

**California Victim Compensation and Government Claims Board
Open Meeting Minutes
September 16, 2010, Board Meeting**

The California Victim Compensation and Government Claims Board (Board) convened its meeting in open session at the call of Bill Leonard, Secretary, State and Consumer Services Agency, at 400 R Street, Sacramento, California, on Thursday, September 16, 2010, at 10:01 a.m. Also present were Board members Les Kleinberg, Deputy Controller, acting for and in the absence of John Chiang, Controller, and Board member Michael Ramos, San Bernardino County District Attorney.

Board staff present included Julie Nauman, Executive Officer; Patty Harris, Chief Deputy Executive Officer; and Wayne Strumpfer, Chief Counsel. Tisha Heard, Board Liaison, recorded the meeting.

The Board meeting commenced with the Pledge of Allegiance.

Item 1. Approval of Minutes of the August 19, 2010, Board Meeting

The Board voted to approve the minutes of the August 19, 2010, Board meeting.

Item 2. Public Comment

The meeting was opened to public comment. No public comment was offered.

Item 3. Executive Officer's Statement

Executive Officer Julie Nauman reported the following:

- In a continuing effort to bring statewide awareness to victim restitution and restitution collection efforts, last month Executive Officer Julie Nauman reported she travelled to Southern California and met with Orange County District Attorney Tony Rachaukas, Riverside County District Attorney Rod Pacheco, Los Angeles City Attorney Carmen Trutanich, and San Diego County District Attorney Bonnie Dumanis. These meetings continued and in August Ms. Nauman met with Ventura County District Attorney Gregory Totten, Santa Barbara County District Attorney Joyce Dudley, and San Luis Obispo County District Attorney Gerald T. Shea. These frank and open dialogues included victim compensation and the state of the Restitution Fund. As occurred in prior meetings, these most recent meetings continued to be to very successful. Ms. Nauman stated working with CalVCP's statewide partners is important for the future of the Victim Compensation Program because restitution is a complex issue with many entities involved. Each entity plays integral roles in the imposition of orders and the collection of restitution revenues that support the CalVCP. Executive Officer Nauman reported each meeting brought something different to the table and much was learned on both sides. In most cases, the district attorney's offices, with the assistance of the Victim Witness Directors, invited other agencies and departments involved in compensation and restitution and in one case a presiding judge joined the discussion. Ms. Nauman reported these meetings were a great prelude leading up to the upcoming Restitution Summit scheduled to occur on November 10, 2010. Ms. Nauman stated the great response from the district attorneys she visited should be reflected in a great turnout and great discussion at the Restitution Summit. Ms. Nauman reported that earlier this morning she met with Michael Ramos, San Bernardino County District Attorney and Board member, to discuss details of the Summit. Ms. Nauman stated the Board members all share a strong commitment to a Restitution Fund that is stable and thriving for years to come.
- The California Crime Victim Assistance Association gathered for its quarterly meeting on August 31st. Heading the list of important topics of discussion was the current state of the Restitution Fund. During the roundtable session, Committee members enthusiastically

discussed future strategic actions to keep the Fund solvent, as well as plans for the upcoming Restitution Summit. Executive Officer Nauman reported the Committee also discussed the CaRES modification project.

- For the period July 1, 2009, through June 30, 2010, CalVCP received over 57,000 applications, an increase of nearly 3,000 compared to the prior year. Of that amount, nearly 50,000 applications were approved. Last year the Victim Compensation Program provided assistance on approved claims amounting to \$96.5 million, an increase of nearly \$2.5 million in the prior year. Ms. Nauman reported the largest portion of that assistance was for medical and mental health payments, the CalVCP's two highest categories of payments.

Chairperson Leonard thanked Board member Michael Ramos for taking the lead on the Restitution Summit.

Item 4. Contract Report

Executive Officer Julie Nauman presented the contract report, an action item, for Board approval. Ms. Nauman reported the contract is with the California Department of Corrections and Rehabilitation (CDCR), Juvenile Services Unit, in the amount of \$219,446. Ms. Nauman stated for the past two fiscal years, the CalVCP previously had a contract with CDCR that has proven very beneficial to the CalVCP. Ms. Nauman reported the contract entails CDCR staff outreaching to judges and looking at cases where no restitution order was issued or the restitution order was a TBD order. CDCR staff is communicating directly with judges and requesting that they reconsider the imposition of an order or specify a dollar amount in those orders with a TBD.

