

WORKERS'

Data Call Supplement: Interpretation and Results

COMPENSATION

2023 HM 83 Attorney Fee Cap Task Force

Introduction

In March of 2023, the New Mexico House of Representatives approved House Memorial 83 (HM 83). HM 83 instructed 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 asked the WCA to prepare a report on the historical status of fee cap and attorneys' fees in the workers' compensation system.

In response, the WCA conducted a data call from July to August of 2023. The exercise chose ten organizations based on their volume of claims as indicated in the WCA's Annual Expenditure Report. Subsequently, the WCA linked the incoming data to its internal claim and case management systems. The results of the data call are presented in the HM 83 Task Force Data Call Tableau Dashboard, which provides an interactive tool to examine the data directly.

The primary purpose of this supplement is to provide additional information on the details of the data call. Additionally, this supplement is intended to draw attention to limitations inherent in the data that should be considered when examining the results. Finally, this supplement attempts to extrapolate the estimated number of claims that reach the fee cap each year in the WCA system at large.

Take Aways

1. The New Mexico House of Representatives House Memorial 83 task force requested that the WCA conduct a data call on attorneys' fee caps. This data call targeted claims from ten organizations with payments made between January 1, 2013 to December 31, 2022.
2. Claims were removed from this analysis for a number of reasons, as outlined in this supplement. Of note was the removal of claims with dates of injury outside the study period (2013-2022) to ensure data consistency. This resulted in a refined sample size of 5,392 claims, out of the initial 99,981.
3. Analysis revealed that 3.1% of the claims in the study sample had attorney fees that reached the cap. Additionally, there was a possibility of another 10.7% of claims reaching the cap, though in practice the actual number of these claims reaching the fee cap was likely far smaller than 10.7%.
4. The limitation of data to claims with dates of injury post-2013 might have excluded some relevant cases, potentially underrepresenting the actual percentage of cases reaching the fee



cap. However, this supplement attempts to compensate for this by focusing on the oldest four years of claims (2013 – 2016), which suggested a slightly higher percentage of cases reaching the fee cap.

5. When applying the adjusted 2013 – 2016 estimates to the average annual claims, the projected figures suggest approximately 4.4% of per year reaching the fee cap, with an additional 12.1% claims possibly reaching the cap. When compared to the actual number of claims filed in those years, that works out to an average of 81 claims per year that reached the fee cap, and an additional 222 that might have reached the fee cap.

Data Call Results

99,981 total claims were received and processed during the course of the data call. Unfortunately, not all claims were usable for the purposes of the study. Claims were removed from the study sample for the following reasons:

1. The WCA used a combination of fields to attempt to link claims to its internal databases – first name, last name, date of injury, and social security number. Heuristics were applied to claims with differences in fields (e.g. “John Doe vs. Jonathan Doe”) to link claims above a certain percentage match. Some claims did not provide sufficient fields to attempt to link the claims to the WCA’s databases. Others provided sufficient fields but the data provided did not sufficiently match any internal WCA claims. Still others only provided data in an irreconcilable format for the purposes of the study. Only claims that could be meaningfully combined with the rest of the data and that were successfully matched to the WCA’s database were included in the study sample.
2. The data call asked for all claims with a payment made after January 1, 2013, regardless of the date of injury. Unfortunately, due to technical limitations, some companies were only able to provide claims with a date of injury after 2013, not payments after. In order to maintain consistency across databases, only claims with a date of injury between 2013 and 2022 were kept in the study sample.
3. Due to a variety of reasons such as technical limitations of individual organizational claims systems, the data was received in a variety of incompatible formats. Based on the data mix and the purpose of the data call, it was determined that the best way to present the data consistently and meaningfully was to limit the study sample to claims that were linked with an associated complaint in the WCA’s internal database.



To ensure uniformity and relevance of the data, this report considers only the 5,392 matched 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.

