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MEETING NOTICE:

The Advisory Council on Workers' Compensation and Occupational Disease Disablement will meet at **9 a.m., Monday, September 14, at the WCA headquarters, 2410 Centre SE, Albuquerque, NM.** Download agenda at: <http://www.workerscomp.state.nm.us/advisory.php> 72 hours prior to the meeting.

Changes at Uninsured Employers' Fund Result in Greater Rate of Collection

By Aileen O'Catherine

The Uninsured Employers' Fund (UEF) has seen a steady rise in collection rates over the past few months, due in large part to the addition of several new employees into the bureau, and a dedicated effort to collect reimbursements from illegally uninsured employers. Attorney Richard Bustamante began at the department in August, 2014, and in addition to handling cases, he has focused on collecting money owed to the UEF. Mark Plomer came on as UEF Administrator in December, 2013, after the position had been vacant for about 18 months. Since joining the bureau, both Bustamante and Plomer have focused on getting the backlog of cases and collections cleared. Monies owed are now coming in as employers are more quickly being held accountable.

The Uninsured Employers' Fund (UEF) provides benefits to injured workers when their employers don't have the requisite workers' compensation coverage. The New Mexico Legislature created the UEF to provide and pay for a job-injured worker's medical and lost wage indemnity benefits, including the legal mechanisms to obtain reimbursement from the uninsured employer for any monies paid on a worker's behalf. In creating the UEF, the Legislature gave the Fund authority to impose penalties against uninsured employers, from 15 to 50 percent of the value of all benefits paid to or on behalf of the worker. All monies collected go back to the fund to aid injured workers.

When the UEF disburses money from its account to help an injured worker, it does what it can to recoup those costs from the employer, and to assess penalties. When he started at the UEF, Plomer directed the team to go after older accounts. For some of those accounts, a great deal of time had passed from the original request for reimbursement and Plomer said a very good collection letter helped him pave the path to success. The demand letter from the UEF spells out what employers must do to repay funds to the UEF and how much they owe for workers' medical and indemnity charges. The letter also details the penalty fee of anywhere between 15

and 50 percent of costs the UEF incurred on behalf of the worker. Once they've been given the balance due, employers have the option of making payment through a payment plan or by paying in full. "The idea is to get them to call us and get this resolved. We have had good success with that demand letter," Plomer said. About 30 percent of those who receive a letter respond by contacting the UEF.

The team worked their way down the list of funds owed by beginning collection efforts with claims that topped \$100,000. Once those monies were collected, they worked down in dollar amounts owed. Now that the backlog has slowed, Plomer has been able to focus on making other needed changes. One of the changes he instituted was timing of collections. In the past, the UEF would wait until all old claims were paid on the account before going to collections. Now repayment is requested immediately. Plomer has also found ways to recover costs even when an employer closes down. If bankruptcy is part of the picture, UEF staff will contact the trustee to let them know the employer owes the Fund money.

"We don't lose any opportunity to get money back," Plomer said, "even if it's not the full amount owed." Some money is better than no money at all, he says. He also keeps on the lookout for other parties to help offset UEF claims, and take some of the burden off the UEF. "We're always on the lookout for found money."

When he came to the position, Plomer set a goal to bring in \$240,000 in collections for the fiscal year (2015). By the end of FY2015, the bureau collected \$239,094, or 99 percent of their goal. The UEF has been at 183 percent of the bureau's average collections per month (\$10,890) over the past three years. Plomer bases his estimation on a monthly amount that is 100 percent equivalent to the average in the last two fiscal years' collections. For FY2015, the UEF collected 2.09 times as much as it had taken in for the prior year. "Our collection efforts seem to be paying off," he said.

Plomer is a licensed claims adjuster and was a field underwriter for 23 years. From 2009 to 2013, he worked in medical malpractice, where he honed

Save the Date!
 Settlement Week
 is scheduled for
 October 26 - 30,
 2015.

WCA Welcomes New Executive Deputy Director

Governor Susana Martinez and Director Darin A. Childers announced Dana Chavez as the WCA Executive Deputy Director on May 23, 2015.

Chavez has served in various capacities at the WCA for 27 years. For the past four years, she was Clerk of the Court, ensuring accurate processing of all court documents, pleadings, complaints, petitions and judge assignments. She was responsible for activities in both the Docket and Records Sections.

