

**State of California
FRAUD ASSESSMENT COMMISSION**

**Summary Meeting Minutes
Sacramento, California
September 9, 2009**

In attendance: William Zachry, Chair, and Commission Members Jiles Smith, Lilia Garcia, and Lisa Middleton.

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

Chairman William Zachry opened the meeting with an agenda overview. The first order of business was the summary of meeting minutes.

Motion

Commission member Middleton made the motion to accept the June 17, 2009 minutes as submitted.

Commissioner Garcia seconded the motion.

Action

The minutes are unanimously passed.

The Chair addressed the public comment process. Before the Commission takes action on a particular agenda item, the Chair will ask for public comment. If you wish to address the Fraud Assessment Commission (FAC), please step up to the microphone. To assist the transcriber, the public can provide their name or submit a business card.

Vanessa Himelblau, Senior Legal Counsel commented that public comments must pertain to the agenda item and be no more than three minutes in length and will be uninterrupted.

Lori Kammerer, Small Business California, addressed the FAC and provided a brief update on Senate Bill 313 (DeSaulnier). This bill increases the current penalty on uninsured employers or employers who are found to be illegally uninsured from \$1,000 to \$1,500. This piece of legislation is a compliment to SB 869 (Ridley-Thomas) which established the uninsured identification program which coordinated the efforts between the Department of Insurance, the Workers' Compensation Insurance Rating Bureau (WCIRB), Employment Development Department (EDD) and others to identify employers who are uninsured.

Chairman Zachry remarked that the primary function of the FAC is the determination of the aggregate assessment. "This year the budgets are strained and the amount of money that the district attorneys have to supplement the fight against workers' compensation fraud has been fairly limited," stated Zachry. Additionally, there are competing challenges as employers received a significant increase in assessments to the employer community. The FAC must take this issue into consideration when determining the aggregate assessment for the department and the district attorneys.

Chairman Zachry called on each of the thirty-seven grant-funded counties to provide oral presentations if the district attorneys had additional or new information to support their prospective budgets. In summary, sixteen (16) counties voluntarily addressed the FAC. They were Alameda, Amador, Contra Costa, Fresno, Humboldt, Kings, Los Angeles, Monterey, Riverside, San Diego, San Francisco, Santa Barbara, Santa Clara, Tulare, Ventura and San Bernardino.

Basically, each county recognized and commented on the economic situation in California and requested maintenance of grant funds. A couple of counties requested a 3% increase in their funding to satisfy COLA.

District Attorneys

Gary Fagan, co-chair, California District Attorneys Association (CDAA) Insurance Fraud Committee, addressed the FAC. "There is no extra money in anyone's office right now," remarked Fagan. Businesses are struggling, revenues are down, sales tax is down, real estate is down and capital gains are down, noted Fagan. "The district attorneys are hoping to maintain the grant funding so they can maintain their programs," stated Fagan.

On behalf of district attorneys statewide, Mr. Fagan urged the Commission to do everything possible to maintain the funding this year so that counties can struggle through and continue to do the job expected of them.

Public Comment

Ms. Trent addressed the FAC and opposed funding for Sacramento and Yolo Counties alleging blatant disregard for workers' compensation insurance fraud.

Dina Padilla opposed funding also for Yolo and Sacramento. Ms. Padilla also opposed funding for Los Angeles and Marin Counties on a separate issue all regarding the handling of injured workers cases.

Steve Zeltzer gave public comment that no budget should be passed without examining district attorneys about the prosecution of insurance company fraud.

Enforcement Branch, Fraud Division

Deputy Commissioner Plein reported that Fraud Division would be requesting a slight decrease in funding. "This is the result of budgetary issues within state government and the Insurance Commissioner's ability to right size the department as he sees fit," noted DC Plein.

Fraud Division continues to work significant investigations across all lines of insurance fraud. Fraud Division is working with Los Angeles County on an \$18 million Premium Fraud Case against a Staffing Services Company.

In the Central Valley, Fraud Division worked with Kern County on a medical provider case. "After the provider got out of jail on bail, the same provider continued the bad behavior and was re-arrested for continuing to commit insurance fraud," commented Plein.

