

**STATE OF CALIFORNIA
FRAUD ASSESSMENT COMMISSION**

**Summary Meeting Minutes
Sacramento, California
June 18, 2014**

In attendance: Don Marshall, Chairperson; Commission Members Lilia Garcia, Carol Newman, John Riggs, Joel Sherman and Jiles Smith.

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

Chairperson Don Marshall opened the meeting and asked for a motion to approve the submitted summary minutes from the January 15, 2014 meeting.

Motion

Commission Member Newman made a motion to accept the summary minutes as submitted. Commission Member Smith seconded the motion.

Action

The summary minutes were unanimously passed.

Fraud Division Report

Deputy Commissioner Weirich began by recognizing the Enforcement Branch staff for all of the work they put into the Workers' Compensation Grant Review Process.

Deputy Commissioner Weirich stated that per the California Code of Regulations, the Insurance Commissioner convenes a Review Panel. The panel was comprised of the following: two members of the Fraud Assessment Commission (FAC), Chairperson Don Marshall and Vice Chairperson John Riggs; the Director of the Department of Industrial Relations or designee, Glenn Schor; an expert in consumer crimes and prosecution designated by the Insurance Commissioner, Dale Banda; Chief of the Fraud Division or designee, Laureen Pedroza. The Review Panel's funding recommendations are presented to the Insurance Commissioner for his determination on the most effective distribution of funds.

Deputy Commissioner Weirich noted that the Fraud Assessment Commission determined a funding level of \$31,774,392 to be available for distribution to District Attorneys' Offices for Fiscal Year 2014-15. This year, the Department received 37 applications representing 41 counties requesting \$36,272,888, which was about \$4.5 million more than what was available for distribution. Deputy Commissioner Weirich then asked if any of the Review Panel members had any comments.

Chairperson Marshall stated that, as usual, it's extremely difficult to make the determinations. He wanted to recognize the hard work put in by the District Attorneys'

offices and the panel members for the time commitment to review the documents and come up with recommendations.

Commissioner Riggs echoed the above and recognized the monumental task to put the grant awards together and the tough month of review. He stated he was pleased with the outcome.

Bureau Chief Pedroza stated this was her first time to sit as chair for the Panel, and she wanted to thank the Panel for their hard work.

On, June 6th, Deputy Commissioner Weirich, Bureau Chief Pedroza and Division Chief Gonzalez met with the Insurance Commissioner to go over the recommendations of the Review Panel which convened on June 4th. Deputy Commissioner Weirich noted that many questions were asked and answered. The Insurance Commissioner made six modifications to the Review Panel's recommendations: Amador County and Fresno County each decreased by \$10,000; Los Angeles County increased by \$171,664; San Bernardino decreased by \$96,763; San Diego County decreased by \$64,708; and Tulare County increased by \$9,807.

The Insurance Commissioner expressed his sincere appreciation for the contributions made by the District Attorneys for their battle against Workers' Compensation fraud. The letter from the Insurance Commissioner was read into the record and submitted to the FAC for advice and consent. Copies of this letter and the funding award chart were handed out to the audience.

Public Comment

Chairperson Marshall opened the floor for public comment.

Ernesto Acosta, Ventura County DA's office brought forth an update on an applicant fraud case that was noteworthy as the defendant lives in Santa Barbara and the arrest was made in Orange County at the Santa Ana's WC Appeal Board's hearing room; the defendant had to travel through Santa Barbara, Ventura, Los Angeles and Orange counties to process a claim. This illustrates the magnitude of the problem.

Dominic Dugo, representing San Diego and Imperial Counties, wanted to thank the Review Panel and CDI; as an observer in the audience it's easy to have other opinions; it's a very complex task and he wanted to express his appreciation.

Jennifer Snyder, Los Angeles County, updated that LADA was successful in arresting and charging the Dancing Hamster Man, who was a dancer for a number of great acts. This case has garnered publicity world-wide. She also wanted to congratulate CDI for having helped with that case.

Chairperson Marshall concurred that it was big news, and commented that timing regarding outreach can be everything. He congratulated CDI and LA. Chairperson Marshall moved on to ask Commissioners for the comments regarding the Panel, starting with Commissioner Garcia.

Commissioner Garcia thanked her colleagues for participating in the Review Panel. She also expressed her frustration with the economic reality that they can't increase funding at this point despite so many counties doing outstanding work.

Commissioner Sherman echoed that the panel is a lot of work and he applauded those involved. He also expressed his frustration with the lack of funding increase. Commissioner Sherman would like to see more cross-county teamwork and communication as the fraud teams are aggressive and cross county lines.

Commissioner Smith commented on how grueling the panel can be; but even more so for the District Attorneys and their staff. He brought up that he would like to put together a subcommittee to review that process, which he will address later. In reviewing the letter from the Insurance Commissioner, Commissioner Smith stated "after all the hard work and diligence that we put forth, that we would probably be derelict in our duties to not at least find out why he made the changes....it's within our right to ask why." "Maybe the Department of Insurance can answer the question."

Chairperson Marshall stated he wanted to go ahead and finish the comments and then let Deputy Commissioner Weirich respond.

