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Workers' Compensation Full Board Meeting Minutes

Date: Tuesday; July 19, 2022
Location: 328 State Street, Schenectady, NY
Room 329
WebEx/Live Broadcast

Time: 10:00 a.m.

MEMBERS OF THE BOARD

Clarissa M. Rodriguez, Chair
Freida Foster, Vice Chair
Mark Higgins
Loren Lobban, Esq.
Samuel G. Williams
Linda Hull
Fredrick M. Ausili, Esq.
Steven A. Crain, Esq.
Mark R. Stasko
Arelis Tavares
Martin M. Dilan
Pamela Caggianelli
Renee Delgado, Esq.

SECRETARY TO THE BOARD

Kim McCarroll

GENERAL COUNSEL

David Wertheim, Esq.

1 KIM MCCARROLL: Okay. It's 10:00.

2 CLARISSA RODRIGUEZ: Okay. All right, Board
3 Members, we're going to go ahead and get started with
4 the recording.

5 (Whereupon, a recording was played.)

6 KIM MCCARROLL: Go ahead.

7 CLARISSA RODRIGUEZ: Okay. Good morning,
8 everyone. Thank you for joining us. I'm
9 Clarissa Rodriguez, Chair of the New York State
10 Workers' Compensation Board. Today's meeting is being
11 conducted remotely throughout various locations in
12 New York State, as well as being webcast live for
13 members of the public.

14 Before we begin the official order of business, I
15 have a few announcements to make. First, I take
16 personal privilege to acknowledge the departure of one
17 of our longest serving Board Members, Board Member
18 Ellen Paprocki. Ellen served on this Board for over
19 20 years. During her tenure, Ellen was a valuable
20 resource of institutional knowledge for the Workers'
21 Compensation Board. Her wisdom and competency towards
22 upholding the Workers' Compensation Law and
23 strengthening the tenets of our system are solidly
24 planted with the thousands of cases on which she has

1 opined over the years.

2 As Ellen has said herself, the Workers'
3 Compensation Board is continually striving for and
4 accomplishing goals that provide better services to
5 the people of New York State. And Ellen has been an
6 integral part to reaching our goals over the last two
7 decades. In fact, during her time with the Board,
8 Ellen has supported our work through significant
9 challenges and milestones, including the Board's
10 response to the terrorist attacks of September 11,
11 2001 when the Board found itself having to ensure that
12 thousands of people hurt and killed as a consequence
13 of the attacks received benefits humanely and quickly.
14 And Ellen heard some of the first appeals involving
15 9/11 claims.

16 The legislative reforms of 2007, which ensured
17 the maximum benefit would adjust automatically as
18 wages rise in New York, and that claims from injured
19 workers would not be disputed solely in an effort to
20 delay benefits. The Business Relief Act of 2013,
21 which delivered efficiencies resulting in 800 million
22 system savings to all employers, both public and
23 private, as well as raising the minimum benefit for
24 most vulnerable workers. The 2017 legislative reforms

1 which revised Permanent Impairment Guidelines, created
2 a Pharmacy Formulary, and ensured better worker
3 protections, and our response to the ongoing COVID-19
4 pandemic, and appeals currently being heard by the
5 Board.

6 I want to thank Ellen for her many years of
7 dedicated service and wish her the very best in all of
8 her future endeavors, which I know will include the
9 golf course, hitting the ski slopes, and of course
10 spending time with family.

11 If any of the Board Members would now like to
12 offer their own comments on Ellen's time here, please
13 raise your hand and I will call on you so you -- so
14 that you may do so. Okay, I see one hand.
15 Mark Higgins, go ahead. Please unmute yourself. And
16 then --

17 MARK HIGGINS: Yes.

18 CLARISSA RODRIGUEZ: -- Mark Stasko and then
19 Linda Hull, right? Okay.

20 MARK HIGGINS: Can you hear me, Madam Chair?

21 CLARISSA RODRIGUEZ: Yes, we can.

22 MARK HIGGINS: Okay. I'm going to take off
23 my glasses because they're steaming up. Ellen
24 Paprocki will be sorely, sorely missed on this Board.

1 She kept the standard and her competence, her
2 know-how, her know-where, her know-what were
3 inspirational to me in trying to do this job. But
4 beyond that, I considered her a great, great friend
5 and I'll miss her even more in -- in that way.

6 Ellen has a knack for pushing aside policy
7 differences and just being friends and being fun, and
8 just a real good person to hang out with, with all the
9 other Board members as well. So it's a difficult
10 farewell, but she's looking at a big, big life, lots
11 of great, great events will be happening to Ellen
12 because of who she is and how she feels about her
13 family, which we all know, and I think that she would
14 make the coolest grandmother that ever was. Thank
15 you, Ellen.

