

**HM83 Task Force  
Via Zoom  
December 12, 2023; 11:30 – 12:30**

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

Megan Kuhlman - E/I Attorney

**Johnna Padilla – Employer (SPO)**

Matt Sanchez – Employer (Jaynes Corp.)

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)

**Non-Task Force Members**

Ruili Yan – Economic Bureau

Rinda Dewhirst, WCA GC Paralegal

Charles Cordova – Economic Bureau

Diana Sandoval-Tapia, WCA PIO

---

**Michael Holt – WCA General Counsel and Director's Designee**

**Introductions...**

**Michael Holt** – Roll call was taken of who is here and who is not. The rest of the task force meetings will do them via zoom, maybe one more in person? We will see how this virtual meeting goes today.

We have crested a hill on this task force. The heavy leg worked is done; the task force work included an economic research dive just to see what was out there to see what that research would show. Between the attorney survey results and the data call results, the task force has good data to use in the task force's report. One significant limit of the task force is lack of time.

The contents of the task force dashboard on the WCA website were briefly reviewed.

When the Bob Scott bill was introduced, the WCA Economic Bureau performed a PPI (Producer Price Index) inflation analysis. The Economic Bureau was tasked with this question: if we applied an inflationary analysis like PPI to the \$22,500

figure, what would the new attorney fee cap be? The economic bureau has performed an update of that research, will be one more piece of information the task force is going to have for use in its report. WCA will be doing a deeper dive into the amount of pro se cases that are filed at the WCA; this data point will illuminate the access of justice issue. WCA may have a couple more pieces of data/information that maybe produced that can be incorporated into the task force report.

He does not remember from the last meeting who volunteered to help write the report.

The agenda outlines possible subparts of the task force report, including: basic background of the House Memorial; key points of the “Bob Scott bill”; the formation of the Task Force and its members; the history of the \$22,500 fee cap and where did it come from- i.e., why do we have a fee cap; the report should discuss how the WCA judges award attorney fees; another bullet point will be the unconstitutionality case from Geri Hanrahan which is now before the NM Supreme Court; all task force meeting dates; the task force methodologies used (some of the things the WCA posted on the website show those methodologies already); the report should comment on the limitations of the Task Force; perhaps we include what future studies might look like such as studies on the carriers that we did not have time to survey; and we should certainly discuss the important data call results; the updated inflationary analysis.

Regarding the Task Force recommendations, there may not be agreement and that is acceptable. Different constituencies that are represented on the Task Force may have different recommendations at the end of the report. We may have different recommendations; it may be 1-5 different recommendations.

That is the agenda for today to be discussed.

The Task Force report is due April 30, 2024. A suggested time line: if we work backwards from that date and set Feb 15, 2023 as a due date for the first draft; and then the second draft due date of March 15, 2023; and the final draft due by mid-April, 2023.

Any further thoughts or questions?

**Kathryn Lueker-Eaton** – She thinks she volunteered to help write to the extent she can be helpful on the report. She does not remember who else volunteered.

**Megan Kuhlmann** – She is happy to help.

**Dan Giralmo** – He is happy to participate in drafting the report.

**Michael Holt** – He was hoping to have the worker’s side be a principal author; the defense side be a principal author; and the carriers also have a dog in the fight. We do not want to exclude Jeff or Victoria or someone else that comes from a different point of view.

Another option is once the report becomes final, the different constituencies or customers of the WCA - whether it is the union side or the lay person side - they can write their own addendum. He would add himself (Mike) and Charles to help write the report.

**Chris Elmore** – He is happy to help out however we need him, but he finds it more fun to pick at someone else’s draft first.

**Ben Sherman** – He is also happy to help. When he was reviewing HM83, he wanted to make sure we address what the house memorial says we are to address. He wants to make sure as we are drafting it, we keep in mind what the ask was. It says they want us to make recommendations to resolve the issues or problems related to attorney fees and caps. What he is hearing is we will be making multiple recommendations. It sounds like they want some guidance. He knows it will be hard since we have so many stakeholders and not everyone agrees; but we did gather information.

**Michael Holt** – He thinks the recommendations are more akin to options or potential solutions that can be considered. Maybe the Task Force comes to an ultimate recommendation. He doesn’t know what that ultimate conclusion will or will not be.

It was important to have the Task Force webpage up and running. Your point is well taken, Ben, this is his (Mike’s) first task force. He is not sure what to do at the end: whether it is a single recommendation, and some people do not agree with it. Or, does the Task Force give multiple recommendations.

**Ben Sherman** – It is written “recommendations” (plural), so we do not have to make one recommendation. It will be a task for those who are writing the report. When you get to that point, go to the data, and regurgitate what we discovered. The WCA did an amazing job getting this data and making it available to the public. We took a deep dive, and he thinks that is what they wanted. He is curious to see what the recommendations are going to be.

**Michael Holt** – He always liked the PPI analysis because it was an easy way to address the fee cap being under value. However, the point is well taken- when we get to drafting, we answer what the memorial asked.

One of the “asks” from HM83 is what is the average attorney fee? Mike and Charles were wondering if that was a useful piece of information. Do you include all the claims where there are no attorney fees or just look at where there were

attorney fees awarded? How useful is it that, hypothetically speaking, the average attorney fee is \$7,000. What does that mean?

