

California Victim Compensation and Government Claims Board
Open Meeting Minutes
January 20, 2011, Board Meeting

The California Victim Compensation and Government Claims Board (Board) convened its meeting in open session at the call of Leslie Lopez, Acting Secretary, State and Consumer Services Agency, at 400 R Street, Sacramento, California, on Thursday, January 20, 2011, 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 December 16, 2010, Board Meeting

Board members Kleinberg and Ramos voted to approve the minutes of the December 16, 2010, Board meeting. Chairperson Leslie Lopez abstained from the vote.

Item 2. Public Comment

The meeting was opened to public comment. Public comment was given by the following individuals: Vanessa Kieu and Yvonne Miller on behalf of Paladin Eastside Psychological Services spoke in opposition to the Board's December 16, 2010, action reducing the reimbursement rate for mental health services provided by interns by 25 percent effective January 1, 2011.

Michael Siegel, attorney, requested that the Board action taken at the December 16, 2010, meeting reducing intern rates by 25 percent be revisited and discussed as an action item at the February 17, 2011, meeting.

Item 3. Executive Officer's Statement

The Executive Officer reported the following:

- At the December 16, 2010, Board meeting, the Board delegated to the Executive Officer the authority to approve government claims filed against the California Department of Corrections and Rehabilitation (CDCR) and the Department of Mental Health (DMH) by contracting vendors who have not yet been paid for services completed in fiscal year 2009-2010. The Executive Officer reported that as of this week, she approved 20 claims from CDCR totaling \$26,347,323 and 325 claims from DMH totaling \$8,306,747, for a combined total of \$34,654,070.
- Executive Officer Nauman appointed Chief Counsel Wayne Strumpfer to serve on the Judicial Council Task Force on Court Ordered Debt pursuant to SB 857. Mr. Strumpfer will represent the VCGCB along with 17 members representing various divisions of the criminal justice system to evaluate aspects of the criminal and traffic related court fees, fines, forfeitures, penalties, and assessments imposed by statute. The group will make recommendations to simplify, consolidate, and prioritize the order in which these court-ordered debts are satisfied.
- January is Human Trafficking Awareness Month. Events will be held around the country in an effort to raise awareness of the crime of human trafficking. According to the State Department, in the United States alone, approximately 14,000-17,000 people are trafficked each year.
- The National Association of Crime Victim Compensation Boards will hold its National Training Conference in Long Beach on September 19-23, 2011. Beginning in March staff will meet with leaders from other organizations to help plan the conference.

Board member Kleinberg directed staff to update the Board on the status of outstanding government claims filed against the California Department of Corrections and Rehabilitation and the Department of Mental Health at the February 17, 2011, meeting.

Item 4. Overview of the Governor's Budget and Status of the Restitution Fund

Executive Officer Julie Nauman presented the Governor's budget for 2011-12. Ms. Nauman stated that the budget proposal for the VCGCB reflected necessary cost-cutting proposals to address the solvency issue of the Restitution Fund through 2011-12. Ms. Nauman further stated that the proposal calls to attention the need to develop strategies for long-term permanent solutions.

Ms. Nauman reported the following major features of the budget proposal:

- Direct the VCGCB to achieve an estimated savings in its operating expenses of \$3.5 million in 2010-11 and \$2.2 million in 2011-12.
- Reduce the overall Joint Power and Criminal Restitution Compact local assistance program contracts by 5 percent for an estimated savings of \$707,000 in 2011-12, which is an unallocated reduction.
- Reduce the baseline budget for the Ten Percent Rebate Program in a manner that is consistent with prior year expenditures for an estimated savings of \$4.8 million over 2010-11 and 2011-12.
- Propose a cap on the growth rate not to exceed 2.5 percent in expenditures for benefit claims from 2010-11 to 2011-12.

Ms. Nauman presented a chart of the VCGCB's budget from 07-08 through the budget proposal for 2011-12. Ms. Nauman reported that revenues are steadily decreasing resulting in the reserve being depleted dangerously quickly. She explained that as the VCGCB carries over the reserve each year, it is then utilized to obtain solvency at the end of the year. She further reported that by the end of fiscal year 2011-12, even with the proposals that are contained in the Governor's budget, the VCGCB's ending reserve will be just short of \$5 million, which is a significantly small reserve for a Program of its size.

Ms. Nauman stated that in comparing revenue figures in December 2009 to December 2010, revenues are down approximately 7 percent. Ms. Nauman added that, for year to date, the VCGCB is almost \$4 million below where it was last year, which continues to demonstrate the need to be very cognizant of revenue and to watch both revenues and expenditures. She further reported those staggering numbers are the driving force behind the proposals that are contained in the Governor's budget.

