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20	and Shorthand Reporter in and for	20	
21	the State of New York.	21	
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5

1 PRESIDENT POWERS:
2 Find our seats, we'll get
3 started. We'll get
4 started. Good morning.
5 Call the meeting to go
6 order. Chris, do the
7 roll.
8 RECORDING SECRETARY
9 SUMMERS: Good morning.
10 President Powers?
11 PRESIDENT POWERS:
12 Here.
13 RECORDING SECRETARY
14 SUMMERS: Powers, present.
15 Executive VP Sawchuk?
16 EXECUTIVE VICE
17 PRESIDENT SAWCHUK: Here.
18 RECORDING SECRETARY
19 SUMMERS:
20 Sawchuk, present.
21 Treasurer, Gilbo.
22 TREASURER GILBO: Here.
23 RECORDING SECRETARY

6

1 SUMMERS: Gilbo, present.
2 Recording
3 Secretary Summers,
4 present.
5 VP North, Roberts?
6 VP NORTH ROBERTS:
7 Here.
8 RECORDING SECRETARY
9 SUMMERS:
10 Roberts, present.
11 VP Mid-Hudson,
12 Mazzella, excused.
13 VP Law Enforcement,
14 Harmon?
15 VICE PRESIDENT HARMON:
16 Present.
17 RECORDING SECRETARY
18 SUMMERS:
19 Harmon, present.
20 VP Central, Hluska?
21 VICE PRESIDENT HLUSKA:
22 Present.
23 RECORDING SECRETARY

7

1 SUMMERS:
2 Hluska, present.
3 VP South, Luther.
4 VP SOUTH LUTHER:
5 Present.
6 RECORDING SECRETARY
7 SUMMERS:
8 Luther, present.
9 VP West, Deburgomaster?
10 VICE PRESIDENT
11 DEBURGOMASTER:
12 Here.
13 RECORDING SECRETARY
14 SUMMERS:
15 Deburgomaster, present.
16 Sergeant Liaison, Sellers, excused.
17 Adirondack, Sturgeon?
18 MR. STURGEON: Here.
19 RECORDING SECRETARY
20 SUMMERS:
21 Sturgeon, present.
22 Albany Training Academy,
23 Christiano?

8

1 MR. CHRISTIANO: Here.
 2 RECORDING SECRETARY
 3 SUMMERS:
 4 Christiano, present.
 5 Albion, Molino?
 6 MR. MOLINO: Here.
 7 RECORDING SECRETARY
 8 SUMMERS:
 9 Molino, present.
 10 Altona, Ayotte?
 11 MR. AYOTTE: Here.
 12 RECORDING SECRETARY
 13 SUMMERS:
 14 Ayotte, present.
 15 Attica, Tartarka?
 16 MR. TARTARKA: Here.
 17 RECORDING SECRETARY
 18 SUMMERS:
 19 Tartarka, present.
 20 Auburn, Vincent?
 21 MR. VINCENT: HERE.
 22 RECORDING SECRETARY SUMMERS
 23 Vincent, present.

9

1 Bare Hill, Grammo?
 2 MR. GRAMMO: Present.
 3 RECORDING SECRETARY
 4 SUMMERS:
 5 Grammo, present.
 6 Bedford Hills, Floyd?
 7 MS. FLOYD: Here.
 8 RECORDING SECRETARY
 9 SUMMERS:
 10 Floyd, present.
 11 Cape Vincent, Hill?
 12 MR. HILL: Present.
 13 RECORDING SECRETARY
 14 SUMMERS:
 15 Hill, present.
 16 Cayuga, Hatfield?
 17 MR. HATFIELD: Here.
 18 RECORDING SECRETARY
 19 SUMMERS:
 20 Hatfield, present.
 21 Central New York Psych,
 22 Hollenbeck?
 23 MR. HOLLENBECK: Here.

10

1 RECORDING SECRETARY
 2 SUMMERS:
 3 Hollenbeck, present.
 4 Clinton, Basto, excused.
 5 Collins, Morosey?
 6 MR. MOROSEY: Here.
 7 RECORDING SECRETARY
 8 SUMMERS: Morosey,
 9 present. Community
 10 Supervision, Ruland?
 11 MR. RULAND: Here.
 12 RECORDING SECRETARY
 13 SUMMERS: Ruland, present.
 14 CCA, Sharpe?
 15 MR. SHARPE: Here.
 16 RECORDING SECRETARY SUMMERS
 17 Sharpe, present.
 18 Cocksackie, Carknard?
 19 MR. CARKNARD: Here.
 20 RECORDING SECRETARY
 21 SUMMERS:
 22 Carknard, present.
 23 Downstate, Neal.

11

1 MS. NEAL: Here.
 2 RECORDING SECRETARY
 3 SUMMERS: Neal, present.
 4 Eastern, Caban?
 5 MS. CABAN: Here.
 6 RECORDING SECRETARY
 7 SUMMERS:
 8 Caban, present.
 9 Edgecombe, Valentin?
 10 MR. VALENTIN: Here.
 11 RECORDING SECRETARY
 12 SUMMERS:
 13 Valentin, present.
 14 Elmira, Duryea?
 15 MR. DURYEA: Here.
 16 RECORDING SECRETARY
 17 SUMMERS:
 18 Duryea, present.
 19 Fishkill, Van Tassell?
 20 MR. VAN TASSELL: Here.
 21 RECORDING SECRETARY
 22 SUMMERS:
 23 Van Tassell, present.

12

1 Five Points, Mamon?
 2 MR. MAMON: Here.
 3 RECORDING SECRETARY
 4 SUMMERS:
 5 Mamon, present.
 6 Forest Rangers, Carlson,
 7 excused.
 8 Franklin, Allen?
 9 MR. ALLEN: Here.
 10 RECORDING SECRETARY
 11 SUMMERS:
 12 Allen, present.
 13 Gouverneur, Best?
 14 MR. BEST: Present.
 15 RECORDING SECRETARY
 16 SUMMERS:
 17 Best, present.
 18 Gowanda, McMurray?
 19 MR. McMurray: Here.
 20 RECORDING SECRETARY
 21 SUMMERS:
 22 McMurray, present.
 23 Great Meadow, Keough?

13

1 MR. KEOUGH: Here.
 2 RECORDING SECRETARY
 3 SUMMERS:
 4 Keough, present.
 5 Green Haven, Moreau?
 6 MR. MOREAU: Here.
 7 RECORDING SECRETARY
 8 SUMMERS:
 9 Moreau, present.
 10 Greene, Karamanos?
 11 MR. KARAMANOS: Here.
 12 RECORDING SECRETARY
 13 SUMMERS:
 14 Karamanos, present.
 15 Groveland, Gaynor?
 16 MR. GAYNOR: Here.
 17 RECORDING SECRETARY
 18 SUMMERS:
 19 Gaynor, present.
 20 Hale Creek, Rowe?
 21 MR. ROWE: Here.
 22 RECORDING SECRETARY
 23 SUMMERS:

14

1 Rowe, present.
 2 Hudson, Cox?
 3 MR. COX: Here.
 4 RECORDING SECRETARY
 5 SUMMERS:
 6 Cox, present.
 7 ISO's, Ohms?
 8 MR. OHMS: Present.
 9 RECORDING SECRETARY
 10 SUMMERS: Ohms, present.
 11 Kirby Forensic, O'Garro,
 12 excused.
 13 Lakeview Shock, Gruber?
 14 MR. GRUBER: Here.
 15 RECORDING SECRETARY
 16 SUMMERS:
 17 Gruber, present.
 18 Marcy, LaSalle, excused.
 19 Mid Hudson Forensic Psych,
 20 Noel?
 21 MR. NOEL: Here.
 22 RECORDING SECRETARY
 23 SUMMERS:

15

1 Noel, present.
 2 Mid State, McGowan?
 3 MR. MCGOWAN: Here.
 4 RECORDING SECRETARY
 5 SUMMERS:
 6 McGowan, present.
 7 Mohawk, Mullin?
 8 MR. MULLIN: Here.
 9 RECORDING SECRETARY
 10 SUMMERS:
 11 Mullin, present.
 12 Moriah Shock, Trombley?
 13 MR. TROMBLEY: Here.
 14 RECORDING SECRETARY
 15 SUMMERS:
 16 Trombley, present.
 17 Ogdensburg, Wilhelm?
 18 MR. WILHELM: Here.
 19 RECORDING SECRETARY
 20 SUMMERS:
 21 Wilhelm, present.
 22 Orleans, Sharts?
 23 MR. SHARTS: Here.

16

1 RECORDING SECRETARY
2 SUMMERS:
3 Sharts, present.
4 Otisville, Hawkes?
5 MR. HAWKES: Here.
6 RECORDING SECRETARY
7 SUMMERS:
8 Hawkes, present.
9 Queensboro, Smith?
10 MR. SMITH: Here.
11 RECORDING SECRETARY
12 SUMMERS:
13 Smith, present.
14 Riverview, Aldous?
15 MR. ALDOUS: Here.
16 RECORDING SECRETARY .
17 SUMMERS:
18 Aldous, present.
19 Rochester Psych, Cahill?
20 MR. CAHILL: Here.
21 RECORDING SECRETARY
22 SUMMERS:
23 Cahill, present.

17

1 SSO Central, Barrett?
2 MR. BARRETT: Here.
3 RECORDING SECRETARY
4 SUMMERS: Barrett,
5 present.
6 SSO Mid-Hudson, Smith?
7 MR. SMITH: Present.
8 RECORDING SECRETARY
9 SUMMERS: Smith, present.
10 SSO Northern Region,
11 Leclair?
12 MR. LECLAIR: Here.
13 RECORDING SECRETARY
14 SUMMERS: Leclair,
15 present.
16 SSO Southern Region,
17 Henderson?
18 MR. HENDERSON: Here.
19 RECORDING SECRETARY
20 SUMMERS: Henderson,
21 present.
22 SSO Western, Compton?
23 MS. COMPTON: Here.

18

1 RECORDING SECRETARY
2 SUMMERS:
3 Compton, Present.
4 Security Officers,
5 Tonney V?
6 MR. VACHAPARAMBIL:
7 Yes.
8 RECORDING SECRETARY
9 SUMMERS: Tonney V,
10 present. Security Services
11 Assistant, Schiavone?
12 MR. SCHIAVONE: Here.
13 RECORDING SECRETARY
14 SUMMERS:
15 Schiavone, present.
16 Shawangunk, Zappala?
17 MR. ZAPPALA: Here.
18 RECORDING SECRETARY
19 SUMMERS:
20 Zappala, present.
21 Sing Sing, Harris?
22 MR. HARRIS: Present.
23 RECORDING SECRETARY

19

1 SUMMERS:
2 Harris, present.
3 Southport, Sickler?
4 MR. SICKLER: Here.
5 RECORDING SECRETARY
6 SUMMERS:
7 Sickler, present.
8 Sullivan, Gilmour?
9 MR. GILMOUR: Here.
10 RECORDING SECRETARY
11 SUMMERS:
12 Gilmour, present.
13 Taconic, Frazier?
14 MR. FRAZIER: Here.
15 RECORDING SECRETARY
16 SUMMERS: Frazier,
17 present. Ulster,
18 Scampoli?
19 MR. SCAMPOLI: Here.
20 RECORDING SECRETARY
21 SUMMERS:
22 Scampoli, present.
23 Upstate, Gary?

20

1 MR. GARY: Here.
2 RECORDING SECRETARY
3 SUMMERS:
4 Gary, present.
5 Wallkill, Sheridan.
6 MR. WALLKILL: Here.
7 RECORDING SECRETARY
8 SUMMERS: Sheridan,
9 present. Washington,
10 Chapman?
11 MR. CHAPMAN: Here.
12 RECORDING SECRETARY
13 SUMMERS:
14 Chapman, present.
15 Watertown, Dier?
16 MR. DIER: Here.
17 RECORDING SECRETARY
18 SUMMERS:
19 Dier, present.
20 Wende, Porter?
21 MR. PORTER: Here.
22 RECORDING SECRETARY
23 SUMMERS:

21

1 Porter, present.
2 Willard, Cornacchio?
3 MR. CORNACCHIO: Here.
4 RECORDING SECRETARY
5 SUMMERS:
6 Cornacchio, present.
7 Woodbourne, Noecker?
8 MR. NOECKER: Here.
9 RECORDING SECRETARY
10 SUMMERS:
11 Noecker, present.
12 Wyoming, Goodrich?
13 MR. GOODRICH: Here.
14 RECORDING SECRETARY
15 SUMMERS:
16 Goodrich, present.
17 PRESIDENT POWERS:
18 Thanks, Chris. First
19 thing off this morning,
20 the department has
21 cancelled the Monday labor
22 management meeting. We'll
23 be looking to reschedule

22

1 that hopefully as soon as
2 possible, within the next
3 two weeks. I do know
4 there's an all
5 superintendent call this
6 morning, I don't what that
7 pertains to. Any updates
8 we get, we'll be quick to
9 get them out to you guys.
10 We'll get back into the
11 motions for new business.
12 We have a motion to
13 appoint Brian Hluska
14 central region. The
15 motion is made by the
16 Executive Board. Any
17 discussion? All in favor
18 signify by saying aye.

(All respond with aye.)

PRESIDENT POWERS:
Anyone opposed?

