

**California Victim Compensation and Government Claims Board
Open Meeting Minutes
November 18, 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, November 18, 2010, at 10:00 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 October 21, 2010, Board Meeting

The Board voted to approve the minutes of the October 21, 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 that on November 10, 2010, the VCGCB held its first ever Restitution Summit which was cosponsored by the California District Attorneys Association (CDAA). Ms. Nauman then yielded her time to Board member Ramos who was the Restitution Summit moderator and the current CDAA President.

Board member Ramos complimented VCGCB staff for their efforts in organizing and planning the Restitution Summit. Mr. Ramos reported the panelists were excellent and great ideas were shared. He stated discussions included the importance of the Victim Compensation Program (VCP), improving restitution collection efforts, restitution courts, and stabilizing the Restitution Fund so that the VCP remains strong and able to continue to assist victims of crime. Mr. Ramos further stated that the Summit was just the beginning and efforts will continue to assure the stability of the Fund. Lastly, Mr. Ramos stated that he plans to discuss these ideas with the 57 elected district attorneys at the 2011 CDAA Winter Conference in January.

Board member Kleinberg stated he was impressed with the breadth and caliber of individuals who attended the Summit and applauded the time and commitment everyone made.

Chairperson Leonard thanked Board member Ramos for his co sponsorship and leadership at the Restitution Summit.

Executive Officer Nauman provided the Board with copies of the November 2010 issue of the *Victim Compensation Connection Newsletter*, a bimonthly publication of the VCGCB.

Item 4. Consent Agenda (Nos. 1- 412)

The Board voted to adopt the staff recommendations for item numbers 1-412, with the following exceptions: item numbers 19 and 59 were removed pending the review of additional information received; item numbers 62, 64, and 122 were removed to allow the claimants an opportunity to address the Board; and item number 287 was removed for jurisdictional reasons.

Consent Agenda Appearance
Item No. 62, G589731

Claimant Juan Javier Rios failed to appear. The Board voted to adopt the staff recommendation to reject the claim.

Consent Agenda Appearance
Item No. 64, G590061

Claimant Mark Edwards failed to appear. The Board voted to adopt the staff recommendation to reject the claim.

Consent Agenda Appearance
Item No. 122, G592051

Claimant Andrew Weaver failed to appear. The Board voted to adopt the staff recommendation to reject the claim.

Item 5. Claim of United Financial Casualty Company, as Subrogee of Randall Losh
Claim Number G587968

United Financial Casualty Company, as subrogee of Randall Losh, requested payment in the amount of \$66,097.61 for damage to his 2002 Freightliner allegedly caused by the California Department of Forestry and Fire Prevention during test burns on November 13, 2009.

The Board voted to adopt the staff recommendation to allow the claim in the amount of \$66,097.61 under authority of Government Code section 965 (agency pay).

Item 6. Claim of Rick Camacho dba GEMS
Claim Number G590668

Richard Camacho dba GEMS requested payment in the amount of \$35,936.46 for maintenance services provided to the California Department of Corrections and Rehabilitation, Wasco State Prison, for the period of March 3, 2010, through July 31, 2010. The amount requested also included prompt payment penalties.

Steven Tolle appeared on behalf of the California Department of Corrections and Rehabilitation in support of partially allowing the claim in the amount of \$27,696.96; however, he stated CDCR opposed awarding Mr. Camacho prompt payment penalties.

Chairperson Leonard asked Mr. Tolle to explain why the Board should not honor the claim in the full amount requested.

Mr. Tolle stated CDCR had a contract with Mr. Camacho; however, during the course of the contract, additional services were required that were not covered in the original contract. He stated CDCR did a Request for Information (RFI), not an amendment to the contract; however, CDCR staff misunderstood and told Mr. Camacho to continue the work. Mr. Tolle stated Mr. Camacho did perform the work, but CDCR disputes Mr. Camacho's entitlement to prompt payment penalties because the RFI was not an amendment to the contract. Mr. Tolle further stated if prompt payment penalties are granted, then Mr. Camacho is incorrect in his calculations for the prompt payment accounting. Mr. Tolle stated CDCR challenged the GCP staff recommendation to allow the prompt payment penalties based on the following: Mr. Camacho and GCP staff incorrectly start the late payment penalty rate on April 3rd however, the invoice is dated March 3rd which is only 30 days.

He stated the California Prompt Payment Act requires that state agencies pay properly submitted, undisputed invoices within 45 days of receipt. He stated the 15-day error would cost CDCR an additional \$1,038 that Mr. Camacho is not legally entitled to receive. Mr. Tolle stated Government Code section 927.2 is clear in its wording that "received by a state agency" is the date an invoice is delivered to the state location or party specified in the contract. He stated Mr. Camacho did not comply with the requirements of the Government Code; therefore, CDCR never had an opportunity to pay or dispute the invoice because it was not properly delivered. Mr. Tolle stated he had a copy of an envelope with a postmark date of May 10 that was received by CDCR on May 12. He stated if that is considered properly submitted, then the prompt payment penalties would not begin until June 27th. Mr. Tolle stated if the Board is suggesting that the RFI is an amendment to the contract, then Mr. Camacho should have mailed the invoice, in triplicate, to the regional county office in Bakersfield, which is not where he sent the invoice. Mr. Tolle further stated based on all of the information provided, it is CDCR's contention that because Mr. Camacho did not submit his invoice properly, he is not entitled to prompt payment penalties under the statute.

