



STATE OF NEW MEXICO
Workers' Compensation
Administration

ONE TEAM | ONE GOAL
A Better New Mexico for Workers and Employers

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**2023 HM 83 Task Force
Attorney Fee Cap Data Call
*Preliminary Report**

Produced by the Economic Research & Policy Bureau

Introduction

In March 2023, the New Mexico House of Representatives approved House Memorial 83, tasking the Workers' Compensation Administration (WCA) to form a task force to examine how attorney fees and the limits on these fees affect the state's workers' compensation system. In compliance, the WCA organized the first task force meeting in June 2023. At this meeting, the task force instructed the WCA to prepare a report on fee limits within the system.

To fulfill this directive, the WCA carried out a data gathering exercise from July to August 2023. The exercise targeted ten organizations, chosen based on their volume of claims as indicated in the WCA's Annual Expenditure Report. The WCA successfully linked the incoming data to its internal claim and case management systems. This document serves as the initial report based on the collected data.

Please note that some data from the responding organizations is still being processed; therefore, an updated version of this report will be released later. It is doubtful that significant statistical change will occur for the existing numbers. The current version contains all available information up to the point of its preparation and will be presented at the September Task Force meeting.

Data Call Results

96,611 total claims were received and processed as of the time this report was written. Of those claims, the WCA was able to match 79,622 to its internal claim system, or an 80.3% match. 8,716 of the linked claims had a complaint filed with the WCA's court system. The linked complaints represented 57% of the total complaints filed with the WCA over the study period (2013 – 2022). The results of this study come with a margin of error of less than 1% at the 95% confidence level, indicating that it can be assumed with 95% confidence that the true values are within 1% of the results presented here.

To ensure uniformity and relevance of the data, this report considers only the 8,716 claims that had a corresponding workers' compensation case (complaint filed). It can be safely assumed that claims that do not have any associated court case or indemnity payments filed will not reach the attorney fee cap. Furthermore, only cases that have a date of injury between the dates of January 1, 2013, and December 31, 2022, were considered. This was necessary to standardize data across responding organizations.



Lastly, it is essential to recognize that the WCA receives reports on a large number of injury claims annually, far exceeding those included in this report. However, claims without an complaint were deemed irrelevant to the fee limit discussion and were thus excluded.

Complaints Reaching the Fee Cap

The Workers' Compensation Administration (WCA) sorted the 8,716 matched claims with a complaint into three main groups. The first two groups are cases that either "did not reach the fee cap" or "definitely reached the fee cap." These groups were identified based on sufficient data that showed the exact amount of attorney fees paid, with the fee cap being \$22,500. The third group, called "might have reached the fee cap," includes claims where only the total legal fees were known and exceeded the \$22,500 cap. It's important to note that many claims in this category likely did not actually go over the fee cap.

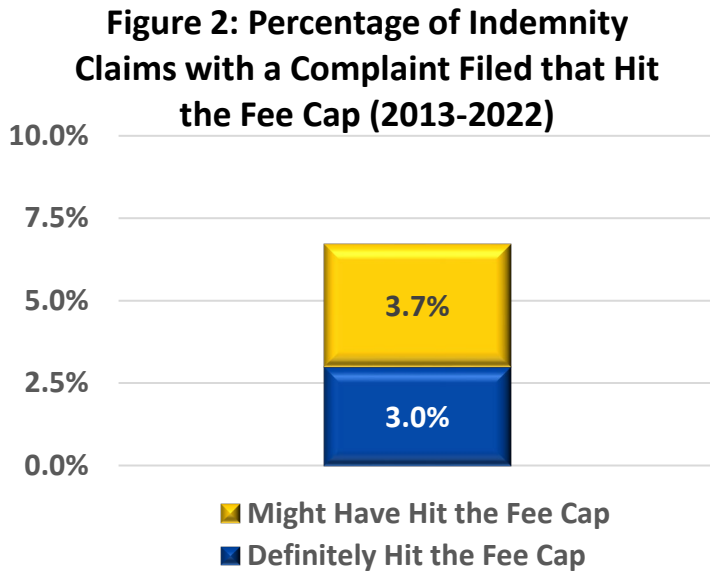
Table 1: Fee Cap Status of Cases with a Complaint Filed (2013 - 2022)		
Case Status	Complaint Count	Complaint Percentage
Did Not hit the Fee Cap	8,130	93.3%
Definitely Hit the Fee Cap	261	3.0%
Employer's Attorney Fees Hit the Cap	192	2.2%
Worker's Attorney Fees Hit the Cap	54	0.6%
Both Employer and Worker's Attorney Fees Hit Cap	15	0.2%
Might Have Hit the Fee Cap	325	3.7%
Total	8,716	100%

