

STATE OF CALIFORNIA
FRAUD ASSESSMENT COMMISSION

Summary Meeting Minutes
Sacramento, California
September 8, 2010

In attendance: Lisa Middleton, Chair, and Commission Members Lilia Garcia, Don Marshall, and Jiles Smith.

Others present: Rick Plein, Deputy Commissioner, Enforcement Branch, California Department of Insurance; Eric Weirich, Bureau Chief, Enforcement Branch; and Vanessa Himelblau, Senior Staff Counsel, Legal Division.

Chairperson Lisa Middleton opened the meeting with the summary of meeting minutes from the previous FAC meeting.

Motion

Commission member Jiles Smith made the motion to accept the June 16, 2010 minutes as submitted.

Commission member Lilia Garcia seconded the motion.

Action

The minutes were unanimously passed.

The next item of business was the proposed bylaws of the Fraud Assessment Commission (FAC). Chairperson Middleton informed the meeting attendees that copies of the bylaws were on the table in the back with the handouts. There will be a discussion and voting on the bylaws at the next meeting in November.

John Duncan, Director of the Department of Industrial Relations (DIR), made a presentation on the methodology of collection. Mr. Duncan explained to the Commission that the vote they take today will be reflected in the assessment that goes out to employers next year in November.

Greg Edwards, Chief Fiscal Officer for the DIR, further explained how the assessment works. The DIR assessment is driven by the Annual Budget Act, but is promulgated at the midpoint of the fiscal year. "So the budget that has not yet passed will set the baseline for our 10-11 assessment which will not be distributed until on or about December 1 of this fiscal year", stated Mr. Edwards. The Commission's vote is actually about 12 months ahead of the assessment.

Commission member Don Marshall asked the representatives of DIR if a study has been completed to confirm that the assessment to employers and self-insureds are close to equitable. Mr. Edwards answered that the intent of the distribution of assessment is that it be equitable. Seventy percent of the assessment costs go to employers who have paid premiums and thirty percent to self-insured employers. "The principle driver between the 70/30 split is the fact, the understanding that paid indemnity does not represent 100 percent of the cost to the self-insured" stated Mr. Edwards.

Chairperson Middleton commented that it's important to get the ratios right and to validate them without getting to the point where we're trying to make them perfect at all times.

Chairperson Middleton called on each of the thirty-six grant-funded counties to provide oral presentations if the district attorneys had additional or new information to support their prospective budgets. In summary, twenty-one (21) counties voluntarily addressed the FAC. They were Alameda, Amador, Contra Costa, El Dorado, Fresno, Kern, Kings, Los Angeles, Merced, Monterey, Napa, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, Santa Barbara, Santa Clara, Ventura, and Yolo.

Each county recognized and commented on the economic situation in California. Most counties are affected by the current state of the economy and are being cut; therefore, they are requesting funding to remain stable or for a slight increase in order to maintain their programs. A few counties proposed the assessment level remain the same as last year and add the offset amount in the Workers' Compensation Fraud Account into the program. The additional money will help to increase fraud fighting efforts without increasing the employers' contribution.

Michael Silverman, Supervising Deputy District Attorney from Riverside County, made a comment that in the last two Review Panels he's attended, the Panel recommended more money to the district attorneys than what was available. Mr. Silverman suggested the assessment be increased slightly in order to more accurately meet the needs of the district attorneys.

Chairperson Middleton acknowledged Mr. Silverman's point, and stated she would like to have a discussion at the November meeting about how to improve the Review Panel process.

District Attorneys

Gary Fagan, co-chair, California District Attorneys Association (CDAA) Insurance Fraud Committee, addressed the FAC. "I think we have to have some confidence that you're going to see some rebound and certainly not a dip in the economic environment throughout the next 16 months when the bill is actually due", stated Mr. Fagan.

Mr. Fagan also commented on the fact that the Commission's expectations of the district attorney offices has increased over the years, and in order to meet all of the goals of the Commission, it costs money. On behalf of the district attorneys statewide, Mr. Fagan urged the FAC to increase the amount of money awarded to the district

attorneys so they can reach those goals. “If funding decreases, something’s going to happen to our ability to perform in those areas and you’re not going to get the performance that you hoped to see”, stated Mr. Fagan.

