

**STATE OF CALIFORNIA
FRAUD ASSESSMENT COMMISSION**

**Summary Meeting Minutes
Sacramento, California
September 14, 2022**

Pursuant to SB-189 approved by Governor Gavin Newsom on June 30th, 2022, this meeting was a hybrid meeting with the option to attend in person or via Zoom Video Conferencing services with options to participate online and via telephone.

Commissioners personally in attendance: Jay R. Bobrowsky, and John Riggs. Commissioners remotely in attendance: Don Marshall, Chairperson, Christine Baker and Branden Lopez.

Others present: Eric Charlick, Division Chief (DC), California Department of Insurance (CDI) Enforcement Branch. Others attending remotely: George Muller, Deputy Commissioner, Victoria Martinez, Assistant Chief, CDI Enforcement Branch, and Yvonne Hauscarriague, Senior Staff Counsel, CDI Government Law Bureau.

I. Fraud Assessment Commission

a. Opening Remarks

Chairperson Marshall opened the meeting at 10:39 a.m. and provided an explanation of the logistics for the online and telephonic meeting. It was stated that materials provided to the Commissioners are available to the public by sending a request to LAU@insurance.ca.gov.

Chairperson Marshall asked the Commissioners if they wished to make any opening comments; there were no opening comments.

b. Approval of the Summary Meeting Minutes

Chairperson Marshall then proceeded with the approval of the summary minutes from the September 7, 2022, meeting.

Motion

Commissioner Lopez made a motion to accept the minutes. Commissioner Bobrowsky seconded the motion.

Action

The summary minutes were unanimously accepted via a roll call vote.

c. Public Comments

Chairperson Marshall asked if there were any public comments and there were none. He then turned the meeting over to Deputy Commissioner George Mueller of the Enforcement Branch.

II. Enforcement Branch Report

a. Administrative Update

The Insurance Commissioner's Review Panel met in July and recommended the pro-rate method for any additional funds. CDI had no unspent Fraud Division funds, however there is approximately \$170,000 in fines and penalties that will be distributed to the participating counties in FY 2022-23. DC Mueller stated for the fourth year in a row CDI will be participating in the International Fraud Awareness week which will take place from November 13th through the 20th. CDI will be posting a variety of anti-fraud messages to their social media platforms.

b. Public Comments

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

III. Aggregate Assessment

a. Discussion

Chairperson Marshall noted that the Commission will take public comments after the Commissioners' comments, before the vote.

Commissioner Bobrowsky discussed having a better functioning program before increasing the assessment. Lack of staff and turnover is impacting efficiency. He also encourages more outreach. When determining whether to increase the assessment or not, it comes down to results and outcomes, and it would be hard to increase the funding when outcomes are declining.

Commissioner Baker concurred with Bobrowsky. She said they are in a precarious situation with staffing shortages and turnover and recommended looking internally and getting the programs turned around, then looking at an increase next year potentially.

Commissioner Lopez said insurance fraud costs affect different communities in different ways. These are highly competitive industries and when one contractor cheats the system by not having WC insurance, they can outbid their competitors and that impacts businesses that follow the law. Good businesses are going out of business because they follow the law.

Commissioner Riggs echoed Commissioners Bobrowsky and Baker's comments. It is a challenge to find good staff at this time. He feels we are in a rebuilding phase.

Chairperson Marshall stated he likes the term rebuilding. The question is if additional funding is needed to rebuild or if it's a restructuring that's needed. He said he went over more numbers and it is concerning. He recalls a case where the prosecutor allowed a plea deal where the insurance fraud charges were dropped and the employer ended up going out of business because the X-mod couldn't be changed and they couldn't afford the premium. Also, the stats are concerning: Misdemeanor arrests are down 60%, Felony convictions are down 25%, and Misdemeanor convictions are down 46%. It is also bothersome that there are roughly the same number of staff, but drastically less investigations being opened. It does not appear the number of investigations or prosecutions being opened support the number of staff being requested. He thinks restructuring is a better use of funds.

Commissioner Baker likes the idea of restructuring. She thinks more technology driven solutions are available.

Commissioner Lopez said that simply the number of investigations is not that telling as several may not have been viable cases. It could be that the current number of investigations are more viable or more complex. He'd like to discuss giving DA offices goals as guidance if we are going to hold them to the outcomes.

Chairperson Marshall agreed with Commissioner Lopez questioning if the number of investigations were solid investigations. The Coalition Against Insurance Fraud estimates the WC fraud problem nationally is \$35 billion. Chairperson Marshall stated prosecutions are the best deterrent against WC Insurance Fraud and the number of prosecutions is a good measurement. Steve Smith & Natalie Chandler are working to improve the quality FD1s. The punishments for Uninsured Employers needs to change, but that is a legislation change. He also thinks any WC insurer should have access to unredacted EDD records to match payroll employers to their underwriting docs.

Commissioner Bobrowsky said that some counties are doing well and some are not doing so well. He thinks it's important to take what's working in some counties and emulate it in other counties that aren't performing. Commissioner Bobrowsky said Commissioner Lopez's comments resonated with him and maybe SCIF and the Center for Contract Compliance can create a taskforce.

Commissioner Riggs said that a lot of the WC fraud is a legislative failure. He said with a 1% threshold it's nearly impossible to deny these claims. No amount of money for DAs will change the WC fraud until there is a change in the legislation.

There was some discussion regarding legislation changes and the role of the FAC.

Chairperson Marshall said historically the FAC Commissioners have individually supported legislation changes but the FAC has not led any legislation changes.

Commissioner Bobrowsky returned to the funding discussion and stated doesn't think it's a funding issue, but an issue of use of funds.

b. Public Comments

Chairperson Marshall opened the floor for public comments.

Robert Brown (San Bernardino) said there are a lot of factors to be considered when looking at results. He heard at CDAA the mutual challenges DA offices are facing is to recruit and retain staff and get them up to speed.

Bill Lee (San Bernardino): Agrees there's a lot of work to be done. It comes down to not having stability in staffing which relates to not having stability in funding. He said a zero increase is the same as a decrease in funding. The DAs asking for an increase is really just asking to maintain status quo. If there is no increase this year, then next year there is a need for a larger increase and he discourages this instability in funding.

There were no further public comments.

c. Determination of Aggregate Assessment for Fiscal Year 2023-24

Commissioner Lopez made a motion for a 10% increase assessment. No second.

Commissioner Lopez made a motion for a 5% increase. No second.

Commissioner Riggs made a motion to increase assessment by 3%. Commissioner Lopez seconded. Roll call vote: Bobrowsky-no, Baker-no, Lopez-yes, Riggs-yes, Marshall-no. Motion did not pass.

Commissioner Marshall made a motion that assessment remain the same.

Commissioner Baker seconded. Commissioner Marshall updated the motion that the assessment remain at \$85,700,386. Commissioner Baker seconded. Roll call vote: Bobrowsky-yes, Baker- yes, Lopez- no, Riggs-no, Marshall-yes. Motion passes and the aggregate assessment remains the same at \$85,700,386.

IV. Other Business

a. Next Scheduled Meetings

Chairperson Marshall announced the next scheduled meeting is January 11, 2023.

V. Public Comments

There were no public comments.

VI. Public Comments

The floor was opened for public comment on any agenda item and there were none.

VII. Closing Remarks

Chairperson Marshall asked the Commissioners if they wished to make any closing comments. Commissioner Lopez stated he would like to have some time in the next meeting to discuss how to make improvements.

Motion

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

Action

The Commissioners unanimously approved via a roll call vote and the meeting adjourned at 11:45 a.m.