Table 1 provides a detailed breakdown of 8,716 cases with filed complaints. Most notably, the overwhelming majority of cases (8,130, or 93.3%) did not reach the fee cap of \$22,500. Conversely, only a small fraction of cases (261, or 3.0% - see Figure 2) definitively exceeded the fee cap. It is also noteworthy that employer's attorney fees reached the cap in 192 cases, while workers' attorney fees reached it in 54 cases. Lastly, a category of uncertainty exists: 325 cases (or 3.7% - see Figure 2) might have reached the fee cap, but it's unclear due to insufficient data breakdown. These findings imply that the **current fee cap structure does not have an impact on the overwhelming majority of workers' compensation cases** in New Mexico.

Based on the sampled data and by using the total number of claims filed with the WCA during the study period (2013 – 2022), **it is estimated through extrapolation that 458 cases met or exceeded the fee cap.** This number is obtained by applying the percentage of cases in the sample that exceeded the fee cap to the overall number of filed claims. Accordingly, this translates to an average of



approximately 46 cases per year meeting or exceeding the cap. Please note that this does not include cases that might have hit the fee cap, but for which there was not sufficient information to determine conclusively.



3.0% of cases met or exceeded the fee cap. The WCA estimates that 458 cases met or exceeded the fee cap during the study period, or an average of 46 cases per year.

Matters Filed

The task force asked the WCA to examine potential factors that could quantify if a case is a “serious” case for the purpose of discretionary limit increases. While some of this analysis is ongoing and intended for a future report, the WCA included initial information about case complexity based on the number of “matters” filed, as well as the number of appeals filed. In this context, a “matter” refers to a new type of complaint or legal issue for a single injury brought before the court such as a denial of benefits, medical dispute, permanent disability rating, etc. All cases have at least one matter (the initial complaint), but each injury can have multiple matters. Generally speaking, a new matter indicates a new phase or aspect of the legal proceedings.



Table 3: Average Number of Legal Matters Filed	
Case Status	Average # of Matters
Did Not hit the Cap	1.7
Definitely Hit the Fee Cap	3.0
Employer's Attorney Fees Hit the Cap	3.1
Worker's Attorney Fees Hit the Cap	2.6
Both Employer and Worker's Attorney Fees Hit Cap	3.5
Might Have Hit the Fee Cap	2.6
All Cases	1.8

For cases that did not reach the fee cap, an average of 1.7 matters were filed. This is notably less than cases that exceeded the fee cap, where the average was 3.0 matters. When analyzed by who reached the fee cap, the data shows that cases involving employer's attorney fees hitting the cap had an average of 3.1 matters. In contrast, cases where only the worker's attorney fees hit the cap had an average of 2.6 matters. **This could suggest that the more legal complexities or issues a case has, as indicated by the number of matters, the more likely it is that attorney fees will reach the cap.**