Study Sample Claims Reaching the Fee Cap

Attorney payment data was received in two formats, dependent on the technical limitations of individual organization's claim systems. The first type included the amount of legal fees paid to each party's attorney over the life of the claim. The rest of the data only included a single number representing the total legal fees paid for each claim. Based on this, the WCA sorted the study sample claims into three main groups:

- **Reached the Fee Cap:** Claims are categorized as having reached the fee cap if individual attorney fees for either party were reported to be \$22,500 or more. Please note that in cases of a bad faith finding, an additional fee of \$5,000 can apply, but such occurrences are rare and were not considered for the sake of simplicity.
- **Might Have Reached the Fee Cap:** Typically, employers or their insurers and workers share the responsibility for a worker's attorney fees. However, in instances where an employer/insurer rejects a recommended resolution and a subsequent compensation order is not more favorable to them, they can become responsible for the entirety of workers' attorney fees. Consequently, workers' attorney fee payments reported by payors that are between \$11,250 and \$22,500 may or may not have reached the fee cap. In cases where only total legal fees are reported, it's not possible to separate individual attorney fees or non-cap applicable costs. Any claim where total legal fees were reported and met or exceeded \$11,250 technically might have reached the fee cap, although realistically only a small portion of these claims are likely to have done so.
- **Did Not Reach the Fee Cap:** This category includes claims where both employer and worker attorney fees were below \$11,250, in cases where such data was available. Claims are also classified under this category if only the total legal fees were reported and these were less than \$11,250.

Table 1 shows a breakdown of the percentage of the study sample based on the attorney or legal fees reported:



Table 1: Cap Status of Study Sample (2013 - 2022)		
Case Status	Complaint Count	Complaint Percentage
Did Not Reach the Fee Cap	4,646	86.2%
Reached the Fee Cap	169	3.1%
Employer Attorney Fees Capped	120	2.2%
Worker Attorney Fees Capped	40	0.7%
Both Attorney Fees Capped	9	0.2%
Might Have Reached the Fee Cap	577	10.7%
Worker Attorney Fees Might Have Capped	144	2.7%
"Total Legal" Might Have Capped	433	8.0%
Total	5,392	100%

Based on the results of the data call, approximately 3.1% of claims in the study sample resulted in either or both attorneys hitting the fee cap. Further, an additional 10.7% of claims might have reached the fee cap, although in practice it is likely a much lower portion of those claims actually did.

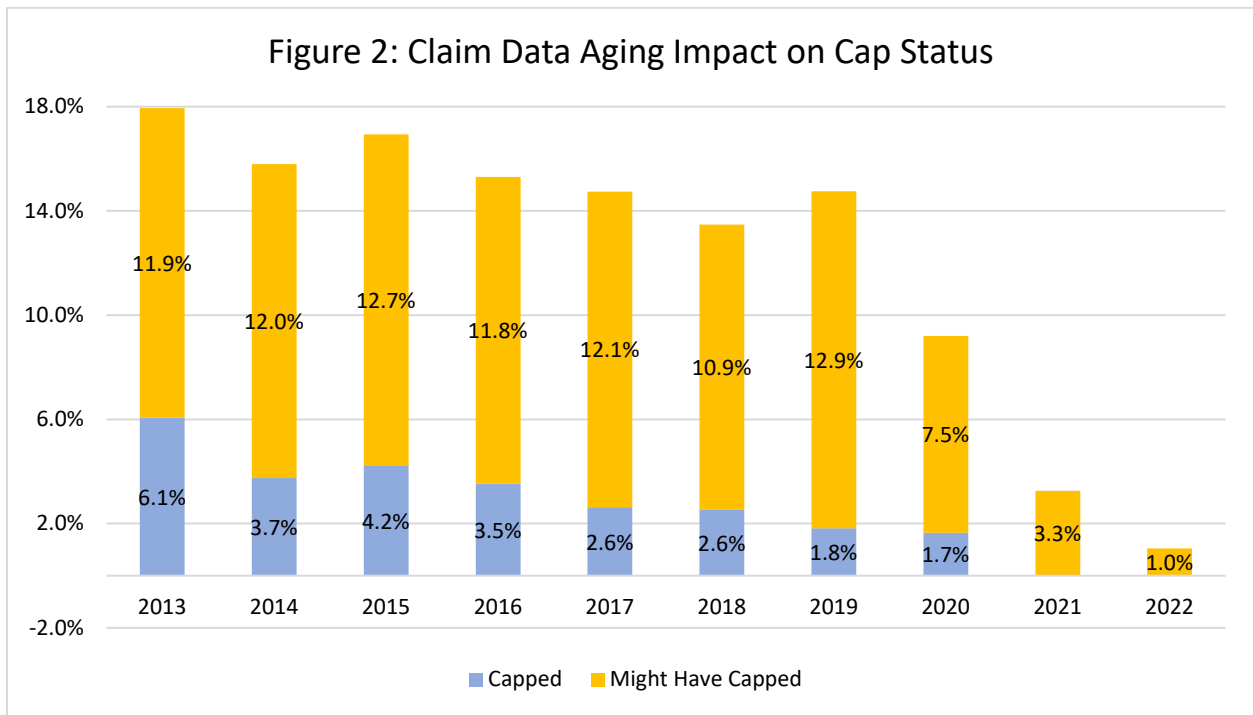
Impact of Data Aging on Results and Mitigation

