

# THE ORANGE COUNTY REGISTER

## Insurance committee critics must wait for legislative review

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SACRAMENTO A promise. That's one thing Dan Jacobson remembers from a hearing three months ago on the troubled California Insurance Guarantee Association.

For a couple of hours, a state Senate committee hauled CIGA representatives and critics before its dais, firing questions about the obscure agency's finances, but never probing too deep.

Real answers weren't coming out, he thought, but Jacobson took solace from the committee chair's words. Sen. Mike Machado promised follow up, promised that the committee would call CIGA back in 90 days, promised that the issue wouldn't die.

But so far nothing's happened.

Ninety days have come and gone since the March 10 hearing and the Senate Banking, Finance and Insurance Committee still hasn't scheduled a follow up hearing. Machado's office said it's received a report from CIGA, but because the senator is deeply involved in state budget negotiations, another hearing might not be held until after that's

resolved which could be several weeks or even months. CIGA critics say that's not good enough.

"There might be reasons, legitimate reasons, what with the budget issues and all; but a hearing doesn't take much time," said Jacobson, an Orange County attorney who sits on the CIGA board. "If the public is going to get answers, another hearing must be held, and it should be held soon, just as Sen. Machado had said would be done."

Worst still for Jacobson and other critics are the new questions that were raised at the last hearing - questions, they fear, that may never get answered.

"In light of the testimony given, one would think the senators would be anxious to inquire further," said former CIGA board member Steve Testan.

Formed under state legislation, CIGA is a quasi-governmental entity that serves as a vital safety net for Californians. If your insurance provider goes broke, CIGA picks up your claim.

In February, I revealed that an independent review of CIGA's finances found the organization in disarray: contracts were awarded without bidding, claims were paid without review. The auditor, accountant John Williams from Alhambra, concluded that of \$66 million spent on bill review fees, CIGA overpaid \$55 million.

At the hearing in March, CIGA representatives explained away one of the largest sources of the alleged overspending, a contract with a medical review contractor now known as Broadspire.

Williams' audit concluded that CIGA was grossly overpaying for Broadspire's medical bill reviews because the 2000 contract employs a controversial provision that pays Broadspire a percentage of the savings it uncovers, rather than a simple flat fee.

CIGA's former executive director, Larry Mulryan, testified that the contract was forced on the agency by the state Department of Insurance.

Jacobson and Testan don't understand - CIGA is an independent body. They say the department can't legally force CIGA to do anything.

Plus, I have a copy of the agreement. It states that the Insurance Commissioner at the time "specifically" deemed the fees "reasonable and appropriate." However, the accompanying order signed by the Insurance Commissioner doesn't actually say that.

Something doesn't add up.

So, with no hearing on the horizon, I tracked down the Insurance Commissioner from that time, J. Clark Kelso. Kelso, a good government type, served as the acting Insurance Commissioner for just a few months during the summer of 2000, after Chuck Quackenbush resigned following a political scandal.

Kelso is currently working as the court-appointed receiver overseeing reform of California's prison health care system, so insurance isn't the first thing on his mind. He said he didn't remember the Broadspire contract specifically, but recalled there was a "time-sensitive" issue involving CIGA that he was forced to address during his brief tenure as Insurance Commissioner.

He said it's possible he had to make a decision that some people didn't agree with, but he couldn't tell me much more than that. He seemed shocked that CIGA would blame him for its current problems.

"My God, it's 2008," he said. "It's just not plausible that the action" taken in 2000 couldn't be changed by now.

CIGA executive director, however, told me, in fact it couldn't be changed. Wayne Wilson said there's actually two parts to the Broadspire contract and the second part, for managing claims, is "cradle to grave," meaning Broadspire is on the hook for services CIGA has already paid for.

If CIGA tried to pull out of the bill review side now, he said, Broadspire would likely view that as a breach of contract and discontinue the claims service, too. Then CIGA would have to hire another company for services it's already paid Broadspire to handle.

As for how the Insurance Commissioner's legal authority to force CIGA to do something, Wilson said he can because he appoints people to the CIGA board and approves the agency's Plan of Operations. When asked for proof that the commissioner had found the fees to be reasonable, Wilson pointed to a provision that said CIGA "has acted properly."

When I told Jacobson that, he scoffed.

"That still doesn't even come close to saying that the commissioner made the findings that that contract says he made," Jacobson said. "The only reason I can think of why anyone would put (the line about reasonable fees) in there would be to blunt any argument that these outrageous fees were outrageous."

In other words, he smells a rat. But will we ever find it without another hearing?

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