"I'm excited for my new opportunity to serve here at the administration and within the workers' compensation community," said Chavez.

Chavez began her career in state government as a secretary at the Department of Labor when workers' compen-

sation was part of that agency. When the WCA was established in 1988, Chavez began work as an insurance specialist, assisting in the establishment of processes and procedures for the new unit, processing certificates of insurance and educating employers about workers' compensation coverage.

Chavez managed the functions of the WCA Employer Compliance Bureau from 1991 to 2004, then took over as program manager for the agency's proof of coverage efforts until taking on the position as bureau chief at the Clerk of the Court.

Prior to her work with the state, Chavez



worked in the insurance industry, where she dealt with all lines of coverage.

"Dana has been a reliable employee and is the consummate professional," Childers wrote in his e-mail announcement. Chavez will oversee the WCA's Operations Division, which encompasses the Dispute Resolution, Medical Cost

Containment, Self-Insurance, and the Economic Research and Policy bureaus. Chavez will continue as Clerk of the Court until a replacement is hired. She replaces outgoing Executive Deputy Director Robert Doucette, who accepted a position with the Office of Superintendent of Insurance.

WCA Announces New Hires and Promotions

There have been a number of changes in the WCA's staffing. Judith Paquin is the agency's new assistant general counsel, as of February 28. She came from CYFD in Carlsbad, and prior to that, was a practicing attorney in Connecticut for 25 years. She also served as an adjunct professor at Quinnipiac University for 15 years.

The Employer Compliance Bureau has two new compliance officers. Army veteran Lenny Fulton comes to the WCA after working as a corrections officer with CYFD and a loss prevention manager with Sears. Johnny Romero has worked for the

state for eight years, at both the Board of Nursing and at Human Services. Both Fulton and Romero started on May 26.

Pauline Gurule-Sers began June 22 as the new human resources specialist. She previously worked in Human Resources at the Department of Corrections.

Kyle Bowman began as a WCA statistician on June 22. He has a master's degree in statistics from California State University in East Bay.

Kathy Sours will welcome visitors and greet phone calls as the new WCA receptionist. She started on June 22.

There have been several promotions at the WCA. As bureau chief of the Ombudsman Program, Richard Villafuerte will supervise the ombudsmen in the Albuquerque office and coordinate the program statewide. Villafuerte has been an ombudsman with the WCA for 15 years. Staci Tullar was promoted to financial manager on March 28. She most recently worked in the Human Resources office, where she oversaw payroll and benefits, but Tullar previously worked in the Finance Bureau for 21 years. Kellee

Gaddis, who has served as the agency's main office receptionist since August 2014, was promoted to facilities clerk May 9.

The WCA Field Offices have welcomed several new staff as well. Don St. Germain began as the new safety consultant in Las Cruces on April 27. He worked at the New Mexico State Veterans Home for 12 years, and is also retired from the U.S. Navy after 20 years of service. Lydia Mirabal is also new in Las Cruces, where she began on May 23 as the new ombudsman. She was the human resources director at MECA Therapies and an instructor at NMSU and Doña Ana Community College prior to joining the WCA. Pat Williams began at the Lovington office on May 26 as the new safety consultant. He previously worked for Halliburton Energy Services as the Permian Basin health, safety and environment manager. Also new in Lovington, Allison Holder started as the new ombudsman on July 6. And the Santa Fe office has a new business operations specialist. Desirae Sanchez began the position June 6, coming from CYFD, where she worked in licensing and certification.

NM Workers' Comp. Adm. Quarterly Bulletin

Darin A. Childers, Director
Diana Sandoval-Tapia, Public Information Officer
Aileen O'Catherine, Technical Writer

The Bulletin is published in January, April, July and October by the Economic Research Bureau of the New Mexico Workers' Compensation Administration. The Bulletin is available free of charge. Send changes of address and requests to receive the Bulletin to Diana Sandoval in the Public Information Office, New Mexico Workers' Compensation Administration, diana.sandoval@state.nm.us.

Suggestions for articles are welcome; call Diana Sandoval-Tapia at (505) 841-6052.

