

**STATE OF CALIFORNIA
FRAUD ASSESSMENT COMMISSION**

**Summary Meeting Minutes
Sacramento, California
September 9, 2020**

In attendance: Don Marshall, Chairperson; and Commission Members Christine Baker, Jay R. Bobrowsky, Branden Lopez, John Riggs, and Joel Sherman.

Others present: George Mueller, Deputy Commissioner (DC), California Department of Insurance (CDI) Enforcement Branch; Eric Charlick, Division Chief, CDI Enforcement Branch; and Patricia Hein, Assistant Chief Counsel, CDI Government Law Bureau.

I. Fraud Assessment Commission

a. Opening Remarks

Chairperson Marshall opened the meeting at 10:30 a.m. and provided the following explanations and instructions:

- Materials provided to the Commissioners for review, consideration, and approval at today's meeting will be available to the public following the meeting by sending an email request to LAU@insurance.ca.gov. This email address can also be found on today's Agenda.
- All voting would be done by roll call and persons making any motions or seconding should identify themselves.
- The AT&T Moderator provide instructions for making Public Comments during the meeting.

Chairperson Marshall then asked the Commissioners if they wished to make any opening comments and there were none.

b. Approval of the Summary Meeting Minutes

Chairperson Marshall then asked for a motion to approve the submitted summary minutes from the September 2, 2020, meeting.

Motion

Commissioner Baker made a motion to accept the September 2, 2020, summary minutes as submitted. Commissioner Bobrowsky seconded the motion.

Action

The summary meeting minutes were unanimously approved via a roll call vote.

c. Public Comments

Chairperson Marshall opened the floor for Public Comment and there were none.

Chairperson Marshall moved to the next agenda item and turned the meeting over to DC Mueller.

II. Enforcement Branch

a. Administrative Update

DC Mueller then informed the Commissioners that, when he met with the Insurance Commissioner in June, the Commissioner had approved the use of the pro-rata approach for calculating the distribution of prior year funds that may be available. He estimated that the District Attorneys had submitted approximately \$225,000 in fines and penalties during Fiscal Year 2019-20.

DC Mueller explained that International Fraud Awareness Week is November 15-21, 2020, and that this will be the second year that CDI and District Attorneys (DAs) will be participating. He highlighted some of the outreach efforts and messages shared during the prior year's Fraud Awareness Week.

DC Mueller expressed his appreciation for the presentations made at the prior meeting which provided an overview of what happens on the front line. He then asked if the Commissioners had any questions or comments and there were none.

b. Public Comments

The floor was opened for public comments on this agenda item and there were none.

III. Aggregate

a. Discussion

Chairperson Marshall indicated that setting the aggregate assessment is one of the most important roles of the Commission. He offered the public the opportunity to comment both before and after the Commissioners discussion. There were no public comments before the discussion.

Commissioner Bobrowsky commented on the impact and consideration given to the prior week's presentations, COVID, and the economic downturn in making today's decision difficult.

Commissioner Sherman agreed that this is a difficult decision and commented on the financial impact of all assessments collected from employers and the increase over the past five years. He expressed appreciation for the great work being done and the effort to meet the Commission's goals. He expressed that these are unusual times and that, due to the current economic situation, it would be difficult to support an increase.

Commissioner Riggs indicated that he echoed Commissioner Sherman's comments and additionally commented that COVID has changed our lives and businesses environment. He expressed that he can't push for an increase and that everyone is facing the need to do more with less.

Commissioner Baker indicated that she also echoes Commissioner Sherman's comments and additionally commented that this is an opportunity to pivot resources to look at where fraud is heading and determine how technology can be utilized in enforcement.

Commissioner Lopez expressed that he has a different mindset in evaluating the needs of CDI and the DAs for the assessment and the impact on employers. Some of the areas he considered are historical funding compared to requested amounts and economic growth compared to funding. He commented that underfunding has the risk of increased fraud, that the historical year over year funding has been less than the inflation rate, and that continuous underfunding could affect performance. He commented on the number of referrals and the need for manpower. He commented on the differences he has experienced with enforcement across State agencies when they are underfunded and adequately funded.

Commissioner Lopez further indicated that he considered the presentations and the potential increase in fraud due to COVID and telemedicine and the challenges counties face with the cost of prosecuting complex cases and providing outreach. He also considered the assessment impact to employer's per dollar of payroll and the cost of not providing adequate funding. He highlighted that there was no public defense from employers that the assessment is a burden and recommended a 12% increase.

Chairperson Marshall explained that for many years the assessment did not change and more recently the increases have averaged approximately 7.5%. He commented on county statistics, the work being done to fight provider and premium fraud, and the costs associated with these type of fraud cases. He noted that the county requests for funding exceed the funding available for distribution, that some counties are doing better than others, and recommended that a closer look be given to how funds are distributed.

Chairperson Marshall expressed that payroll is down and that this assessment affects employers. He commented on the global impact of COVID-19 requiring everyone to do more with less and expressed his support for a minimum increase to of up to 4% to show his commitment to the need to fight fraud and in recognition of the benefit these efforts provide to employers.