Commission member Marshall commented that although he did not sit on the Review Panel this year, he did have the opportunity to read through all district attorney Requests-for-Application (RFA), and he’d like to work with the district attorneys on rewriting the RFA. In evaluating the RFAs, Mr. Marshall said he looks at not only the number of cases being prosecuted, but also the degree of difficulty of those cases. “I think we, as a Commission, have to keep that in mind that numbers alone don’t identify the assessment”, stated Mr. Marshall.

Commission member Garcia commented that she’d like to see the counties be creative on outreach in order to get the word out to large amounts of people rather than talking to individuals one by one. “And that’s what I’m interested in, in supporting and helping and to reach out to our communities that are in these low-wage industries where we very much know this is where the fraud is most fertile and they’re going to be our best informants”, stated Ms. Garcia.

Commission member Smith clarified his question to all counties about whether or not they use general fund money to support the program. “When I was asking the district attorneys, does your county help support the program, what I really was asking was, if a county is engaged in the process, if they help support it, then in my mind, from my perspective, I’m more inclined to support that county more because they have skin in the game”, stated Mr. Smith.

Chairperson Middleton thanked the district attorneys for the time and effort they put into their presentations and programs. “I’m very impressed with the commitment that I see across the State”, remarked Ms. Middleton. Additionally, she encouraged the district attorneys to take the comments made by the Commission and use them to improve their programs.

Enforcement Branch, Fraud Division

Deputy Commissioner Rick Plein reported that the Fraud Division would be requesting a slight increase in funding of about \$1,000.

The Fraud Division continues to work significant investigations across all lines of insurance fraud. A couple of those cases include a major medical provider case with Los Angeles County and the CDI where \$60 million in liens were released. The case started in 2004. The Department also had a \$20 million case where a company was misclassifying employees.

The Investigation Division of the Enforcement Branch had an investigation of a broker who embezzled and created fictitious workers’ compensation certificates in the amount of \$4.2 million. This case was prosecuted by Orange County.

“There are four critical elements required to have successful outcomes: an aggressive outreach program, partnership with key stakeholders, effective trend analysis, and maintaining a balanced caseload”, stated Mr. Plein.

The Department continues to work with allied agencies such as the Department of Industrial Relations (DIR), Division of Labor Standards Enforcement; Employment Development Department; Franchise Tax Board; Contractors State License Board; and State Compensation Insurance Fund. The relationships with these agencies allow us to collaborate and become more proactive at fighting insurance fraud. We are able to determine cases of fraud that may not have been identified yet.

The Department has seen a nearly ten percent increase in Suspected Fraudulent Claims this year particularly in the areas of pharmacy and medical provider fraud. Incidents of claimant fraud have actually decreased slightly. The Fraud Division is using this information to help monitor the trends in insurance fraud.

“One of our main components in the Fraud Division is supervised outreach and training to the public, private and governmental sectors. We reach out to everyone. We are providing updates on a regular basis of the going ons of the Fraud Assessment Commission as well as the DAs”, stated Mr. Plein.

The Fraud Division is requesting \$20,056,436 for Fiscal Year 2011/12. There is also \$200,000 in incidental expenses and \$75,000 for the DIR notification. We also have \$6,712,089 in the Workers’ Compensation Fraud account to offset any future expenses.

Commission member Marshall asked Deputy Commissioner Plein if the Department has ever considered centralizing outreach through the Department rather than having district attorneys perform outreach. “Not that I’m aware of. I can go back in time and check on it”, commented Mr. Plein.

Commission member Marshall raised the issue as to whether or not the Department ever considered creating specialists. Mr. Plein stated that he does have some specialists in a few offices such as the premium fraud task forces. The problem is that some people have retired and we haven’t been able to fill those positions. Mr. Plein also stated that he thinks having experts is a benefit to the offices where those individuals work.

Chairperson Middleton asked Mr. Plein how the Department plans to support those counties where resources are most challenged. Mr. Plein replied that we’ve reached out and brought in a couple new counties over the last few years. The Department works with these counties to identify and see what we can do. Some counties are so small in population that it’s difficult to support them unless they’re really willing to do the job.

Public Comment

Ms. Trend addressed the FAC and opposed funding for Sacramento and Yolo counties because of noncompliance in enforcement of laws in her son’s case, David Bell versus

Ag-Quest. She also stated a conflict of interest and bias by the judge who presides over her son's trial.

