

**STATE OF CALIFORNIA  
FRAUD ASSESSMENT COMMISSION**

**Summary Meeting Minutes  
Sacramento, California  
September 7, 2022**

Pursuant to SB-189 approved by Governor Gavin Newsom on June 30<sup>th</sup>, 2022, this meeting was a hybrid meeting with the option to attend in person or via Zoom Video Conferencing services with options to participate online and via telephone.

Commissioners personally in attendance: Don Marshall, Chairperson, Jay R. Bobrowsky, and John Riggs. Commissioners remotely in attendance: Christine Baker and Branden Lopez.

Others present: Eric Charlick, Division Chief (DC), California Department of Insurance (CDI) Enforcement Branch. Others attending remotely: George Muller, Deputy Commissioner, Victoria Martinez, Assistant Chief, CDI Enforcement Branch, and Yvonne Hauscarriague, Senior Staff Counsel, CDI Government Law Bureau.

**I. Fraud Assessment Commission**

**a. Opening Remarks**

Chairperson Marshall opened the meeting at 10:43 a.m. and provided an explanation of the logistics for the online and telephonic meeting. It was stated that materials provided to the Commissioners are available to the public by sending a request to LAU@insurance.ca.gov.

Chairperson Marshall asked the Commissioners if they wished to make any opening comments.

Commissioner Bobrowsky thanked CDI and the District Attorneys (DAs) for their efforts. This is his third year representing State Fund on this Commission. The assessment is employer funded, and employers are struggling these days. Dedicated prosecutors and outreach are important, and better outcomes need to be considered as fraud trends are changing.

Commissioner Baker concurred with Bobrowsky that we need to focus on outcomes and productivity with the budget we have and hold ourselves accountable with the money disbursed.

Commissioner Lopez said the meeting in June is when the discussion was held about best use of funds. He feels that today's meeting is about whether the money we have is

enough to fight fraud. 2020 had \$423 million in estimated fraud, which is an increase of 122% from 2016. He doesn't know if enough money is being requested to fight that level of fraud. He stated he will have additional comments later in the meeting.

There were no other opening comments.

### **b. Approval of the Summary Meeting Minutes**

Chairperson Marshall then proceeded with the approval of the summary minutes from the June 29, 2022, meeting.

#### **Motion**

Commissioner Lopez made a motion to accept the minutes. Commissioner Bobrowsky seconded the motion.

#### **Action**

The summary minutes were unanimously accepted via a roll call vote.

### **c. Public Comments**

Chairperson Marshall asked if there were any public comments and there were none. He then turned the meeting over to DC Eric Charlick of the Enforcement Branch.

## **II. Enforcement Branch Report**

### **a. Administrative Update**

DC Charlick thanked the LAU team for their efforts. He announced that Janis Perschler has retired, and Diana Russell was promoted to LAU manager effective yesterday. DC Charlick provided an overview of CDI's development of the online statistical reporting system, GCMS, and updates to the online Grant Management System, GMS. He advised GCMS should be rolled out in Fall 2023 for the FY 2023-24 statistics. DC Charlick then provided a summary of hiring and recruitment efforts.

DC Charlick opened the floor to questions and comments. Commissioner Baker said we should focus on where to go from here to accomplish goals. Commissioner Riggs asked about turnover in relation to hiring. DC Charlick advised vacancy rate, despite retirements and the like, remains about 20%.

### **b. Public Comments**

Chairperson Marshall asked if there were any public comments and there were none. He then returned the meeting to DC Eric Charlick of the Enforcement Branch.

### **III. Workers' Compensation Program Overview**

#### **a. Program Overview**

DC Charlick provided an overview of statewide anti-fraud efforts. The potential loss of the cases we submitted in FY 2021-22 increased by over \$87,000,000, which indicates the growing complexity of cases. Additionally, our search warrants nearly doubled, to almost 200. CDI continues to coordinate and house several workers' compensation fraud taskforces in our regional offices throughout the state.

CDI has a finite amount of resources to expend on the workers' compensation program, and funds were in short supply at the end of the year. It is estimated, in spite of projected retirements and persons leaving to other agencies, specifically the Department of Justice due to the 17.6% pay gap, that CDI should be able to maintain its current staffing if the Assessment remains the same for Fiscal year 2023-24.

