

## HM83 Task Force Meeting May 16, 2023; 1:00

### Attendance:

Michael Holt, WCA General Counsel

Diana Sandoval-Tapia, WCA PIO

Rinda Dewhirst, WCA GC Paralegal

Pamelya Herndon, Representative

Victoria Bratton - Injured Worker

Marsha Schmidt - Injured Worker

Chris Elmore - E/I Attorney

Megan Kuhlman - E/I Attorney

Kathryn Lueker-Eaton – Workers’ Attorney

Ben Sherman – Workers’ Attorney

Johnna Padilla – Employer (SPO)

Joe Powdrell – Employer (Powdrells)

Dan Giralmo – Insurer (NM Mutual Casualty)

Randy Akin - SI Group (Builders Trust of NM)

Jeffrey Steele - Ironworkers Local 495

Greg Montoya - IAFF Local 244

(Highlighted names did not attend)

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Michael Holt – WCA General Counsel and Director’s Designee

### Introductions:

**Michael Holt** was hired September 2020 as Enforcement Bureau Chief, then four months later was hired as General Counsel for the last 2 ½ years.

**Representative Pamelya Herndon** – She represents District 28 and is also a lawyer, her background has been in tax, then entered into governmental work, first as the General Counsel and as the Duty Superintendent for the Regulation and Licensing Department and then the Secretary for General Services.

**Ben Sherman** – Is a solo practitioner for injured workers. He is the President of NM Bar

**Kathryn Lueker-Eaton** – She also has solo practice, an attorney for injured workers’.

**Chris Elmore** – Started as a solo defense practice but the defense attorneys kept switching to the workers side so eventually, he had to recruit some to his team; Jeff Stradling, Austin Martz they represent employer-insurers.

**Megan Kuhlman** – Attorney for the White law firm does exclusively defense work; about 75-80% is workers comp work. Have done this for 13 years.

**Greg Montoya** – He’s with Albuquerque Fire and Rescue, he’s been a captain for 15 years. He’s also union Vice President; he represents one of the largest group of

firefighters in the state. He hopes to get some insight on workers' comp. He's local 244, has 934 members; they represent the city of Albuquerque firefighters and Bernalillo County firefighters.

**Jeffrey Steele** – Business Manager for Ironworkers local 495, his jurisdiction covers the state of NM.

**Johnna Padilla** – Works for the State of NM Personnel Office, has been Human Resources for 19 years.

**Dan Giralmo** – He represents NM Mutual; he's been with the company since 1994 – 29 years now. Started as an Industrial Trainee.

**Randy Akin** – They are Builders Trust of NM; they are a self-insurer fund created in 1987 before the 1990 reform. He's been the administrator for 17 years. They only insurer construction workers or related. They have 1300 employers. They have about 70,000 workers they cover.

**Victoria Bratton** – Her workers comp attorney has worked on her case for 9 years; it was a rough go.

**Michael Holt** – Everyone local? It'll be important for our next meeting. Next agenda point is background.

**Representative Pamela Herndon** – they put together a piece of legislature that was to amend the statute but what she found out early on is there is a disconnect with insurance companies and members of the public who many will be utilizing the statute for purposes for their health and wellness. It became imperative to get these two groups together to have a conversation about the statute that hasn't been amended in over 10 years. A reoccurring item that kept coming to her attention was that some individuals who have a reoccurring illness, for example who are bringing their cases for relief under the statute there was a cap on attorney fees. We need to put the economic resources that are beneficial on both sides. She wants everyone to look at the statute through the lens of what is fair and equitable for everyone. What we are doing is resenting a place where people can come and make sure their case are being heard. She appreciates everyone for what they are bringing to the table because it is exactly what needs to happen. If the task force is able to finish the work by the end of December, then she will be able to present the recommendations to the Governor. She's not saying this to rush anyone, but that is a different option. As for the way the memorial is written the task force has until next April 2024 to give the recommendations. She won't be attending the meetings unless we need her to.