16 CLARISSA RODRIGUEZ: Thank you, Mark. We
17 appreciate that. Okay, Mark Stasko.

18 MARK STASKO: Thank you, Madam Chair, for
19 the opportunity to speak about Ellen. During your
20 life -- during my life, there was -- are -- were times
21 where I had specific individuals that touched me and
22 made a lasting impression on me. I can think of a
23 grammar school social study teacher, a history
24 professor in college, and a couple of my managers

1 while I was in the private sector. And to me, Ellen
2 falls into this category as a -- as a very special
3 person in my life.

4 I had the -- I had the fortune of living in
5 Syracuse, which is the same area where Ellen lives.
6 And when I was first appointed as Commissioner, I
7 received a phone call prior to the first meeting from
8 Ellen inviting me out to lunch to ease my way into the
9 Board, as I was very excited that I had been
10 appointed, but Ellen kind of gave me the lay of the
11 land to make me feel comfortable. And I've -- I also
12 had a lot of time to share with her going to facial
13 exams and other Board meetings where I've really -- I
14 really got to know what a special person Ellen is and
15 what a sweet -- what a sweet person she is. She'll
16 be -- she'll really be missed.

17 But I -- I -- I have to say that Ellen is a
18 consummate professional. She was always very thorough
19 in her review and analysis of cases presented to her.
20 And she was a mentor to me on cases where it was
21 something I hadn't seen before. And, you know, I'd
22 run it by Ellen and she would -- she would help for me
23 to decide the decision anyway, so I wish Ellen all
24 the -- all the health and happiness in retirement and

1 I'm grateful to have served on the Board with her.
2 Thank you.

3 CLARISSA RODRIGUEZ: Thank you, Mark Stasko,
4 for those kind words. Go ahead, Linda.

5 LINDA HULL: Well, a lot has been said about
6 Ellen and she is a very special person, no question.
7 She -- she is truly the eminent professional. She
8 took her job very seriously, and yet at the same time
9 she had a unique almost fiercely independent in some
10 of her views, which you could -- you just couldn't
11 help but respect.

12 As all the other Board Members said, she just was
13 an awful lot of fun to work with, and I know I
14 personally am going to miss her in many ways. We had
15 children the same age and shared a lot of experiences.
16 Best of luck, Ellen.

17 CLARISSA RODRIGUEZ: Thank you, Linda. And
18 Vice Chair Freida Foster.

19 FREIDA FOSTER: Thank you. I concur with
20 what everyone has said about Ellen. And having served
21 with her for over 13 years, I came to admire her
22 tenacity and her competency as well as her humor. She
23 was very, very funny, especially on our after-work
24 ex -- our after-work discussions over wine. She was

1 an extraordinary resource for everyone and she will
2 definitely be missed. But I'm very happy she finally
3 is able to enjoy the ski slopes and her family.

4 CLARISSA RODRIGUEZ: Thank you, Vice Chair
5 Foster. Anyone else? Okay. Well, thank -- oh, yes,
6 Board Member Lobban.

7 LOREN LOBBAN: I would just like to say
8 Ellen was there when I first came on and the
9 composition of the Board was radically different. And
10 at any time that you had to call up somebody, I
11 believe Ellen was the first one that was willing to
12 share information regarding the Board. She was a true
13 professional. She did take her work seriously, and
14 she will be missed. It's -- I don't know about the
15 grandkids and everything else, but I just know her as
16 a professional when it came to work. Thank you.

17 CLARISSA RODRIGUEZ: Thank you, Board Member
18 Lobban. And thank you all, Board Members. I'm sure
19 Ellen will be touched when she sees this. And just
20 lastly on behalf of the Board, thank you very much,
21 Ellen. You will be missed by all, as you have heard.
22 You are also a personal friend to me and I thank you
23 for your many years of friendship.

24 Now, we turn from a departed colleague to a new

1 one, and one we welcome warmly and with excitement
2 about the great work we'll be doing together here.
3 It's my pleasure to introduce to the Board and our
4 fellow New Yorkers across the state to someone who
5 brings a wealth of experience to this critical role
6 insuring the rights of every stakeholder in the
7 Workers' Compensation system.