23

1 (No response.)
2
3 PRESIDENT POWERS: Next
4 motion, to appoint Kenny
5 Gold Western Region
6 business agent. Any
7 discussion? Western
8 region only. Any
9 discussion? All in favor?

(All signify "aye".)

PRESIDENT POWERS:
Anyone opposed?

(No response.)

PRESIDENT POWERS
Thank you. Motion, to
initiate litigation on
behalf of Mike Lewis, Kurt
Stitzel and Timothy Zhan
for the retro monies and

24

1 recalculations for their
2 retirement benefits. This
3 litigation should act as a
4 precursor and possible
5 litigation for other
6 active members who have
7 not received the
8 appropriate raises, retro
9 and recalculations for the
10 CBA in 2016 and 2023.

11 The wisdom, to initiate
12 a precedent for those
13 members who resign and
14 subsequently retired under
15 Article 15. They were
16 denied retro for the
17 raises for any period
18 worked under the new
19 contract, which
20 subsequently affects their
21 FAF, as well as their
22 recalculations and final
23 retirement benefits. The

25

1 motion is made by Mark
2 Deburgomaster, seconded by
3 Ray Sickler out of South
4 Port. Discussion? John?

5 VP LAW ENFORCEMENT
6 HARMON: John Harmon, Law
7 Enforcement VP. Just an
8 update, there's gonna be a
9 discussion this week on
10 this. I'm not saying
11 there's going to be a
12 resolution, but I was
13 wondering if the maker
14 would postpone this to the
15 May EA. By then hopefully
16 we'll have some
17 discussion, and if we
18 don't have any resolutions
19 by then, then I -- and
20 it's just not for these
21 three guys, we have to
22 look at other means to
23 possibly litigate

26

1 everybody who doesn't have
2 retro. I hate to limit it
3 to three people.

4 PRESIDENT POWERS: The
5 discussion he's referring
6 to is a phone call I will
7 be having later on this
8 afternoon with the
9 Director of GOER, Mike
10 Bellaforte at one o'clock.
11 Mark?

12 VP WEST DEBURGOMASTER:
13 Mark Deburgomaster,
14 Western Region VP.
15 Obviously we had
16 discussions on this moving
17 forward, Bellaforte's
18 conversation is tomorrow
19 or today actually, I don't
20 have a problem we can hold
21 the motion pending the
22 outcome of today's phone
23 call. But I would ask for

27

1 to still move forward,
2 obviously this will give
3 latitude to the Board to
4 act as appropriate as long
5 as we have consent from
6 the membership.

7 PRESIDENT POWERS: We
8 can put it in the old
9 business at the next
10 Executive Assembly. Mark,
11 you got a second? You got
12 a second? Donn?

13 All in favor of tabling
14 this motion? Donn? Not
15 tabling, I apologize, not
16 tabling. Sitting on it
17 until we get more
18 clarification from GOER.
19 We'll put it in old
20 business at the next
21 Executive Assembly.

22 VP NORTH ROBERTS: John
23 Roberts, Northern Region.

28

1 There's approximately 350
2 or so people on that list.
3 Whether they were
4 terminated, quit, resigned
5 Article 15, Section 71,
6 73s. I think it's
7 disturbing to limit that
8 list to three people.
9 Maybe it needs to be
10 someone who resigned,
11 terminated, 71 to 73.
12 People that were on
13 Workers' Comp got
14 terminated and ended up
15 getting disability, didn't
16 get their back pay.

17 PRESIDENT POWERS:

18 John, the motion looks to
19 set precedence for all.

20 It ultimately looks to
21 set a precedence for all.

22 VP WEST DEBURGOMASTER:

23 Mark Deburgomaster,

29

1 Western Region. The
2 motion was to move forward
3 to set precedence.
4 We were approached by
5 these individuals, they
6 came to us, we vetted
7 them. And it was to set a
8 precedence, this is not
9 just about leaving
10 everybody else into the
11 wind. This is moving
12 forward, we're almost a
13 year out.

14 We are no further than
15 we've been, recalculations
16 aren't being done, it's
17 not being addressed. As
18 far as they're concerned,
19 they asked us to bring it,
20 we brought it forward.
21 I'm still asking for a
22 vote today, with an
23 amendment saying it would

30

1 be pending the outcome of
2 today's phone call. I
3 don't want it tabled to
4 the next EA.

5 PRESIDENT POWERS:

6 You're right. So the
7 amended motion is to --

8 VP WEST DEBURGOMASTER:

9 At this point the amended
10 motion is to be to give
11 latitude to the Board
12 pending today's phone
13 call, but I'm still asking
14 to move forward for a
15 vote.

16 PRESIDENT POWERS:

17 Okay. Any other
18 discussion with the
19 original motion the one I
20 read in with the
21 amendment? Sixty percent
22 approval for the amendment
23 signify by saying aye.

31

1
2 (All respond with aye.)
3

4 PRESIDENT POWERS: So
5 with the amended motion,
6 to move this motion
7 pending the outcome of the
8 call with GOER today.
9 Everybody good with that?
10 Any other discussion with
11 that? All in favor
12 signify by saying aye?

13
14 (All respond with aye.)
15

16 CHRIS MOREAU: Is there
17 any chance we can get a
18 legal opinion on
19 implications this may have
20 on the union as a whole?

21 PRESIDENT POWERS: We
22 beat this thing to death,
23 man. Yeah, we can, before

32

1 a vote, but you just
2 voted.
3 VP LAW ENFORCEMENT
4 HARMON: Just so everybody
5 is clear with the
6 retroactive where we are
7 right now, as we know, you
8 know, the issue that least
9 I know myself and Mid
10 Hudson vice president Mike
11 Mazzella, and John Sakotia
12 and Steve Isaacs had, was
13 what was put into the
14 payroll bulletin and the
15 pay bill was not what we
16 understood was agreed to.
17 That's part of the issue
18 that we have here.
19 Because what the State
20 is saying is that the
21 mediator told them that we
22 agreed to -- you know,
23 that we agreed to this.

33

1 And we didn't agree to
2 this. We were told that
3 there's gonna be full
4 retroactive, so there's a
5 discrepancy in what was
6 said.
7 Just so everybody knows
8 during mediation not
9 everybody is in the same
10 room together. And
11 actually we were here. So
12 what happened is the State
13 sits in one conference
14 room, we sit in another
15 conference room, the
16 mediator goes back and
17 forth, the only time
18 people get together, when
19 the negotiators gets
20 together is to try to iron
21 out an issue.
22 This issue actually
23 wasn't brought between the

34

1 two parties together. It
2 was talked about in both
3 rooms, so there's some
4 discrepancy what happened.
5 The issue is that after
6 retroactive payment was
7 made to probably everybody
8 in this room, some people
9 got paid based on their
10 payroll designations that
11 the jail gave to you.
12 So you could have a
13 transfer, retirement, you
14 could have had a
15 resignation, a
16 termination. Some Article
17 15s were paid based on the
18 jail putting a transfer
19 designation or a retiring
20 designation instead of a
21 terminated or resigned.
22 That's part of the issue
23 here.

35

1 The other issue is
2 Section 71 and Section 73s
3 are those who were
4 terminated based on
5 medical or sick or
6 something like that. The
7 payroll bulletin and the
8 pay bill are clear that if
9 you come back on payroll,
10 so if you were Workers'
11 Comp terminated, come
12 back, get put back on
13 payroll because you got
14 disability retirement,
15 every one of those guys is
16 supposed to be paid.
17 There's also a group of
18 people on this list that I
19 have I compiled are those
20 that actually transferred
21 to another state agency.
22 State Police, DOT, other
23 state buildings, some how,

36

1 some way, somebody screwed
2 that up.

3 I can tell you right
4 now probably about three
5 hundred fifty names I
6 think it's a little less
7 than that, I would say
8 maybe half of Article 15s
9 that we believe legally
10 should get paid because
11 the language is
12 completely -- it doesn't
13 really say they shouldn't
14 get paid. And the other
15 half are probably ten to
16 twenty different
17 variations of people who
18 didn't get paid for
19 whatever the reason.

20 Out of that hundred
21 fifty or hundred
22 seventy-five people who
23 are not Article 15s, I can

37

1 tell you probably half of
2 those are people who
3 actually meet the criteria
4 to get retroactive pay
5 that GOER hasn't given the
6 comptroller's office the
7 authority to pay yet for
8 whatever the reasons.

9 I have I don't know how
10 many e-mails or
11 communications in to GOER,
12 that's the only reason I
13 asked Vice President
14 Deburgomaster to kind of
15 hold off because today
16 will be the first phone
17 call we're having about
18 this in quite some time.
19 So hopefully we'll get
20 some leeway of where the
21 hell they're going.

22 If they can just pay
23 those who should be paid,

38

1 it takes care of probably
2 maybe fifty to a hundred
3 names, then we can work
4 the list down, cross off
5 the people who get paid
6 and start working on those
7 that didn't get paid.

8 CHRIS MOREAU: Chris
9 Moreau, Green Haven. What
10 type of response are
11 hoping from this phone
12 call in order to proceed
13 with the litigation?

14 PRESIDENT POWERS:
15 Obviously everything.

16 CHRIS MOREAU: Every
17 person getting paid?

18 VP LAW ENFORCEMENT
19 HARMON: So, I can tell
20 you the one group of
21 people they're absolutely
22 going to not gonna want to
23 pay; those terminated due

39

1 to discipline. That was
2 their -- that was their
3 huge crux in this whole
4 thing. And we kind of
5 understood that that
6 night, that that was the
7 piece they were holding on
8 to, we were like, you
9 know, okay.

10 And we didn't -- when
11 it was all said and done
12 we didn't even agree to
13 that, but we understood
14 what they are saying, but
15 they said no, no
16 retroactive payment.
17 Okay. What I think we
18 need from this phone call
19 today is an agreement to
20 fix those that already
21 meet the criteria. That
22 there's no reason they
23 shouldn't get paid. They

40

1 meet the criteria by the
2 legislation, they meet the
3 criteria by the
4 comptroller's office and
5 they meet the contract, we
6 should have some
7 commitment out of them to
8 pay them and get them off
9 the list.

10 There also needs to be
11 something with the phone
12 call today of
13 acknowledging that in
14 previous discussion with
15 GOER and budget, that
16 there was some
17 understanding that somehow
18 the 71 and 73s got left
19 out. And with that, there
20 is an understanding there
21 is something to be said
22 that the Article 15s do
23 meet the conditions.

41

1 So, we just need
2 to see -- we need an
3 update from them that we
4 haven't had in probably
5 four months, three months.
6 You know, we've been
7 pressing them to tell us
8 who you're gonna pay so we
9 can tell these people
10 they're getting their
11 retroactive check. And
12 then we can start working
13 on the rest of it, either
14 agree, disagree or
15 litigating. That's kind
16 of where we're at.

17 CHRIS MOREAU: So
18 anything short of all
19 those people getting paid,
20 we'll proceed with
21 litigation.

22 VP LAW ENFORCEMENT
23 HARMON: It depends on if

42

1 this is going to create a
2 conversation to start
3 looking into Article 15s
4 or whatever. If this is
5 the start of them to start
6 agreeing to look into this
7 stuff, then we're moving.
8 As Vice President
9 Deburgomaster said, we
10 haven't had any movement
11 in a while.

12 It's just me compiling
13 a list of those that
14 didn't get paid and asking
15 GOER over and over again,
16 can you tell me where we
17 are with this; can you
18 tell me if anyone's been
19 paid. I need an update on
20 these guys and just let me
21 know what's going on.

22 CHRIS MOREAU: I
23 understand to light the

43

1 fire, my concern is just
2 that it might bring about
3 future problems for our
4 current members and
5 retirees.

6 VP WEST DEBURGOMASTER:
7 Deburgomaster, Western
8 Region. Obviously we are
9 to a point now we can't
10 even get a phone call
11 back. They're not
12 communicating with us.
13 And when they are, whether
14 it's the clear bag issue,
15 whether it's the Article
16 15s, 71s, 73s, they're not
17 talking to us. The only
18 thing they understand is
19 when we put something
20 legal in front of them and
21 push the issue. That's
22 our standpoint and that's
23 why we move forward with

44

1 these cases. Even though
2 those members were our
3 members during the period
4 of the contract, they're
5 not paid. That's what
6 we're fighting for.

7 VP LAW ENFORCEMENT

8 HARMON: Just one
9 clarification, John Harmon
10 Law Enforcement VP. One
11 of our issues is that
12 through our discussions,
13 Section 71 and 73s,
14 technically speaking, they
15 don't qualify. They don't
16 fit the pay bill, they
17 don't fit the payroll
18 bulletin. That's why I
19 said one of the issues
20 that we've had, Mark and I
21 had this discussion is,
22 one of our worries all
23 along is by pushing the

45

1 until it's one year out
2 which would be the next
3 EA, because then it's like
4 you know what, we're not
5 going to deal with it.
6 We'll have to find other
7 ways we can shame them PR
8 wise, 71 and 73s. We can
9 litigate the Article 15s
10 that should get paid. We
11 have another group of
12 people that didn't get
13 paid, who do qualify.

