

**STATE OF CALIFORNIA  
FRAUD ASSESSMENT COMMISSION**

**Summary Meeting Minutes  
Sacramento, California  
September 5, 2018**

In attendance: Don Marshall, Chairperson; and Commission Members John Riggs, Lilia Garcia-Brower, Joel Sherman, Dr. Karla Rhay, and Dante Robinson.

Others present: George Mueller, Deputy Commissioner (DC), Enforcement Branch, California Department of Insurance (CDI); Eric Charlick, Assistant Chief (AC), CDI Enforcement Branch; Patricia Hein, Senior Staff Counsel, CDI Legal Division; Vern Pierson, District Attorney for El Dorado County and Co-Chair of the California District Attorney Association's Insurance Fraud Committee.

**I. Fraud Assessment Commission**

**Opening Remarks**

Chairperson Marshall opened the meeting at 10:35 am and asked the Commissioners if they wished to make any opening comments.

Commissioner Robinson commented on the positive outcome of the Insurance Commissioner's Review Panel.

Commissioner Rhay thanked the Commissioners that participated on the Review Panel for their hard work.

There were no additional opening comments.

Chairperson Marshall then asked for a motion to approve the submitted summary minutes from the June 20, 2018 meeting.

**Motion**

Commissioner Riggs made a motion to accept the June 20, 2018, summary minutes as submitted. Commissioner Rhay seconded the motion.

**Action**

A roll call vote was taken. The Fraud Assessment Commission (FAC), voted unanimously to approve the summary meeting minutes.

Chairperson Marshall moved to the next agenda item.

### **Sub-Committee Report on the RFA Update**

Commissioner Rhay reported that the sub-committee (Commissioners Marshall and Rhay) met with CDI on August 7, 2018, to discuss streamlining the RFA process and revisions to the application documents submitted by the counties.

Chairperson Marshall commented that the RFA process belongs to CDI and that it is a work in progress.

Chairperson Marshall moved to the next agenda item.

### **CDI Legal Report: Separate Prosecution Expense Fund**

In response to discussion and questions raised at the prior meeting, Ms. Hein reported that such a use of funds is not allowed pursuant to California Insurance Code (CIC) Section 1872.83(d) and California Code of Regulations (CCR) Title 10, Section 2698.52 et seq. which sets forth the criteria for distribution of funds to district attorneys.

Chairperson Marshall moved to the next agenda item.

### **CDI Legal Report: Labor Code Section 3820**

Chairperson Marshall explained that he asked Ms. Hein to report to the Commission on the civil fraud actions under Labor Code Section 3820.

Ms. Hein reported that, in the interest of eliminating fraud in the workers' compensation system, LC 3820 authorizes civil suits for money penalties and that this is an additional tool that is available to the District Attorneys.

Chairperson Marshall moved to the next agenda item.

### **Public Comments**

Chairperson Marshall asked if there were any public comments and there were none. Chairperson Marshall then turned the meeting over to DC Mueller.

## **II. Enforcement Branch Administrative Update**

### **Distribution of the Fiscal Year (FY) 2017-18 Year-End Balance**

DC Mueller acknowledged the Local Assistance and Fraud Division Operations staff for their efforts with the application review process. DC Mueller explained that, in accordance with (CCR) Title 10, Section 2698.52 et seq., the Insurance Commissioner's Review Panel reconvened on August 22, 2018 to make a recommendation for the distribution of the Fiscal Year (FY) 2017-18 Year-End Balance estimated at \$1,094,000. On August 29, 2018, the Enforcement Branch met with the Insurance Commissioner. He then explained that the Insurance Commissioner decided to use the 'pro-rata' approach for the distribution of the FY 2017-18 Year-End balance and provided the Commissioners with a letter and chart from the Insurance Commissioner indicating his distribution decision.

DC Mueller asked the Commissioners that were Review Panelist if they had any comments.

Chairperson Marshall commented that he was glad the 'pro-rata' approach was used.

Commissioner Sherman commented that he appreciated the DA's work and that their 'pro-rata' approach made sense.

Chairperson Marshall further commented on a bill (Assembly Bill 2046) pending the Governor's signature that, if signed, would require remaining funds to be used to augment DA funding.