Executive Officer Nauman reported that budget hearings would begin next week. The VCGCB's budget would be heard on Thursday, January 27th before Senate Subcommittee No. 5 on Corrections, Public Safety and the Judiciary.

Item 5. Proposed Board Meeting Dates for Calendar Year 2011

The Board voted to continue the item to the February 17, 2011, meeting.

Item 6. Consent Agenda (Nos. 1- 468)

The Board voted to adopt the staff recommendations for item numbers 1-468.

Item 7. Claim of PRIDE Industries **Claim Number G592674**

PRIDE Industries requested payment in the amount of \$51,289.56 for custodial services provided to the California Department of Forestry and Fire Protection from October 1, 2009, through September 30, 2010.

The Board voted to adopt the staff recommendation to allow the claim in the amount of \$51,289.56 under authority of Government Code section 965 (agency pay).

Item 8. Applications for Discharge from Accountability for Collection

The Board may discharge a state agency from accountability for the collection of money owed to the state if the debt is uncollectible or the amount of the debt does not justify the cost of collection (Gov. Code, § 13940). The agency files the application for discharge with the Office of the State Controller, which audits the application and, if appropriate, recommends to the Board that the applicant be discharged from further accountability for collection and be authorized to close its books. In order for the Controller to make such a recommendation, it must determine that the matters contained in the application are correct, no credit exists against which the debt can be offset, collection is improbable, the cost of recovery does not justify the collection, and, for items that exceed the monetary jurisdiction of the small claims court, the Office of the Attorney General has advised, in writing, that collection is not justified by the cost or is improbable (Gov. Code, §§13941 and 13942).

The State Controller's Office audited the applications and determined that the criteria for discharge have been met. For all items exceeding the monetary jurisdiction of the small claims court, the Office of the Attorney General has also advised, in writing, that either collection is not justified by the cost or is improbable.

The Board voted to allow the 75 requests by state agencies (applicants) for discharge from accountability for collection of debt, totaling \$131,867,626.42.

Item 9. Bid Protest of Utility Crane and Equipment Invitation for Bid No. 5305A

Jeremy Magee appeared and addressed the Board on behalf of Utility Crane and Equipment. Bryan Kimura appeared and addressed the Board on behalf of the Department of General Services.

The purpose of solicitation number 5305A was to procure eight articulating boom cranes for the Department of Transportation. The Department of Transportation (DOT) issued the solicitation on August 13, 2010, with two addendums published as late as September 1, 2010. Four bids were received on September 16, 2010, in response to the solicitation. Two were not considered because the offered amounts exceeded DOT's purchasing delegation. The remaining bids of Coastline Equipment (Coastline) and Utility Crane and Equipment (Utility) were evaluated for compliance with the technical and administrative requirements of Invitation for Bid Number 5305A. DOT rejected Utility's bid totaling \$449,920.00 after determining that it did not comply with the technical requirements of the IFB. Specifically, it was determined that Utility did not meet the IFB's technical specifications because it failed to clearly answer three questions which were necessary to determine if the proposal met specifications. It was not apparent on the face of the bid that the proposal met the IFB's technical specifications. Coastline's bid totaling \$471,434.96 was, however, determined to be both technically and administratively compliant with the IFB. On behalf of DOT, the California Department of General Services served a notice of intent to award the contract to Coastline. Utility timely protested the proposed award.

Mr. Magee stated that he acknowledged that Utility did not meet the IFB's technical specifications; however, he stated that he believed that DOT should have voiced any concerns it had regarding Utility's product not meeting specifications and provided Utility with the opportunity to respond to those concerns.

Mr. Kimura stated that Mr. Magee admitted that Utility was nonresponsive to the specifications of the IFB. He further stated that to date the Department of General Services does not have any assurances that all of the safety concerns that were specified in the IFB could be met by Utility.

Board member Kleinberg stated that based on the fact that technically Utility did not meet the specifications, the Board had no choice but to deny the protest.

The Board voted to adopt the Hearing Officer's recommendation to deny the protest.

Item 10. Joseph Rollin (Pen. Code, § 4900 et seq)
Claim Number G573925

Richard Hamlish, claimant's attorney, appeared and addressed the Board. Kari Ricci, Deputy Attorney General (DAG), and Michael Farrell, Senior Assistant Attorney General, appeared and addressed the Board on behalf of the Department of Justice, Office of the Attorney General.

The Penal Code section 4900 claim of Joseph Rollin stemmed from the conviction for abusing a dependant adult. Mr. Rollin later had his conviction overturned by the appellate court and in the second trial, the jury found him not guilty. Mr. Rollin sought \$121,600 for 1,216 days imprisonment served subsequent to conviction. The Hearing Officer recommended denial of Mr. Rollin's Penal Code section 4900 claim.