Recent issues of the Quarterly Bulletin can be viewed on the Internet at <http://workerscomp.state.nm.us/research/index.php>.

What is the Advisory Council?

The Advisory Council on Workers' Compensation and Occupational Disease Disablement is a task force created by statute, comprised of six members, three representing workers and three representing employers. The primary role of the Council is to advise the governor and legislature on the status of the workers' compensation system in New Mexico. The Advisory Council meets several times a year on an irregular schedule. Scheduled meetings of the Council are announced on the WCA website, <http://www.workerscomp.state.nm.us/advisory.php>

Angel Fire Resort's Innovative Program Increases Safety Both On and Off the Slopes

By Aileen O'Catherine

The four-season Angel Fire Resort features outdoor experiences and family activities in the Rocky Mountains of northern New Mexico. Known for its beauty, biking, skiing and golfing, the resort also has a growing reputation for its outstanding safety program. The National Ski Association recently awarded the resort with top honors for a safety program that promotes responsible skiing and snowboarding. And while developing a program to ensure slope side safety might have been enough for another organization, the resort broadened theirs to include initiatives introduced to in-house staff so they could directly impact safety issues themselves.

Maya Lengerich oversees human resources and risk management at the resort. When she noticed some of the guests used risky maneuvers on the slopes or wouldn't always wear helmets, she came up with a



Puzzle pieces display departmental safety action items

Employees are rewarded for safety knowledge. The newsletter once posed safety questions such as "Do You Know the Code?," referring to the skier/snowboarder responsibility code, which is in seven parts. The newsletter would list a code number with its explanation, and ask what the next one would be. Employees who answered

"While some managers at first perceived the program as more work, once they saw the improvement in their department's workers' compensation statistics, they understood the benefits."

safety program to address those issues, with the theme "What Makes a GREAT Skier or Snowboarder?" The resort's GREAT program educates guests on safety by using messaging and the image of the resort's ski patrol dog, who became Shadow the Safety Dog. They also enlist the help of in-house staff from lift operations, housekeeping, food and beverage and ski patrol to help spread the message. And while employees are program advocates, they are also part of the resort's in-house employee safety program.

Lengerich said both the in-house and resort safety program have run for the past three years. The in-house employee safety program consists of several parts, all of which highlight and promote safety. A weekly newsletter features examples of employees working safely, along with each department's commitment to ensuring safety through an action plan. The hotel housekeeping staff, for example, came up with the following plan:

1. Train employees on use of chemicals
2. Train employees on proper use of tools
3. Work as a team and look out for each other
4. Have a good safety attitude

correctly by the next newsletter were entered into a drawing for a \$15 gift card.

The gift cards weren't the only positive rewards employees could receive. Managers were given scratch cards valued at \$5 to \$50 to hand out to employees who were observed practicing safety. Employees got cards for actions such as keeping up with snow and ice removal, cleaning snow out of the safety net, and noticing equipment problems. Employees who received the cards could then spend them like cash in any of the resort's stores or restaurants. About 500 of the cards were awarded to employees over the 2014 winter season.

During the resort's busy winter season, department managers were tasked with creating a safety action plan. Each was given a large puzzle piece which they then decorated with the three actions their team would take to prevent injuries. The large puzzle was put together outside the Human Resources office, where employees could see what others were doing to expand safety and safety awareness throughout the resort.

Every month, departments were required to conduct a safety meeting, a jobs hazards analysis and facility inspections.

Departments that completed all the requirements received money for an end-of-season party, and the department manager received a \$100 gift card.

The in-house employee safety theme of "Own Your Zone" encourages employees to keep on top of potential hazards and reduce slips, trips and falls. In the winter season, employees would keep the snow shoveled, practice good housekeeping, put melt on the ice and more. When new employees come to the resort, they are given an "Own Your Zone" button which is worn through the season as a reminder to focus on keeping the workplace safe.

New employees also take a workshop on healthy eating habits with a nutritionist, who teaches them how to prepare healthy and affordable meals. Eating better and drinking more water helps workers to remain alert during the day, which in turn leads to working more safely, and fewer

accidents.