Fraud Division continues to work claimant fraud and recently arrested two attorneys and a public defender for insurance fraud. Also, Fraud Division investigated an insider fraud case, where individuals were fraudulently soliciting outstanding medical liens. However, the medical provider was unaware and the perpetrators were able to steal approximately \$1 million.

Deputy Commissioner Plein reported that overall case selection for investigation and prosecution should be based on three principles: 1) Public Safety, 2) Return on Investment and 3) Duty to enforce the law regardless of the size of the case.

Additionally, each Regional Office throughout the State has significant premium fraud cases being investigated with approximately \$139 million in identified fraud. Furthermore, Deputy Commissioner Plein noted that the Legal Division was involved in a qui tam action against a major pharmaceutical firm.

Also, the department is working with EDD and State Fund on a new payroll matching program. This program is a proactive approach to identify and investigate insurance fraud throughout California.

The Deputy Commissioner concluded his remarks and reiterated the request for funding of \$20,055,035 for Fiscal Year 2010-2011. "This amount is approximately \$1.2M less than last year's funding," commented DC Plein.

Public Comment

Mr. Zeltzer made public comment that the presentation by the department did not include a category for fraud by insurance companies. Again, Ms. Padilla remarked that she supported Mr. Zeltzer's comments and further related on individual injured worker cases. Unfortunately, these cases do not fall under the purview of the FAC.

Senior Legal Counsel Himelblau requested on several occasions that Ms. Padilla keep her remarks relevant to the budget presentation.

Determination of the Aggregate

The Fraud Assessment Commission began their deliberation and discussion regarding the aggregate assessment for fiscal year 2010-2011.

Deputy Commissioner Plein provided the FAC with the amount available in the Workers' Compensation Fraud Account totaling \$3,096,868, which can be used to either augment or offset the aggregate.

Commission member Jiles Smith acknowledged his appreciation to the district attorneys for either their remarks and/or their submitted prospective budgets. He noted that he was very encouraged that the program was going in the right direction and the numbers looked good.

Commission member Lilia Garcia remarked that she was pleased with the increase in outreach and collaboration. Ms. Garcia commented on the necessity of getting the message out there. "But I think the idea that we are going to terminate crime is unrealistic, and that's where I think that outreach and communication tools really help increase the impact of all the work that you invest in your offices and in the courtrooms," stated Garcia.

Commission member Lisa Middleton commended everyone for the restraint shown in the requests for funding. Ms. Middleton commented on the economic challenges everyone is facing and in particular the employers in this state who are in fact the individuals who are responsible for the funding and bear the greatest burden of costs.

Ms. Middleton congratulated some counties for their creativity especially when directed to low income and monolingual in Spanish. For those interested, Commission member Middleton suggested reading a recent report entitled "Broken Laws, Unprotected Workers." This study relates the impact of violations of employment and labor laws in Los Angeles, Chicago and New York.

Chairman Zachry provided his overall observations of the meeting. He thanked the district attorneys for their restraint in funding requests. He further noted that the department's request for a funding reduction was very important.

Chairman Zachry noted the importance of outreach between the district attorneys and the department and other allied agencies. Mr. Zachry's personal goal is to eliminate the split staffing and for counties to move toward fully funding individual positions. Also, the cost drivers are medical providers and the employers, but it is necessary to include claimant insurance fraud and have an overall balanced approach.

In reviewing the numbers, the program had 1,090 pending prosecutions in the caseloads with approximately \$312 million worth of chargeable fraud. Although, this amount reflects a lot of fraud, it is not all of the fraud that exists. "We had 555 convictions in the last fiscal period, and I think that's a very, very good number in terms of compared to any other state in the nation," remarked Zachry.

Motion

Commission member Middleton made the motion for a collected level of \$47,060,937. District Attorneys funded at \$29,827,500 and the Fraud Division funding at \$20,055,305 for a total aggregate of \$50,157,805.

Commission member Middleton continued. The incidental expenses of \$200,000 and the Department of Industrial Relation (DIR) notification, cost of \$75,000.

Commission member Garcia seconded the motion.

Chairman Zachry offered time for further discussion and being none called the vote.

Action

The Fraud Assessment Commission unanimously approved the motion.

That concluded the business before the FAC and Chaiman Zachry adjourned the meeting.