8 Renee Delgado has devoted much of her career to
9 advocating for workers' rights. For example, her work
10 at the New York City Central Labor Counsel, AFL-CIO,
11 which represents workers in the public sector, private
12 sector, and building trade unions. That was prior to
13 earning a master's degree in criminal justice, law
14 degree, which also -- which held -- which led to her
15 administration to the Bar and a 14-year career with
16 the New York State Public Employees Federation. She's
17 served there as Associate Counsel, as Director of
18 Contract Administration, and as General Counsel.
19 Board Member Delgado was a Special Assistant in the
20 Counsel's Office of the New York State Department of
21 Labor, Assistant Director of Legal Services at the
22 SUNY Colleges of Nanoscale Science and -- and
23 Engineering, and Assistant District Attorney in Queens
24 County and in Albany County, which is where she is

1 from, by the way.

2 Now, Board Member Delgado, we are happy to have
3 you here with us as we continue fulfilling the Board's
4 mission. Welcome to the Board.

5 RENEEL DELGADO: Thank you, Madam Chair. It
6 is an honor to serve the people of New York as a
7 member of the Board. We all bring to the Board unique
8 backgrounds and perspectives, and I look forward to
9 working with all of you to ensure the Board meets its
10 mission.

11 In my very short time as a member of the Board
12 and my experience as a labor representative, I know
13 how important the duties with which we are charged, as
14 it has a real and meaningful impact on lives. I'm
15 eager to get this opportunity to work on behalf of
16 injured workers and their employers. Thank you.

17 CLARISSA RODRIGUEZ: Thank you for your
18 comments, Board Member Delgado. Okay. After all
19 those important announcements, I now have the honor to
20 call the 1,012th meeting of the Full Board to order.
21 Madam Secretary, will you please call attendance?

22 KIM MCCARROLL: Vice Chair Foster.

23 FREIDA FOSTER: Here.

24 KIM MCCARROLL: Board Member Higgins.

1 MARK HIGGINS: Here.

2 KIM MCCARROLL: Board Member Lobban.

3 LOREN LOBBAN: Here.

4 KIM MCCARROLL: Board Member Williams.

5 SAMUEL WILLIAMS: Here.

6 KIM MCCARROLL: Board Member Hull.

7 LINDA HULL: Here.

8 KIM MCCARROLL: Board Member Ausili.

9 FREDRICK AUSILI: Here.

10 KIM MCCARROLL: Board Member Crain.

11 STEVEN CRAIN: Here.

12 KIM MCCARROLL: Board Member Stasko.

13 MARK STASKO: Here.

14 KIM MCCARROLL: Board Member Tavares.

15 ARELIS TAVARES: Here.

16 KIM MCCARROLL: Board Member Caggianelli.

17 PAMELA CAGGIANELLI: Here.

18 KIM MCCARROLL: Board Member Dilan.

19 MARTIN DILAN: Here.

20 KIM MCCARROLL: Board Member Delgado.

21 RENEE DELGADO: Here.

22 KIM MCCARROLL: Madam Chair, all members are
23 present.

24 CLARISSA RODRIGUEZ: Okay. Thank you, Madam

1 Secretary. Now on to our agenda. Agenda Item 1,
2 approval of the June 14th, 2022 meeting minutes.
3 Please note, Board Member Delgado, you are recused
4 from voting on this item. Now, to the remaining Board
5 Members, you have all received a copy of the
6 June 14th, 2022 meeting minutes for review. Are there
7 any questions or need for discussion? Okay, seeing
8 and hearing none, is there a motion to approve the
9 June 14th, 2022 meeting minutes?

10 FREDRICK AUSILI: Yes, Madam Chair. This is
11 Board Member Fredrick Ausili, and I move to approve
12 the June 14th Board Meeting Minutes.

13 CLARISSA RODRIGUEZ: Thank you, Board Member
14 Ausili. Is there a second?

15 PAMELA CAGGIANELLI: Yes, Madam Chair. This
16 is Board Member Pamela Caggianelli, and I second that
17 motion.

18 CLARISSA RODRIGUEZ: Thank you, Board Member
19 Caggianelli. Is there any opposition to the motion?
20 Hearing none, all in favor, please say aye.

21 ALL: Aye.

22 CLARISSA RODRIGUEZ: All opposed? Hearing
23 no opposition, I am also a yes. That motion is
24 passed. Thank you, Board Members. Agenda Item 2,

1 Office of General Counsel's Departmental Report. Now,
2 Acting Executive Director and General Counsel,
3 David Wertheim, will now present the Statistical and
4 Informational Report for the month of June.

5 DAVID WERTHEIM: Thank you. Good morning,
6 Chair, Vice Chair, and Board Members. Here is a
7 Statistical and Informational Report relating to the
8 resolution of issues by the Workers' Compensation
9 Board in June. In the Adjudication Division, there
10 were 16,857 hearings held, with 11,200 cases becoming
11 fully resolved at the hearing. There were also 327
12 Reserve Decisions issued, and 1,803 finalized Waiver
13 Agreements.