14 The only issue I think
15 is when is the time right.
16 I think the phone call is
17 important today.
18 Hopefully we get another
19 one out of this, try to
20 speed this along a little
21 bit. If this goes nowhere
22 quick, it's time to figure
23 out what we're going to do

47

1 envelope with the 71s and
2 73s, again, if someone has
3 been terminated because of
4 Workers' Comp or
5 terminated because of
6 cancer, they don't
7 technically qualify right
8 now.

9 We've had some -- even
10 though we have not had an
11 update in a long time,
12 we've had some commitment
13 from them in the past that
14 they would consider
15 looking at them. The
16 problem is one of the
17 issues that we have is
18 when is the time to push
19 it. And we're getting
20 close to that year, that's
21 why I said let's see what
22 happens with this phone
23 call. Maybe let's wait

46

1 to fix it.

2 PRESIDENT POWERS: Any
3 other discussion on that?
4 Another motion. Need
5 sixty percent approval,
6 this is new business. It
7 was not on the agenda,
8 need sixty percent
9 approval to move forward.
10 All signify by saying aye.

11 (All respond with aye.)

12
13 PRESIDENT POWERS Anyone
14 opposed?

15 (No response.)

16
17 PRESIDENT POWERS: You
18 should have in your
19 possession a motion. It
20 was not in the packet, I
21 believe it was handed out.
22 To change current
23

48

1 committee policy and
2 procedures policy.
3 There's an attached policy
4 with it. You have it.
5 Motion is made by Doug
6 Westervelt, seconded by
7 Chris Fear, it would have
8 been handed out yesterday.
9 Everybody has it?

10 NEIL GRUBER: Yeah.

11 PRESIDENT POWERS:

12 Thank you. Do you want me
13 to read in the committee
14 policy and procedure? You
15 guys all have it, right?
16 Do you want me to read it
17 in or no?

18 Committee policy and
19 procedure. Committees
20 will convene on the first
21 and second day of the
22 Executive Assembly in one
23 module. The first day of

49

1 the Executive Assembly's
2 committee will meet in
3 designated areas from
4 eight to ten a.m. Ten
5 a.m. to twelve p.m. normal
6 Executive Assembly agenda
7 will commence. Lunch
8 being from twelve to one.
9 Each committee will plan
10 their module accordingly
11 based on their respective
12 agendas and need for
13 longer time frames. The
14 committee chairs will
15 notify the recording
16 secretary of their
17 attendance at each
18 upcoming Executive
19 Assembly.

20 The committee will make
21 every effort to conduct
22 business at the regularly
23 scheduled Executive

50

1 Assembly's, but meet
2 during Executive Assembly
3 off months if a meeting is
4 absolutely necessary to
5 contract NYSCOPBA
6 business. The discretion
7 on whether to meet in off
8 months will rest with the
9 board member who oversees
10 each committee. Each
11 committee member will
12 receive a hundred fifty
13 dollar stipend for each
14 Executive Assembly as
15 their respective committee
16 convenes.

17 At the conclusion of
18 lunch at one p.m. the
19 normal Executive Assembly
20 agenda will continue. The
21 second day of the
22 Executive Assembly from
23 nine to ten a.m.

51

1 committees will meet, if
2 needed, for any unfinished
3 or new business. Ten a.m.
4 to one p.m. the Executive
5 Assembly will commence
6 until the agenda has been
7 complete.

8 The motion is made by
9 Doug Westervelt, seconded
10 by Chris Fear.
11 Discussion?

12 EXECUTIVE VP SAWCHUK:
13 I just like to have a
14 better understanding what
15 this is in reference to,
16 whether it be room
17 accommodations, we're
18 paying for them, per diems
19 or EOL?

20 DOUG WESTERVELT: Has
21 to do with EOL.

22 EXECUTIVE VP SAWCHUK:
23 So, I can not submit for

52

1 EOL for one hour on a what
2 if, what if, the
3 possibility of.

4 DOUG WESTERVELT: Could
5 we go off the record?

6 PRESIDENT POWERS:
7 All in favor of going off
8 the record?

9
10 (All respond with aye.)

11 PRESIDENT POWERS:
12 Anybody opposed?

13
14 (No response.)

15
16 (Off the record
17 discussion.)

18
19 PRESIDENT POWERS: Back
20 on the record. Doug has
21 amended the motion to pull
22 if needed, now we're
23 voting on the amendment.

53

1 The amended aspect of the
2 committee policy and
3 procedure, all in favor
4 signify by saying aye?

5
6 (All respond with aye.)

7
8 PRESIDENT POWERS:
9 Anyone opposed?

10
11 (No response.)

12
13 PRESIDENT POWERS: Now
14 we're back to the original
15 motion.

16 DOUG WESTERVELT: With
17 everything that has been
18 said and the fact that
19 they can't question our
20 EOL, AUB time, let's move
21 on the motion and take a
22 vote.

23 PRESIDENT POWERS: Any

54

1 other discussion? All in
2 favor signify by saying
3 aye?

4
5 (All respond with aye.)

6
7 PRESIDENT POWERS:
8 Anyone opposed?

9
10 (No response.)

11
12 PRESIDENT POWERS:
13 Motion passes.

14 VP LAW ENFORCEMENT
15 HARMON: Just so we're
16 here on the clear on the
17 motion that passed. So
18 any committee that comes
19 out for the EA needs to
20 have an agenda for two
21 days. If there is not an
22 agenda for two day, and
23 it's only one day, you'll

55

1 get one day of EOL. Just
2 so we're all clear on
3 that. So if there's no
4 agenda for two days, you
5 don't get two days.

6 PRESIDENT POWERS:
7 That's in the motion.

8 I was just handed
9 another motion. We'll
10 need --

11 DOUG WESTERVELT: What
12 was that? Westervelt,
13 South Port. What was
14 that? For clarification,
15 to be politically,
16 correct.

17 VP LAW ENFORCEMENT
18 HARMON: What I'm just
19 saying is for the
20 committee to be out for
21 two days, all I'm saying
22 is that when the
23 committees put their

56

1 agendas together, make
2 sure there's an agenda for
3 two days.

4 DOUG WESTERVELT: The
5 agenda is already set,
6 it's already in committee
7 policy that we're going to
8 meet a second day. And if
9 there is any unfinished
10 business that we can't
11 finish the first day and
12 then the business that
13 comes up maybe in the
14 meeting on day one, we
15 have to be here to meet
16 again.

17 VP LAW ENFORCEMENT
18 HARMON: I'm not
19 disagreeing with you,
20 Doug.

21 DOUG WESTERVELT: There
22 could be no agenda. We
23 might end up within an

57

1 get it.

2 RECORDING SECRETARY
3 SUMMERS: Mike, I just
4 want to clarify on the
5 agendas, all the chairman
6 should be giving me the
7 agenda two weeks before
8 the EA, you know, and have
9 it spelled out. I'm not
10 going to go any farther
11 than that, but maybe you
12 guys should be looking at
13 sending the agenda. Hint,
14 hint.

15 PRESIDENT POWERS:
16 Sixty percent approval to
17 move another piece of new
18 business, signify by
19 saying aye.

21 (All respond with aye.)

23 PRESIDENT POWERS: Any

59

1 agenda because of the
2 first day.

3 VP LAW ENFORCEMENT
4 HARMON: All I'm saying is
5 for -- go ahead.

6 SHAWN KEENAN: Keenan,
7 Wende. Doug, he's not
8 saying we're not -- what
9 he's saying is there's
10 going to be two days worth
11 of work on that agenda.
12 So when the agenda gets
13 submitted day one is X, Y,
14 Z. Day two --

15 VP LAW ENFORCEMENT
16 HARMON: Which should
17 probably say unfinished EA
18 business. I'm only saying
19 for our purposes.

20 SHAWN KEENAN: For the
21 state, not for this body.

22 DOUG WESTERVELT: To be
23 politically, correct, I

58

1 nays?

2 (No response.)

3
4 PRESIDENT POWERS: This
5 was just handed to me. To
6 have NYSCOPBA spend up to
7 750 thousand on an ad
8 campaign to promote the
9 jobs our members do and
10 the service they provide
11 in protecting our
12 communities. These ads
13 should focus on pointing
14 out the inadequate
15 policies and practices of
16 both the department and
17 Governor's administration,
18 that continuously ignores
19 the safety and security of
20 staff.

21 This campaign should be
22 directed at all major news
23 outlets throughout the

60

1 state, each region equally
2 per ratio. This
3 information should include
4 information regarding drug
5 epidemic in our state, the
6 need for K-9 in each
7 facility, protective
8 equipment, inhumane
9 treatment of inmates with
10 regard to double bunking,
11 assault on staff, assaults
12 on inmates, parolees
13 unaccounted for.
14 Including murderers,
15 rapists and pedophiles
16 should be targeted through
17 radio ads, newspaper ads,
18 press releases and
19 television.

20 This motion is made by
21 Chris Summers, Recording
22 Secretary and Brian
23 Hluska, Central Region --

61

1 seconded by Brian Hluska.
2 Discussion? None? Chris?
3 CHRIS MOREAU: Moreau,
4 Green Haven. I'm all for
5 it as long as we have the
6 750-K. Would that be a
7 Frank question?

8 DAVE LUTHER: Is that
9 what it was, seven hundred
10 fifty thousand?

11 CHRIS MOREAU: Yeah, I
12 think the treasurer should
13 probably say if we have
14 the money.

15 PRESIDENT POWERS: I'm
16 pretty sure from
17 yesterday's treasurer's
18 report I think we have
19 750-K, but I hear ya. I
20 don't know where Frank
21 went. I don't know if the
22 makers of the motion are
23 looking to create a budget

62

1 line for this, I don't
2 believe so.

3 CHRIS MOREAU: Is this
4 a one time campaign?

5 PRESIDENT POWERS: This
6 is -- I'm assuming, in the
7 event -- I'm assuming, I
8 just got it, I'm assuming
9 it's in the event that we
10 need to act quicker kind
11 of thing.

12 CHRIS MOREAU: So this
13 is a just in case 750?

14 RECORDING SECRETARY
15 SUMMERS: Chris Summers,
16 recording secretary. Last
17 time we had a motion for
18 750 thousand and it was
19 just -- it wasn't
20 explained. I explained it
21 all out there. Everybody
22 in this room I believe
23 kind of agrees that we

63

1 keep getting kicked in the
2 face, everybody wants
3 something done.

4 As a board our hands
5 are tied, we can only
6 spend up to so much. Then
7 we have to wait two months
8 to meet with you to get
9 approval. This is giving
10 us approval to move
11 forward. That's why it's
12 all explained out how to
13 do it. But without the
14 treasurer, I can't answer
15 if there's 750 thousand.
16 According to his report
17 yesterday, yes.

18 TREASURER GILBO: Fill
19 me in.

20 PRESIDENT POWERS:
21 We were handed a new
22 motion, Frank, while
23 you were somewhere, to

64

1 have the NYSCOPBA spend up
2 to 750 thousand on an ad
3 campaign to promote the
4 jobs our members do and
5 service they provide,
6 regarding all the issues
7 we continually put
8 forward.

9 And the question was
10 asked by Brother Moreau to
11 you was, do we have it?

12 TREASURER GILBO: Yes,
13 we do. But do we want to
14 while -- we got the
15 closures coming, do we
16 really want to spend that
17 money right now?

18 PRESIDENT POWERS: I
19 think it's in the event
20 that we need to.

21 RECORDING SECRETARY
22 SUMMERS: Chris Summers,
23 recording secretary. It

65

1 explains right in there.

2 PRESIDENT POWERS: He
3 wasn't in here. I'll read
4 it again.

5 To have NYSCOPBA
6 spend up to 750 thousand
7 on an ad campaign to
8 promote the jobs our
9 members do and the service
10 they provide in protecting
11 our communities. These
12 ads should focus on
13 pointing out the
14 inadequate policies and
15 practices of both the
16 department and Governor's
17 administration, that
18 continuously ignores the
19 safety and security of
20 staff.

21 This campaign should be
22 directed at all major news
23 outlets throughout the

66

1 state, each region equally
2 per ratio. This
3 information should include
4 information regarding drug
5 epidemic in our state, the
6 need for K-9 in each
7 facility, protective
8 equipment, inhumane
9 treatment of inmates with
10 regard to double bunking,
11 assault on staff, assaults
12 on inmates, parolees
13 unaccounted for.
14 Including murderers,
15 rapists and pedophiles
16 should be targeted through
17 radio ads, newspaper ads,
18 press releases and
19 television ads.

20 TREASURER GILBO: This
21 would be a timing thing,
22 right, we got to get on
23 this quick? We could

67

1 refer it to the finance
2 committee to see, you
3 know --

4 PRESIDENT POWERS:
5 You're requesting it to go
6 to the finance committee?

7 TREASURER GILBO: Yeah.

8 SEAN KEENAN: Keenan,
9 Wende.

10 PRESIDENT POWERS: Hang
11 on a minute. This body in
12 favor of moving it to the
13 finance committee for
14 review? All signify by
15 saying aye.

16
17 (Response of aye from the
18 floor.)

19 PRESIDENT POWERS: Any
20 nays?

21
22 (Response of nay from
23 the floor.)