The data call initially intended to collect information on the payment history of any claim that had a payment made between January 1, 2013 and December 31, 2022. However, multiple reporting organizations indicated that it was prohibitively burdensome and costly to provide the data in the requested format. As a compromise, those organizations provided the requested data only for claims with dates of injury after January 1, 2013. The remainder of the claims with dates of injury before 2022 from the organizations that complied with the initial data call format were removed to standardize the data across collected samples.

If the initial format of the data call had been feasible in practice, it would have been simple to determine how many claims were reaching the fee cap each year, regardless of the date of injury. The simple percentage of claims in reaching the fee cap would have been reflective of the percentage of comparable claims in the entire system that reach the fee cap each year. Unfortunately, with the more limited final study sample, some claims reaching the fee cap are not captured in the data. Specifically, cases with dates of injury before 2013 that capped subsequently are not represented in the data. As a result, an attempted calculation of annual complaints hitting the cap based on the data call results will underrepresent the actual percentage of cases that hit the cap.



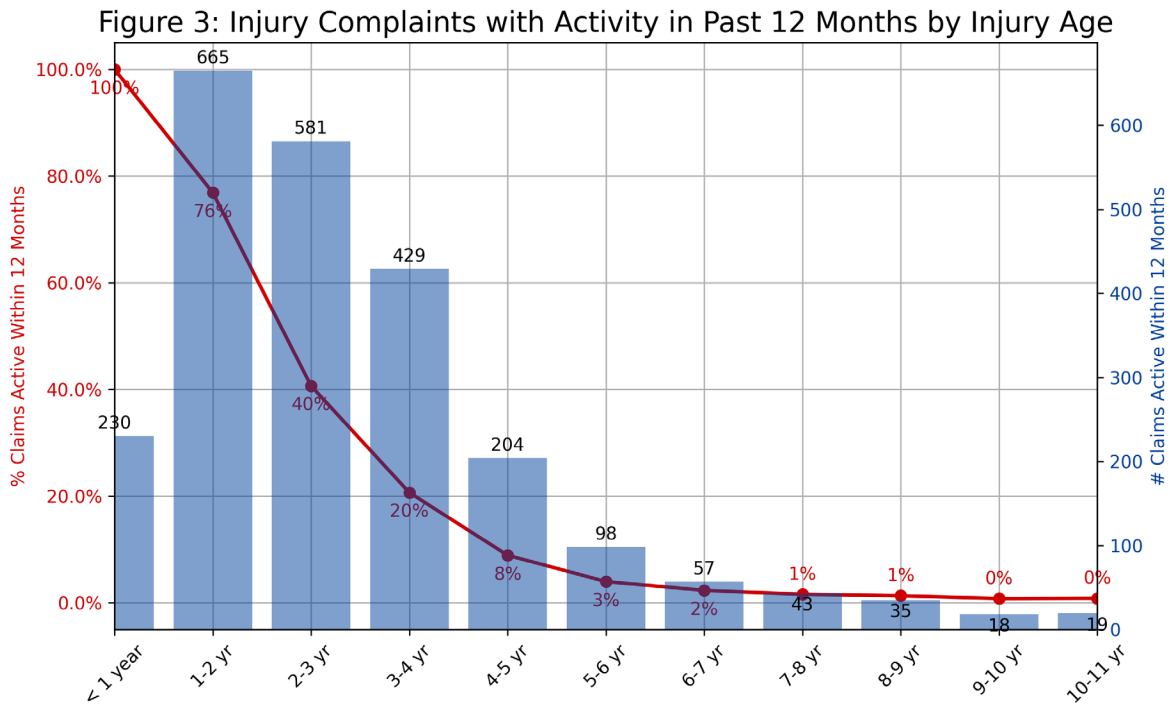
Figure 2 shows a breakdown of the percentage of study sample cases by date of injury that had capped in the study sample by date of injury, highlighting the issue:



As can be seen in Figure 2, most cases do not begin hitting the cap until their third year at the earliest, with a strong majority of the cases that cap doing so within the first six years after the date of injury. Additional claims with activity long past the date of injury are still present, however. For example, imagine a hypothetical worker who was involved in a car accident while on the job and sustained a back injury. The date of the injury is well-documented as being prior to 2013. Initially, the worker did not experience severe symptoms and decided not to file a workers' compensation claim. However, over the course of a decade, the worker experienced worsening and back pain. The insurance company challenged the causality between the accident and the back pain, leading to a legal dispute that resulted in attorney fees reaching the cap between 2013 and 2022.

In order to estimate the potential impact of these “long-tailed” cases, Figure 3 shows an analysis of the number of cases that have activity in the WCAs docket based on the life of the claim. The X axis shows the age of the claim in bins of 1 year (e.g. the first bin [0, 1] shows claims off less than one year in age). There are dual Y axes, the red showing the percentage of claims within that age group that have had activity within the last 12 months, and the blue showing the number of claims that have had activity within the past 12 months.





It is clear that the overwhelming majority of injury claims resolve within the first six years after the date of injury. While there are still be a small number of cases with activity past the six years mark, the number is small enough to limit the impact on the accuracy of the final estimate. In consideration of that, the accuracy of the annual capped percentage estimate can be greatly improved (if not entirely mitigated) by utilizing only the final four years of sample data. The choice of a four-year sample period was made as it allows for a robust sample that is less impacted by data aging issues. With that in mind, the updated percentages utilizing only the oldest four years of claims in the study sample are as follows:

Table 4: Adjusted Estimated Percentage of Complaints Reaching the Fee Cap (2013 - 2016)		
Case Status	Complaint Count	Complaint Percentage
Did Not Reach the Fee Cap	2,332	83.5%
Reached the Fee Cap	124	4.4%
Employer Attorney Fees Capped	88	3.1%
Worker Attorney Fees Capped	29	1.0%
Both Attorney Fees Capped	7	0.3%
Might Have Reached the Fee Cap	338	12.1%
Worker Attorney Fees Might Have Capped	71	2.5%
"Total Legal" Might Have Capped	267	9.6%



Total	2,794	100%
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Please note that the aforementioned data limitations are still present. This analysis attempts to provide a more accurate estimate of the percentage of cases hitting the fee cap, but the limitations can only be mitigated, not entirely eliminated. Furthermore, while using cases from the older years in the data helps to address the data aging issue, it does not take into account the impact of inflation on attorneys' fees. That said, because inflation has been high in recent years, and cases typically take at least two to three years before reaching the cap, there is no way to determine the impact of inflation on fee caps at this point.

Estimated Annual Cap Complaints (2013 – 2016)

Applying the adjusted estimated percentage of complaints reaching the fee cap (2013 – 2016) from the prior section to the average annual complaints filed with the WCA between 2013 and 2016 of 1,832 resulted in projected annual claims hitting the fee cap of 81. An additional 222 claims might have hit the fee cap. Table 5 provides a breakdown of annual claims estimated to hit the fee cap:

Table 5: Projected Annual Case Cap Status - All Comp Cases			
Case Status	Study Percentage	2013 - 2016 Avg. Complaints Filed	Projected Annual Cases
Did Not hit the Fee Cap	83.5%		1,529
Definitely Hit the Fee Cap	4.4%	X 1,832	= 81
Might Have Hit the Fee Cap	12.1%		222
Total	100%		1,832

