

California Victim Compensation and Government Claims Board

Open Meeting Minutes

November 12, 2009, Board Meeting

The California Victim Compensation and Government Claims Board (Board) convened its meeting in open session at the call of Fred Aguiar, Secretary, State and Consumer Services Agency, at 400 R Street, Sacramento, California, on Thursday, November 12, 2009, 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 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. Minutes of the October 15, 2009, Board Meeting

Chairperson Aguiar and Board member Les Kleinberg voted to approve the minutes of the October 15, 2009, Board meeting. Board member Michael Ramos abstained.

Item 2. Public Comment

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

Item 3. Executive Officer's Statement

The Executive Officer introduced the VCGCB's new Chief Counsel, Wayne Strumpfer, who joined the Board on November 9, 2009. Mr. Strumpfer previously worked at the California Department of Corrections and Rehabilitation as the Acting Director of Health Care Operations.

The Executive Officer gave the following report:

- To better inform our stakeholders and to listen to their concerns and comments, the VCGCB hosted two significant events last week. On November 2nd the Fiscal Services Division convened the first Criminal Restitution Compact (CRC) Conference. The agenda included a presentation by the California Department of Corrections and Rehabilitation, a discussion of CRC expectations, and a review of victim confidentiality requirements. The following day the VCGCB welcomed the California Crime Victim Assistance Association Compensation Committee for their bimonthly meeting. The Committee, comprised of professionals from county victim assistance centers throughout the state, discussed the state of the CaIVCP and improvements to the CaRES system.
- In the interest of the VCGCB's employees' personal safety and to increase safety awareness, on October 27th the VCGCB arranged to have the CHP provide a presentation on employee safety in the workplace for all Board employees. The informative session provided information regarding personal, office, and traffic safety.
- Fundraising for the California State Employees Charitable Campaign at the VCGCB recently concluded after several weeks of great food, prizes, and lots of fun. The annual cake auction raised over \$800.00 and overall the VCGCB raised nearly \$4,400, well exceeding the goal set last year. The Executive Officer acknowledged all the effort and hard work from members of the Committee.

Item 4. Contract Report

The Executive Officer presented the Contract Report, an action item, for Board approval. The Contract Report consisted of the Cyber-Pro Systems Inc., dba Medical Data Exchange-Fiscal Intermediary Services (MDX) contract in the amount of \$519,630.00. The Executive Officer stated the contract was put out to bid and received three competitive bids. The contract was awarded to Cyber-Pro Systems, Inc., the lowest bidder. The Executive Officer further stated that in order to keep

the contract on a fiscal year renewal cycle, the contract term would expire on June 30, 2010, with an option to renew.

Chairperson Aguiar requested that staff make an evaluation of whether to renew the contract for an additional term early next year to ensure a contract is in place prior to the June 30, 2010, expiration date. The Board voted to adopt the staff recommendation to approve the contract.

Government Claims Program

Item 5. Consent Agenda (Nos. 1- 420)

The Board voted to approve the staff recommendations for numbers 1-420, with the following exceptions: item number 186 was removed pending further review of additional information received from the involved parties and item numbers 33, 34, 99, 106, 111, 326, 397, and 409 were removed in order to allow the claimants an opportunity to address the Board.

Consent Agenda Appearance **Item Number 33, G580603**

The claimant was not in attendance when called by the Chair to address the Board. As a result, the Board took action to adopt the staff recommendation to partially allow the claim in the amount of \$8.50. Sometime later, the claimant appeared and requested an opportunity to present her claim. The Board rescinded their prior action in order to allow the Board the ability to hear and act on the claim.

Because the representative from DMV was no longer in attendance to present their side, the Chair asked the claimant if she would prefer to have the Board continue the claim to the December 17, 2009, Board meeting or deny the claim so that the claimant could proceed to small claims court. The claimant requested the Board deny the claim.

The Board voted to deny the claim.

