

**HM83 Task Force
In Person Meeting
September 19, 2023; 11:30 – 1:00**

Attendance:

Michael Holt, WCA General Counsel and Director’s Designee

Ben Sherman – Workers’ Attorney

Kathryn Lueker-Eaton – Workers’ Attorney

Victoria Bratton- Injured Worker

Marsha Schmidt - Injured Worker

Chris Elmore - E/I Attorney Miriam Sutherland

Megan Kuhlman - E/I Attorney

Johnna Padilla – Employer (SPO)

Matt Sanchez – Employer (Jaynes Corp.)

Dan Giralmo – Insurer (NM Mutual Casualty)

Michael Hamsing for Randy Akin - SI Group

(Builders Trust of NM)

Jeffrey Steele - Ironworkers Local 495

Greg Montoya - IAFF Local 244

(Highlighted names did not attend)

Non-Task Force Members

Ruili Yan – Economic Bureau

Rinda Dewhirst, WCA GC Paralegal

Charles Cordova – Economic Bureau (present for first 10 minutes of the meeting)

Diana Sandoval-Tapia, WCA PIO

Michael Holt – WCA General Counsel and Director’s Designee

Introductions made

Michael Holt – Introduced Charles Cordova to explain the preliminary report handout regarding the results of the data call.

Charles Cordova – Charles provided an overview of the preliminary report handout.

Dan Giralmo – Question on the 1% confidence level, there were 20,000 claims you weren’t able to match 57% the total complaints filed, what do you mean by the 1%?

Charles Cordova – When you are doing a survey and there’s a population of X amount of people, you only have to get a certain sample. The more people you have in that sample, the closer you are to approaching the true meaning of the data. The margin of error is a way of calculating how confident you are with the data you are presenting. We are saying that the numbers we are presenting here,

assuming that the data itself is good, what the inputs of the data are based on how much of the total population we have, we are estimating that our numbers are accurate within 1% either way 95% of the time.

Michael Holt – Our agency has the ability to send out an attorney survey. The agency took Kate’s idea that the task force should do an attorney survey. The agency thought it was a good idea to attempt an attorney survey. The survey goal is to send the survey to attorneys who practice law before our agency; so if you (attorney) filed a case or entered an appeared, then the attorney would qualify to participate in the survey. This survey asks a lot of questions. The survey also permits the attorney to provide narrative input with regard to certain questions. When we performed the data call, we realized that we would not be receiving much data, if any, on the \$3,000 discovery cost because carriers are not able to break down their data to permit the collection of data on this parameter. The goal moving forward is to work with the four lawyers on the task force, as a subcommittee so to speak, to help finalize the survey. This can occur via a zoom meeting. We want to get this survey finalized and get the data back (give people 30 days to respond). The goal is to send out the survey in early October, receive the data back early November, and then analyze the data before Thanksgiving. The survey results will be a piece of information available to the Task Force.

Dan Giralmo – Is there a way to survey carrier stakeholders.

Michael Holt – We have different kinds of email list of stakeholders, the carriers, TPA’s, attorneys who else do you think?

Dan Giralmo – Self-Insurers carriers is a stakeholder as well, I don’t know.

Randy Akin – The concern he had was the data call is pretty factual for the most part. He is afraid these questions are not data driven at all, and he is questioning what this committee could do with things like this. You are going to ask for a certain perception of what someone feels. It is like what Dan says, how far broad do we go with this? The workers’ compensation system is not just what the cost is; there are a thousand touch points...statutes. He looks at these questions and as a committee member, what does he do with that?

Kathryn Lueker-Eaton – To respond to that, looking at the fee cap experience question and also the non-compensable hours, a lot of attorneys have software programs that track how much time they are spending. She thinks the survey is important. Workers and defense attorneys are not fully getting compensated. I think we all know or at least from the data it shows that we are not always reaching the cap but, when we are reaching the cap, we are really exceeding the cap sometimes 2-3 times because of the depositions and the amount of care that someone needs so you have to go back after you settle indemnity. When there are those cases, the attorneys can use their software to take a look at the numbers of

billable hours of what they have not been compensated for; she thinks that is a data driven response.

Randy Akin – That is a great matter to look at but that is not what these questions ask for. If you can supply that data to the WCA so they can match that up to the data they have. He and Dan gave the WCA raw data right off the shelf.

Kathryn Lueker-Eaton – There is a question asking for an estimate cost.

Megan Kuhlman – She was flagging the questions from the survey so she can hand them to her practice manager to answer questions.