68

1
2 PRESIDENT POWERS: Nays
3 please stand. Go to the
4 mic for the record.
5 INAUDIBLE SPEAKER: No.
6 MCGOWAN: McGowan,
7 Midstate, no.
8 HILL: Hill, Cape
9 Vincent, no.
10 NEAL GRUBER: Gruber
11 Lakeview Shock, no.
12 MULLIN: Mullin,
13 Mohawk, no.
14 DON MOLINO: Don
15 Molino, Albion, no.
16 CHRIS MOREAU: Moreau,
17 Green Haven, no.
18 EVAN: Evan Five
19 Points, No.
20 TAYLOR: Taylor,
21 Groveland, no.
22 BEST: Best, No.
23 Edwin: Edwin, Cayuga,

69

1 no.
2 DIER: Dier, Watertown,
3 no.
4 HORACEK: Horacek,
5 Willard, no.
6 STICHLTER: Stichtler,
7 South Port, no.
8 VINCENT: Vincent,
9 Auburn, no.
10 VP SOUTH LUTHER:
11 Luther, Southern Region
12 VP, no.
13 VP WEST DEBURGOMASTER:
14 Deburgomaster Western
15 Region VP, no.
16 MR. DURYEA: Duryea,
17 Elmira, no.
18 RECORDING SECRETARY
19 SUMMERS: Chris Summers,
20 recording secretary. I
21 just have to cut in, we're
22 way past ten, we go with
23 role call, we don't need

70

1 to put all this on the
2 record. I have to do a
3 role call vote.

4 PRESIDENT POWERS:
5 We're past that now. The
6 nos have it, it won't go
7 to the finance committee.
8 We'll go back to the
9 original motion. Any more
10 discussion with the
11 original motion?

12 MULLEN: Mullen out of
13 Mohawk. Correct me if I'm
14 wrong to the authors for
15 the motion, I believe what
16 they're getting at is, and
17 I think clearly by that
18 little vote there, we're
19 being attacked by the
20 state on a daily basis.
21 The members up here they
22 put out press releases
23 about drugs that are found

71

1 in jails by the
2 hardworking efforts of
3 COs, and then it's pointed
4 out the state is taking
5 the steps, like the secure
6 vendor program. The state
7 and the representatives
8 have the nerve to come
9 back and say, we are
10 taking steps, we gave the
11 COs clear bags. I mean,
12 this stuff is nonsense.
13 They attack us on a daily
14 basis. They dump their
15 shortcomings on us and we
16 just sit back and take it
17 in the face all day, every
18 day and it's about time
19 somebody called out those
20 shortcomings.

21 To say, you want to put
22 some stuff to downgrade
23 us, you want to blame

72

1 everything that happens in
2 this department on us and
3 we're just sitting their
4 being the sponge of it, we
5 need to repel some of
6 that, put it right back
7 where it belongs. They
8 came to us with that
9 secure vendor program,
10 they should be ashamed of
11 themselves and their
12 answer is they gave the
13 COs clear bags. Get out
14 of here.

15 (All applause.)

16 AL ZAPPALA: Al
17 Zappala, Shawangunk. I
18 would ask the makers of
19 the motion to do a slight
20 amendment and add,
21 coronavirus campaign to
22 that. What I would like
23 to see happen, is maybe we

73

1 can use this campaign to
2 also get the push for our
3 visiting rooms to shut
4 down, because that right
5 there is a big thing for
6 us for the safety of us.
7 And that's something maybe
8 the public will relate to.
9 So, would the makers mind
10 doing that?

11 RECORDING SECRETARY

12 SUMMERS: Chris Summers,
13 recording secretary. In
14 there it says for
15 security, it already
16 covers that.

17 UNIDENTIFIED SPEAKER:

18 I believe you're
19 circumventing the finance
20 committee with this vote,
21 I think we should have the
22 final say.

23 EXECUTIVE VP SAWCHUK:

74

1 I just have a quick
2 question. So, are we
3 attaching this campaign to
4 the current campaign that
5 Mike discussed yesterday
6 with the billboards and
7 the bus wraps? So we're
8 just adding this to
9 Gramercy, is that what
10 we're doing?

11 RECORDING SECRETARY

12 SUMMERS: Correct. We can
13 only spend up to a hundred
14 and twenty thousand.

15 EXECUTIVE VP SAWCHUK:

16 No. No. No. That's
17 completely understood. I
18 get that. So the
19 campaign --

20 RECORDING SECRETARY

21 SUMMERS: I want to keep
22 moving forward with this
23 campaign, I don't just

75

1 want to stop with just the
2 wraps on the bus.

3 EXECUTIVE VP SAWCHUK:

4 I'm in total agreement
5 with you on that. My
6 question is, so the seven
7 hundred fifty thousand
8 dollar would include what
9 we're currently doing with
10 the campaign with the
11 buses and the billboards
12 or is this in addition?

13 RECORDING SECRETARY

14 SUMMERS: No, this is in
15 addition.

16 EXECUTIVE VP SAWCHUK

17 Okay.

18 RECORDING SECRETARY

19 SUMMERS: On top of the
20 buses that we already
21 have, I believe it's fifty
22 thousand. I'm not sure
23 exactly.

76

1 PRESIDENT POWERS:
2 Chris?
3 CHRIS MOREAU: Moreau,
4 Green Haven. I just want
5 you to know I support it.
6 I think it's great motion
7 now that we have the
8 money. It's long over
9 due.
10 PRESIDENT POWERS: Any
11 more discussion on the
12 motion. All in favor
13 signify by saying aye.
14
15 (All respond with aye.)
16
17 PRESIDENT POWERS:
18 Anyone opposed?
19
20 (No response.)
21 PRESIDENT POWERS:
22 Thank you. That concludes
23 new business. Now,

77

1 anybody else? Okay. We
2 have a presentation, we
3 have a Workers'
4 Compensation attorney
5 that's going to come and
6 do a presentation. His
7 name is Alex Dell. Safe
8 travel else on the way
9 back. Couple things here,
10 if we can briefly go off
11 the record real quick.
12 All in favor.
13
14 (All respond with aye.)
15 (Off the record
16 discussion.)
17
18 PRESIDENT POWERS: We
19 can go back on the record.
20 ALEX DELL: Good
21 morning everybody. I have
22 to tell you, when I talked
23 to Mike and Tammy they

78

1 said I could be here today
2 as long as I didn't tell
3 any miserable lawyer
4 jokes, so we'll keep those
5 till the end. I
6 appreciate you having me
7 here today.
8 My name is Alex Dell.
9 I can tell you for the
10 last twenty-five years now
11 I basically eat, breathe
12 and sleep Workers' Comp
13 and disability law and
14 believe it, I enjoy it
15 too. And in your goodie
16 bag everybody got today --
17 if you don't have one we
18 can get you one -- there's
19 an outline of what I'm
20 gonna talk about.
21 And I just want to
22 start off by talking a
23 little bit about what I'm

79

1 seeing in Workers'
2 Compensation today,
3 representing you, your
4 members throughout New
5 York State. And then
6 we're gonna get into some
7 really good things that
8 are going on and then
9 there's some things that
10 you need to be aware of,
11 for you and your fellow
12 brothers and sisters that
13 you represent.
14 So, when I first
15 started practicing, and
16 some of you remember this,
17 if you had an injury, you
18 went to a hearing, you saw
19 a doctor, you went to
20 another hearing, you got a
21 money award for that. And
22 things were pretty good
23 back in the day as they

80

1 say.
2 And then, fast forward
3 to the last three to five
4 years. Somebody gets
5 injured, they didn't have
6 a hearing, they didn't get
7 a money award for loss of
8 use, they didn't know they
9 were entitled to be get
10 reimbursed for their
11 travel expenses, and you
12 say, well, that's just
13 maybe me. But the problem
14 is it's not just you, it's
15 a statewide consistent
16 phenomenon.

17 And what we're seeing
18 is that the Workers'
19 Compensation Board has
20 instead of becoming very
21 proactive, they have
22 become just the opposite.
23 They've become reactive.

81

1 And in same cases they've
2 become combative to the
3 point they're questioning
4 whether you had a prior
5 injury and you didn't tell
6 us about it or they're
7 trying to take credit for
8 a prior loss of use award
9 that maybe you forgot
10 about.

11 So it's very important
12 in this day and age to be
13 extremely proactive with
14 your own claim and ask
15 questions about, what am I
16 entitled to and how do I
17 get that benefit for me
18 and also to protect me and
19 my family.

20 So, new developments,
21 current trends, what's
22 going on? I think the
23 majority of people in this

82

1 room understand that if
2 there is a work related
3 injury and it results in a
4 permanent disability,
5 there is a potential for a
6 money award for that
7 permanency.

8 And in New York we
9 basically deal with two
10 types of money awards. We
11 deal with permanent awards
12 for loss of use of an
13 extremity and we deal with
14 what we call non schedule
15 awards for non extremity
16 injuries. Neck injuries,
17 back injuries, head
18 injuries, posttraumatic
19 stress disorder type
20 claims. And basically
21 depending on the type of
22 permanency you have would
23 dictate whether you're

83

1 entitled to a money award.

2 And in general that
3 award gets made about one
4 year after an accident or
5 one year after a final
6 surgery, when the doctors
7 have determined you've
8 reached maximum medical
9 improvement. So, the
10 terminology should be
11 somewhat familiar;
12 schedule loss of use or
13 non schedule injuries for
14 back or neck injuries.
15 And that can sometimes
16 result in some very
17 significant money awards.

18 What's happened is
19 that, and I'm gonna talk
20 about various cases and
21 how they impact everybody
22 because you may have seen
23 some of this already. You

84

1 have a situation where
2 you're involved with an
3 active inmate, and you
4 injure your right shoulder
5 and you also injure your
6 neck in that same
7 incident.

8 For the last few years
9 the Workers' Comp Board
10 has taken the position
11 that if you had an ongoing
12 neck issue and the right
13 shoulder injury at the
14 same time, you would not
15 be able to generally get
16 that loss of use award for
17 your right shoulder even
18 though you were working
19 full time. And that was a
20 problem. And what we
21 would have to do in some
22 cases is agree that you
23 had no permanency for it,

85

1 because you have a neck
2 problem.

3 And what we're
4 primarily looking at to
5 help you make that finding
6 is that you're back to
7 work without a loss of
8 earnings. And if that
9 situation arises, that's a
10 potential opportunity to
11 get that type of money
12 award.

13 Now, in the future if
14 the neck becomes more
15 problematic and you had to
16 go out of work because of
17 the neck, you have an
18 opportunity to also make a
19 claim for permanency for
20 that, the only issue being
21 that if you didn't
22 otherwise have your
23 statutory time to get paid

87

1 your neck condition or
2 back condition, to try to
3 help you get that money
4 award; and if you were
5 under active treatment, we
6 wouldn't able to get that
7 award either.

8 Now, the Appellate
9 Division in New York which
10 is second highest court,
11 has said you have an
12 opportunity to get that
13 loss of use award even
14 though you may have also
15 injured your neck or your
16 back, for example, in that
17 particular accident.

18 That's a huge
19 transformation in the law,
20 and one in which now you
21 shouldn't run into a
22 situation well, we can't
23 make that award to you

86

1 per your contract, you may
2 have a credit before the
3 State Insurance Fund would
4 have to pay you in that
5 situation. But the bottom
6 line is that's a very good
7 finding for the future.

8 The other big issue
9 that has come up is where
10 someone gets a prior loss
11 of use award and now is
12 making a claim for a new
13 loss of use award. What
14 am I talking about? In
15 2005 you injure your left
16 elbow, in 2006 you get a
17 ten percent loss of use
18 award for your left arm.
19 Ten years later you get
20 involved with an active
21 inmate and you have a
22 rotator cuff tear and now
23 the doctor says, I think

88

1 you have a thirty percent
2 loss of use of your arm.
3 The only problem is
4 that the doctor was not
5 aware of the prior ten
6 percent loss, and maybe
7 you didn't recall that you
8 got that loss or you
9 thought, well, it was for
10 my elbow and so, I'm not
11 gonna really make too much
12 of that.

13 The Workers'
14 Compensation Board, and
15 they have the case law to
16 support this now, says
17 that if you have a thirty
18 percent loss of use of
19 your arm and the doctor
20 does not specify whether
21 it's for the elbow or the
22 shoulder, they're going to
23 take credit for that prior

89

1 loss of use award. So how
2 do you deal with that?
3 You make certain that
4 if there was a prior
5 injury to that extremity
6 and you got an award for
7 that extremity, that the
8 doctor is well aware of
9 that and can say, I think
10 that this loss of use
11 which I'm judging now is
12 on top of the loss of use
13 award that you got
14 previously.

15 That prevents a
16 situation where you think
17 you're gonna get a
18 certainly amount of money
19 and then the next thing
20 you know, that award gets
21 drastically reduced by an
22 award that had been made
23 several years earlier.

90

1 Also another
2 development which has gone
3 on for the last few years
4 but is significant to talk
5 about, it used to be that
6 if you were out of work
7 from a work related injury
8 and you were paid pursuant
9 to your collective
10 bargaining agreement, when
11 it came time for the loss
12 of use award, the State
13 Insurance Fund who is the
14 insurer for the Department
15 of Corrections would only
16 take credit out of the
17 loss of use award up to
18 the maximum Workers'
19 Compensation rate in
20 effect under the Workers'
21 Compensation Law.

22 That changed a few
23 years ago and it's very

91

1 clear at this moment that
2 whatever wages you get
3 while you're out of work
4 the state is entitled to
5 make a claim for
6 reimbursement for those
7 wages against a schedule
8 loss of use award. Is it
9 automatic? No. You have
10 to make certain that the
11 Carrier filed a request
12 for reimbursement.