**Michael Holt** – He hopes he can provide a good report. Some of the materials he provides a good background. There's not a lot of elected officials who know workers' comp. The WCA Director, Robert Doucette had a hand in choosing all

you to be on the task force. The WCA had an informal zoom meeting regarding “The Bob Scott Bill” HB455; we had feedback within the meeting but since we ran out of time, various stakeholders submitted their pros/cons afterwards which is part of the handout we sent to you before this meeting. HB455 died in the house, it had the existing fee cap of \$22,500 and raised it to \$32,500. The Bob Scott Bill had to die in order for HM83 to move forward, it’s a complicated issue. He doesn’t have a dog in the fight; other than we have to keep the task force on time and that our agency makes available resources for this task force to enable it to accomplish its objective. When we had to provide the legislature a fiscal impact report, he asked our economic bureau to run a producer price index analysis from 2013- 2023 to the \$22,500 figure would be \$31,000 (roughly) and the \$3,000 figure would be \$5,500 (roughly). He is pointing this out so you know this is the kind of resource we will have. The other thing is called a data call; he’s hoping in the June meeting we will have available recommendations. Question from Kate – MH repeated the figures.

**Michael Holt** – Would like to have a standing meeting, third Tuesday of every month (June 20<sup>th</sup>) everything is negotiable. The WCA will provide pizza and soft drinks (11:30 – 1:00). It’ll take time to go through this data call concept that he is contemplating. We probably wouldn’t meet in July, but that’s negotiable. In the July time frame, he would send out the date we received. We would meet and discuss the data in August. He can have an ergonomist explain all the numbers.

**Chris Elmore** – Two main goals are to determine attorney fee cap and discovery cost. That’s the two objectives to come to an agreement that the legislature will sign off on.

**Michael Holt** – Task force gives us discretion we will not go beyond those core subjects we can expand this task force to something that is related to attorney fee cap and discovery cost. We have a lot to do in a year, we have to focus on those two items.

**Ben Sherman** – He read it also looking at the attorney fee cap, discovery advancement and extensive beyond the cap for certain circumstances like medical only case, someone severely injured-whatever that means, Permanent total case, is that accurate?

**Michael Holt** – Right, we have to start with an initial focus, he’ll keep talking about the will of the task force and see where this goes. At WCA we don’t have a lot of discovery cost. We have these reports that get submitted to us and they are only as accurate as what people submit to us, it may not represent discovery cost, that’s one reason why making a data call will help the task force; need to put something on the black board. His goal is to get this data by August, it may/may not happen.

**Dan Giralmo** – Do we have a hard deadline next April?

**Michael Holt** – April 30, 2024; our report will go to the workers' comp advisory council, they give the Governor advise to propose legislature that affect workers comp.

**Megan Kuhlman** – She may be naïve but if it's just about picking a number for attorney fee cap and discovery advance, she thinks we can do that fairly quickly. Where we'll get in a debate is these possible exceptions and how they are defined. Their best intentions may lead to further litigation on attorney fees.

**Michael Holt** – He's a number guy but not economist; he asked our economic bureau to pick an inflation index. He didn't know which was right, PPI, CPI, or wage; they picked PPI and ran their numbers. This is about politics, just because we come up with numbers doesn't mean there won't be some horse trading with those numbers by the actual legislators. He can circulate the FIR that have all these numbers at. It was compelling to hear during our zoom meeting that workers' attorneys talk about cases that take 10 years, lose their shirt on it-so to speak.

**Kathryn Lueker-Eaton** – We are familiar with those type of cases, she has cases from 2010 she's still working on. It's true you do have a duty to represent these injured workers, especially when you know they can't find someone else. One thing she's curious about is how we define attorney fees/cost. She's heard other attorneys are working without additional attorney fees (Phyllis Lynn, Kim Syra) what allows them to continue working on those cases are defense attorneys continuing to charge their clients for cost? Do we define cost? Attorney fees?

**Michael Holt** – Everything is on the table, when we had that informal public comment on the original Bob Scott bill, he tried to categorize them as best he could but access to justice is one of the issues. There's not a lot of workers attorneys in Farmington or Hobbs and the young lawyers aren't getting into this profession in part because there's not enough money in it. Another comment was; if we raise the attorney fees then workers' get less money for their own recovery. The last thing he wants to do is put gasoline on litigation; If you give lawyers more reason to litigate, guess what they are going to do...they are going to litigate to get paid. It gets more costly for insurers and premiums are going to go up.