Commissioner Newman thanked the Panel and the hard work of the participants. Workers' Compensation fraud is a "target-rich" environment. The fraudsters have the benefit of working with systems and technology, and they have a team environment, often with a whole group of attorneys who bury you in work. The fight is honorable and very hard work, and very important. Workers' Compensation fraud impacts the whole California economy. Commissioner Newman also expressed her frustration that there isn't enough money to fight the amount of fraud before us, and thinks some decisions need to be made going forward related to the level of funding.

Commissioner Riggs stated he did not have a problem with the Insurance Commissioner's changes; he thought they were minimal. Fighting Workers' Compensation fraud is hard work for all. He stated a lot of money is spent that could be more productive with communications with claims departments, as they can be an important part to recognize fraud.

Chairperson Marshall thanked the Commissioners. Regarding Commissioner's Smith question, "which I can't answer because I'm not the Commissioner," he wanted to give an opinion. When the panel finished he didn't necessarily agree with what was on the board. The Panel is five people, with different experiences within the Workers' Compensation world and different opinions to come to a number. And the statute gives the Insurance Commissioner final say. Had the Insurance Commissioner's adjustments been way different numbers, Chairperson Marshall would have been really concerned.

Chairperson Marshall then shared an analogy with regards to caseloads and what the panel looks at, that is the degree of difficulty of what the counties are doing and the impact on the cost drivers. When he was a traffic cop:

- He used to give out tickets to the high school kids as they crossed mid-block; they looked at it as a safety issue not just the obvious traffic flow issue. It just took a little bit of the day, wasn't that big of an impact, but it needed to be done. He would like to call that 3700.5 in our world; really important, but not a lot of work in the big picture.
- He gave radar tickets, which relied upon something else to help him enforce speed laws. He would refer to this as claimant fraud: most claim fraud cases are generated by claims examiners and members of the special investigations unit that identify and report as required by law.
- Then, he would investigate accidents; harder than tickets, especially when people are injured; they take time, effort and team work. A complex investigation he would equate with premium fraud.
- Fatalities. Commitment and expertise were at a higher level. The Highway Patrol has a team that specializes in the worst of the worst accidents. That's how he equates medical fraud. That's where the resources need to be channeled for the major investigations.

As a traffic cop, his day could have all four of the above. That is his expectation of a prosecutor's office, particularly those receiving funds, to work on all four. But the majority of the time and resources should be spent on the worst of the worst.

Chairperson Marshall stated that you should still do it all, but really start going after the cost drivers, which are premium and medical fraud. That is what he was looking at during the Panel process. Regarding outreach, to claims examiners and SIU's you should teach them what you need to increase the success of the cases. And, as it has been brought up, fraud crosses the county lines, and that is where CDI comes in; Chairperson Marshall stated that he is looking for the District Attorneys to use CDI to the utmost.

Before moving to the advice and consent, Deputy Commissioner Weirich was given the opportunity to respond to Commissioner Smith's comments.

Deputy Commissioner Weirich: Per regulation, the Insurance Commissioner receives recommendations from the Review Panel that he, in a sense, puts together. He also listens to the Fraud Division's advice, which is part of the regulation. The Insurance Commissioner appreciates the efforts of the Review Panel and takes it very seriously. It's a lengthy meeting and discussion to look at the Review Panel numbers, listen to the Fraud Division's advice, his own thoughts, looking at county performances, etc. In this case, there were six adjustments. Three of the six were \$10,000 or less. One of the other larger adjustments was dropping an increase in funding from 3.45% to 2%. Deputy Commissioner Weirich sees those as minor changes.

Chairperson Marshall thanked Deputy Commissioner Weirich and opened for a comment or motion.

Motion

Commission Member Riggs made a motion to accept the Insurance Commissioner's funding determination. Commission Member Newman seconded the motion.

The Chairperson called for the vote, with all in favor say "aye."

Commissioner Newman: "Aye."

Commissioner Riggs: "Aye."

Commissioner Sherman: "Aye."

Commissioner Garcia: "Aye."

Commissioner Marshall: Aye."

The Chairperson then called for those opposed.

Commissioner Smith: "Nay."

Action

Chairperson Marshall: The Commission vote: five ayes, one nay on the advice and consent of the Fraud Assessment Commission regarding the Insurance Commissioner's funding determination.

Commissioner Smith: "I'm not trying to be difficult, Mr. Chair. Sometimes a person has to stick with their convictions. I'm not saying that the Insurance Commissioner does not have the right or the responsibility to make those small adjustments." "This vote for me is another cry that we need to standardize the process." Mr. Smith would like to see the three year average and "apples-to-apples" comparison.

Chairperson Smith thanked Commissioner Smith and moved to the next item on the agenda, the next scheduled meeting which is September 10, 2014, at 10:30 am. This meeting will be to determine the workers' compensation aggregate assessment for Fiscal Year 2015-16.

Commissioner Smith spoke, wanting to add to the agenda a proposal to put together a subcommittee to look at the whole application process.

Chairperson Marshall asked Legal Counsel Vanessa Himelblau to research that subcommittee and asked Deputy Commissioner Weirich to discuss with the Insurance Commissioner. Commissioners Sherman, Newman and Marshall said they would be willing to participate in the process.

Chairperson Marshall called for any further comments; with none he asked for a motion to adjourn the meeting.

Motion:

Commission Member Garcia made a motion to adjourn. Commission Member Riggs seconded the motion.

Action:

The FAC unanimously approved. Meeting adjourned at 11:22am.