



**SAN MATEO COUNTY SPECIAL DISTRICTS:
WHO IS REALLY IN CHARGE OF THE TAXPAYER'S MONEY?
The Mosquito District Embezzlement: Is it the Tip of the Iceberg?**

SUMMARY

San Mateo County (County) has 22 independent special districts. Common in counties throughout California, independent special districts are local governmental entities that are legally separate from counties and cities.¹ They deliver special public services such as mosquito abatement, water management, and health care, to name a few. Special districts receive a significant amount of their operating funds from their portion of countywide property taxes and/or special assessments. They wield considerable influence with little oversight other than their own board of directors. In many cases, these boards are responsible for multi-million dollar budgets.

The recent embezzlement case in the Mosquito and Vector Control Abatement District (District) involving hundreds of thousands of dollars prompted the 2012-2013 San Mateo County Civil Grand Jury (Grand Jury) to investigate what led to the embezzlement. Two employees, who oversaw financial matters for the District pleaded no contest to embezzlement charges and will be sentenced in the latter part of 2013.

The Grand Jury finds that the Board of Trustees (collectively, Board, and individually, Trustee) and the District's District Manager (Manager) share in responsibility for the lack of oversight that was instrumental in allowing the embezzlement to occur. The Grand Jury finds that the Manager and the Board's finance committee did not recognize red flags in financial reports that should have revealed the embezzlement far sooner.

The Grand Jury also finds that the insurance company's denial of the District's embezzlement loss claim is further evidence that there were inadequate management practices, insufficient accountability, and oversight of the District.

The Grand Jury finds that the District's internal financial controls were inadequate and that important policies and procedures were not followed. The Grand Jury also finds that the Board did an inadequate job of overseeing operations and that there were significant differences of opinion regarding the Manager's ability to manage the District.

The Grand Jury finds that Trustees are confused about their responsibilities, some feeling their only role is to make district policy, while others feeling they have more oversight responsibilities. The Grand Jury also finds that the issue of the dissolution of the District and transfer of its services to the County Environmental Health Department (CEHD) because of the District's poor management and the need for more operational efficiency and cost savings, merits further study even though the County's Local Agency Formation Commission (LAFCo) recently rejected the recommendation of its executive officer to do so. The Grand Jury further finds that

¹ For purposes of this report, the term "cities" includes "towns" and County government where the context so requires.

Cities do not give priority to having representation on the Board, which representation is an important component to the oversight of the District operations

The Grand Jury recommends that the Board require its Manager to follow the Policies and Procedures manual at all times and provide monthly financial reports to the Board.

The Grand Jury recommends that the Board emphasize the importance of its finance committee's role in ensuring that internal financial controls and policies are in place and are being followed. The Grand Jury recommends that the District hire a consultant to redesign the Manager's evaluation process to better assess job performance and to provide clarity and goal setting. The Grand Jury also recommends that the Board evaluate its policies and procedures on an annual basis and study a restructuring of the Board to better fulfill its oversight role.

The Grand Jury recommends that LAFCo continue to study the possible dissolution of the District and transfer of its services to the CEHD.

The Grand Jury recommends that cities give priority to having representation on the Board and, if unsuccessful in recruiting appointees, comply with Health & Safety Code section 2021 and appoint a council member in the interim. In addition, the Grand Jury recommends that cities require representatives to give their city councils regular updates on District's operations.

BACKGROUND

The District's budget is approximately \$6 million. It has an accumulated reserve of about \$5 million. Its funding comes from property taxes, parcel assessments, and a benefit assessment. It is governed by a Board composed of one member from each of the County's 20 cities plus County government. It employs a Manager to oversee its daily operations. Despite all of these "overseers," only one Trustee recognized a problem with an overage in operational expenses in 2011, thereby leading to the discovery of the embezzlement. After the discovery, only one city asked for a Grand Jury investigation.

The Grand Jury learned during interviews that the Manager did not follow normal employment vetting procedures when hiring the finance director accused of the embezzlement.

The LAFCo executive officer performed a Municipal Service Review and Sphere of Influence Review (Service Review) pursuant to Government Code Sections 56425 and 56430 following the alleged embezzlement. The report addressed public accountability and broadly examined district operations, fiscal health, opportunities for sharing resources, and governance alternatives. The study was not a financial audit and only identified measures the District has taken or could take to prevent such embezzlement events.²

Subsequent to the Service Review, the LAFCo executive officer recommended that the District be dissolved and incorporated into the CEHD, which might result in a cost savings. However, the LAFCo commissioners rejected the recommendation and deferred any further decision on the subject to a later review after the Manager completed a Performance Improvement Plan as

² June 12, 2012, LAFCo Municipal Service Review.

required by the District Board. However, LAFCo has taken no further action on the District matter.

It is important for County taxpayers to understand special district governance structure and the responsibility of special district boards with regard to such issues as embezzlement.

Concerns about special district management practices, accountability, and oversight were the impetus for a Grand Jury investigation.