The internal safety program has increased safety awareness and reduced accidents, said Lengerich. "The employees did respond positively," Lengerich noted in an e-mail. "Many of them wear the 'Own Your Zone' buttons and talk about safety more frequently." It also had an overall positive effect on the staff's safety outlook. While some managers at first perceived the program as more work, once they saw the improvement in their department's workers' compensation statistics, they understood the benefits.

Lengerich said that while the workers' compensation numbers haven't gone down significantly over the past three years, the overall attitudes about safety and safety awareness have improved. Employees now make safety suggestions and if they see unsafe behaviors and close calls, report them more often.

The gift cards and rewards program have been worth the cost, Lengerich said, providing staff with good motivators. There are other rewards as well. "If they prevent even one injury then they pay for themselves," she said.

We the People

By Judge Leonard Padilla

“What procedural due process rights should be granted to prisoners at Guantanamo Bay?”

Usually, as a workers' compensation judge, I'm not called upon to ponder such issues. My mind tends to be focused on impairment ratings, modifiers, and disability. Today, however, I'm sitting in a large lecture hall at George Mason University in Fairfax, Va., thinking of follow-up questions to ask a panel of “experts” who just finished a rapid fire opening statement of their view on constitutional law—specifically the Bill of Rights.

In this instance, the “experts” are high school students, exceptionally bright and outgoing, who practically beg for more opportunity to demonstrate their knowledge of the Constitution, past and present. In their opening statement of this mock congressional hearing, the student panelists make reference to the Magna Carta, Locke, Rousseau, de Tocqueville, and the Federalist Papers. Now, I ask them to apply their historical understanding to the present. They do not disappoint; as one student eagerly begins to answer the question, she receives quick and able support from her colleagues.

I'm volunteering as a judge at the national finals of the *We The People* competition held on April 25 and 26, 2015, sponsored by the Center for Civic Education which, according to its mission statement, is dedicated to promoting an enlightened and responsible citizenry committed to democratic principles and actively engaged in the practice of democracy in the United States.

I have acted as a *We The People* judge at the state level for many years. This past year, following the state finals in December, the statewide coordinator for New Mexico nominated me to judge the national finals. There are 71 other judges from around the country participating with me. I am paired with a district court judge from Erie, Pa. and with the treasurer of the Montpelier



Foundation in Virginia. There are 56 schools competing (including some from as far away as Hawaii and Alaska). In addition to the students (six teams from each school) and teachers, many schools have large followings of family and supporters.

Over two days, we judge teams from 28 schools, ranging from Hawaii to Vermont. Some teams, as described earlier, are polished and eager, even when it is six o'clock in the morning in their time zone. Other teams are shy and unsure; they look nervously at their notes while the opening question is read to them. Each team has four minutes to respond to the opening question

and most rely on notes prepared beforehand. Then, the students put away their notes and respond to follow-up questions from the judges.

As soon as the hearing is finished, we shake hands (or bump fists) with the students and teachers and find a place in the hallway to sit and enter numbers onto the score sheets for each team. Then our facilitator (whom we affectionately call “Mother”) is on the move. Mother's job is to keep us on track and on time, taking us to the next classroom. This is an intense time and the hearings happen quickly, but before we know it, our time is up and we turn in our score sheets. We wait to learn (via Facebook and Twitter) which top 10 teams will be going to Capitol Hill in Washington, D.C., for the finals on Monday.

Me? I have a workers' compensation trial in Albuquerque on Tuesday, so I travel to National Airport for my flight. In the distance, I see the Washington Monument. Nearby that monument to one of our nation's visionary founders, I know extremely bright and motivated young citizens are competing to remain true to the founders' vision. As Thomas Jefferson stated, “I know of no safe depository of the ultimate powers of society but the people themselves, and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them but to inform their discretion.”

This weekend, I too have been informed.

Leonard Padilla is a judge with the Workers' Compensation Administration.

NOTICE OF PUBLIC HEARING

The New Mexico Workers' Compensation Administration will conduct a public hearing on the changes to the WCA Rules at 1:30 p.m., Thursday, August 6, 2015. The proposed rule changes are available at: <http://www.workerscomp.state.nm.us/news.php>

Comments made in person at the hearing (time may be limited to five minutes each), or in writing will be considered. Written comments on the rule changes should be directed to the WCA's General Counsel Office, and will be accepted until the close of business on August 14, 2015.