Based on the economy, we are sensitive to the impact the assessment has on California Employers and therefore CDI is not seeking an increase for the 2023-24 Fiscal year. However, if the FAC decides to increase the assessment, he provided examples of how the Fraud Division would effectively utilize the additional funds.

#### **b. Public Comments**

Chairperson Marshall opened the floor for public comments. There were none.

### **IV. CDAA Update and Presentation**

Mr. William Lee announced he is now Co-Chair with Vern Pierson of CDAA's Insurance Fraud Committee as Scott Tsui has retired. The CDAA Fraud Symposium will be February 7-10, 2023, in Garden Grove. They are planning to diversify presenters and go back to fundamentals and basics. He then turned the presentation over to Ms. Shaddi Kamiabipour, from the Orange County District Attorney's Office.

Next year will Ms. Kamiabipour's 13<sup>th</sup> year of prosecuting workers' compensation fraud. She has shared her knowledge with California County District Attorney (DA) offices, both large and small. Educating the public and employers is important, but it is with criminal convictions that medical licenses can be suspended, employers' X-mods can be revised, WCIRB liens can be suspended, and providers can be banned from Department of Industrial Relations. Only the DA offices prosecutes premium fraud, provider fraud, uninsured employer fraud, and applicant fraud. The most effective tool to reduce employer costs and protect injured workers is criminal convictions, and that can only be done by County DA offices.

Mr. Lee, Supervising Deputy District Attorney for San Bernardino County, then continued the presentation, utilizing a Power Point presentation for which he detailed verbally each

slide. The District Attorneys' performance has built momentum over the years. In Fiscal Year (FY) 2013-14 there were 23 Provider Fraud cases in court with \$282 million in estimated chargeable fraud; in FY 2021-22 there were 101 cases in court with over \$2 billion in estimated chargeable fraud. Presented were tables, displaying the number of new prosecutions: Claimant, Premium, Provider, and Uninsured Employer (UE) for FYs 2016-17 to 2021-22. With the exception of UEs, there has recently been a drop in performance, an aberration they believe is rooted in the Covid Pandemic and the closure of offices and courts, remote work, the cessation of stings, and a current backlog of cases. Covid recovery has set a new normal; the "great resignation" is real and the DA offices have lost a lot of expertise, hence a return in the CDAA symposium to the fundamentals. Efficiencies have also been lost, some due to remote work, quarantines, the quality of FD-1s, and carrier and SIU responsiveness. They can't snap back to pre-pandemic; they need to build back.

The need to regain that momentum includes reestablishing collaborations, more training to regain expertise and experience lost, and outreach to the public, employers, carriers, SIUs, etc. There are still task forces and collaboration taking place to try to build that momentum. There is no entity that can deter fraud and recover restitution like DA offices prosecuting fraud.

The DA offices are projecting a deficit of 17.62% next year. This would be the 2<sup>nd</sup> highest deficit in 15 years. San Bernardino's budget is 95% for personnel, so a 17.62% deficit would mean a cut into their staffing.

Employers will pay if they get a return on their investment. The price to fight fraud is small; less than a penny per \$100 of payroll. Hypothetical cost to employer (2022): An employer with \$1M annual payroll equals \$70.56/year to the fraud fund. A 5% increase is \$3.53/year, 10% increase is \$7.05/year, and 15% increase is \$10.54/year. A bar graph showed industry average charged premium rates. In 2005 it was \$5.17 per \$100 of payroll. In 2014 it was \$3.24. In 2021 it was \$1.81, and the beginning of 2022 it fell to \$1.76. The DA offices are still faced with the financial responsibility of rising costs including salary increases due to inflation.

A claimant fraud case can impact an employer's X-mod more than the one penny per \$100 of payroll they pay. Fighting Premium fraud and UE fraud protects workers and levels the playing field. Provider Fraud is a high cost driver; take the Subsequent Injuries Benefits Trust Fund increases over the years: 2016-17 was \$54M, 2017-18 was \$101M, 2020-21 was \$170M, and 2021-22 was \$372M.

Final thoughts: an increase in the assessment offers significant value at a small cost, in a time when premium rates are declining. The DA offices need to rebuild momentum and networking. CDI stated funds were short at the end of the year, and the Department of Justice pays 17% more than CDI, which makes competing with them difficult. Funding stability leads to performance stability. If the increase is zero one year it creates pressure to go high the next year, then zero, then high. It is a better approach to have moderate, steady increases each year. Funding decision today will have an impact up until June 30,

2024. Any increase today won't impact employers until January 2024. The request is for an increase of 5% - 15%.

Chairperson Marshall clarified there won't be a decision today, that is next week.