Michael Holt – My goal as the Director's Designee is to cast a wide net, without knowing the kind of fish that will be caught. Or, if caught, whether the fish will be worth anything. We will get to the point of writing the task force report which is due April 30, 2024. When we complete the task force report it goes to the advisory council who may or may not advise the governor on some bill that may or may not get introduced or be passed out of committee. He likes the idea of a survey; it is not gospel by any means. Getting useful information is the challenge, it took a lot of work to come up with the survey. It is one of the tools from the toolbox. He does not know what it's going to show.

Dan Giralmo – I do not have any objection to the questionnaire, he wants to make a point that attorneys are directly impacted by attorney fee changes. Attorneys do a lot of work, and he appreciates them.

Michael Holt – I will talk to Charles Cordova. It was not an impossible task to develop the survey. We could potentially do a survey number 2 to non-attorney stakeholders. I do not know how to tap into workers that would care and return the survey.

Matt Sanchez – For the insurance carriers, what sort of questions do you feel like you need to communicate?

Dan Giralmo – We have lots of comment on the expense and if it is necessary or not. It is difficult to find defense attorneys for workers' compensation.

Randy Akin – We have more of the defense attorney's hitting the cap than the plaintiff side because they start early on in the process.

Megan Kuhlman – A lot of this is data driven, but a lot of it is how we feel about judicial discretion in this and she is curious how underwriting feels about this.

Michael Holt – We may be able to steal some of these questions/concerns for the possible second survey (carrier/Self-Insurer/TPA). I want attorneys help from this task force to help finalize the current attorney survey. The attorneys can take it home and mark it up and then we will have a zoom meeting in a couple of weeks

to talk about it. At some point, the task force has to start the report, which will take a few months to prepare. My goal is to obtain all the data and cast a wide net as best as we can and have it analyzed by the end of the year. I am not against morphing this into another phase. We have the ability to do two surveys. Charles told him there are 400 counsel that at least filed an appearance, he could be wrong.

Miriam Sutherland – That number is way too high. She has a question to the longer practicing lawyers that may know the answer to this: When you are disqualifying judges, do you have to specify the reason?

Ben Sherman – No. His concern is having comparable data - what if there are differences in the hard data says something different than the survey data. Will this be useful to put in the report, maybe two different data sets say two different things?

Charles Cordova – Some of the data does not show up on the data call, for example, if someone exceeds a fee cap by how much – that is something the WCA cannot obtain. Only the attorney would have that. There is hard data but then again how hard is it.

Megan Kuhlman – She agrees because if she was outside looking in and she saw the graph on page 2, it is not reflecting the actual impact it might have on the fee rates. I think once it's time to draft the report to whatever extent the survey will be included, it needs to be thoroughly explained; this is the subject of the survey and here is what the hard data shows. She thinks it does give context to it and why we are all here.

Michael Holt – We are struggling to obtain data regarding the \$3,000 on discovery cost. NM Mutual is providing us with some of their data but it is broadly categorized. It is hard to delineate the \$3,000 discovery cost issue but the survey gets into that. He does not want to spend a lot more time on this. If the task force members agree with the subcommittee approach, we'll finalize the questionnaire; I am happy to send it out again if needed. Between now and the next meeting, I will talk with Charles Cordova to review the questions and also possibly bring in new stakeholders - self-insurers, carriers and employers. Maybe there could be an appendix where we could include subjective statements without identifying names.

Marsha Schmidt – She feels like the white elephant in the room. She does not understand why this committee needs an injured worker for these meetings. She feels like everyone is talking over her head and at times it is hard to understand what she could contribute to these meetings.

Michael Holt – Representative Herndon is the one who sponsored the House Memorial that passed. Workers are also stakeholders in the system.

Victoria Bratton – She feels the system is broken on both sides. When she met with her attorney and found out how much money he would make on her case, she was appalled (it's too low); her case went on for a long time.

Miriam Sutherland – When she was a WCA mediator and saw a pro se worker, she would have a conversation with them to explain they are entitled to an attorney. They felt they could not afford one.

Victoria Bratton – She provided details about her workers' compensation case and her experience with it.

Michael Holt – In his opinion this is the best mechanism to change the law and it is called the agreed bill process. The legislature mostly does not understand workers' compensation. It is like a foreign language- whether it's the fee cap or anything else. The task force approach presents the highest probability that change can be effectuated. He feels like there should always be a task force to study possible changes to the Act.

Victoria Bratton – She explained additional experience regarding her case such as how being educated penalized her. She got lucky with her attorney, she felt he cared and that's why he stuck with her and her case.

Michael Holt – On the carrier survey, maybe I will do the subcommittee approach too. Dan, you nominated yourself, Randy, any interest with the questions?

