Orange County Register **06/01/09**

Millions misspent by state insurance agency, and nobody cares, OC attorney says

June 1st, 2009, 4:00 am · 5 Comments · posted by BRIAN JOSEPH, Sacramento Correspondent

You know that saying about a tree falling in the woods with no one around to hear it? **Dan Jacobson** feels a bit like that tree.

"I am screaming at the top of my lungs," said the Orange County attorney. "We've accomplished a great deal for the future, but I'm still screaming about the past — a past I think includes the theft of **tens of millions of dollars** from Californians."

We first wrote about Jacobson in February of last year, after he sounded the alarm about a little-known, quasi-governmental agency called the **California Insurance Guarantee Association**. CIGA, as it's known, is the state safety net for commercial insurance companies, funded through a surcharge on insurance premiums. If your insurance provider goes broke, CIGA picks up your claim.

Anyway, back in late 2007, Jacobson, who sits on the CIGA board, began warning state elected officials that something was seriously wrong with the agency. It was running a deficit of **$1.6 billion** and an internal audit concluded that of **$66 million** spent on bill review fees, CIGA had overspent **$55 million**. Jacobson also complained that CIGA operated under a veritable cloak of secrecy where nobody could find out what was going on.

Jacobson's warnings seemed to be confirmed when, for that initial story, this reporter tried to attend a CIGA board meeting in San Francisco and was promptly thrown out just moments after arriving.

When that was reported last February, it sparked a hearing by the State Senate and legislation to make CIGA meetings open to the public, which eventually became law. Also, Jacobson said he's helped establish bidding procedures and internal controls that he thinks ensure CIGA will run well.

"We're doing fine for the future," he said.

But from the very beginning, Jacobson has been pushing for a serious investigation into CIGA's past and no one has followed through.

After the Senate hearing, state lawmakers and Insurance Commissioner **Steve Poizner** promised to look into CIGA. Lawmakers, however, never followed through on their review.

Meanwhile, Poizner, who is now a candidate for governor, has done a review but the report still hasn't been released publicly, even though his office has told Jacobson and us at the various times that it would be released in late March, early April, late April, early May and now early June.

As a board member, Jacobson said he had an opportunity to read a draft of the Insurance Commissioner's report back in February and was disappointed to find that "it didn't look at past wrongs."

"The Department of Insurance has told me it's not going to act on those past issues," Jacobson said, meaning Poizner's office won't investigate the actions that sent CIGA deeper into the red.

Poizner spokesman **Darrel Ng** said the report will address Jacobson's concerns and makes recommendations for the future.

Jacobson, however, said he's still looking for answers about the contract that led CIGA to overpay bill review fees. (The initial analysis said CIGA overpaid **$55 million of $66 million** spent, but a subsequent analysis found the agency actually overspent **$128 million of $153 million**.)

Under the contract, CIGA pays an independent company to review medical claims (bills) that have been filed with CIGA to ensure that the bills are legit. CIGA might be billed for a broken arm, but upon investigation, the company may discover the patient only broke his pinkie. That kind of review can save CIGA money.

- Typically, companies that do this sort of work are paid a simple flat fee for each bill they review.

- But this contract is different. It pays the bill review company a *percentage* of the savings it uncovers. In other words, if the difference between a broken arm and broken pinkie is **$12,000**, the private company gets a cut of CIGA's savings. That costs a lot more than a flat fee.

Such a payment plan, as you might imagine, is rather controversial, but at the Senate hearing CIGA officials said the Department of Insurance forced the agency to sign the contract. In fact, the contract states that the Insurance Commissioner in 2000 "specifically" deemed the bill review fees "reasonable and appropriate."

The Department of Insurance, however, legally can't force CIGA to do anything — they're separate entities. There's also no evidence that the Insurance Commissioner back then, **J. Clark Kelso**, ever made such a ruling.

So Jacobson wants an investigation into why CIGA agreed to a contract with a screwy payment plan — and why that contract says the Insurance Commissioner signed off on it when apparently he didn't.

"I am a contracts lawyer and a contracts professor and there's no legal reason for that line (about the commissioner deeming the fees reasonable) to be there," Jacobson said. "So why would a clause be in a legal document if there's no legal reason to be there?"

Because it provides cover? Jacobson thinks that line was put into the contract either to persuade CIGA to sign it or because someone involved knew the fees weren't reasonable and needed protection in case questions ever arose. It's sure hard to challenge the reasonableness of a contract when the very document says an elected official has specifically ruled it is reasonable.

"(That) suggests to me a crime took place," Jacobson said. "It suggest to me there was fraud. It suggests to me the fees were not reasonable, (that) they were dressed up to look reasonable with a lie," which would mean insured Californians were held up for tens of millions of dollars.

"The police have to investigate when the people of California are held up," Jacobson said.

CIGA Executive Director **Wayne Wilson** said it was premature to call for another investigation before the Insurance Commissioner's report has been released publicly. He said CIGA isn't perfect, but the agency's been examined thoroughly over the last couple of years and it's learned from each review.

Wilson said he's frustrated by Jacobson's repeated calls for investigation and doesn't understand why Jacobson continues to pursue the matter.

“I think this organization has been poked and prodded from several different directions,” Wilson said. “It’s not like nobody’s done anything and nobody’s looked at this stuff.”

Jacobson, on the other hand, feels it’s his moral responsibility to continue sounding the alarm on CIGA, especially since the deficit has grown to $1.9 billion. Even though Jacobson’s term on the CIGA board ends June 30, he says he’s trying to get Attorney General **Jerry Brown** to investigate CIGA now that it appears Poizner’s office won’t be doing anything.

Like Poizner, Brown also is planning a run for governor next year and it wouldn’t be surprising if the Republican Poizner faced the Democratic Brown in the general election.

Might Brown take this as an opportunity to act where Poizner didn’t? Stay tuned — the CIGA saga might not be over just yet.

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- *Travis* says:

  June 1, 2009 at 7:40 am

  Wow, thanks for uncovering this.

  Post Reply

- *Jerry* says:

  June 1, 2009 at 8:20 am

  Great reporting Brian. Dan Jacobson; Thanks for staying on this for the citizens of CA!!

  Post Reply

- *Alan* says:

  June 1, 2009 at 9:58 am

  Another Expense of Government without a source of Revenue set up to support the agency.

  In a couple years we will get another ballot prop asking us for a blank check to cover everything the government did for the past years just like we got this year.

  Our constitution needs to require every bill that has spending be backed by a “new” source of revenue that is benchmarked for its spending.

  Maybe this does happen and yet when in a budget crisis all these bills look to the general fund for support.

  Although I love the Governors plan to cut Healthy Families that brings billions of dollars at the cost of a fraction of the income money. The kicker is him asking the feds to continue to give the State the money for a service it intends to cut from the budget.

  Again the cuts that need to be made are those that are not backed by a revenue scource to support the programs.

  I hope the next race for governor these people push for such checks and balances in bill passage and not a rubber stamp system.

  Post Reply

- *sowhat says* says:

  June 1, 2009 at 11:55 am

  doesn’ t surprise me this comes out of california…yet another wasteful tool of deceit.

  Post Reply

- *Anaheim Angel* says:

June 1, 2009 at 12:01 pm

I’m glad to see this issue getting ink and attention. Good work Dan Jacobson. We need more board members and elected officials to take their positions of responsibility seriously.

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