

Meeting Notes January 11, 2023: Attorney Fee Cap

Panelist:

Robert Doucett Michael Holt Representative Pamela Herndon
Diana Sandoval, Host

Diana Sandoval – She has 55 attendees

Robert Doucette – Introduction

Representative Pamela Herndon – She likes to have conversations before we put the bill to have consent from all sides.

Michael Holt – There are three components to this bill. The current fee cap is \$22,500 for attorney fees, and the proposal is to raise that to \$42,500. Please keep comments 2 minutes maximum. Second component deals with discovery cost which is currently at \$3,000, the proposal is \$10,000. The third component is dealing with bad faith changing language from \$5,000 cap to \$5,000 per occurrence.

Christopher Elmore – He rarely hits the cap since everything is on zoom not traveling as much. His opinion is the cap is too much, needs to be a more moderate increase (\$4,000 – \$8,000 increase is more reasonable). It might encourage litigation.

Merilee Danneman – She is very concerned that the legislation was not presented in the last advisory council meeting. It would be nice to have a list of all these 55 people participating in this meeting.

Robert Doucette – Just a point of clarification, this bill has been out there for several months, and all advisory council members received the proposals weeks ago. He personally called every member.

Ben Sherman – He agrees with Chris Elmore. He also thinks \$42,500 is too high. He rarely hits the cap. He would propose at the most \$10,000. He feels like it would encourage litigation.

Paul Civerolo – The current cap has been the same since 2013. He has several cases that has been capped out due to the benefits going over 700 weeks and medical is lifetime. He also thinks the current proposal increase of \$42,500 is excessive.

Randy Akin (Builder's Trust – Administrator) – They are a self-insurance group that handles over 700 million dollars of payroll from the construction industry in NM. He also thinks the current proposal increase of \$42,500 is excessive. In

2013, there was a lot of talk about what is justifiable in that increase and CPI was followed when those increases were made in 2003 and 2013. We lost a lot of small employers during the pandemic, and most of them that survived are still struggling. The state of the economy should be considered, not just rate of inflation. The increase should be well under \$30,000.

Richard Parmeley, Jr. – Most of his cases do not meet the current cap. In the last six months, he had three cases that involved lumbar injuries that are severely debilitating - one guy was paralyzed and denied in their entirety and all three cases were settled with help of WC Judges. Every one of those cases at his normal hourly rate his fee was over \$28,000. The cases required doctor depositions, there was a lot that needed to be done. It would have been nice if it was accepted as compensable. He had to write off a lot of money. This creates a problem of people who want to do these cases, there are only two attorneys in Farmington that do work comp (him and Mr. Titus). He does not think the cap of \$42,500 is a bad idea.

Victor Titus – He also practices in Farmington. In 1981, there were a dozen lawyers that would handle work comp, now there's only two that handle work comp. He is 66 years old, and Mr. Parmeley is 65 years old. There are no young attorneys who are practicing workers' comp. He agrees that he rarely reaches the cap. He has a case that is in the Supreme Court and has written five different briefs. The case got tried twice before it went on appeal. 20-25% contingent fee has no legal basis. It is not the standard. Defense bar should be required to have their attorneys' fees approved, too, like the worker's bar.

Michael Holt – He is now going to open up the discussion to all three segments/components.

Jason Espinoza – He is speaking on behalf of the NFIB National Federation of Independent Business, and it is associated with the general contractors of NM. They oppose all three initiatives of proposed legislation. He feels it will slow down the resolution of case. They represent the Ma and Pop stores in NM. The increase premiums will put an increase strain on small businesses. It is a bad time to raise premiums on small business.

Chelsea Canada (NM Chamber of Commerce, Director) – They believe the proposed changes will slow down the speed of the current system and increase cost to employers. They also oppose the increase of attorney fees in the wc system giving that the current system already faces challenges with increase litigation and legal costs.

Derek Weems (Worker Attorney) – Not a lot of his cases merit the attorney fee cap. The people who have claims that implicate the attorney fee cap are those who are severely injured. He has to be careful on how many of those case he takes on. He has had to turn down some wc cases who are severely

handicapped. He cannot commit to long term representation – he cannot afford it. This is not a conversation about attorney’s trying to make more money, it is about severely injured persons needing adequate representation. It is access to justice. He would like to see better enforcement of rules on bad faith.

Paul Maestas – (Employer/Insurer Attorney) He supports the attorney fee increase of \$42,500 for a bad case. He has ten cases where he has been over the cap, some of those cases has numerous appeals and/or trials. Discovery cost rising to \$10,000 seems like a lot. He suggests to give the judge the latitude.

Jeremiah Ritchie (NM Mutual) – He opposes all three changes. The fee cap is part of the grand bargain. The increase in the cap will increase litigation. The fee cap is supposed to streamline litigation as well as costs. The last fee cap increase they saw a big jump of litigated cases. He feels this increase will be the same. He would like to see data to support that workers are not finding counsel. The changes proposed to bad faith will exclude consideration of the worker’s bad faith. It needs to be kept applicable to both sides.

Nick Stiver – Majority of his cases doesn’t reach the fee cap. It is reached in truly severe injured workers. Workers must litigate many years later when medical rights are kept open, and the fee cap has been exhausted. This is an access to justice issue.

Bob Scott – There is no data on how attorneys are billing; how many hours they bill on the case; and how many times they go over the cap. He thought \$42,000 was appropriate from his own experience and input from his colleagues. This needs to be a consensus number and he will support that. He disagrees with the bad faith comments. He does not think it will change anything. There is no recognized bad faith in workers’ compensation, it is rarely litigated. When it is litigated the consequences are small.

Representative Pamela Herndon – She appreciates everyone’s time and her take away is it is those cases that involve serious injuries and where there may be re-litigation that has to occur in order to resolve a matter. It does not sound consistently that there is a problem reaching the discovery amount unless re-litigation occurs in severe injuries. On bad faith, she will review more responses/comments but what she heard today it doesn’t sound like it happens on a frequent basis.