Commissioner Bobrowsky stated that some counties are more effective than other counties, and performance-based funding might be more effective as opposed to an increase in the assessment. Mr. Lee replied that if San Bernardino were to get more of the current fund, then other counties will get cut and will suffer. Ms. Kamiabipour added that each DA office has limited jurisdiction and, when a county is cut you have reduced the fraud fight in that jurisdiction. It's not a practical solution to take from one office to give to another.

Commissioner Baker thanked them for their presentation. She responded that employers will feel the premium impact, and if the Subsequent Injuries Benefits Trust Fund is at a worrisome level then perhaps a taskforce should be created to tackle that.

Commissioner Lopez stated that financial instability makes it very difficult for the counties to make long term decisions. He did an analysis of the FAC assessment vs. the private sector's enforcement fund: FAC at \$0.01 per \$100 of payroll vs. private sector at \$0.50 per \$100 of payroll. That tells him employers want enforcement and are willing to pay for it.

Commissioner Riggs thanked them for the presentation and expressed his appreciation for all the work the DAs accomplish. A concern he has is with the current legislation: it is easier to accept a claim and monitor the medical than it is to fight a claim. Without legislative changes, an increase in funding will not change this issue.

Chairperson Marshall cited his 34 years investigating fraud and 12 years on the FAC. He doesn't think the fraud is getting worse, it is just being measured differently; and it is difficult to measure as fraud is, by nature, secretive. When looking at the counties, some do better in outcomes than others. In FY 2016-17, the assessment was \$34.9 million and there were 305 felony arrests and 359 misdemeanor arrests; last year the statistics were significantly lower despite higher funding. The drop in productivity is very concerning; the main issue is inefficiency, and the rotation of staff is a major component. Perhaps a re-assessment of funds makes more sense, looking at the split with CDI and the possible overfunding of some counties. Workers' compensation fraud can exist because of the way the laws are written. Cappers are out of control; regarding the QME system, a QME will find some disability; is it a case of fraud or is it the system? He said there are some doctors who should be removed from the system permanently.

Ms. Kamiabipour responded that convictions are needed in order to get the ban in the system. Regarding the arrest decrease, law enforcement risk their lives when arresting a suspect, yet the suspects are often released immediately. They are constantly pivoting to accommodate changes and trends, but pivots are not fast as you test them out. An example has been the trend of deferred entry of judgement (DEOJ); Orange County is

now is moving away from DEOJs as convictions are more valuable. She also said the insurers seem to appreciate the lien dismissals more than restitution collected.

Chairperson Marshall stated that criminal charges filed, as opposed to arrests, are what are important. Convictions are important. Plea bargains that drop the insurance fraud charges are not good as without the insurance fraud conviction the employer's premium goes up. He reiterated that he is concerned with the requested increase.

Commissioner Baker commented it may be time to have the conversation about changing legislation to reduce some of the challenges DAs have when prosecuting fraud.

Commissioner Bobrowsky clarified regarding productivity, he is not talking small counties but there are medium and medium-large counties that are not performing for the level they are funded.

Mr. Lee responded that the DA costs are rising, and redistributing funds is not helpful for the increased costs; also, re-allocation may be discouraging.

Chairperson Marshall said that he believes the insurance industry must do a better job at the initial investigation, collection of evidence, and documentation before the case reaches the DA office. CDI's SIU Compliance Team is working towards that goal.

Commissioner Baker commented that CDI's vacancy rate and corresponding unspent funds should revert to the counties as an additional source of funding. Commissioner Riggs clarified that unused funds are spread out on a pro-rata basis.

Mr. Lee commented that last year CDI ran out of money and it was clarified that there is not enough current funding for CDI to be fully staffed. Additionally, Mr. Lee said that ultimately the counties' issue is that costs are increasing.

#### **a. Public Comments**

Chairperson Marshall opened the floor for public comments.

Mr. Chris Bouffard of Riverside County ceded his time to Alameda County.