The Executive Officer reported that in fiscal year 08-09, the cost of the CDCR contract was approximately \$170,000. During that same fiscal year, nearly \$478,000 in impositions was received and revenue generated directly to the CalVCP from those impositions amounted to \$366,000. In addition, in fiscal year 09-10, the cost of the contract was approximately \$199,000 and during that same fiscal year impositions increased significantly to approximately \$836,000 and the CalVCP received approximately \$324,000.

The Board voted to approve the interagency contract with CDCR in the amount of \$219,446.

Item 5. Legislative Update

Jon Myers, Deputy Executive Officer, Legislation and Public Affairs Division, presented the Legislative Update, an information item, to the Board. Mr. Myers reported the following:

- AB 1715 (Fuentes) and SB 910 (Kehoe), the VCGCB's Government Claims bills, both passed their respective houses and have moved to enrollment.
- SB 733 (Leno), the bill relating to VCP trauma center grants, and SB 1046 (Cogdill), the bill that requires that claims against CSU be presented to the Trustees of the CSU, rather than the VCGCB's Government Claims Program, and authorizes the Trustees to adjust and pay those claims, have both moved through their respective houses and have moved into enrollment. Mr. Myers reported the VCGCB opposes both bills.

Government Claims Program

Item 6. Consent Agenda (Nos. 1- 397)

The Board voted to adopt the staff recommendations for item numbers 1 through 397 with the exception of item numbers 209 and 391, which were removed in order to allow the claimants an opportunity to address the Board.

Consent Agenda Appearance
Item No. 209, G591385

Claimant William Luttge appeared and addressed the Board. Mr. Luttge requested \$40,000 in damages allegedly caused by a subcontractor who performed work adjacent to his property in 2007. Mr. Luttge alleged that as a direct result of this work, damage occurred to his retaining wall, which led to its failure in May 2010.

Chairperson Leonard asked Jackie Tinetti, Manager of the Government Claims Program, if staff had an opportunity to notify CalTrans to make them aware that the claim would be presented today. Ms. Tinetti stated CalTrans was made aware by copy of the August 2010 proposed action letter that was also sent to the claimant. Ms. Tinetti further stated the letter noted the staff recommendation and that the claim would be scheduled for hearing today. In addition, she stated staff attempted to contact CalTrans; however, they were unsuccessful in those attempts.

Board member Kleinberg stated the Board had the option of continuing the claim to allow the Board an opportunity to hear from CalTrans; however, since CalTrans is denying the claim, the Board would reject the claim on the grounds of complexity. Mr. Luttge stated Caltrans informed him that they were not rejecting the claim; rather, CalTrans stated the claim was over their \$5,000 limit.

Chairperson Leonard stated the three-member Board is not equipped to handle complex cases. The Board cannot swear in witnesses and allow cross-examination because it is not an adversarial forum. He stated the superior court is better suited to hear those types of cases. Chairperson Leonard further stated the Board's rejection of the claim is without prejudice and would allow the claimant the ability to go forward quickly to seek relief.

The Board voted to adopt the staff recommendation to reject the claim on grounds of complexity.

Consent Agenda Appearance
Item No. 391, G591340

Claimants Kristin and Robert Gordon appeared and addressed the Board. The Gordon's provided the Board with documentation in support of their claim. The Gordon's requested \$154,891.67 in payment for attorney fees, financial losses, and unspecified costs arising from the Department of Labor Standards Enforcement administrative hearing process.

Board member Kleinberg stated, according to the staff write up, the case moved to the Napa County Superior Court. He asked Ms. Gordon to explain the circumstances that lead to the case going to superior court. Ms. Gordon stated the Department of Labor Standards Enforcement (Department of Labor) refused to help them so they sought alternative resolution.

Chief Counsel Wayne Strumpfer stated errors of findings of fact are appealed to the superior court because they entail looking at the record, which is too complex for the Board. Mr. Strumpfer stated since the case has gone to the superior court, there is a question of whether the Board has jurisdiction over the matter.

Chairperson Leonard asked Chief Counsel Wayne Strumpfer if decisions of an administrative hearing officer can come before the Board for an appeal or if it is separate from the Board's jurisdiction.