He doesn't know who wrote the house memorial. Was it an attorney or some legislature researcher. It got thrown together at the last minute.

**Jeff Steele** – Would Representative Herdon have any input on what they were looking for in the report when they were drafting this.

**Michael Holt** – He has not talked to her since the first meeting. Maybe if we get to the second draft, we can send it to her and ask her if we are missing anything.

**Randy Akin** – He agrees with Mike. The collection of data is more than he initially thought was going to happen in this. He thinks the Task Force needs to come up with at least three recommendations or more. He hopes we all come to a consensus on some of the recommendations. At the end he thinks that each member of the Task Force should be allowed to enter one statement on their views. That way we do not have a decision that is mixed.

**Michael Holt** – He agrees that there are different constituencies here; there is no way to keep everyone happy.

**Megan Kuhlmann** – Does the task force agree that the cap should be increased; not how much but that \$22,500 is not the number in today's world? The second thing she would impose is does everyone agree that waiting to see what the supreme court does on constitutionality of the cap make sense because the supreme court has certified it; the timing of this is ironic.

**Michael Holt** – It is like two freight trains going down the track at the same time and they will eventually meet. The HM83 deadline is April 30, 2024, we are obligated to produce a report.

**Megan Kuhlmann** – She is not saying not to write a report but maybe one of the recommendations is everyone hold the phone and wait to see what the supreme court has to say about this.

**Michael Holt** – It is the reality that all the work that has been done can be blown out of the water by the supreme court's ruling. Just so everyone knows: Mr. Hanrahan has two cases he appealed to the appellate court. In the appellate court, he argued that the \$22,500 fee cap violates principles of separation of power. The appellate court sat on the cases for a while. The constitutionality and other issues were briefed by the parties, and the WCA submitted a friend of the court brief. The appellate court punted the constitutionality issue up to the supreme court and asked them to accept certiorari and they did. The order of the supreme court was dated Nov 14; the briefs are being written; Mr. Hanrahan's brief is due in 30 days; the employer's brief is due in the middle of January.

Our agency is looking into whether we will file a friend of the court brief with the supreme court; it has not been decided yet. He was told the trial lawyers are filing a brief; it is not known whether the carriers will file a brief. It is interesting that this issue is coming to a head one way or another, either through the supreme court or through the legislature.

**Chris Elmore** – We still need to make a recommendation. We also know that the supreme court could take a very long time to decide, it maybe be 2-3 years from now.

**Michael Holt** – It is on General Counsel’s radar and our judges know about it.

**Dan Giralmo** – He thinks it is going to be hard to come up with multiple recommendations. He always felt the bill from Bob Scott was too complex to get approved - this idea to give judges discretion to exceed the fee cap in certain cases. That has unintended consequences that we cannot foresee. All the discussions he has heard from the task force, he has not heard any support for why that needs to happen; there is no data to support that. It is going to be hard to come to a consensus. To him the area to focus on having consensus is increasing attorney fee cap, a simple yes or no and some kind of recommendation. The other items are going to be tricky to have any kind of consensus just because they are much more complex.

**Michael Holt** – Part of the report is going to be like dry toast, the history of time kind of stuff. He thinks it will be easy to write the history of the fee cap, the history of the task force. Mike and Kate were talking in the last meeting about what the economic data “suggested” rather than it is conclusive of anything. We can talk in black and white in terms of what the data call and survey results show and what the attorney survey results show. It is been difficult from the beginning to obtain data on that attorney cost advance, and there still does not seem to be a whole lot of economic data to shed light on it.

**Charles Cordova** – He wanted to mention that there has been a lot of discussion around the potential for lack of agreement on the recommendation side of things. The way the house memorial is worded, it lays out a number of different points that it wants the task force to study. Part A is gathering the study information which is the data we put on our website. Part C is the recommendations, but part B is to identify issues and problems related to attorney fees and attorney fee caps. Part C is related to part B by saying make recommendations to resolve the issues and problems that were identified in part B or at least that is the way he reads it. Before getting too ahead and assuming there is no consensus on any of this, it might be helpful to start drafting the report and identify what issues and problems are going to be included. There would be an opportunity to see if or when there is consensus about the issues and problems.

**Michael Holt** – Good point Charles, talking about the issues and problems it could be that there is not a lot of agreement; or the problem is getting an agreement.

Going back to the agenda, he is looking at February 15, 2024 for the next task force meeting. This date gives the task force report authors basically two months to come up with a first draft.

Maybe those who volunteered to write we can have a separate zoom meeting to see who will write what. We need to come up with that first draft and share that with the entire task force. The first draft, if we get it done by mid-February and due a zoom meeting during the 3<sup>rd</sup> or 4<sup>th</sup> week of February to discuss the draft. Does that sound reasonable?

**Chris Elmore** – Sounds good to him, so Megan, Kate, Mike, and Charles will come up with the first initial draft and then Ben and him can throw in their two cents.

**Michael Holt** – Why don't Kate, Megan and Dan stay on the zoom with him and Charles unless anyone has anything else?

**Adjourn**