13 Generally they do,
14 generally they're good
15 about making sure they
16 file that request, but in
17 some cases they don't.
18 And in that case it's up
19 to you and/or the
20 representative for you to
21 say, the state funds
22 should be precluded from
23 getting reimbursed for

92

1 full wages paid to me
2 because they didn't timely
3 request or file that
4 request for reimbursement.

5 Something to think
6 about, the upside to that
7 is if you did get paid
8 wages, they should have
9 been a non taxable event.
10 And that's the potential
11 credit or opportunity when
12 you have a situation such
13 as that.

14 Now, when it comes to
15 consequential injuries
16 when we're dealing with
17 loss of use, too often
18 someone will say to me, I
19 injured my right shoulder
20 but because of that I now
21 have problems with my left
22 shoulder. And what
23 happens is when you see

93

1 the doctor that gets put
2 under your private
3 insurance because it was
4 not directly injured as a
5 result of the accident.
6 If you can demonstrate to
7 the satisfaction of your
8 doctor that that injury
9 developed as a consequence
10 of your work injury, that
11 should likewise come under
12 that same Workers'
13 Compensation claim for the
14 injury that originally
15 occurred because now you
16 have an opportunity to
17 potentially get the same
18 awards, same benefits,
19 same permanency type
20 findings that you would
21 get for the original
22 injury.

23 What is the pitfall,

94

1 what do the insurance
2 companies and their
3 attorneys try to do to
4 prevent you from getting
5 that? They ask your
6 doctor, can you tell me
7 what was it that Mr. Smith
8 was doing with his left
9 arm because he couldn't
10 use his right arm? And a
11 lot of times the doctors
12 will say, well, you know,
13 I don't really know, he
14 just told me he was over
15 using it because of the
16 other arm.

17 What do the judges say?
18 Well, that's not really a
19 credible, solid opinion
20 because you don't really
21 know what your patient was
22 doing. So, how do you
23 combat that? When you see

95

1 the doctor you bring a
2 list of all the things
3 you're doing differently.
4 If you hurt your right
5 knee and now your left
6 knee is more relined or
7 you're using your left
8 knee more, maybe you're
9 getting out of the car
10 differently, maybe you're
11 going up the stairs
12 differently, maybe you're
13 walking differently. A
14 list given to your doctor
15 can help the doctor make
16 that connection for you
17 and potentially solidify
18 that claim. And that
19 potentially can mean a big
20 difference.

21 Also, I talked about
22 Section 123 and the
23 possibility of a new

96

1 accident in the outline.
2 What is Section 123 and
3 why does that matter to
4 you? New York State says
5 that if you injure
6 yourself at work and you
7 make a claim for
8 permanency for that injury
9 more than 18 years after
10 the date of accident, the
11 Workers' Compensation
12 Board and/or the Carrier
13 can refuse to pay you
14 lost wages or permanency
15 because that case is too
16 old.

17 So, if you're in that
18 potential situation we
19 need to look closely is
20 there an opportunity
21 to say maybe the case was
22 not truly closed after the
23 passage of 18 years. Or

97

1 work. Now, talking about
2 non schedule injuries for
3 a moment. Huge case came
4 out within the last week.
5 The situation is that you
6 have a back injury or a
7 neck injury typically and
8 you're not at work any
9 longer because it was
10 essentially a career
11 ending injury. The
12 Workers' Comp Board has
13 made a determination that
14 you have what we call a
15 loss of earning capacity.
16 And typically they'll set
17 a number of weeks that
18 you're entitled to. If
19 it's 75 percent, it maybe
20 four hundred weeks of
21 compensation into the
22 future.

23 The issue comes up when

99

1 better yet, maybe it was a
2 new accident. I think a
3 lot of times people will
4 say, oh, that was an old
5 injury. The problem with
6 that mentality is if we're
7 relying on a 2004 injury
8 as opposed to 2019, and
9 we're looking to get a
10 money award payable to
11 you, would you rather that
12 award payable at the max
13 rate in 2004 which was
14 four hundred a week or
15 would you rather it be
16 paid at the max rate in
17 2019 which is \$934.11 per
18 week.

19 It's something to think
20 about as you determine
21 what's the best way to
22 approach a situation where
23 you've been injured at

98

1 you go to the hearing, you
2 get the award and a
3 hundred weeks into the
4 award you die. And your
5 spouse says, am I entitled
6 to any part of that?
7 Three hundred weeks of
8 compensation that didn't
9 get paid because it was
10 due into the future.

11 Prior to last week the
12 answer was, nobody gets
13 that award, it goes back
14 to the State. Since last
15 week we're reopening cases
16 now to help your spouse,
17 your children who are
18 surviving, to get the
19 remaining part of that
20 award.

21 That's a giant change
22 in the law. And when it
23 comes to settlement, it's

100

1 even bigger. Because now
 2 when you talk about, well,
 3 life expectancy if you're
 4 older maybe you won't get
 5 paid the whole award,
 6 we're now talking to
 7 carriers about paying the
 8 entire award or a good
 9 portion of that up front,
 10 because it's almost a
 11 guaranteed award. The
 12 problem is the case is so
 13 good, we're problem going
 14 to get an appeal on that
 15 case. But as of right
 16 now, that's what the law
 17 says and that's a good
 18 thing for everybody in
 19 this room and their
 20 families.

21 Now, a lot of questions
 22 about the drug formulary.
 23 What is it, what's going

101

1 June of 2020 your doctor
 2 will have to get prior
 3 authorization for that
 4 medicine, unless it's an
 5 emergency situation.

6 And in the first
 7 instance what happens is
 8 that your doctor submits
 9 the request to the
 10 insurance company, who
 11 only has, and I say only,
 12 I'm not really happy
 13 saying this, four calendar
 14 days to make a decision if
 15 they're going to approve
 16 or deny the medication.
 17 And if it gets denied,
 18 your doctor has an
 19 opportunity to submit a
 20 request for a challenge to
 21 that within ten calendar
 22 days. And then ultimately
 23 if the doctor and you are

103

1 on with the Workers' Comp
 2 Board. What you need
 3 to know and take away from
 4 this, is that the Workers'
 5 Compensation Board has
 6 decided that there is
 7 essentially a pre-approved
 8 list of medicines, that
 9 generally speaking
 10 immediately after an
 11 accident or just prior to
 12 and after surgery are
 13 gonna be pre-approved.

14 The remainder of the
 15 medications that you may
 16 be accustomed to taking
 17 now, potentially for
 18 several years, are
 19 generally not going to be
 20 pre-approve. What that
 21 means for you if you've
 22 been on an existing
 23 medication is that come

102

1 dissatisfied with that
 2 decision, the Workers'
 3 Compensation Board medical
 4 director will step in and
 5 make their decision, which
 6 if it is negative, can be
 7 challenged at the Workers'
 8 Comp Board.

9 What is the good part
 10 about this thus far?
 11 Well, the cases that we've
 12 seen for new medications
 13 starting in December of
 14 2020, in other words,
 15 you've never been on this
 16 scrip before, the Board is
 17 making very quick
 18 decisions on these.
 19 Meaning, your doctor
 20 submits request no
 21 response within four
 22 calendar days, they're
 23 approving the medicine,

104

1 they're issuing what we
2 call an order of the
3 chair. Meaning, too late
4 for the carrier to now try
5 to deny it. So if that's
6 a situation you're
7 involved in, that's the
8 most immediate way as of
9 right now to address that.

10 But if you're gonna be
11 potentially in that
12 situation or if you have a
13 member or a union brother
14 or sister that's in that
15 situation, now is a good
16 time to start talking to
17 the doctor to gear them up
18 for the idea that they're
19 gonna need to submit this
20 approval.

21 And what does it have
22 to include? It needs to
23 really say why this is a

105

1 do that as of now.

2 Any questions at all
3 about that? I know that's
4 a lot of material already.
5 Okay. Let me just talk
6 briefly about whether
7 something is an accident
8 or an occupational
9 disease. Understand that
10 regardless of what happens
11 in your employment, if you
12 come to someone who is an
13 expert in this field and
14 you are trying to identify
15 what type of claim you
16 have, it generally is
17 going to fall in the
18 category of accident or
19 occupational disease.

20 Accident is just what
21 everybody knows about. It
22 happened suddenly,
23 unexpected and usually

107

1 medical necessity, why
2 it's related to your
3 injury and why it's
4 beneficial for you. How
5 are you achieving
6 improvement? How is it
7 helping you function? And
8 if those things are
9 involved, then that can be
10 the recipe to help get
11 that authorized.

12 But without that, there
13 may be some issues. So I
14 think we're gonna see a
15 lot more activity and
16 there will be a lot more
17 news to report on this
18 come June because anyone
19 with existing scrips will
20 have to start getting
21 authorization after June
22 of 2020. If it's a new
23 scrip, you would need to

106

1 injurious impact. An
2 occupational disease kind
3 of sneaks up on you. You
4 have been responsible for
5 a lot of typing, opening
6 and closing cells using
7 keys, maybe you have
8 carpal tunnel that
9 developed over several
10 years, maybe you have a
11 hearing loss from the
12 noise within the
13 facilities, maybe you have
14 a bad back from various
15 gun belt or apparatus
16 material you may be
17 wearing.

18 Those are conditions
19 that equally can be deemed
20 work related. If there is
21 an exposure or an
22 immediate event that
23 occurs, that would be what

108

1 we would categorize as a
2 sudden accident. The key
3 take-away if you're
4 claiming an occupational
5 disease, something that
6 developed over time, and
7 you're asked, well, when
8 did that really manifest
9 itself, when did it start?

10 What we're looking at a
11 is not really when you had
12 your symptoms begin but
13 when did you go to the
14 doctor? When did you
15 first lose time from work?
16 Because that's what we
17 call the date of
18 disablement. And that's
19 where we look to make a
20 claim once you have gone
21 to the doctor and once the
22 doctor says there's a
23 relationship here between

109

1 say anything about his
2 work.

3 Then the doctor says,
4 I'm going to order this
5 test and you're going to
6 have carpal tunnel surgery
7 and you're going to be out
8 of work for four to six
9 weeks. The next thing you
10 know it wasn't put under
11 Workers' Comp. Now, the
12 good news is you got the
13 treatment, you got
14 potentially better, but
15 you are not going to get a
16 money award for loss of
17 use of your hands because
18 it wasn't put through
19 Comp. But if you bring it
20 to attention of your
21 doctors from the
22 beginning, there's an
23 opportunity there to make

111

1 your work and your
2 condition.

3 How do you help
4 yourself in that
5 situation? If you're not
6 sure like most people that
7 have carpal tunnel that's
8 developed over time, write
9 down a list of what you
10 did every day for the last
11 twenty years. And bring
12 that to your doctor and
13 say, is there a connection
14 here?

15 Because a lot of times
16 when I read the first
17 medical reports from your
18 doctors this is what it
19 says, Mr. Smith comes in
20 for the last two years
21 complaining of numbness
22 and tingling in his upper
23 extremities. It doesn't

110

1 a Workers' Comp claim.

2 The key is the
3 knowledge component that
4 you give to your doctors
5 so that they can support
6 the claim and be able to
7 credibly say, yes, these
8 conditions over time,
9 repetitive forceful
10 activity or whatever it
11 may be led to that
12 condition and that makes a
13 successful Workers' Comp
14 claim.

15 Okay. Briefly, notice
16 and claim filing with the
17 Board. I would say that
18 in general that members of
19 the Department of
20 Corrections do as good, if
21 not the best, when it
22 comes to reporting and
23 documenting injuries. But

112

1 every now and then,
2 somebody didn't document
3 something and it turns in
4 to a mess.

5 And it turns in to a
6 technical mess because you
7 didn't do two things.
8 Anytime there is a work
9 related event, regardless
10 of whether you got
11 significantly injured,
12 regardless of whether you
13 sought any treatment, you
14 should do two things. You
15 should number one, give
16 written notice to the
17 Department of Corrections
18 within thirty days of the
19 accident. And keep a copy
20 of that report. And here
21 is where the kicker is, a
22 lot of people do that and
23 then they don't do

113

1 not timely. Because you
2 didn't file what we call a
3 C-3 form, which many of
4 you are familiar with, an
5 employee's claim for
6 compensation within two
7 years of the date of that
8 accident.

9 So, with that said, any
10 time there's an accident,
11 also file an employee's
12 claim for compensation
13 with the Workers' Comp
14 Board within two years of
15 the date of the accident.
16 That will prevent a later
17 technical argument from
18 being made that you didn't
19 properly preserve your
20 claim for future benefits.

21 Any questions about
22 that? Okay. Big question
23 that I get, am I entitled

115

1 anything else.

2 And we've had many,
3 many cases over the years
4 where someone injured
5 their knee in an incident,
6 went to medical, got some
7 ice, and didn't lose any
8 time from work and kept
9 working. And then about
10 two years and two days
11 later their knee starts
12 bothering them. And now
13 they go to the doctor,
14 they say I had this use of
15 force, I hurt my knee.
16 There's no claim on file
17 so now we file a claim.