Figure 4: Average Number of Legal Matters by Fee Type

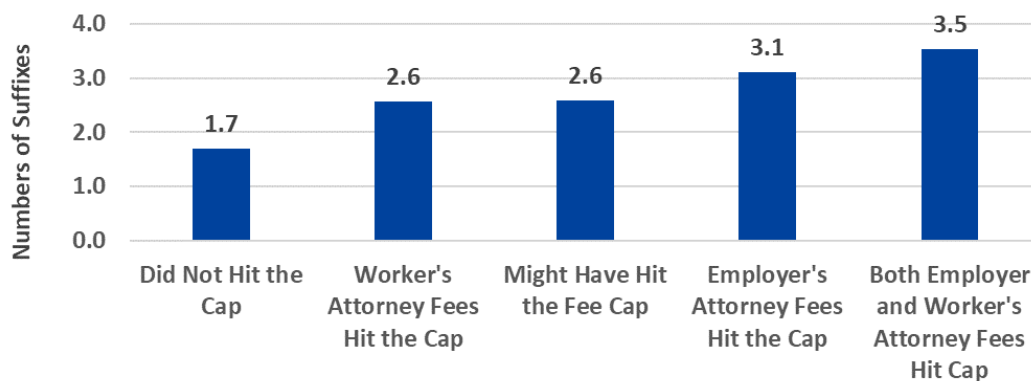


Figure 4 further clarifies the relationship between the number of matters and the likelihood of reaching the fee cap. With an average of 3.5 matters, cases where both the employer's and worker's attorney fees hit the cap are at the top of the scale. This is closely followed by cases where only the employer's attorney fees hit the cap, with an average of 3.1 matters. Cases that might have hit the fee cap and those involving only the worker's attorney fees both average 2.6 matters, offering a middle-ground complexity level. Lastly, cases that did not reach the cap have the lowest average number of matters, at 1.7, suggesting they are generally less complex.

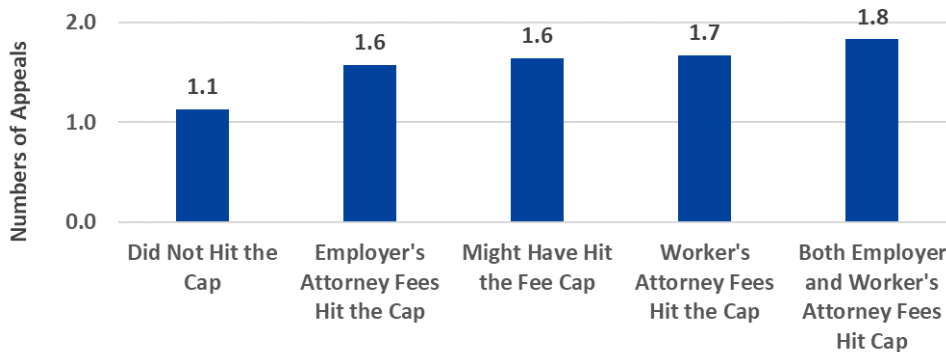


Appeals Filed

Table 5: Average Number of Appeals Filed	
Case Status	# of Appeals
Did Not Hit the Cap	1.1
Definitely Hit the Fee Cap	1.6
Employer's Attorney Fees Hit the Cap	1.6
Worker's Attorney Fees Hit the Cap	1.7
Both Employer and Worker's Attorney Fees Hit Cap	1.8
Might Have Hit the Fee Cap	1.6
All Cases	1.4

In *Table 5*, the data reveals that the number of appeals filed in a case is an indicator of its complexity. Cases that "did not reach the cap" had fewer appeals on average, with 1.1 appeals, compared to those that "definitely hit the fee cap," where the average was 1.6 appeals. For cases where both the employer and worker's attorney fees hit the cap, the number of appeals was the highest, averaging 1.8. The overall average number of appeals across all case categories was 1.4. Please note that appeals were represented by a very small sample.

Figure 6: Average Number of Appeals by Fee Type



As part of the task force's directive, the WCA was asked to examine factors that indicate the complexity of a case for the purpose of potential discretionary limit increases. Both legal matters and appeals filed could be included as factors for a judge to consider when granting a request for a discretionary fee cap increase.