HOLIDAY CLOSURE

The Workers' Compensation offices in Albuquerque and all its field offices will be closed on the following upcoming holidays:

Labor Day, Monday, Sept. 7
Columbus Day, Monday, Oct. 12

Changes at Uninsured Employers' Fund Result in Greater Rate of Collection

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his negotiation skills. Those skills have been useful at the UEF, where claims require negotiation. He enjoys the work. "Claims are a lot of fun," he said. "No one claim is the same as another. Claims (work) always bring a variety of challenges."

Plomer has also changed the focus of UEF attorney work more toward legalities

and less toward collections. In fact, Plomer has taken much of the collections process on himself. "I want to let them do their work," he said of the attorneys. UEF attorneys Richard Bustamante and Richard Crollett each handle about 48 cases per year. The staff is supported by legal secretary Yvonne Unruh-Guerin. "They're doing a good job

and work great as a team," he said.

Another change he has made is to do a thorough review of cases every 30 days. The review allows the department to see which claims have closed, and what steps remain for those still open.

NM Court of Appeals Declares Farm/Ranch Exclusion Unconstitutional

On June 22, 2015, the New Mexico Court of Appeals declared that the provision of the New Mexico Workers' Compensation Act, §NMSA 52-1-6(A), excluding farm and ranch laborers from mandatory coverage, is unconstitutional. In a ruling on consolidated appeals brought forth by two agricultural laborers, the Court ruled that its decision will apply to any workers' claims that were pending as of March 30, 2012 (the date the Second Judicial Court ruled the exclusion

unconstitutional in *Griego v. New Mexico Workers' Compensation Administration*), and that were filed thereafter. Absent further case law, the New Mexico Workers' Compensation Administration intends to fully enforce the Court of Appeals' decision by requiring coverage for farm and ranch laborers by their employers. The WCA is working to educate affected employers in order to bring them into compliance.

Notice of Non-Enforcement of Electronic Billing Rule

NOTICE IS HEREBY GIVEN that the New Mexico Workers' Compensation Administration will not enforce Paragraph (16) of Subsection C of Section 8, 11.4.7. NMAC, which required that electronic billing be implemented by July 1, 2015. Public comment will be accepted on a permanent rule change during the next rulemaking cycle at a public hearing on **Thursday, August 6, 2015. (See notice on page 4.)**

New Mexico Workers' Compensation Administration Offices:

MAIN OFFICE

Location & Main Mail Address:

2410 Centre Ave. SE
Albuquerque, NM 87106-4190

Alternate Mailing Address:

PO Box 27198
Albuquerque, NM 87125-7198

Phone Numbers:

Phone: (505) 841-6000
In state toll-free phone:
1-800-255-7965
Fax Clerk of the Court:
(505) 841-6060
Director's Fax: (505) 841-6009

Regional Offices

Farmington:

2700 Farmington Ave., Bldg. E, Ste. 2
Farmington, NM 87401
Phone: (505) 599-9746
In state toll-free phone:
1-800-568-7310
Fax: (505) 599-9753

Las Cruces:

1120 Commerce Dr., Ste. B-1
Las Cruces, NM 88011
Phone: (575) 524-6246
In state toll-free phone:
1-800-870-6826
Fax: (575) 524-6249

Las Vegas:

32 NM 65
Las Vegas, NM 87701
Phone: (505) 454-9251
In state toll-free phone:
1-800-281-7889
Fax: (505) 454-9248

Lovington:

100 West Central, Ste. A
Lovington, NM 88260
Phone: (575) 396-3437
In state toll-free phone:
1-800-934-2450
Fax: (575) 396-6044

Roswell:

Penn Plaza Building
400 N. Pennsylvania Ave., Ste. 425
Roswell, NM 88201
Phone: (575) 623-3781
In state toll-free phone:
1-866-311-8587
Fax: (575) 623-0078

Santa Fe:

Aspen Plaza
1596 Pacheco, St. #202
Santa Fe, NM 87505
Phone: (505) 476-7381
Fax: (505) 476-7390

WCA Helpline-Hotline: (toll free in New Mexico)

1-866-WORKOMP 1-866-967-5667

WCA Website:

www.workerscomp.state.nm.us