METHODOLOGY

Documents

The Grand Jury reviewed the following documents:

- The LAFCO Service Review of the District, dated June 12, 2012
- The District's certified financial audits for fiscal years ending June 30, 2009, 2010, and 2011
- Letter of concern from a member city
- Documents from three former senior District employees including timelines of management judgments, financial invoices, and grievance letters to Trustees
- Personnel files of certain District employees
- Forensic audit performed in 2011 by C.G. Ulenberg, the District's regular auditor
- Correspondence regarding the Hartford Insurance claim
- Report issued by Dr. Peter Hughes, CPA, a consultant retained by the District to review its accounting policies.

Survey

- The Grand Jury sent a survey to all County independent special districts

Site Tours

- The Grand Jury toured the District's headquarters and laboratory located at 1351 Rollins Road, Burlingame.

Interviews

- The Grand Jury interviewed 13 individuals. Interviewees included representatives from the District and its Board; representatives from LAFCo and its Commission; former key

District employees; auditors; and County Counsel attorneys who have represented the District.

Subpoenas

- The Grand Jury's presiding judge issued five subpoenas in order to obtain information. (Relatedly, it is noted that the Board declined to waive its attorney client privilege with the County Counsel when the Grand Jury requested it to do so.)

DISCUSSION

District Embezzlement

The noticing by one Trustee in early 2011 of discrepancies between budgeted and actual expenditures led to the discovery of the embezzlement. This Trustee brought the information to the attention of the Manager and the other Trustees. In addition, annual certified audits by the District's outside accounting firm for fiscal years 2009 and 2010 identified significant deficiencies that went unresolved during the period of time in which the embezzlement took place. Examples of such deficiencies included the failure properly to record accounting transactions and petty cash management.

The District embezzlement was unique according to one qualified interviewee, because it involved the entire finance department, consisting of two employees. These two employees are no longer with the District, and the County District Attorney has charged them with embezzlement. The employees have pleaded no contest and are awaiting sentencing.

Prosecutors alleged that District funds were embezzled between 2009 and 2011 when the finance director and her assistant placed themselves at a higher pay rate, fraudulently took time off, contributed excessively to their deferred compensation funds, used credit cards for personal purchases, and electronically transferred money into personal accounts. The forensic audit (described below) showed more than \$635,000 missing but prosecutors charged them with embezzling only \$400,000 because they could not prove an actual loss of the greater amount³ The District's forensic auditor calculated the total loss resulting from the embezzlement to be \$796,781. (Appendix A.) This is the amount the District reported to its insurance company.

The annual certified audits of the District for fiscal years 2009 and 2010 suggested that there was a lack of sound management and fiscal responsibility. A subsequent forensic audit of the District listed "ten distinct loss activities that were executed against the District by 2 former employees..."⁴ These loss activities included incorrect pay calculations to employees, unauthorized and personal use of credit cards, and fraudulent reporting of time off for Family Medical Leave Act (FMLA). While taking FMLA, one employee served jail time for a previous embezzlement.

³ *End in sight for mosquito district case: Former finance chief expected to plead guilty on 10 charges related to embezzlement of public money*, March 22, 2013, Heather Murtagh - Daily Journal Staff.

⁴ See Appendix B.

After the allegations of embezzlement, some of the Trustees determined the Manager's skills were inadequate for the position.⁵ The Board hired an outside consultant to perform a review of the internal financial controls. Notwithstanding this state of affairs, the Trustees voted to extend the Manager's contract and paid the outside consultant to prepare a Performance Improvement Plan for the Manager to complete in an effort to avoid any further incidents.

The District's insurance company has declined to pay on its loss claim given the circumstances surrounding the embezzlement. The insurance company's outside legal counsel stated that the District "misrepresented" its computer controls and should have had systems in place to detect unusual activity. The District disputes this.⁶ The District has retained additional counsel to negotiate this matter.

The District indicated in its insurance application that no employee could control a process from the beginning to the end, e.g., request a check, approve a voucher, and sign the check. The District's internal controls required the Manager and a Board officer to approve requests for payment and to sign on checks.⁷ However, the finance department used signature stamps that seemed to by-pass this control. Attorneys for the District argue that "the insurance company was already aware of the lack of controls designed to prevent an embezzlement of this nature".⁸ It should be noted that insurance for these special districts frequently does not cover the costs for attorneys, audits, or other costs associated with embezzlement.

Embezzlement may be more prevalent in districts than has been revealed to date. For example, in addition to the District, employee fraud cases in the following County special or school districts have come to light in the last two years alone. Although three of the cases do not relate to special districts, the underlying problems, inadequate controls and oversight, are the same:

- Woodside Elementary School District
- Portola Valley School District
- Mid-Peninsula Water District (It should be noted that LAFCO's executive officer has also recommended that this district be dissolved.)
- San Mateo County Community College District

The District embezzlement case may be the *tip of the iceberg*. As one interviewee stated, with so many special districts in this county and counties throughout the Bay area and state, "embezzlements are not unusual," which is no comfort to the taxpayers. However, with sound internal financial controls and good management practices, the risk of embezzlement can be minimized.