Consent Agenda Appearance **Item Number 34, G582027** **Item Number 106, G591205**

Leonard Valenti appeared and addressed the Board. Francis Coats appeared on behalf of the Department of Motor Vehicles. Because the facts for both claims were very similar, the claims were heard together. The Board voted to continue both claims to the December 17, 2009, Board meeting and requested staff review the contract between the parties and research whether there is a statute or policy that provides that the project manager has no authority to approve additional work.

Board member Les Kleinberg asked staff to clarify the status of the person who approved the additional work that was performed by the contractor.

Consent Agenda Appearance **Item Number 99, G590141**

Claimant Victoria Yeager appeared and addressed the Board. Robin Harrington and Ed Crans appeared on behalf of the Department of Forestry and Fire Protection.

The Board voted to adopt the staff recommendation to reject the claim due to complex issues outside the scope of the Board's authority.

Consent Agenda Appearance
Item Number 111, G582400

Claimant Tej Randhawa appeared and addressed the Board. Robert Frey appeared on behalf of Alliant Insurance Services (Alliant).

The Chair stated the Board continued the claim from the October 15, 2009, Board meeting. The Chair further stated at that Board meeting, the Board requested that Alliant provide the Board with information relative to the specific statute that authorized San Jose State University the authority to exercise its power to impound the vehicle for 30 days rather than release it sooner. The Chair asked Mr. Frey whether the 30-day impoundment procedure is a policy or statute and also asked Mr. Frey to explain the reason why a vehicle cannot be released sooner than 30 days. Mr. Frey stated it is standard procedure for a peace officer to impound a vehicle for a maximum of 30 days, specifically in this case of reckless driving. He further stated the Vehicle Code allows an officer to hold a vehicle for up to 30 days.

Chairperson Aguiar stated the Vehicle Code provides that a peace officer may hold a vehicle up to 30 days but it does not state that they are required to hold it for 30 days if a person has a valid driver's license, valid insurance, and is not impaired. Board member Michael Ramos explained that the reason for the 30-day vehicle impoundment is to punish or deter someone from driving in that manner in the future.

Upon a motion by Board member Les Kleinberg and seconded by the Chair, it was voted to amend the staff recommendation to approve the claim in the amount of \$1,350.00, which represents payment for three days of impoundment for loss of use of the vehicle. Board member Michael Ramos stated he noted in an email that Mr. Randhawa was arrested for driving under the influence. The claimant then stated that his driver's license was taken away from him.

Upon discovery by the Board that the claimant did not have a valid driver's license, Board member Les Kleinberg and the Chair withdrew their first and second motions.

The Board voted to adopt the staff recommendation to reject the claim.

Consent Agenda Appearance
Item Number 326, G585897

Annette S. Elder Evins appeared and addressed the Board. The Board voted to adopt the staff recommendation to reject the claim due to the complexity of the issues.

Consent Agenda Appearance
Item Number 397, G584451

Eduardo Arellano appeared and addressed the Board. The Board voted to continue the claim to the December 17, 2009, Board meeting and requested staff provide clear criteria for denying a late claim application and requested that the claimant provide documentation substantiating why the claim was filed late.

Consent Agenda Appearance
Item Number 409, G585208

David Bratt appeared and addressed the Board. The Board voted to continue the claim to the December 17, 2009, Board meeting and requested staff provide a legal analysis regarding whether the claim falls within the six-month late filing criteria.

Item 6. Reliable Floor Covering, Inc.
Claim Number G584993

The Board voted to adopt the staff recommendation to allow the claim in the amount of \$69,899.50, under authority of Government Code section 965 (agency pay).

Item 7. Mojave Radiation Oncology MG
Claim Number G585032

The Board voted to adopt the staff recommendation to allow the claim in the amount of \$75,085.00, under authority of Government Code section 965 (agency pay).

Item 8. Applications for Discharge From Accountability for Collection

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

Item 9. Bid Protest of Mecom Equipment, LLC
Invitation for Bid No. 5442B

Frank Chavez appeared on behalf of Mecom Equipment, LLC, and provided the Board with a visual display. Pete Hall appeared on behalf of Ditch Witch Equipment dba Muniquip, the proposed awardee. Kathleen Yates appeared on behalf of the Department of General Services and Ron Frank appeared on behalf of CalTrans.