Ms. Jill Nerone, Assistant District Attorney for Alameda County, stated that whatever is decided to be done with funding she would like to see everyone's outcomes improve; maybe creating consortiums of similar sized counties. She also suggested written recommendations from FAC and CDI to counties on their performance. She would love to see stronger language in writing that she can present to the elected DA stating the FAC objects to the turnover. She also said she would like to know what The Subsequent Injuries Benefits Trust Fund is being used for. She talked to Mike Whittington from Santa Clara County, and they are all reaching out to other parties for fraud referrals such as labor unions, etc. She also stated she'd like to see a legislative committee started with the DA's, CDAA and CDI.

Mr. John Philpott, Chief of Insurance Fraud for San Diego County, said most fraud is opportunistic. Fraudsters ask “Can I get away with it? Will I get caught? What are the consequences?” and the criminals adapt to what the District Attorney Offices do in response. In this post-Covid world, stability in funding is important. The cost of doing business is increasing, and to stay stable requires an increase, but not at the expense of another county.

Mr. Matt Olsen, Deputy District Attorney from Solano County, represents the smaller to medium-sized counties. Solano’s DDA splits her time between the Automobile and Workers’ Compensation grants. Their funding is a lot less than most other counties present and the majority of it is used for personnel. He said they expect their personnel costs to rise at least 10% this year; if the funding remains stagnant programs like theirs won’t survive. He requested a minimum increase of 10%.

Ms. Nicole Nicholson, Assistant District Attorney from Orange County stated they are getting the job done through continuity of staffing. They’re incentivizing staff to stay by giving them salary increases. They currently have 7 DDAs, 3 paralegals and 11 DAIs. When looking at projections for FY 2023-24, to keep their current staff they need an increase of 18%.

Mr. William Lee, Supervising Deputy District Attorney for San Bernardino County, stated for his county an increase of 5% is needed to just cover staffing costs at the same level, and a 10% increase is needed to cover staffing and operating expenses. For two years there was zero increase, but COLA costs still occurred and the funding increases a few counties received wasn’t enough to cover the salary increases for the same staffing. For stability, they would prefer to see 5% every year rather than 0% one year and 10% the next year.

#### Online Public Comments

Mr. Robert Yaeger, District Attorney Investigator for Napa County. He works 70% in Workers’ Compensation, and they have 25% DDA time. He said that they don’t want to take away from other county’s funding, but they feel a need for funding increase. He said they self-generate FD-1’s and additional funding will help with that. They would like to see a 10% minimum increase in funding.

Ms. Sara Brucker, Deputy District Attorney for Ventura County. They agree with other counties that an increase of funding is necessary. They are currently training other counties on their SARS process and are presenting at the February CDAA conference to train other counties. They anticipate a 14% increase to their operating cost so they can continue their investigations and outreach.

## **V. Public Comments**

The floor was opened for public comment on any agenda item and there were none.

## **VI. Other Business**

### **a. Next Scheduled Meetings**

Chairperson Marshall announced the next scheduled meeting is September 14, 2022, which is a hybrid meeting. He asked CDI Senior Staff Counsel Yvonne Hauscarriague to confirm what the governor's office allows for future meetings. She said the in-person meeting exception is in effect until June 30, 2023. Chairperson Marshall announced the January 11, 2023, meeting will also be a hybrid meeting.

### **b. Public Comments**

The floor was opened for public comments and there were none.

## **VII. Closing Remarks**

Chairperson Marshall asked the Commissioners if they wished to make any closing comments.

Commissioner Lopez stated Workers' Compensation fraud exists, but it is hard to know the amount as it is hidden. He gave an example of his recent experience in hiring contractors to work at his home. Of the 10 companies actively in business with an online presence, when he checked six had no workers' compensation insurance. He gave another example of a landscaping truck that drove by with 4 workers in it; he went online and verified no workers' compensation insurance. He said the employers aren't scared. Workers' compensation fraud is a big problem. He doesn't think we should let other issues impact the assessment decision, but ask how much fraud is acceptable. A 5%-10% increase only maintains the status quo and doesn't address improvements that were discussed today. Employers complaining about an increase in assessment don't seem to realize they are paying for the fraud that occurs. The fraud is rising and the cycle needs to be broken.

### **Motion**

Commissioner Riggs made a motion to adjourn and Commissioner Bobrowsky seconded the motion.

### **Action**

The Commissioners unanimously approved via a roll call vote and the meeting adjourned at 1:25 p.m.