There were no other comments.

### **Administrative Update**

DC Mueller continued and brought the Commissioners' attention the FY 2017-18 Annual Report that was provided and indicated that the report incorporated the information requested at the June 20, 2018, meeting.

Chairperson Marshall stated that he would like to have the report earlier so it could be reviewed prior to the meeting.

DC Mueller provided an update on recruitment efforts and discussed vacancies, promotions, testing, and minimum requirements.

DC Mueller then explained that the Governor's State Employee Medal of Valor Award is the *highest* honor California bestows on its public servants and CDI is proud to report that Detective Aivaras Petraitis is a 2018 Award recipient. On Sunday, November 13, 2016, Detective Petraitis performed an ocean rescue of a mother and her son off of the Ventura coast. This is the first Medal of Valor Award for CDI.

### **Public Comments**

DC Mueller asked if there were any public comments and there were none.

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

DC Mueller continued to the next agenda item and introduced Vern Pierson, District Attorney (DA) for El Dorado County and Co-Chair of the California District Attorney Association's Insurance Fraud Committee.

DA Pierson explained that CDI and the DAs had been separate presenters until four years ago when they changed to making a joint presentation and that today's Overview for FY 2017-18 would start off as a collaborative presentation and then a group of the DAs would make a presentation.

DC Mueller and DA Pierson then presented a video that talked about efforts in fighting different types of insurance fraud and summarized some of their cases. DC Mueller thanked Damian Scribner and Robert Laughter for producing the video.

DA Pierson then summarized additional program successes and highlights.

Commissioner Garcia-Brower asked some questions and led a discussion on county outreach efforts. Commissioner Garcia-Brower expressed her concerns and interests in making sure outreach effectively connects both statewide and locally with a wide range of employees and employers.

Commissioner Sherman commented on some of San Diego's outreach efforts and further commented that if there is one type of fraud there is probably other types and more awareness brings more eyes to the problem.

DA Pierson responded with highlights of county efforts and acknowledged that statewide outreach might also provide a broader reach.

DA Pierson then turned the presentation over to Jill Nerone (Supervising Deputy DA with Alameda County), Michael Silverman (Chief Deputy DA with Riverside County), and Jennifer Snyder (Head Deputy DA with Los Angeles County) who spoke on behalf of the DAs. They commented that a letter was sent to each of the Commissioners prior to the meeting and copies of the letter were placed on the table in the room and made available to the public.

The three representatives then discussed and presented a series of financial and statistical charts that reinforced the information in the letter and highlighted the historical cost of the fraud assessment paid by employers, the counties growing costs to fight fraud, and the increasing complexity of the fraud being committed.

Mr. Silverman proposed three scenarios to the Commission, all requesting an increase to the FY 2019-20 fraud assessment.

Chairperson Marshall suggested a 15 minute break. After a short recess, the meeting reconvened at 12:20 pm.

Mr. Silverman informed the Commission that he had made an error in his calculations and provided his corrected proposed assessment numbers.

#### **IV. Public Comments**

Chairperson Marshall asked if there were any public comments.

Robert Brown, Chief Deputy DA with San Bernardino County, commented on the proposed SB 10 which, if passed, would amend the pretrial procedures for bail and result in significantly taxing county resources to meet the increased evidence demands.

There were no other public comments and the meeting move to the next agenda item.

#### **V. Aggregate**

##### **Advice and Consent**

Chairperson Marshall then moved to Advice and Consent of the Insurance Commissioner's distribution decision for the FY 2017-18 Year-End Balance of \$1,094,000 and asked the Commissioners if they had any comments.

Commissioner Riggs asked how the balance came about and AC Charlick explained that it is primarily fines and penalties collected by the DAs and deposited into the Workers' Compensation Fraud Account.

Chairperson Marshall explained that four (4) of the five (5) Review Panelists voted in favor of the 'pro-rata' approach and the Insurance Commissioner went with this approach.

Chairperson Marshall asked if the Commissioners had any comments on whether to use the year-end balance to augment DA funding or offset FY 2019-20 collections.

Commissioner Riggs commented that the new bill is favoring augmenting.

There were no other comments.