18 Well, if we don't have
19 a technical exception as
20 to why that claim is now
21 timely, you run the risk
22 of the State Insurance
23 Fund saying that claim is

114

1 to lost wages, am I
2 entitled to reduced
3 earnings? How does that
4 come up in the context of
5 your employment? Well,
6 first of all, if you're in
7 a light duty situation and
8 as all of you know or may
9 know, you will only be
10 permitted to work in a
11 light duty situation for a
12 limited period of time.
13 However, during that
14 window, you're not getting
15 overtime.

16 If you're generally
17 accustomed to getting
18 significant overtime, and
19 now you're only getting
20 your base salary. For
21 example, you used to
22 collect with overtime on a
23 yearly basis fifteen

116

1 hundred dollars a week,
2 and now you're limited to
3 a thousand dollars a week,
4 for example, sixty days.
5 You're losing five hundred
6 dollars a week in overtime
7 essentially.

8 If you can demonstrate
9 that you're working light
10 duty due to your injury,
11 meaning you have medical
12 that substantiates that,
13 and you have a paystub
14 that shows the same, we
15 can go to the Workers'
16 Comp Board and get two
17 thirds of that difference
18 payable to you in what we
19 call reduced earnings.

20 That's a big deal.
21 Many people are not taking
22 advantage of that and
23 you're entitled to that

117

1 week, if we have medical
2 evidence that justifies
3 that you would be entitled
4 to that maximum rate of
5 934.11, meaning your
6 doctors say you're a
7 hundred percent disabled
8 and you qualify for that
9 rate, what happens is that
10 the award gets made at
11 934.11 per week, six
12 hundred dollars or
13 whatever your half pay is,
14 goes back to the State of
15 New York. The balance,
16 334.11 goes to you. And
17 how many people have
18 either seen or not seen
19 that situation where a
20 member was entitled to
21 that benefit but didn't
22 get it? Question.

23 PAUL MIKOLOJAK: Sir.

119

1 benefit. And for people
2 who are accustomed to a
3 lot of overtime, that's a
4 big deal and that can be
5 up to the maximum rate in
6 affect for the date of
7 accident.

8 How is the other big
9 way that we see this? You
10 have exceeded, you've
11 exhausted your contractual
12 hundred eighty-two leave
13 day period and now you've
14 used your accruals and now
15 what? You go to half pay.
16 And people will say to
17 you, how am I gonna make
18 it half pay?

19 Let's say half pay ends
20 up being six hundred
21 dollars a week gross, but
22 the maximum Workers' Comp
23 rate for now is 934.11 per

118

1 We've been informed that
2 starting June 5th there's
3 a new formulary table for
4 items that Workers'
5 Compensation Board is now
6 going to deny, summarily
7 deny our members that have
8 claims, especially those
9 that have been medically
10 terminated and now part of
11 our retirement.

12 There was a question on
13 the floor in December for
14 the Board to file and
15 injunction against this
16 new formulary table. Now,
17 our Workmen's Compensation
18 director in the December
19 meeting made it very clear
20 this new formulary table
21 is not very good for our
22 members. In your
23 opinion -- what's your

120

1 opinion on this new
2 formulary table that's
3 going to take affect on
4 June 5th.

5 ALEX DELL: A great
6 question, glad you brought
7 it up. We talked about it
8 briefly earlier today.
9 There are many concerns
10 with the formulary. What
11 the Board is doing is
12 basically following what
13 they did back in 2010, and
14 then in 2014, with their
15 medical treatment
16 guidelines.

17 The idea being that
18 certain treatment, certain
19 medications is
20 preauthorized. The
21 remainder is not. Now,
22 I will tell you that those
23 medical treatment

121

1 their authorization
2 process. Meaning, your
3 doctor asks for something
4 and they don't get a reply
5 in a certain time frame,
6 then it can be authorized.

7 But I do agree with you
8 that we're going to see a
9 lot of activity and a lot
10 of behavior that's going
11 to go on at the Board;
12 some of which that's going
13 to be good. My belief
14 personally in doing this
15 for the last twenty-five
16 years is that the Board is
17 going to make it more
18 difficult to get certain
19 medications which puts
20 more of a burden and onus
21 on your provider to be
22 able to say, this is why
23 you need this, this is why

123

1 guidelines were challenged
2 in the Appellate Division,
3 which is the second
4 highest court in New York.
5 And when they were on the
6 same type off issues that
7 you're suggesting now, the
8 Court said that it was
9 permissible for the Board
10 to implement these types
11 of guidelines.

12 And so, I think a
13 similar challenge might
14 meet a similar fate. But
15 what I also think is that
16 with very technical
17 expertise, a lot of the
18 drugs that members need
19 because of their medical
20 conditions can be
21 approved. What I mean by
22 that is that the Board is
23 very strict in terms of

122

1 it's a medical necessity,
2 this is why it's related.
3 And these other issues,
4 these other treatment
5 modalities are not
6 working.

7 So it's something that
8 we should continue to
9 aggressively monitor, but
10 to suggest that we can
11 somehow simply blow up
12 that process I think may
13 be problematic only
14 because of the precedent
15 that we've seen from
16 something very similar to
17 this.

18 PAUL MIKOLOJAK: You
19 used the verbiage very
20 technical.

21 ALEX DELL: Yes.

22 PAUL MIKOLOJAK: Here
23 is the situation, I get

124

1 hurt 365 days and I get
2 medically terminated, down
3 the road I get a Comp
4 settlement. From that
5 junction there's no one
6 representing me. My
7 attorney is no longer here
8 because they've got their
9 payment, there will be no
10 future payment. My union
11 doesn't have a Comp
12 attorney, I can't turn to
13 my union. So now I'm
14 expected on myself to
15 learn all this technical
16 verbiage just to get my
17 prescriptions and my care
18 that pain management is
19 saying I need to have any
20 kind of life.

21 And from the
22 conversation you and I are
23 having, an injunction

125

1 an attorney who has
2 abandoned you after they
3 have gotten the money
4 award and they've gotten
5 their attorney fee, that's
6 a real problem. I have a
7 real big problem with
8 that.

9 We have made it a
10 hallmark of our practice
11 to represent people who
12 come to us because they
13 didn't get no pay. But if
14 you're going to take on
15 representation of someone,
16 it's not only with respect
17 to loss wage claims but
18 it's with respect to their
19 medical claims. I've got
20 to tell you, some of the
21 biggest fights that we
22 have are over these
23 medical issues. And we've

127

1 against this new formulary
2 table might, might not do
3 very well, but in same
4 instance it might help us
5 some bit.

6 ALEX DELL: Well, let
7 me just say there's not
8 one minute that me and
9 members of my office who
10 are here today just making
11 sure I don't say anything
12 stupid, but think about
13 ways which we can do more
14 to protect you and your
15 members.

16 And it's an evolving
17 issue, because it's new.
18 But I have to also say to
19 you, and I would be remiss
20 if I didn't say this, I
21 think I probably would say
22 that the Board is gonna
23 say on this, if you have

126

1 handled cases, I think
2 some of us realize the
3 difficulty some of the
4 chiropractors have had in
5 this field. We've had
6 people come to us and say,
7 I'm not entitled to any
8 lost wages, I'm not
9 entitled to any permanency
10 award, but I just want my
11 chiropractor to get paid.

12 We took that case on,
13 it was a medical treatment
14 issue where they were
15 fighting them over an
16 exacerbation and we were
17 able to get them paid.
18 And that helped set a
19 benchmark in New York
20 State to pave the way for
21 other chiropractors to
22 potentially get paid.

23 So, I think there's a

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1 real issue there if you
2 got an attorney who says
3 I'll help you with that
4 but I'm not gonna do
5 anything further. But
6 I will also tell you that
7 we're still looking at
8 ways for lawyers in New
9 York State to potentially
10 get paid for those medical
11 only situations, which
12 there is some authority
13 for that.

14 Because I think it will
15 help more lawyers say that
16 they'll help people, which
17 is sad because you should
18 do that because you enjoy
19 doing it. They say, yeah,
20 Dell, that's right. The
21 reality is, that is how I
22 think about this. And
23 you're right, that's a

129

1 mean by that? Some of you
2 who have claims or know
3 people that have claims,
4 get an objection to a
5 bill. They get what they
6 call a C-8-1 and they stop
7 treating. That's the
8 exact opposite of what you
9 should be doing. You
10 should continue to get the
11 treatment, you should
12 continue to move forward
13 with respect to objections
14 to treatment. And when
15 you get a decision in the
16 mail, because that's how
17 the Board is operating
18 nowadays, that says,
19 you're not liable for that
20 bill pursuant to Section
21 13 of the Workers'
22 Compensation Law because
23 your doctor didn't

131

1 tough thing to go at
2 alone, for that matter in
3 Workers' Comp in general.

4 PAUL MIKOLOJAK: As
5 we've already agreed,
6 since 2009 the Workers'
7 Compensation Board is
8 beginning to diminish the
9 ability for the individual
10 to get their treatment.
11 What would you suggest
12 that we in this assembly
13 do to stop them from steam
14 rolling over us, every
15 complete year they take
16 more and more benefits
17 away from us.

18 ALEX DELL: That's a
19 great question. And what
20 I will tell you is never
21 stop asserting the rights
22 and claims that you're
23 entitled to. What do I

130

1 necessarily follow the
2 rules. When we look at
3 those we don't say, okay,
4 our patient is not going
5 to be liable, no big deal.
6 No, it is a big deal
7 because we want the doctor
8 to get paid because the
9 doctor getting paid
10 creates a harmonious
11 relationship with you as
12 the patient. So, I think
13 those are all really good
14 points.

15 PAUL MIKOLOJAK: What
16 can we as the Assembly do
17 to combat the Workers'
18 Compensation Board from
19 continuing its trend it
20 started in 2009 of
21 diminishing our members
22 rights? Because of the
23 Taylor Law we can't sue

132

1 our employer even when
2 they're egregiously wrong,
3 negligent. So all we have
4 is the Workmen's
5 Compensation Board and
6 since 2009 you have to
7 agree they've been turning
8 their back on us little by
9 little.

10 ALEX DELL: And what
11 we've been doing is
12 pushing back more and
13 more. And what's happened
14 in these Appellate
15 Division cases that I have
16 talked about early, those
17 have been some of the most
18 dramatic push-back.

19 But to also answer your
20 question, when we look at
21 this and when you look at
22 this, I think the two most
23 effective ways to move the

133

1 need to check this.

2 The Injured Worker's
3 Bar Association of which
4 I'm a member, is also very
5 aggressive in trying to
6 promote the same things
7 you're saying so.

8 PAUL MIKOLOJAK:
9 Thank you.

10 VP LAW ENFORCEMENT
11 HARMON: One thing that
12 seems to come up I know
13 with some of the VPs,
14 maybe some of the people
15 in this room is, the
16 difference when your
17 disability retired when
18 you have deductions taken
19 from your retirement based
20 on the difference of lost
21 wages, loss of use. I
22 know for me I often see
23 guys get their disability

135

1 needle are number one,
2 through Appellate work
3 that we do. And secondly,
4 through legislation and
5 appealing to people who
6 can help modify or change
7 the laws.

8 Because what's
9 happening now is that the
10 Board has caught on to the
11 idea that we may not be
12 able to change the
13 statute, so what we're
14 doing is we're changing
15 our administrative rules.
16 And they can do that under
17 the radar screen and
18 that's where this
19 association and other
20 associations can bring
21 that to the attention of
22 other influential people
23 who can then say, hey, you

134

1 retirement and then they
2 become pretty pissed off
3 when they get their
4 retirement calculation and
5 there's a reduction in
6 there for Workers' Comp.
7 And one of the issues it
8 all depends on what type
9 of payment you receive or
10 pay out you receive for
11 that injury.

12 I think it would be
13 good if you could explain
14 what those challenges are
15 and what those issues are,
16 because I think a lot of
17 times we don't have those
18 answers exactly what does
19 create a deduction and
20 what does not.

21 ALEX DELL: I'm glad
22 you bring that up, because
23 that's just about where

136

1 I'm at in the outline
2 right now. And if you're
3 looking at it, it's
4 basically number seven on
5 the outline. But I didn't
6 tell you this in the
7 beginning because I wanted
8 you to like me, but I used
9 to be a Division I Hockey
10 referee for 25 years.
11 Basically I wasn't getting
12 yelled at enough by my
13 wife or other lawyers, so
14 I had to go referee hockey
15 games.

16 You know how lawyers
17 and referees get in
18 trouble? They have tunnel
19 vision. And what I mean
20 by that, and I think most
21 of you know, is that
22 you're focused on one
23 thing. I'm representing

137

1 you in your Workers' Comp
2 case, but I don't know
3 anything about your
4 disability retirement or I
5 don't know anything about
6 Social Security disability
7 for you.

8 And when we represent
9 somebody who has been
10 injured in the course of
11 their employment, we look
12 at what benefits overall
13 you're entitled to. And
14 it's not uncommon, first
15 of all, to have a
16 catastrophic career ending
17 injury where you're
18 collecting Workers'
19 Compensation from the
20 State Insurance Fund,
21 number one. New York
22 State Disability
23 retirement from the New

138

1 York State Retirement
2 System; and then Social
3 Security Disability from
4 the federal government,
5 all at the same time.