Mr. Hamlish stated that he believed the proposed decision was biased and did not abide by the law. He quoted the following at page 19, lines 23 and 24 of the proposed decision: "That finding can only be accomplished through Penal Code section 851.8." He argued that the United States Supreme Court has a standard that they use, and it is not Penal Code section 851.8, it is completely different. There are two terms in a criminal case--guilty and not guilty.

Chairperson Leslie Lopez responded that the hearing is not a criminal proceeding therefore the standard of proof that is used for a criminal conviction or acquittal is different from what is used for this type of a proceeding. She further stated that Mr. Rollin's claim is a civil claim for monetary damages.

Board member Kleinberg explained that his understanding of the law is that a person who is found not guilty means that he or she was not found by the jury to be guilty beyond a reasonable doubt, which is not a standard that the Board uses. The burden is on the claimant to show that he is innocent by a preponderance of the evidence. He added that the fact that a jury did not find Mr. Rollin guilty does not mean that he did not commit the crime.

Board member Ramos stated that the standard of proof is very high in a criminal proceeding. The fact that a person is found not guilty does not mean that they did not commit the crime. It means that the person did not reach the standard of proof; conversely, in a civil proceeding, the standard comes down. Pursuant to Penal Code section 4900, Mr. Hamlish needed to establish that Mr. Rollin did not commit the crime or, if committed, it was not committed by him.

Mr. Hamlish questioned the portion of the proposed decision devoted to an incident that occurred outside the hearing room on the day of the hearing. Mr. Hamlish stated that, upon speaking with a security guard in the hallway, the security guard answered that he did not witness the incident. Including the incident in the proposed decision was solely for the purpose of biasing the Board against Mr. Rollin.

DAG Kari Ricci stated that Mr. Rollin received a fair hearing and had an opportunity to fully litigate his claim before the Hearing Officer. The Hearing Officer found that Mr. Rollin was not credible and

the record supports that finding. Ms. Ricci added that she was present on the day that Mr. Rollin made threatening comments to Ms. Gimle. Ms. Ricci heard frantic pounding on the door, which were not the acts of someone fabricating an incident. She stated that the incident happened and it affected the proceedings; thereby preventing the Attorney General's Office from presenting their closing argument. On behalf of the Attorney General's Office, Ms. Ricci requested that the Board deny Mr. Rollin's Penal Code section 4900 claim.

Michael Farrell, Senior Assistant Attorney General, stated that he supervises the deputy attorney generals and they are of the highest integrity. If Ms. Gimle said that the incident occurred, then it happened. He reported that on the day of the hearing, he received a frantic call and came to the hearing. The Hearing Officer and the Board's Chief Counsel also observed the fact that Ms. Gimle was upset. He further stated that the Board should adopt the Hearing Officer's proposed decision.

The Board voted to adopt the Hearing Officer's proposed decision to deny the Penal Code section 4900 claim of Joseph Rollin.

Item 11. Karl Landry (Pen. Code, § 4900 et seq)
Claim Number G574375

Ryan McCarroll appeared on behalf of the Department of Justice, Office of the Attorney General. The claimant's attorney did not appear at the meeting.

The Penal Code section 4900 claim of Karl Landry stemmed from the conviction for second degree robbery and false imprisonment at a Holiday Inn. Mr. Landry's conviction was overturned for insufficient evidence. Mr. Landry sought \$136,700 for 1,367 days imprisonment served subsequent to conviction. The Hearing Officer recommended denial of the Mr. Landry's Penal Code section 4900 claim.

The Board voted to adopt the Hearing Officer's proposed decision to deny the Penal Code section 4900 claim of Karl Landry.

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 10:56 a.m.

Requests for Reconsideration
Recommendation: Deny
(Nos. 1-20)

The Board voted to adopt the staff recommendations.

Request for Reconsideration Following Board Action on a Proposed Decision
Recommendation: Allow
(No. 21)

The Board voted to adopt the proposed decision.

Requests for Reconsideration Following Board Action on a Proposed Decision
Recommendation: Deny
(Nos. 22-31)

The Board voted to adopt the proposed decisions.

**Proposed Decisions Following Failure to Appear
(Nos. 32A-48)**

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 10:57 a.m. to deliberate on the proposed decisions, numbers 49 through 73.

The Board reconvened into open session at 11:06 a.m.

Open Session

The Board voted to adopt the proposed decisions for numbers 49 through 73.

As a result of public comment and the Executive Officer's presentation of the Governor's budget for 2011-12, Chairperson Lopez directed staff to place an action item on the February 17, 2011, agenda providing an overview of all options to reduce reimbursement rates, compensation benefits and fees to address the Governor's budget proposal for 2011-12.

Adjournment

The Board meeting adjourned at 11:07 a.m.