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

Commissioner Baker commented on these difficult times and the need to be sensitive to the many employers who are struggling to survive and how the cost of an increase will add to the struggles of those employers who remain. She commented that COVID has resulted in a drop in claims and that this may be an opportunity to pivot and strategically go after fraud in a more cost effective way.

Commissioner Bobrowsky commented that the challenge is that, with the reduction in payroll, the same assessment will be an increased cost when it is spread over fewer employers. He expressed that the State Fund would support a nominal 4% increase. In response to presentations made at the prior meeting, he indicated that the State Compensation Insurance Fund (SCIF) currently has a telemedicine case.

Commissioner Sherman acknowledged that the assessment and the fight against fraud is an investment and benefits employers. He commented on the impact that, even at 4%, an increase would have on employers who are trying to survive. He stated he is not proposing a negative impact but would like to hold the line and send a message acknowledging the employers' situation and a desire to do better with the existing funding level.

Commissioner Riggs commented that he understands the argument supporting a small increase but, as a representative of self-insureds, he holds firm to no increase. He also indicated that he does not want a decrease.

Commissioner Lopez commented that, although payroll is down, this is a temporary situation and that there is a backlog of fraud. He commented that the amount of fraud has not dropped and that it takes a long time to prosecute. He suggested a long term viewpoint and expressed that the assessment has a smaller impact on employers than the impact of fraud. He indicated that he would support an 8-9% increase.

Chairperson Marshall opened the floor for public comment.

Chief DDA Robert Brown of San Bernardino County addressed the Commission and commented that he appreciated the analysis offered by Commissioner Lopez; that he understands the impact on employers as expressed by Commissioners Sherman, Riggs, and Baker; and that he acknowledges the innovation suggested by Commissioner Baker. He indicated that, of the six assessments employers face, the Fraud Assessment Commission (FAC) assessment is the smallest and the only one that returns something to the employer through enforcement and deterrence of workers' compensation fraud. He indicated that employers can plan/budget for the cost of the assessment but can't plan for the cost of fraud. He indicated that statistics are down due to the high cost of fighting provider fraud.

There were no more public comments on this agenda item. Chairperson Marshall moved to the next agenda item.

b. Determination of Aggregate Assessment for Fiscal Year 2021-22

Motion

Commissioner Lopez made a motion for a 9% increase. There was no second.

Motion

Commissioner Bobrowsky made a motion for a 4% increase. Chairperson Marshall seconded the motion.

The floor was opened for discussion by the Commissioners and there were no comments.

Chairperson Marshall opened the floor for public comments and there were none.

Action

A roll call vote was taken. Commissioners Bobrowsky and Marshall voted 'yes' and Commissioners Baker, Sherman, Riggs, and Lopez voted 'no'. The motion failed with 2 'yes' votes and 4 'no' votes.

Motion

Commissioner Sherman made a motion for no increase to the current assessment level. Commissioner Riggs seconded the motion.

The floor was opened for discussion by the Commissioners and there were no comments.

Action

A roll call vote was taken. Commissioners Baker, Sherman, Riggs, Bobrowsky, and Marshall voted 'yes' and Commissioner Lopez voted 'no'. The motion passed with 5 'yes' votes and 1 'no' vote.

Chairperson Marshall clarified that the amount of the assessment for FY 2021-22 remains unchanged at \$77,909,442.

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

IV. Public Comments

Chairperson Marshall asked if there were any public comments regarding any of today agenda items. There being no further public comments, Chairperson Marshall moved to the next agenda item.

V. Other Business

a. Next Scheduled Meeting

Chairperson Marshall announced the next scheduled meeting as January 6, 2021.

Chairperson Marshall explained that at the January meeting the Commissioners will be voting on the FAC's Goal and Objectives for FY 2021-22. He suggested the creation of a sub-committee to review and make a recommendation at the January meeting. Commissioners Baker and Lopez expressed interest and were determined to be the sub-committee members.

b. Public Comments

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

VI. Closing Remarks

Chairperson Marshall thanked the Commissioners for their discussion and expressed that Commissioner Sherman's comments regarding employers doing more with less influenced him.

Commissioner Sherman expressed his gratitude to CDI and the district attorneys for their hard work and the benefits they provide to employers. He further indicated that he believes in the process and need but, in the current economic situation, he feels we all need to shoulder the load and thanked Chairperson Marshall for his comment.

Chairperson Marshall commented that all of the Commissioners care about the excellent work being done.

Commissioner Bobrowsky commented on his appreciation for the dialog and concern expressed. He commented on finding ways to be more effective with the resources we have and again expressed appreciation for everyone's dedication and efforts.

Commissioner Lopez thanked the district attorneys for their time and presentations. He commented that today's assessment vote appears to have been tied to the current payroll decrease while a similar practice does not seem to be used in the past and offered the example that if payroll increased 20% the assessment did not increase 20%. He suggested that if we are going to tie the decision to set the assessment based on changes in payroll now, we should also do so in the future when payroll increases.

There were no other closing remarks.

Motion

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

Action

The Commissioners unanimously approved and the meeting adjourned at 11:35 a.m.