Randy Akin – He nominates Dan.

Michael Holt – I think we can prepared a draft, maybe have it ready for the next meeting, so we can go over it and talk about it at the end.

Randy Akin – He wants to data mine the 325 – “Might have hit the fee cap” on page 2 of the handout? He thinks the system works well for a lot of people. If we have 325 identified, can we data mine that a little better?

Michael Holt – The way Charles explained the math system is we were able to match from the raw data. Went over data on page 2 of handout

Randy Akin – Charles has identified which ones have possibility hit the cap. What is the cause here? From a carrier standpoint, we have some predictability in this or we will drive carriers out of the state of NM. Employers will not be able to get coverage, this happened in the 80's.

Megan Kuhlman – She thinks that is contested and there is different ways of looking at that history too.

Michael Holt – He likes that idea but could be a manpower and time issue. Whether we can get the compensation orders from those 261 cases. He was trying

to task the economic bureau for data to try to figure out what some of the drivers were and knew appeals had to be one of them. We are going to start looking at the indemnity data, he doesn't know how conclusive or suggestive it will be, but we may need to dig into these 261 cases.

Matt Sanchez – The more we can identify what category is then we can set some predictabilities.

Kathryn Lueker-Eaton – Just a thought: the discretionary \$10,000 could be similar to Fryar factors or some factors that would be in the language that would help- maybe it is not just the matter of serious cases involving multiple body parts. She thinks it is also the appeal or multiple trials. One obvious way of dealing with this is to set an hourly fee cap. Such as, if you have been working as a work comp attorney (either side) for a certain number of years, you are statutorily entitled to a certain dollar amount per billable hour.

Randy Akin – He thinks there are broken things in our laws but there is also a lot of good things here, especially compared to other states.

Michael Holt – He will talk to Charles about what it would take if we took the subset of the 261 cases that we knew hit the fee cap and come up with a pie chart. What's so special about those cases such that they hit the cap.

Ben Sherman – He likes this approach; it hits a big broad question of how many cases hit the cap and get to the root cause.

Kathryn Lueker-Eaton – The concern she has is the number that might have hit the fee cap is greater than the number that hit the fee cap. She feels like the 325 number needs to be unpacked.

Randy Akin – We do not know what is in there.

Miriam Sutherland – She is not saying this to be a rebel rouser but I probably could tell you who they are by doing mediations with them. She thinks it is part of the theory behind their workers' comp statute is to try to minimize litigation. To try to help people get to their resolution faster. There are cases that are unpredictable 100%.

Ben Sherman – He agrees; we need to dig deeper into 325 cases so we can identify what we want out of those. What we want Charles to get from those cases.

Michael Holt – I do not know if the WCA can. The WCA would have to go through 15-20 cases as a sample to find the commonalities. Instead of going through over 500 cases.

Kathryn Lueker-Eaton – What about as an additional metric, looking at those cases with a long history, like multiple complaints filed. It seems like there is those notable exceptions and that is what we are trying to accommodate. Maybe looking at cases that have gone on for more than five years.

For example, she had a case with a TBI, he got PTD later on. She and the other attorneys settled the medicals after settling the indemnity, there was a separate formal hearing on that. The gentleman still had to do an MSA, there were two formal hearings and two separate settlements. She thinks the worker's attorney in the Cardenas case put in over 100 hours that he's never going to get compensated for it. Those are important cases to take and to be able to take robust representation not just for the injured worker but for the case law and he won. The Supreme Court still has not decided on that case yet. That is why she wants to tie it back to the time spent on the individual case.

Michael Holt – The reason we analyzed appeals and the number of matters filed was to decide if these designate a "serious" case going back to the Bob Scott framework. Length and time would be another factor. I am trying to figure out why we have fee cap cases and why we do not. How do we pigeonhole those cases into various categories; there may be some common elements but until we look into it, we do not know. At least it would be data driven. That may be the best way to do the drill down, that may be the best way to come up with meaningful data.

Miriam Sutherland – Do you know how far back the electronic filing system they have scanned pleadings?

Michael Holt – Not off hand, he does not know when the WCA went to electronic filing. I used the year 2013 as the start date because that is when the fee cap was raised last.

Do we want to have a meeting in October, November or December?

Ben Sherman – He does not think we should meet until Charles has more information, so we do not talk about the same thing.

Michael Holt – If we skipped October, in between now and then and finalized the survey and get it out the door. Meet the second Tuesday of November (November 14th). He's going to a conference the week of November 14th; November 7th would be better.

Randy Akin – He will not be able to make it that day.

Michael Holt – If you want to send someone in your place is fine with him.