Chairperson Middleton advised Ms. Trend to notify the authorities regarding any potential conflict of interest.

Ms. Padilla requested extra time to make a public comment. She brought the FAC documentation to show the connection of the judge to the law firm and insurance company in Ms. Trend's case. Ms. Padilla also commented on specific cases in San Mateo, Los Angeles and San Diego counties where she believes the district attorney offices are not doing their job. Ms. Padilla requested an independent audit of all money being spent in the counties.

In regard to Ms. Padilla's request for extra time to make a public comment on a specific incident, Chairperson Middleton advised Ms. Padilla to work with the local officials in that county.

Mr. Zeltzer pointed out that the minutes from the June 16, 2010 FAC meeting state that Ms. Garcia is not a real labor representative. He commented that an injured worker should be appointed to the Commission. Ms. Himelblau, Senior Staff Counsel, requested Mr. Zeltzer to keep his comments germane to the agenda. He spoke of specific cases from specific counties and opposed funding for Sacramento, Yolo, San Diego and San Mateo counties.

Dr. Thrasher gave a public comment about toxic exposure. Chairperson Middleton informed Dr. Thrasher that the Commission has no authority to deal with toxic exposure issues.

Chairperson Middleton commented on an error in the approved minutes from the June 16, 2010 FAC meeting where it states, "Commissioner Lilia Garcia clarified that she's not a labor representative." Chairperson Middleton stated, "I don't believe that is correct, and I believe we made an error in approving the minutes to read in that fashion." Ms. Middleton asked for a motion to reopen the minutes in order to make the correction.

Motion

Commission member Smith made a motion to reopen the minutes.

Commission member Marshall seconded the motion.

Action

The motion passed unanimously.

Commission member Garcia stated the minutes should read, "Commissioner Lilia Garcia clarified that she is a labor representative." The word "not" should be taken out of the sentence.

Chairperson Middleton asked for a motion to approve the amended meeting minutes from the June 16, 2010 FAC Meeting.

Motion

Commission member Smith made a motion to approve the amended minutes.

Commission member Marshall seconded the motion.

Action

The amended minutes were unanimously passed.

Determination of the Aggregate

The Fraud Assessment Commission began their discussion and deliberation regarding the aggregate assessment for Fiscal Year 2011/12.

Commission member Smith commended the district attorneys for their great work, but stated that the employers do not deserve increased taxes. He recommended the Commission use the offset to give district attorneys more money without increasing the amount of money paid by employers.

Commission member Garcia stated that employers are getting a fair protection for their investment. However, due to the economic reality, Ms. Garcia stated that she is hesitant to provide an increase. She would, however, recommend adding the offset into the program.

Commission member Marshall commented that raising the assessment is not appropriate at this time. He agreed with Commission member Smith that the FAC should use part of the offset to increase the amount of money available to district attorneys without increasing the assessment for employers.

Chairperson Middleton agreed with the other Commissioners and recommended using the \$6.7 million offset to increase the amount of funding for the district attorneys. If we take the assessment from last fiscal year and apply the offset, this would produce a total funding level of \$53.7 million.

There was discussion amongst the Commission regarding the funding amounts for the district attorneys and the Fraud Division. Chairperson Middleton stated the recommendation is that district attorneys receive \$31,774,392 and the Fraud Division receives \$21,395,608. In addition, there is \$200,000 in incidental expenses; \$75,000 for the DIR notification; and \$6,712,089 to offset for a total collection of \$46,732,911.

Chairperson Middleton asked for a motion to approve the aggregate assessment.

Motion

Commission member Smith made a motion to approve the aggregate assessment.

Commission member Marshall seconded the motion.

Action

The Fraud Assessment Commission unanimously approved the motion.

Public Comment

Ms. Padilla asked the Commission why she hasn't received notification about FAC meetings or reports that are handed out. Chairperson Middleton responded that all public reports are placed on the handout table in the back of the room, and all notices are posted on the website ten days before the meeting.

Chairperson Middleton concluded the meeting by informing the attendees that the next FAC meeting on November 16, 2010 in Anaheim will be her last. She is retiring, and a new Chair will be voted on at that meeting. She also stated that the bylaws would be discussed and perhaps approved at the next meeting. If approved, the Commission will vote on a Vice-Chair of the FAC.

That concluded the business before the FAC and Chairperson Middleton adjourned the meeting.