Chairperson Leonard asked Mr. Tolle if Mr. Camacho had been paid anything for his services. Mr. Tolle stated he has not been paid, because he did not submit his invoice to the required location. He stated CDCR's accounting office did not have an opportunity to pay or dispute the invoice because they never received it.

Chairperson Leonard asked Ms. Tinetti if there was additional information the Board needed to be aware of before taking action on the claim. Ms. Tinetti stated GCP staff and the VCGCB Legal Office reviewed the information submitted by the claimant and the calculations appear to be correct and appropriate under the terms of the contract and for the services rendered.

Board member Ramos stated someone at CDCR told Mr. Camacho to continue the work and in doing so, he relied on that information. Mr. Ramos further stated the next issue for Board consideration is whether CDCR has to pay Mr. Camacho the late penalty fee. Mr. Ramos asked Mr. Tolle if he provided the information that he presented today to GCP staff.

Mr. Tolle stated he did not provide the information to GCP staff because it was not part of the government claim package. Ms. Tinetti stated GCP staff made repeated attempts to get clarity from CDCR staff to no avail, which is the reason there are contrary recommendations regarding the claim. She further stated CDCR failed to produce any information prior to today.

Chairperson Leonard asked Mr. Tolle to explain why CDCR did not give the information he just presented to GCP staff. Mr. Tolle stated he received a telephone call from GCP staff asking CDCR to provide an explanation for their recommendation. He stated he asked GCP staff to put their request in writing so that he could then forward it to CDCR Legal. He stated GCP staff informed him that they would not put the request in writing.

Chairperson Leonard stated, from his point of view, the request from GCP staff was not a legal question it was simply a request for CDCR's evidence and documentation.

Chairperson Leonard asked Chief Counsel Wayne Strumpfer if there are rules that require all requests for evidence be in writing and, if so, if that requirement is in statute. Mr. Strumpfer stated requests for evidence are not required to be in written form. Mr. Strumpfer further stated departments do not require written requests either.

The Board voted to adopt the staff recommendation to allow the claim in full in the amount of \$35,936.46 under authority of Government Code section 965 (agency pay).

Item 7. Justin P. Kreigh dba Service West, Inc.
Claim Number G591360

Justin P. Kriegh, dba Service West, Inc., requested payment in the amount of \$308,890 for transportation and storage services provided to the California Energy Commission from the period of October 29, 2007, through July 26, 2010.

Kevin Bell appeared on behalf of the California Energy Commission and clarified that the start date was October 2008 and not 2007 as indicated by GCP staff.

The Board voted to adopt the staff recommendation, as amended, to allow the claim in the amount of \$308,890, under authority of Government code section 965 (agency pay).

Item 8. National Data Services of Chicago, Inc.
Claim Number G592694

National Data Services of Chicago, Inc. requested payment in the amount of \$96,571.18 for printing services provided to the Office of the State Chief Information Officer (OCIO) from the period of August 1, 2010, through September 7, 2010.

The Board voted to allow the claim in the amount of \$96,571.18 under authority of Government Code section 965 (agency pay).

Item 9. Request for Delegation of Authority Under Government Code Section 935.6 by the California State University

The California State University 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 each from December 1, 2010 to December 31, 2010.

Board member Kleinberg stated there was a typo in the writeup regarding the expiration date of the delegation. He clarified that the delegation would expire on December 31, 2010 not December 2011.

The Board voted to adopt the staff recommendation, as amended, to approve the request.

Item 10. Applications for Discharge from Accountability for Collection

The Board voted to adopt the staff recommendation to allow the requests.

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 10:24 a.m.

Request for Approval and Submittal of Victim Compensation Program Rulemaking Record (Tit. §§ 647.4, 649.14-649.62)

On June 17, 2010, the Board authorized the Executive Officer to begin the formal rulemaking process for proposed changes to the Victim Compensation Program (VCP) regulations. The Board published the proposed regulations for public comment and did not receive any comments.

Staff requested that the Board adopt the proposed VCP regulation changes and authorize the Executive Officer to file the proposed regulation changes with the Office of Administrative Law for review and approval.

The Board voted to adopt the Victim Compensation Program regulations and authorized the Executive Officer to file the VCP regulations with the Office of Administrative Law for their review and approval.

Requests for Reconsideration

Recommendation: Deny

(Nos. 1-9)

The Board voted to adopt the staff recommendations.

Request for Reconsideration Following Board Action on a Proposed Decision

Recommendation: Deny

(No. 10)

The Board voted to adopt the proposed decision.

Proposed Decisions on the Written Record

(Nos. 11-39)

The Board voted to adopt the proposed decisions.

Proposed Decisions Following Failure to Appear

(Nos. 40-63D)

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 10:27 a.m. to deliberate on the proposed decisions, numbers 64 through 81.

The Board reconvened into open session at 10:30 a.m.

Open Session

Chairperson Leonard requested that staff revisit the appropriate levels of medical provider rates currently paid by the VCP. He stated that due to the budget crisis, it needs to be addressed.

Chairperson Leonard requested staff prepare an item for the December 16, 2010, Board meeting, to address the following: the VCP's currently policy of paying medical providers Medicare, plus 20 percent; determine whether the federal health reform will have an impact, directly or indirectly, on the VCP's provider rates; and to ascertain whether PERS has a provider rate schedule and, if so, address the possibility of the VCP mirroring those rates.

The Board voted to adopt the proposed decisions for numbers 64 through 81.

Adjournment

The Board meeting adjourned at 10:30 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 December 16, 2010, at Sacramento, California.

Date: December 16, 2010

By: *Tisha Heard*
Board Liaison