Chief Counsel Wayne Strumpfer stated the Attorney General's Office believes the Board has jurisdiction; however, Government Claims Program staff do not necessarily agree.

Mr. Strumpfer further added the Board has jurisdiction for tort claims, but the Board is not an appellate board for the administrative law judge. He further stated the claim is too complex for the Board's consideration.

Ms. Gordon stated she understood the Board does not have jurisdiction over the Napa County Superior Court; however, she believed the Board had jurisdiction over the Department of Labor. Ms. Gordon stated that the information regarding their superior court judgment was provided merely to show the incidents that led up to the events and to explain why they filed when they did. She stated they could not act until the last action was filed in civil court.

Board member Ramos asked Ms. Gordon if the administrative hearing officer was provided the records, including the time cards and transcripts and, if so, in accepting the exhibits did the administrative hearing officer make a finding that they were not credible. Ms. Gordon stated the records were provided; however, they were ignored and not mentioned in the rulings.

Board member Ramos asked Chief Counsel Wayne Strumpfer to explain the next steps for the claimants if the Board accepted the staff recommendation to deny the claim for failure to meet the criteria set forth in Government Code section 911.2.

Chief Counsel Wayne Strumpfer stated they would go to superior court with this claim that a tort occurred against them by the Board. Mr. Strumpfer stated, as an alternative, the claim could be continued and the Board could ask the Napa County Superior Court to respond; however, he believed the Napa County Superior Court would not respond in any fashion.

The Board voted to adopt the staff recommendation to deny the late claim application as untimely.

**Item 7. Claim of National Data Services of Chicago, Inc.
Claim Number G590924**

National Data Services of Chicago, Inc., requested payment in the amount of \$243,577.90 for printing services provided to the Office of the State Chief Information Officer from the period April 2, 2010, through July 31, 2010.

The Board voted to adopt the staff recommendation to allow the claim in the amount of \$243,577.90 under authority of Government Code section 965 (agency pay).

**Item 8. Request for Delegation of Authority Under Government Code Section 935.6
by the Department of Mental Health**

The Department of Mental Health requested that the Victim Compensation and Government Claims Board approve its request for delegated authority to settle and pay or reject timely claims that do not exceed \$1,000. The delegation would be in effect from October 1, 2010, to September 30, 2011.

The Board voted to adopt the staff recommendation to approve the request.

Item 9. Applications for Discharge from Accountability for Collection

The Board voted to adopt the staff recommendation.

Item 10. Proposed Decision Regarding the Board's Jurisdiction Regarding the Claim in the Matter of George Shull

The Board voted to adopt the hearing officer's proposed decision to reject the claim because the Board lacks jurisdiction to consider the claim.

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 10:53 a.m.

Adoption of Service Limitations for Alternative Treatments and Authorization to File an Informational Copy with the Secretary of State

The claim was continued to the October 21, 2010, Board meeting.

Requests for Reconsideration

Recommendation: Allow and Refer to Program Staff for Verification
(Nos. 1 - 5)

The Board voted to adopt staff recommendations.

Requests for Reconsideration

Recommendation: Deny
(Nos. 6-15)

The Board voted to adopt staff recommendations.

Request for Reconsideration Following Board Action on a Proposed Decision

Recommendation: Deny
(No. 16)

The Board voted to adopt the proposed decision.

Proposed Decisions Following Failure to Respond
(Nos. 17-19)

The Board voted to adopt the proposed decisions.

Proposed Decisions Following Failure to Appear
(Nos. 20-32)

The Board voted to adopt the proposed decisions.

Closed Session

Pursuant to Government Code section 11126(c)(3), the Board adjourned into Closed Session with the Board's Executive Officer, Chief Deputy Executive Officer, and Chief Counsel at 10:56 a.m. to deliberate on the proposed decisions, numbers 33 through 51.

The Board reconvened into open session at 11:00 a.m.

Open Session

The Board voted to adopt the proposed decisions for numbers 33 through 51.

Adjournment

The Board meeting adjourned at 11:00 a.m.

Julie Nauman
Executive Officer

Julie Nauman

I certify that the California Victim Compensation and Government Claims Board adopted these minutes at its meeting of October 21, 2010, at Sacramento, California.

Date: October 21, 2010

By:

John Heard

Board Liaison (Affix Seal here)

