



## **Stakeholder Meeting Minutes**

**April 29, 2022**

**Call to Order:** The meeting convened at 9:00 a.m. with the following participants:

Isabel A. M. Cole	Debra Hatzialexiou	Lonnie Ladenburg
Jack S. Eng	Knowrasa Patrick	Chris Bishop
Mark Jaffe	Lionel Greaves IV	Ryan Miller
Brian Watkins	Ingrid Golosman	Richard Clyne
Christopher Swanson	Leslie Johnson	Bob Battles
Lynn Hendrickson	Jane Dale	Joe Kendo
Bob Liston	Katherine Mason	Jay Raish
Anita Booker-Hay	Robert Silber	

**Chief Judge/Chair Update:** Welcome new Chief Judge Anita Booker-Hay. We know that the Governor's office completed reference checks, the new Chair could be announced next week. Once a Chair is named, Mark will return to Acting Chief, Anita will be in training. Thank you to Chris Swanson for assuming the Acting Chief duties on extremely short notice. Mark's tentative retirement date is September 1.

**Resumption of In-Person Proceedings:** Member Eng reported we are slowly going in that direction, but as you all know the COVID situation evolves and changes. We have our safety precautions in place in Olympia and Lakewood. We will hold a mock proceeding to test our safety procedures. We plan for hybrid events so we can accommodate those who prefer not to appear in person. We also want to do a test hearing, if you have a case that you would like to have in person in Olympia or Lakewood, please let your judge know.

Mr. Silber: How will hybrid proceedings work? In Olympia and Lakewood we have OWL devices—you set it in the middle of the table and the device focuses on the speakers. We have large video screens in the hearing room to broadcast those appearing remotely.

Mr Silber: What about getting Seattle and Eastern Washington set up? Seattle office is on lockdown so we don't have OWLs set up in Seattle yet. Once we know the technology works we can make a plan for Seattle even with the office on lockdown. In Eastern Washington, the Spokane office would be the next one we would try. Once we get the tech working and people are comfortable with it, we will continue to expand it.

Mr. Bishop, Mr. Greaves, and Ms. Golosman, Ms. Mason, and Ms. Johnson offered to help test the new tech. Lynn volunteered the Everett office.

Chair Jaffe: Don't forget current guidelines are that people have to be masked. But we get new guidelines every month. We would love to open the Seattle office; if it wasn't for the lockdown it would be included.

**PDO Timelag:** AC Hendrickson shared:

PDO Time Lag – Analysis 1/1/2021-3/31/2022

<b>Report 239 with Data/filters</b>	<b>Total PDOs</b>	<b>Average Time Lag</b>
All PDOs	2257	35.19 days
Firm appeals w/o RPDM	29	40.24 days
WISHA appeals w/o RPDM	83	42.77 days
PDOS w/o WISHA/firm or RPDM	2062	38.43 days

We just instituted a new code for PDOs dismissed for failure to appear so we will be able to pull those from the total from now on. As we go forward from March 7 we will be better able to analyze and share the timelag for a contested PDO. After Mark is back to Acting Chief, we are going to look at a number of factors, for example certain regions, case assignments, and consolidated cases, to give you more accurate information so you can share PDO expectations with your clients. We will share some data in advance of our next meeting.

**Notice of Assignment of Judge:** AC Booker-Hay reported the hearing judge is always included in the first mediation notice. You receive notice if we change judges for proceedings or for writing PDO. The tricky bit is if an attorney is not retained in mediation or if the case skips mediation. We are working on a process improvement to notify attorneys who are retained after the first mediation event. In the meantime, please call us so we can tell you who the judge is.

**Rulemaking:** Chief Legal Officer Watkins shared the rulemaking link on our website. The proposals are to strengthen mediation/CRSA conference confidentiality; add video hearings; and remove "structured" from Claim Resolution Settlement Agreements. We haven't proposed rules on the WISHA discrimination law; we are waiting for the Department to propose rules. We expect to file proposed rules on May 18. A week or two later it will be published, and at that time we will email stakeholders for a formal commenting period.

**Significant Decisions:** Chief Legal Officer Watkins shared a link to the 2021 Significant Decisions.

**CRSA Provisions Checklist:** Chief Legal Officer Watkins reported a checklist will be available on our website next week to help parties draft agreements that meet the legal requirements for a Claim Resolution Settlement Agreement.

**Stakeholder Q&A:**

Mr. Silber: I noticed new language about depositions in the Litigation Order. It is one judge adding language? We will review and get back to you.

Mr. Bishop: A judge demanded an expert to testify in person instead of by dep? Judge said he prefers this type of expert to testify in person. Is that a rule? 263-12-117 says the judge may allow a deposition. The practice has always been to allow depositions to accommodate the parties' schedules. There has been no change in our policy. If a judge issues a ruling that somehow negatively impacts your ability to litigate, file a request for interlocutory review.

Mr. Bishop: regarding the Department's new IME rules WAC 296-23-401:

Following receipt of an appeal by any party, the department may reassume and schedule, or may order the self-insured employer to schedule, an examination.

The self-insured employer may also schedule an examination regarding an appeal if a request has been approved by the department.

We are anticipating that the Department would have reassumed, got the IME and issued further order, not that the parties can get an IME once an appeal is at the Board. Not intended for the self-insured employer to get an independent IME.

Ms. Hatzialexiou said firefighter PTSD presumption will be added and how worker verifies they contacted diseases during emergency proclamation.

**Next meeting:** The target date for the next meeting is July 29, please email [jay.raish@biia.wa.gov](mailto:jay.raish@biia.wa.gov) if you have conflicts.

**Adjournment:** The meeting was adjourned at 10:17 a.m.

Respectfully submitted,

/s/

Jay Raish,  
Confidential Secretary