6 But as the question
7 raised there's an
8 interplay between the
9 benefits. What benefits
10 are going to provide you
11 with the most money at the
12 end of the day? Now,
13 speaking of New York State
14 Retirement, I think
15 everyone realizes that
16 when they get to
17 twenty-five years, they're
18 entitled to fifty percent
19 of their final average
20 salary less federal tax.

21 But what everyone
22 generally does not know is
23 that there are two types

139

1 of disability retirement
2 that are available to
3 members of the Department
4 of Corrections. And what
5 we refer to them as
6 Section 507-a, as in
7 apple, disability
8 retirement, which is
9 otherwise known as an
10 ordinary disability
11 retirement. And we also
12 have a Chapter 722,
13 performance of duty
14 disability retirement.
15 The latter of which pays
16 75 percent of your final
17 average salary, when you
18 have become disabled due
19 to an act of an inmate.

20 The other benefit is
21 typically reserved for a
22 non work related condition
23 that becomes permanently

140

1 disables. Typically that
2 benefit is going to be
3 substantially less than
4 your service retirement.
5 And to the extent there's
6 an act of an inmate, the
7 best benefit to apply for
8 obviously is the
9 performance of duty
10 disability retirement.

11 Now, the ordinary
12 disability retirement,
13 507-a. The New York State
14 Service Retirement, they
15 are not offset or reduced
16 by any Workers' Comp
17 benefit and they are not
18 offset or reduced by any
19 Social Security Disability
20 benefit. So that answers
21 that part of the question.

22 However, the rub is
23 that you get approved for

141

1 benefit ended or it was
2 capped out, then the
3 retirement benefit can go
4 back to the 75 percent of
5 your final average salary.
6 Does it mean because of
7 that that you don't pursue
8 Workers' Compensation?
9 Because you say, oh, I'm
10 only gonna get 75 percent
11 so why should I do that?

12 The reason why you
13 should do you that is
14 because what we've been
15 very successful in doing
16 is going to the insurance
17 company in the Workers'
18 Comp claim and working out
19 a creative settlement such
20 that the majority, and in
21 some cases, all of the
22 settlement proceeds are
23 allocated to medical

143

1 a New York State
2 performance of duty
3 disability retirement and
4 now you're entitled to 75
5 percent of your final
6 average salary; and the
7 Retirement System says,
8 that accident that caused
9 this permanency, you're
10 getting five hundred
11 dollars a week right now
12 in Workers' Comp, we're
13 going to reduce your
14 pension dollar for dollar
15 by what you're getting in
16 Workers' Compensation.
17 And they're allowed to do
18 that by statute, only with
19 respect to the disability
20 retirement.

21 Now, if you're no
22 longer getting Workers'
23 Compensation because that

142

1 expenses. And if we
2 allocate to medical, then
3 no part is allocated to
4 lost wages which means no
5 reduction in 75 percent of
6 your final average salary.

7 Is that easy to do?
8 Not really. Have we been
9 able to do that
10 successfully many times?
11 Yes, but it requires a lot
12 of creativity. When does
13 this best happen? You
14 have had multiple
15 injuries, some of which
16 are act of inmates some of
17 which are not. Because if
18 we can apportion the money
19 awards for lost wages to
20 those injuries that were
21 not due to act of inmates,
22 we may be able to keep
23 that portion of the money

144

1 away from the Retirement
2 System. And that in turn
3 benefits you because now
4 you're getting 75 percent
5 of your final average
6 salary, plus a potential
7 Workers' Comp benefit. Do
8 you have a question?

9 BILL NAYLOR: I'm the
10 retirement specialist for
11 NYSCOPBA, so I deal with
12 this quite a bit. I guess
13 my first question to you
14 is when you're
15 recommending payment
16 options from Workers' Comp
17 in relation to
18 specifically our 507-b,
19 which covers both Chapter
20 722 and also our Chapter
21 653, what is your
22 recommendation to our
23 members whether they take

145

1 potentially keep paying
2 you unless there's a
3 unique circumstance you
4 may be trying to shift
5 around the payments.

6 As far as taking a lump
7 sum and it ultimately
8 affecting your pension,
9 what I generally try to
10 recommend to each
11 individual is you should
12 have the actuarial
13 computation performed by
14 the Retirement System.

15 I'll give you an
16 example. We had an
17 individual that had an
18 offer of a hundred
19 thousand dollars in a
20 Workers' Comp settlement
21 lump sum. The alternative
22 was to just keep getting
23 paid in the combination of

147

1 biweekly payments or a
2 lump sum?

3 ALEX DELL: In terms of
4 the Workers' Comp you're
5 talking about now?

6 BILL NAYLOR: Yes.

7 ALEX DELL: We have had
8 some people -- and that's
9 a great question -- say,
10 well, I'm gonna suspend my
11 Workers' Comp benefits
12 because I don't want my
13 pension to be reduced.
14 And when you do that, what
15 happens in that situation
16 is that you essentially
17 let the State Insurance
18 Fund off the hook for a
19 period of time. And if
20 you're looking to
21 ultimately, potentially
22 settle with them, you
23 really want them to

146

1 Comp and disability
2 retirement, which would
3 equal 75 percent.

4 The retirement system
5 said that is gonna result
6 in about a thousand
7 dollars per month offset
8 of your retirement
9 permanently. And this
10 member said, wow, that's
11 huge, I'm not gonna do
12 that and I agreed with
13 that. I thought that that
14 was the most reasonable
15 way to handle it.

16 Two hours later I had
17 another call with another
18 member who had roughly a
19 250 thousand dollars
20 settlement offered to him
21 that was likewise going to
22 detrimentally effect their
23 pension, and for different

148

1 reasons that this member
2 had they wanted the money
3 immediately.

4 Some of the issue that
5 comes up is, what's your
6 life expectancy, what are
7 your plans, do you need
8 that money for a certain
9 purpose. And I generally
10 tell people, there's no
11 black book we look at when
12 you talk about settlement.
13 One of the things I like
14 to ask someone is, when
15 you go to the doctor do
16 you feel like you're just
17 there and there's nothing
18 more than they can do?
19 When you're getting paid
20 weekly or biweekly, are
21 you using that money to
22 pay your bills? Do you
23 have an alternate source

149

1 biweekly payments end,
2 they then go back to their
3 full three quarter amount.

4 So essentially they're
5 always going to get the
6 three quarter amount
7 whether a portion is from
8 Workers' Comp and the rest
9 is from New York State
10 Retirement. The risk with
11 the lump sum is that
12 they're paid those
13 biweekly payments
14 essentially up front, in a
15 lump sum amount, so that
16 offset will be for the
17 remainder of their life
18 and not just the remainder
19 of their life, but also
20 for whoever they leave
21 their pension to. That
22 exists for their entire
23 term of their pension.

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1 of income?

2 If the answer varies on
3 those, that dictates
4 whether it makes sense or
5 doesn't make sense to
6 settle. So those are some
7 of the things that we look
8 at.

9 BILL NAYLOR: So one of
10 the things when I have
11 discussions with our
12 members is that when it
13 comes to the offset and
14 the payout from Workers'
15 Comp, if they're receiving
16 biweekly payments from
17 Workers' Comp and they're
18 approved for three
19 quarters, which is 507-b,
20 those biweekly payments
21 will offset for only as
22 long as those biweekly
23 payments exist. Once the

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1 ALEX DELL: Yes. You
2 could not have said that
3 any better, because that
4 is why there's a very
5 serious decision that has
6 to be made in that
7 situation and I'm gonna
8 touch on this in a couple
9 minutes, that's where if
10 you have other claims you
11 need to look at those and
12 say, maybe we can allocate
13 or apportion some of your
14 award to those earlier
15 claims, which are then
16 exempt from the reduction.
17 That is a big deal.

18 BILL NAYLOR: That was
19 going to be my next
20 question. What's the time
21 frame on a decision of
22 whether it's going to
23 affect a disability

152

1 retirement or not? How
2 long -- how far back can
3 they go on a -- one of our
4 members gets injured in
5 1995 and they get another
6 injury in 2000, and
7 another one in '15 or '16
8 or whatever. How far back
9 can they go -- if they
10 claim those injuries on
11 their disability
12 retirement how far back
13 can they go to offset?

14 ALEX DELL: The offset
15 goes from when you become
16 eligible for the
17 Disability Retirement.
18 So, for example, if you
19 take an older injury where
20 someone got a scheduled
21 loss of use award back in
22 2004 and now they become
23 retired in 2018. What

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1 those are all really
2 important, very serious
3 questions.

4 And what I would say in
5 general to the members,
6 and I'm sure that you have
7 this discussion, I'm going
8 to take my service
9 retirement, should I apply
10 for the performance of
11 duty disability
12 retirement? And I would
13 tell you to err on the
14 side of doing that.

15 BILL NAYLOR:
16 Absolutely.

17 ALEX DELL: Why?
18 Number one, we've had
19 tremendous success, knock
20 on wood, in the Retirement
21 System of getting those
22 approved. Particularly
23 because I don't think

155

1 happens is if you look on
2 paper that scheduled award
3 was only equal to so many
4 weeks, that long expired
5 before they became
6 eligible for that
7 disability retirement. We
8 would keep that away from
9 the offset because it's
10 not an overlapping,
11 ongoing award at that
12 moment.

13 So, in other words, the
14 key determination is, are
15 you on paper or in reality
16 getting an award at the
17 same time in which it
18 overlaps with the
19 disability retirement? If
20 the answer to that is yes,
21 they're generally going to
22 look to take that offset
23 in that situation. But

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1 people realize that we're
2 looking at only your
3 ability to do your job.
4 You may be able to do
5 other jobs outside of
6 corrections, but if you
7 can't do your job due to
8 an act of an inmate, and
9 if one doctor who sees you
10 for ten minutes from the
11 retirement system agrees
12 with that, that's going to
13 pave the way for that
14 benefit.

15 You should know you've
16 got basically two years
17 from when you separate to
18 file that. We had a guy
19 come in that was with
20 Clinton. And about one
21 day before the expiration
22 of two years he comes in
23 and says, hey, I head I

156

1 might be able to collect
2 on this. And we applied
3 for him and low and behold
4 he got the benefit. So
5 that was a great changer
6 for his life, so that's a
7 big deal.

8 BILL NAYLOR: So here's
9 another question. A lot
10 of our members when they
11 are injured, especially in
12 relation to disability
13 retirements, obviously
14 you're aware of our one
15 year, two year rule,
16 whether it's considered an
17 assault or just injury,
18 correct?

19 ALEX DELL: Yes, I am.

20 BILL NAYLOR: So when
21 we have members that are
22 facing termination, what
23 is your recommendation on

157

1 you're one year into it.
2 If it's an assault, you're
3 about two years into it.

4 And now you decide, I'm
5 gonna apply for disability
6 retirement. I would tell
7 you after doing this for
8 twenty-five years I have a
9 pretty good indication of
10 which way you're going to
11 go in terms of whether
12 you're going back or
13 you're not.

14 And that's not a
15 negative, that's a
16 positive to help you.
17 What I would tell you is
18 you need time on your side
19 in that situation. The
20 retirement system right
21 now, and we do a lot of
22 work with them so I don't
23 want to say too many

159

1 filing disability
2 retirement paperwork prior
3 to termination?

4 ALEX DELL: I was going
5 to touch on that, I'm glad
6 you brought that up as
7 well. This is another big
8 area --

9 BILL NAYLOR: We're
10 gonna be at this for a
11 while.

12 ALEX DELL: This goes
13 to the tunnel vision
14 mentality. You hire a
15 lawyer to represent you in
16 your Workers' Comp claim
17 and he says, I don't
18 really know about
19 disability retirement,
20 that's problematic because
21 you find out at the last
22 minute and now you're --
23 if it's a non assault,

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1 rotten things, but they've
2 slowed down tremendously.

3 When I say that, the
4 average wait time for
5 these applications to get
6 adjudicated is at least a
7 year or more.

8 BILL NAYLOR: So just
9 so you understand that,
10 I've been doing this for
11 four years, I haven't been
12 doing it as long as you
13 but right now our rule of
14 thumb is a year and a half
15 to two years to get a
16 determination on 507-b
17 application. But anything
18 507-A or Article 14 or 15,
19 because not all of our
20 members are entitled to
21 507-A or B. We have law
22 enforcement members that
23 are only entitled to the

160

1 Article 14 or 15, ordinary
2 disability retirements.
3 But the rule of thumb for
4 our guys is a year and a
5 half to two years for a
6 determination.

7 ALEX DELL: I think
8 that's a fair statement.
9 I think what we've done to
10 try to expedite that
11 process is knowing that we
12 need to have the
13 retirement system set up
14 an exam with their doctor,
15 making sure that they have
16 all the medical records so
17 they can make a decision.
18 And to the extent someone
19 is not recovering from a
20 recent surgery, sometimes
21 we can get those to move a
22 little quicker.

23 Some of the more severe

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1 situations, we've had more
2 success with. We do a
3 tremendous amount of work
4 with the State Police,
5 their 9/11 claims, some of
6 the cancer cases are being
7 approved without an exam.

8 But as a general matter
9 if you look at any of the
10 performance of duty cases,
11 you're generally not
12 getting approved without
13 an exam from the
14 Retirement System's
15 doctor.

16 BILL NAYLOR: No, I
17 understand. And I've had
18 success with expediting
19 terminal illness claims
20 with retirement, I have a
21 very good working
22 relationship with the
23 advisory council there.

