel and Mulholland will assist the Executive Director in preparing the report with hopes of completion in early 2018.

Without a quorum, draft minutes were not voted on.

Chairman Johnson directed the floor to guests from the Workers' Compensation Rating and Inspection Bureau (WCRI): Virginia (Ginny) McCarthy, General Counsel and Daniel Crowley, Vice President of Customer Service and Residual Market. The Advisory Council asked for an update on the audit noncompliance audit that was filed by WCRI in November 2017.

The filing is based on WCRI request that carriers surcharge at two times the rate (premium) for insureds who fail to submit to an audit.

Mr. Crowley mentioned the national NCI filing in 2015. The audit noncompliance charge has been approved in 39 other states. It was just implemented in May 2017 in those states and data was not yet available on the success of the implementation. The WCRI Fraud Subcommittee recommended that WCRI adopt this national endorsement. Mr. Crowley mentioned that the endorsement is a very simplistic way of handling noncompliance of an audit. The carrier does not have leverage against the employer who fails to submit to an audit. What the endorsement does is clearly outlines to the policyholder on the importance in complying with an audit in the workers' compensation system. It also highlights that the insurer is able to charge up to two times the policy premium if the insured fails to submit to an audit. Once the insured complies with the audit, the premium will be refunded. The ultimate goal with WCRI and this endorsement is to get the insured to comply with the audit.

In response to Council Member Falvey's question about whether or not a policy can be canceled midterm, Mr. Crowley responded yes, but only in the assigned risk pool.

Chairman Johnson asked Mr. Crowley if there were specific differences in the language of the endorsement from the national filing to WCRI filing. Mr. Crowley explained that the words "*up to two times*" were in the national filing, "*two times*" in the WCRI filing. Mr. Crowley said that WCRI wants to discourage bad behavior with the companies who fail to submit to audits.

Council Member Long asked for clarification on how many policies were in the insurance pool (residual market). Mr. Crowley said 25% of the policies were in the residual market and 75% in the voluntary market (approximately 160,000 policies). About 10,000 of these policies are reported as noncompliance reporting transactions, in the residual market. WCRIB does not collect the data in the voluntary market. According to Mr. Crowley and his experience, the vast majority comply with the audit request.

Council Member Kelley explained the assigned risk pool and the voluntary market and the distinction between the two with respect to the endorsement.

Council Member Steenbruggen asked Mr. Crowley about providing WR-1s for employers. Mr. Crowley said that in his opinion there would be a privacy issue with providing tax records, but that was not in his purview.

Mr. Crowley outlined the appeals process within WCRIB, in response to Council Member Long's question.

Council Member Long thanked Mr. Crowley for his good work.

Chairman Johnson asked WCRIB for the timeline regarding the filing. Attorney McCarthy said that the filing was submitted on November 17, 2017. There is an expectation that there will be a public hearing. When the notice comes out the hearing will most likely take place a few weeks afterward. Optimistically, Attorney McCarthy said that it could take place late January.

Chairman Johnson thanked Attorney McCarthy and Mr. Crowley for their efforts in explaining the audit noncompliance surcharge filing to the Council.

Council Member Long submitted a draft letter to the Council pertaining to his thoughts on the audit noncompliance charge.

Chairman Johnson

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

The next meeting of the Advisory Council is tentatively scheduled for Wednesday, January 10, 2018 at 9:00 A.M., at the Department of Industrial Accidents, 1 Congress Street, Suite 100, Conference Room #10-140, Boston, MA 02114-2017.