14 With respect to the Administrative Review
15 Division, there were 1,148 Applications for
16 Administrative Review received, 921 processed, with an
17 end-of-month inventory of 4,595. Relating to Full
18 Board Review, 137 applications were received in June,
19 123 processed fully, leaving an end-of-month inventory
20 of 247.

21 That concludes the Statistical and Informational
22 Report for June. Of course, I will be happy to take
23 any questions. Thank you.

24 CLARISSA RODRIGUEZ: Thank you, David.

1 Board Members, are there any questions or need for
2 discussion? Okay, hearing none, may I please have a
3 motion to accept the Statistical and Informational
4 Report of the Office of General Counsel?

5 FREDRICK AUSILI: Yes, Madam Chair, this is
6 Board Member Frederick Ausili, and I move to accept
7 the report, the Statistical and Informational Report
8 for the Office of the General Counsel.

9 CLARISSA RODRIGUEZ: Thank you very much,
10 Board Member Ausili. Is there a second?

11 PAMELA CAGGIANELLI: Yes, Madam Chair. This
12 is Board Member Pamela Caggianelli, and I second that
13 motion.

14 CLARISSA RODRIGUEZ: Thank you, Board Member
15 Caggianelli. Is there any opposition to the motion?
16 Seeing and hearing none, all in favor, please say aye.

17 ALL: Aye.

18 CLARISSA RODRIGUEZ: Thank you. All
19 opposed? Hearing no opposition, I am also a yes.
20 That motion is passed. Thank you, Board Members.
21 Now, Agenda Item 3, our Legal Appeals. Acting
22 Executive Director and General Counsel,
23 David Wertheim, will now present the recommendations
24 concerning decisions by the Appellate Division.

1 DAVID WERTHEIM: Thank you again, Madam
2 Chair. Since the time of the last Board Meeting until
3 today, the Appellate Division, Third Department has
4 issued 13 decisions with respect to Workers'
5 Compensation Board claims. Of those 13, nine
6 decisions were affirmed, one reversed, one was a
7 modification, and two decisions were -- two appeals
8 from decisions were dismissed. It's the
9 recommendation of General Counsel that all of the
10 decisions of the Court be adopted as decisions of the
11 Board. Thank you.

12 CLARISSA RODRIGUEZ: Thank you, David. May
13 I please have a motion to accept the recommendations
14 of the Office of General Counsel?

15 FREDRICK AUSILI: Yes, Madam Chair. This is
16 Board Member Frederick Ausili, and I move to accept
17 the recommendations of the Office of the General
18 Counsel.

19 CLARISSA RODRIGUEZ: Thank you, Board Member
20 Ausili. Is there a second?

21 PAMELA CAGGIANELLI: Yes, Madam Chair. This
22 is Board Member Pamela Caggianelli, and I second that
23 motion.

24 CLARISSA RODRIGUEZ: Thank you, Board Member

1 Caggianelli. Is there any opposition to the motion?
2 Seeing and hearing no opposition, all in favor, please
3 say aye.

4 ALL: Aye.

5 CLARISSA RODRIGUEZ: Okay, thank you. All
6 opposed? Seeing and hearing none, I am also a yes.
7 That motion is passed. Thank you, Board Members.
8 Agenda Item 5, Mandatory Full Board Review. We start
9 with Case 5A, Department of Corrections, Case Number
10 G1237129. Is there a motion with respect to 5A on the
11 agenda?

12 PAMELA CAGGIANELLI: Yes, Madam Chair. This
13 is Board Member Pamela Caggianelli, and I move that
14 the majority decision be the Full Board decision.

15 CLARISSA RODRIGUEZ: Thank you, Board Member
16 Caggianelli. Is there a second?

17 LOREN LOBBAN: Yes, Madam Chair. This is
18 Board Member Loren Lobban, and I second that motion.

19 CLARISSA RODRIGUEZ: Thank you, Board Member
20 Lobban. Are there any recusals from this matter?
21 Hearing none, is there any opposition to the motion?
22 Okay, seeing and hearing none, all in favor, please
23 say aye.

24 ALL: Aye.

1 CLARISSA RODRIGUEZ: Thank you. All
2 opposed? Hearing none, I am also a yes. That motion
3 is passed. Moving on to 5B, B&W Electrical
4 Contractors, Case Number 99801481. Is there a motion
5 with respect to 5B?

6 STEVEN CRAIN: Yes, Madam Chair. This is
7 Board Member Steven Crain, and I move that the
8 dissenting opinion be adopted as the opinion of the
9 Full Board.