##### **Motion**

Commissioner Rhay made a motion to use the funds to augment DA funding. Commissioner Robinson seconded the motion.

### **Action**

A roll call vote was taken. The Fraud Assessment Commission (FAC), voted unanimously to approve augmenting DA funding.

Chairperson Marshall asked if the Commissioners had any comments on the Insurance Commissioner's distribution decision. There were none.

### **Motion**

Commissioner Robinson made a motion to accept the Insurance Commissioner's funding recommendation and Commissioner Sherman seconded the motion.

### **Action**

A roll call vote was taken. The Fraud Assessment Commission (FAC), voted unanimously to approve the funding recommendation.

## **Aggregate Assessment for FY 2019-20**

Chairperson Marshall opened the discussion by commenting on the statistics presented by the DAs and posed questions to Mr. Silverman regarding the request for additional funding, planned utilization, and impact on the Program.

Mr. Silverman responded with information regarding case complexities, restitution collected, and cases in the pipeline.

Commissioner Sherman commented on the overall impact to employers of increases in the Workers' Compensation assessment along with other assessments.

Commissioner Garcia-Brower commented on performance over the past 3-4 years and asked the counties to consider employers and employees in industry sectors impacted by the 'underground economy' and she requested more outreach to these industry sectors.

Commissioner Rhay commented that she understood the DAs message but wasn't sure more money was the solution. She also agreed that more outreach is needed.

Commissioner Riggs commented that he was open to some increase. He further commented on the improvement in performance and the importance of media exposure, especially for high impact cases, in order to prevent fraud from happening in the first place.

Commissioner Robinson commented that, with the current economy, there is an opportunity to take advantage of the growth and that he favored an increase. He also posed the question: If not now, then when?

There were no additional comments at this point so Chairperson Marshall asked if there was a motion.

## **Motion**

Commissioner Riggs made a motion to increase the assessment to the amount of \$72,138,372, an amount presented by Mr. Silverman on behalf of the DAs. Chairperson Marshall seconded the motion.

Chairperson Marshall asked the Commissioners for their comments.

Commissioner Garcia discussed outreach to employer organizations and labor groups.

Ms. Snyder of Los Angeles commented on shifting outreach from educating insurers to educating labor groups.

Commissioner Garcia-Brower highlighted some of the outreach efforts being used by San Diego County and asked that consideration be given to a statewide outreach effort.

DC Mueller indicated that CDI would take the lead on creating an Outreach Committee to collaboratively share outreach efforts.

Chairperson Marshall expressed his agreement with a statewide effort to deliver universal and individual outreach messages.

Commissioner Sherman commented on evaluating the outreach component of the applications and that he also favors the centralized idea.

Commissioner Robinson commented that he would like to see a higher assessment than the current motion to keep up with growth and that the Program is behind in providing resources.

Commissioner Rhay commented that she understands the 'If not now, then when?' question and would consider supporting the current proposal but not higher.

Commissioner Sherman indicated he was struggling with the current number.

Commissioner Garcia-Brower commented that she was comfortable with the current motion and that her hesitation was that she has heard the same message from the counties in the past.

The Commissioners had no further comments.

## **Action**

A roll call vote was taken.

The motion passed with 5 'yes' votes from Commissioners Marshall, Riggs, Rhay, Garcia Brower, and Robinson and 1 'no' vote from Commissioner Sherman.

## **Public Comments**

Chairperson Marshall asked if there were any public comments and there were none.

## **VI. Other Business**

### **Administrative Update**

Chairperson Marshall commented that the FY 2018-19 Goals and Objectives were provided to the Commissioners for review and that the discussion for FY 2019-20 will be at the next meeting.

Chairperson Marshall indicated that the next meeting will take place in Southern California on January 9<sup>th</sup> at CDI's Inland Empire Regional Office in Rancho Cucamonga.

## **VII. Public Comments**

Chairperson Marshall asked if there were any public comments and there were none.

## **VIII. Closing Remarks**

Chairperson Marshall asked the Commissioners if they had any closing comments and there were none.

## **Motion**

Commissioner Garcia-Brower made a motion to adjourn the meeting and Commissioner Rhay seconded the motion.

## **Action**

The Commissioners unanimously approved and the meeting adjourned at 1:45 p.m.