Chairperson Aguiar asked Mr. Frank to explain the specification process and explain why the bid was rejected. Mr. Frank stated CalTrans researches the industry prior to writing the specifications and looks at their needs as well. Mr. Frank stated Mecom's bid was not chosen because it was not responsive to the bid's technical requirements and deviations. Mr. Frank stated Mecom's bid was denied because the overall length of the hydraulic excavator was longer than the bid requirement; the maximum tail swing was longer than required; and the bid required that the excavator be equipped with the manufacturer's standard type drawbar permanently fixed to the rear of the machine.

Chairperson Aguiar asked Mr. Chavez to explain why Mecom's bid did not meet the specifications. Mr. Chavez stated its proposed hydraulic excavator was only seven inches over the maximum length of 25 feet; its proposed hydraulic tail swing was only five inches over the maximum length of 10 inches; and although its proposed hydraulic excavator did not include a rear drawbar, it could be added at no additional cost.

Ms. Yates stated the deviations from the specifications were material and further stated in the three areas that Mecom's bid was deficient, the requirements were necessary to ensure safe operation of the hydraulic excavator in its intended work environment.

The Board voted to adopt the hearing officer's recommendation to deny the protest.

Item 10. Gerald McCall (Pen. Code, § 4900 et seq.)

Claim Number G566589

Board member Michael Ramos excused himself from discussion of the claim due to a conflict. Michael Farrell appeared on behalf of the Attorney General's Office.

Board member Les Kleinberg stated he was concerned because in the proposed decision it is noted that the AG argued that the claim was barred under the doctrines of res judicata and collateral estoppel since the guilty verdict was never overturned, thus the Board did not have jurisdiction to hear this claim. Mr. Farrell stated he did not write the recommendation; however, this claim is one of a few claims with a conviction still on the books unlike a large number of claims where the conviction is vacated.

Chairperson Aguiar and Board member Les Kleinberg voted to adopt the hearing officer's recommendation to deny the claim.

Item 11. Mark Wilson (Pen. Code, § 4900 et seq.)

Claim Number G570604

Dwight Ritter, attorney, appeared on behalf of the claimant. Cliff Zall appeared on behalf of the Attorney General's Office.

Board member Les Kleinberg stated that it appeared that Mr. Wilson stopped registering as a sex offender in 1997, prior to the *Hofsheir* decision. Board member Kleinberg further stated Mr. Wilson understood what the consequences of his not registering would be and for Mr. Wilson to say he did not contribute to his arrest and conviction is hard to believe.

The Board voted to adopt the hearing officer's proposed decision to deny the claim.

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 12:12 p.m.

Request for Reconsiderations Following Board Action on a Proposed Decision

Recommendation: Deny

(Nos. 1-2)

The Board voted to adopt the proposed decisions.

Proposed Decisions Following Failure to Respond

(Nos. 3-13)

The Board voted to adopt the proposed decisions.

Proposed Decisions Following Failure to Appear

(Nos. 14-23)

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 12:15 p.m. to deliberate on the proposed decisions, numbers 24 through 42B.

The Board reconvened into open session at 12:19 p.m.

Open Session

The Board voted to adopt the proposed decisions for numbers 24 through 42B.

Adjournment

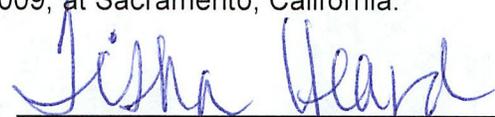
The Board meeting adjourned at 12:19 p.m.

Julie Nauman
Executive Officer



I certify that the California Victim Compensation and Government Claims Board adopted these minutes at its meeting of December 17, 2009, at Sacramento, California.

Date: December 17, 2009

By: 

Board Liaison (Affix Seal here)