**Dan Giralmo** – He wants to bring up what Kate brought up; it happens on the defense side too that fees get capped. He had a conversation with Chris to take on a case that has been going on for 10 years and it's already capped, and he has been gracious enough to take on that case which he won't be getting paid, but those cases are exceptional. They happen infrequently, they are not the run of the mill case. Most cases settle or get resolved.

**Randy Akin** – He’s like Michael Holt, he’s a data guy. Data itself is going to be tough, the task force shouldn’t isolate themselves regarding data. There are too many components to deal with. We need to balance out the system; we need some data but he’s not sure what that data is, to make some suggestions. Megan makes a good point if we can come up with some sort of compromise to a number after some data. He thinks it’s going to take a while to come to that point, we have to consider all the components the work comp act makes us look at.

**Michael Holt** – There’s a learning curve to workers’ comp if there’s something you don’t understand call a time-out. He wants to pin down the next meeting date on June 20<sup>th</sup>. It’ll be a working lunch; we’ll have pizza and soft drinks. He wants a proposal from our economic bureau that is consistent with all the task force in terms of a potential data call that we could review and discuss.

**Randy Akin** – He’s concerned on what could come out with a data call and what they can deliver. He or Dan wouldn’t hide anything, he’s worried about getting the right data. He wants to work with our economic bureau so they can talk about how they store data and what they can deliver especially oh the discovery fees are going to be extremely difficult to carve out and get data out. Even on the attorney cap the policies have changed and the worse thing we can do as the task force is give bad data. He wants to have a side conversation to talk about what he thinks they can get for data.

**Michael Holt** – He has no problem with that he used to be a workers’ comp lawyer, he went and tried his case and left the courtroom and never thought about the regulatory side, how to run and administration, what kind of data insurance companies have, what kind of data we have.

**Ben Sherman** – What they do a lot at the State Bar when we are tasked with similar type questions is we look at other jurisdictions and the possibility in our June meeting we can get attorney fee caps from similar jurisdictions. When he says “similar” he means population; we are a low-income state, he doesn’t expect us to have the highest fee cap. It’s good to compare when we look at data to see what other states are doing.

**Michael Holt** – NCCI representatives collect data from all 50 states; they said they would cooperate with our task force if we asked them to produce data. That’s the point of the data call, it doesn’t necessarily have to be NM.

**Dan Giralmo** – He agrees with Randy, they are happy to provide data, but he wants everyone to recognize that data is never perfect, and we can’t draw firm assumptions from that data. They can’t break out deposition cost, copy charges unless you do it manually. There are so many disclaimers from state to state so you have to be careful about that. He was talking to an attorney from Utah not

too long ago and they found their attorney fee unconstitutional, now there's no cap.

**Kathryn Lueker-Eaton** – It might help to get a better perspective of what kind of data, how it's kept, and what is kept. Not all solo practitioners know or understand the way in which these carriers are preserving information about fee schedules or indemnity histories or pay schedules. It may be helpful to understand from their perspective to talk in the same language when we do the data request.

**Michael Holt** – This is all good input, WCA has inhouse experts and he was going to task them because they know what data is out there. He is going to come up with ideas and possibly a proposal, it's not binding on the task force it can be get refined. He wants to see what the data shows, it could be inconclusive even if we come up with a number like Randy said. Confirmed if everyone could make the June 20<sup>th</sup> meeting. If anyone has an agenda item let him know, he'll add it.

**Randy Akin** – He would make a recommendation to the task force that we tentatively schedule a meeting the third Tuesday of every month so something is on our calendar, and we can verify the prior month if it's still a go.

**Michael Holt** – He'll want to keep the meetings to an hour; in June will be a heavy lift. Any particular time? He will propose a longer meeting in June, skip July and another working lunch in August with pizza and soft drinks (August 15<sup>th</sup> at 11:30).

**Victoria Bratton** – She'll be out of town August 15<sup>th</sup>; zoom would be better for her.

**Kathryn Lueker-Eaton** – Can someone bring a laptop so people who need to zoom can have that choice?

**Greg Montoya** – He would like to offer up his union hall for in person and they have zoom capabilities there.

**Michael Holt** – We have the capabilities here as well – hybrid meeting. TBD in August in person/hybrid meeting.