10 CLARISSA RODRIGUEZ: Thank you, Board Member
11 Crain. Is there a second?

12 ARELIS TAVARES: Yes, Madam Chair. This is
13 Board Member Arelis Tavares, and I second that motion.

14 CLARISSA RODRIGUEZ: Thank you, Board Member
15 Tavares. Are there any recusals from this matter?

16 LOREN LOBBAN: Yes, Madam Chair. This is
17 Board Member Loren Lobban, and I'm asking for -- to be
18 recused from this matter.

19 CLARISSA RODRIGUEZ: Thank you, Board Member
20 Lobban. Your recusal has been noted. Is there any
21 opposition to the motion?

22 LINDA HULL: Yes, Madam Chair. This is
23 Board Member Linda Hull, and there's opposition.

24 CLARISSA RODRIGUEZ: Thank you, Board Member

1 Hull. In light of the opposition, I now -- I now call
2 upon the Secretary for a roll call vote.

3 KIM MCCARROLL: Board Member Ausili.
4 FREDRICK AUSILI: No.
5 KIM MCCARROLL: Board Member Caggianelli.
6 PAMELA CAGGIANELLI: No.
7 KIM MCCARROLL: Board Member Crain.
8 STEVEN CRAIN: Yes.
9 KIM MCCARROLL: Board Member Delgado.
10 RENEE DELGADO: Yes.
11 KIM MCCARROLL: Board Member Dilan.
12 MARTIN DILAN: Yes.
13 KIM MCCARROLL: Board Member Higgins.
14 MARK HIGGINS: Yes.
15 KIM MCCARROLL: Board Member Hull.
16 LINDA HULL: No.
17 KIM MCCARROLL: Board Member Stasko.
18 MARK STASKO: No.
19 KIM MCCARROLL: Board Member Tavares.
20 ARELIS TAVARES: Yes.
21 KIM MCCARROLL: Board Member Williams.
22 SAMUEL WILLIAMS: Yes.
23 KIM MCCARROLL: Vice Chair Foster.
24 FREIDA FOSTER: Yes.

1 KIM MCCARROLL: Madam Chair.

2 CLARISSA RODRIGUEZ: Yes.

3 KIM MCCARROLL: That motion is passed 8, 4.

4 CLARISSA RODRIGUEZ: Okay. Thank you, Madam
5 Secretary. Agenda Item 6, Discretionary Full Board
6 Review. I now turn this portion of the agenda over to
7 Vice Chair Foster.

8 FREIDA FOSTER: Thank you, Madam Chair. For
9 the cases listed in Item 6 on your agenda, it has been
10 recommended that Full Board Review be granted. That
11 case is New York Black Car Fund. I move to refer the
12 case back to the respective Panel for further
13 consideration.

14 CLARISSA RODRIGUEZ: Thank you, Vice Chair
15 Foster. Is there a second?

16 PAMELA CAGGIANELLI: Yes, Madam Chair. This
17 is Board Member Pam Caggianelli, and I second that
18 motion.

19 CLARISSA RODRIGUEZ: Thank you, Board Member
20 Caggianelli. Are there any recusals from this matter?
21 Hearing none, is there any opposition to the motion?
22 Also seeing and hearing none, Board Members, all in
23 favor, please say aye.

24 ALL: Aye.

1 CLARISSA RODRIGUEZ: Thank you. All
2 opposed? Hearing none, I am also a yes. That motion
3 is passed. Thank you. And finally, any other
4 business? Board Members, is there any other business
5 we'd like to discuss at this time? Okay. Hearing
6 none, may I please have a motion to adjourn the
7 meeting?

8 FREDRICK AUSILI: Yes, Madam Chair. This is
9 Board Member Frederick Ausili, and I move to adjourn
10 the meeting.

11 CLARISSA RODRIGUEZ: Thank you, Board Member
12 Ausili. Is there a second?

13 PAMELA CAGGIANELLI: Yes, Madam Chair. This
14 is Board Member Pamela Caggianelli, and I second that
15 motion.

16 CLARISSA RODRIGUEZ: Thank you, Board Member
17 Caggianelli. Is there any opposition to the motion?
18 Okay. Hearing none, all in favor, please say aye.

19 ALL: Aye.

20 CLARISSA RODRIGUEZ: All opposed? Hearing
21 none, I am also a yes. That motion is passed.
22 Meeting adjourned. Thank you very much, Board
23 Members. Have a great afternoon.

24 UNIDENTIFIED SPEAKER: Have a great summer,

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everybody.

CLARISSA RODRIGUEZ: Yes, have a great
summer. See you in September.

(Whereupon, the meeting was adjourned.)