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1 ALEX DELL: So the
2 answer more specifically
3 to your question is, we
4 like to file those very
5 soon if we know that
6 someone is going to go in
7 that direction. Sometimes
8 we file those as few as a
9 few months after. We had
10 a horrific assault at
11 another facility in the
12 north country and I knew
13 right away that this
14 person wasn't going back
15 to work and within a month
16 after the injury we filed
17 it. And that was smart
18 because it took over a
19 year to get that
20 adjudicated.

21 BILL NAYLOR: Some of
22 our members have called me
23 and they'll be like, well,

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1 my lawyer says I need to
2 wait until I'm terminated
3 to file for disability
4 retirement. I'm like,
5 listen, it's year and a
6 half to two years, I don't
7 know why -- I'm not saying
8 it was you, I'm just
9 saying there's lawyers out
10 there that will tell them
11 that.

12 ALEX DELL: And I think
13 that's probably a
14 misunderstanding and that
15 is not true. And in fact,
16 to me, that would be
17 probably one of the worst
18 case scenarios.

19 BILL NAYLOR: So, my
20 last question for you is
21 can you explain for our
22 law enforcement folks the
23 difference between the

164

1 Article 14 and Article 15,
2 ordinary disability
3 retirements. Because one
4 does have a Social
5 Security offset to it,
6 neither have a Workers'
7 Comp offset, but one does
8 have a Social Security
9 offset.

10 ALEX DELL: Typically
11 if you're not a uniformed
12 officer, you're gonna be
13 eligible for a different
14 type of retirement
15 benefit, which is either
16 an Article 14 or Article
17 15 retirement benefit.
18 Typically, if you don't
19 have the requisite years
20 of service, it's gonna be
21 a lesser benefit than
22 fifty percent of your
23 final average salary.

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1 benefit is that it gets
2 reduced substantially by
3 the Social Security
4 benefit, whereas the
5 Article 15 benefit does
6 not. Meaning, you can
7 stack the Social Security
8 and Article 15 benefit on
9 top of each other, in
10 addition to the Workers'
11 Comp.

12 Because you should also
13 note that if you have
14 someone in that situation
15 who has a work related
16 injury, the Workers' Comp
17 is not going to offset or
18 reduce either Article 14
19 or 15 for that matter.

20 BILL NAYLOR: The other
21 caveat to that is Article
22 14 is for Tier III members
23 only, whereas the Article

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1 The issues though are
2 still the same in the
3 sense that you have to
4 prove you're permanently
5 incapacitated from the
6 performance of your
7 duties. They're still
8 going to take a look at
9 the exam generally
10 speaking to see whether
11 you can do your work or
12 not.

13 You mentioned Article
14 14 versus Article 15. So,
15 Article 14 is a benefit
16 that you get if the Social
17 Security Administration
18 determined that you're
19 eligible for their
20 benefit; in other words,
21 Social Security
22 Disability.

23 The problem with that

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1 15 is pretty much for
2 everybody.

3 ALEX DELL: Correct.
4 But again, same concept,
5 if you think that that
6 could be their situation,
7 to file that sooner than
8 later, definitely don't
9 wait until after you're
10 terminated.

11 BILL NAYLOR: And
12 again, for my own purposes
13 on that, what I tell our
14 members is if they -- even
15 if they are a Tier III, I
16 have them file for both 14
17 and 15.

18 ALEX DELL: I think
19 that's great advice. And
20 similarly if we have a
21 uniformed officer, we may
22 very well say to that
23 person if they do not have

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1 their requisite
2 twenty-five years of
3 service, you should file
4 507-A which is ordinary,
5 you should file for
6 performance of duty at the
7 same time.

8 One thing I think we
9 should briefly talk about
10 is what is an act of an
11 inmate, that comes up
12 quite a bit. An act of an
13 inmate is basically when
14 you have some sort of
15 physical contact with the
16 inmate. That is what the
17 most clearest, brightest
18 rule is.

19 Now, you get into some
20 stranger situations where
21 an inmate may do something
22 and then the result of
23 that becomes an injury or

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1 eligible for an accident.

2 BILL NAYLOR: So going
3 with that, there was also
4 a recent court decision
5 that kind of went in favor
6 as far as expanding what
7 was considered an act of
8 an inmate. So, I
9 appreciate your time
10 today.

11 ALEX DELL: Thank you
12 for bringing all that up.
13 The Appellate Division,
14 also makes decisions about
15 retirements and what they
16 basically said in that
17 case that it expanded the
18 definition of what would
19 constitute an act of an
20 inmate. Which is a good
21 thing because as you're
22 looking for more liberal
23 interpretations of these

171

1 you're running on a code
2 blue and you get hurt. I
3 had this discussion with
4 someone the other day,
5 well, I was running
6 because of an act of an
7 inmate. That is not
8 something the retirement
9 system is going to say
10 entitles you to three
11 quarters of your final
12 average salary.

13 But what I will also
14 tell you is don't prejudge
15 those. Because we look at
16 those very closely, the
17 cases are very all over
18 the place on this point
19 and you shouldn't say,
20 well, I'm not gonna apply
21 because -- let someone
22 else make that decision
23 for you that you're

170

1 rules.

2 So, just a couple other
3 things and then I'll take
4 questions and I appreciate
5 your patience. I want to
6 talk briefly about
7 voluntary versus
8 involuntary retirement and
9 it goes along with the
10 questions we just talked
11 about.

12 You injured your back,
13 you get the twenty-five
14 years of service and then
15 you retire. Then you come
16 to me and you say, I
17 retired because of my
18 back, my back injury at
19 work. I heard you might
20 be able to help me get
21 something. And here's the
22 questions the Workers'
23 Comp Board are gonna have

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1 for you. Before you
2 retired, did you speak to
3 your doctor about whether
4 you should stop working
5 with your injury? Did you
6 tell the employer that
7 your work stoppage was
8 because of your injury?
9 Did you file for a
10 disability retirement?

11 And if you don't do all
12 those things or some
13 combination of them, the
14 judges at the Workers'
15 Compensation Board might
16 say, you know what, that's
17 an after thought. So, if
18 you're looking to
19 potentially make that
20 claim, these are things
21 that should be done before
22 you retire. Speak to your
23 doctor, does the doctor

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1 are talking about a loss
2 of use of your extremity,
3 you wouldn't need to have
4 that same thing done
5 because you could
6 potentially be entitled to
7 that award regardless of
8 your work status. A lot
9 of guys will ask, hey, I'm
10 gonna retire, am I still
11 gonna get an award for
12 loss of use? The answer
13 is generally yes. Your
14 retirement is not
15 contingent on loss of use
16 award and that's a big
17 deal.

18 Lastly, what's I've
19 used this term, what's a
20 110(a) and why should you
21 care about that? Over the
22 years I have seen some
23 very strange things in

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1 think it's a good idea for
2 you to stop working? Have
3 him put that in writing,
4 if you're going to stop
5 voluntarily, a letter to
6 the Department explaining
7 this is why I'm leaving.

8 Filing for the
9 disability retirement,
10 even if you may not get
11 it, would be an indication
12 that you did all this
13 because your retirement
14 was truly involuntary.
15 Why are you doing that?
16 Because if you want to try
17 to preserve a weekly
18 Workers' Comp benefit,
19 such as for a back injury
20 or neck injury, those are
21 things that would be
22 important to do.

23 Now, keep in mind if we

174

1 this practice. One of the
2 stranger things that I've
3 seen that may not jump off
4 the page to all of is that
5 you had an injury a few
6 years ago, you hired a
7 Lawyer A to handle it and
8 they did a good job doing
9 it. Few years later you
10 had another injury and you
11 hired Lawyer B. They did
12 a good job resolving it.
13 And A few years later you
14 had another injury and you
15 hired Lawyer C and they
16 did a good job doing that.

17 But you know what they
18 didn't do any of those
19 lawyers? They didn't get
20 on notice in each of those
21 claims, in other words,
22 they didn't say to you, I
23 know you already got an

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1 award in that case, but I
2 need to know what happened
3 in that case. I want to
4 represent you in that case
5 from this point forward.

6 Because if we get into
7 a situation like we talked
8 about earlier where we're
9 really trying to
10 strategize how to maximize
11 your retirement and other
12 benefits, and avoid a
13 situation where you got an
14 award before and now we're
15 trying to get another
16 award on top of that, you
17 got to know these things.
18 And you can't guess when
19 it comes to that.

20 So, if you're lawyer is
21 not asking for what we
22 call an OC-110(A) form for
23 you to at least sign, make

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1 Workers' Comp Board case
2 number, why is that?

3 Well, for years the
4 Board took claims where
5 you gave notice, but
6 nothing was really that
7 serious at that moment and
8 they dumped them into what
9 they call a case assembly
10 file. What that means is
11 basically like no man's
12 land. There's no case
13 number assigned but the
14 document is there.

15 With that form we go to
16 the Workers' Compensation
17 Board and say, I'd like
18 to see every single
19 document that was filed
20 for Mr. Smith in what I
21 call case assembly. And
22 then we talk about what we
23 find. And if it's within

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1 sure you bring that up.
2 Because that form will
3 give them the ability to
4 see every single case you
5 had at the Board and then
6 if appropriate, have you
7 sign another form that
8 says you can have access
9 to all of these claims.

10 And the other thing
11 that that form does, and
12 this is something that's
13 been very successful over
14 the years, is that you
15 have had injuries where
16 you didn't lose time from
17 work, you didn't really
18 treat, but when I say to
19 you, do you remember that
20 injury that you had and
21 your knee still bothers
22 you and you say yes, but
23 yet, you don't have a

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1 the last 18 years, it may
2 be worth filing a claim at
3 that point because it's
4 not gonna mysteriously
5 form into a claim unless
6 you do something.

7 So that's another
8 advantage of why you want
9 someone looking at your
10 past history. A lot of
11 these things you forget
12 about, but they're there
13 and they're a resource
14 that can potentially help
15 you.

16 Especially if you're
17 now out and we're waiting
18 for you to potentially get
19 approved a disability
20 retirement and now you get
21 this money award for loss
22 use, sometimes that makes
23 the difference for you and

180

1 your family while we're
2 waiting for these other
3 benefits to come forward.

4 So it's just something
5 else to think about.

6 I will conclude on this
7 unless somebody has some
8 questions. I'll also say,
9 I'm happy to stay after if
10 anybody has questions,
11 they want to talk about.
12 But it's actually a good
13 story, it's a hockey story
14 and a lawyer story at the
15 same time.

16 It was one of those
17 days everybody just wasn't
18 getting along. Judges
19 were upset, the lawyers
20 were upset, even our
21 clients were kind of
22 cranky. And then I got
23 picked to go referee the

181

1 walked in my bedroom about
2 two in the morning, my
3 wife's in bed and she
4 says, Alex, is that you?
5 Yeah, it's me. I was
6 really looking for a
7 little bit of sympathy, a
8 little bit of
9 understanding, who knows
10 what else.

11 And I walk in and my
12 wife says, how was your
13 day? And I told her about
14 everything I told you
15 guys. And you know what
16 she said to me? She goes,
17 you know, if you really
18 wanted people to like you,
19 you picked the two worst
20 jobs in America. And I
21 said with that good night
22 Tina and that was it and
23 we all went to bed.

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1 Cornell Harvard game at
2 Cornell, which was a
3 playoff game.

4 I had to drive out to
5 Ithaca New York from
6 Albany, did the game and
7 of course Harvard scores
8 the game winning goal as
9 time expires, it was on
10 the goal line signalling
11 the goal, as about four
12 thousand Cornell fans
13 about to kill me. Of
14 course, the game ends,
15 nobody is happy, I have to
16 drive home. Normally it's
17 about a three hour ride to
18 get him, but unfortunately
19 that tight it was a
20 blizzard. So it took
21 about six hours to get to
22 Albany.

23 And I get home and I

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1 So with that said, let
2 me thank you for your
3 attention and the great
4 questions. And above all,
5 really the honor to be
6 able to represent you and
7 your brothers and sisters
8 with their very serious
9 situations. So thanks
10 again.

11 (All applause.)

12 EXECUTIVE VP SAWCHUK:
13 Thank you, Alex. That was
14 quite an education. And I
15 thank Alex Dell for coming
16 here and addressing us.
17 So if there's no further
18 business, motion to
19 adjourn.

20 BILL RULAND: Motion.

21 EXECUTIVE VP SAWCHUK:

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Second?

NEAL GRUBER: Second.

EXECUTIVE VP SAWCHUK:

Thank you.

(Whereupon, the
Executive Assembly then
concluded for the day.)

* * * *

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STATE OF NEW YORK)

COUNTY OF ERIE) ss

I, DARLENE L. JERGE, Court

Reporter and Notary Public in and
for the County of ERIE, State of
New York, do hereby certify:

That said EXECUTIVE ASSEMBLY
MINUTES were taken before me at the
time and place set forth and was
taken down by me in shorthand and
thereafter reduced to computerized
transcription under my direction
and supervision.

And I hereby certify the
foregoing transcript is a full,
true and correct transcript of my
shorthand notes so taken.

IN WITNESS WHEREOF, I have
hereunto subscribed my name this
5th day of June, 2020.

Darlene L. Jerge
DARLENE L. JERGE
Notary Public

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