⁵ Board Evaluations of the District Manager.

⁶ Letter dated April 11, 2012, from Meredith, Weinstein & Numbers, LLP pg 3 (See Appendix C).

⁷ *Ibid.*

⁸ *Ibid.*

District Operations

After extensive investigation, the Grand Jury learned of oversight shortcomings and management issues that include the following:

- Standard business practices, such as performing detailed background checks, were not followed in the hiring of the finance director accused of embezzling. As a result, the District hired an individual who was already under indictment in another embezzlement case.
- The Manager and the Board's finance committee did not recognize red flags in financial reports that could have revealed the embezzlement far sooner. Examples include the budget overage (ultimately noticed by a Trustee), lack of complete monthly financial packages as provided by the previous finance director, and discrepancies revealed in two years' annual audits. Board complaints to the Manager concerning financial reports were answered with the excuse that a new accounting system had been installed and that there were issues with the County Controllers staff.
- The Trustees' written evaluations of the Manager's performance revealed significant differences of opinion. Some Trustees gave the Manager high ratings while others expressed little confidence in the Manager's ability to manage the District. Others indicated they did not trust the Manager and felt the Manager was excessively controlling information provided to the Board.
- Internal financial controls in place at the time of the embezzlement were inadequately implemented. For example, controls required that both the Manager and a Board officer to sign checks issued by the finance department for payments. However, the finance department used signature stamps that seemed to by-pass this control.
- The Manager hired unlicensed and uninsured contractors to work on District facilities, a violation of District policies.
- Surplus vehicles were sold to employees and friends, a practice that the Grand Jury was informed has been discontinued.
- The issuance of Visa cards to employees for the purchase of materials led to abuse. The Visa cards had high limits and there was little oversight of their use. The finance director used a Visa card to pay her attorneys for a previous embezzlement case. Neither the Manager nor the Board's finance committee caught improper charges of up to \$15,000 placed on the card.
- There was an amendment to the District Policies and Procedures manual in 2007 that stated, "dismissal of the current District manager would require 90% of the Trustees' approval." The Grand Jury requested and received an updated version of the manual. The entire section 2160 titled "Separation from District Employment" is no longer in the current manual. It has been replaced by a new section 2160 titled "Salary and Benefit Survey." No further information was provided as to the reasons for this change.

The embezzlement incident was costly, with additional losses still being discovered. The loss submitted to the insurance company was over \$790,000 but does not include related costs such as attorney fees, consultants, and financial training.⁹ Some of the loss may be covered by insurance, but as of May 1, 2013, the insurance company has denied the claim citing misrepresentation of facts in the District's insurance application and the failure of the District to perform appropriate background checks.

Following the embezzlement and subsequent evaluation of the Manager, the Board chose to implement a Performance Improvement Plan in order to improve the Manager's financial management skills. The Board also extended the Manager's employment contract and increased the Manager's compensation.

Also after the embezzlement, a new consultant prepared eight recommendations to improve the district's internal financial controls. (See Appendix D, an excerpt of the consultant's report). The Grand Jury has been advised that these recommendations have been implemented. As a result, the financial system was rebuilt. An interviewee familiar with the consultant's review opined that the Manager had program skills but lacked the fiscal skills necessary for overseeing financial operations.

District Board

A 21-member Board governs the District. The voters elect other San Mateo County special district governing bodies, which differentiates them from the Board, whose members are selected by city councils. The District began covering the entire County in 2005. In this circumstance, the Health & Safety Code provides that cities may appoint a Trustee to the Board. The Trustees' direct responsibility is to the city councils that appointed them, not directly to the voters. The Health & Safety Code also states that the legislative intent is that members have experience, training, and education in fields that will assist in governing the district.¹⁰

One question raised during the investigation was whether a Board of 21 members could be effective. The Board president appoints members to the following standing committees: Finance, Policy, Strategic Planning, Environmental, and Manager Evaluation. One interviewee stated, "Authority may be dissipated when responsibility gets diffused over a large group." With a large board it can be difficult to have accountability for decisions made. A few Trustees expressed interest in studying another governance model that would reduce the size of the Board. Through document review and interviews, the Grand Jury learned that there are varying opinions regarding what Trustees believe to be their roles and responsibilities. Some Trustees feel their only role is to make policy, while others feel they have more oversight responsibility.

When a number of employees tried to approach Trustees to express concerns about the Manager, they were turned away for not following the chain of command. Relatedly, there was confusion about communications between staff and Trustees. In light of these communication issues, the Peninsula Vector Workers Association requested that the Trustees review and revise the District policies governing communication between staff and Trustees.

⁹ See Appendix A.

¹⁰ State Health Code section 2021.

The Grand Jury learned that Trustees requested financial information from the Manager during the embezzlement period but the request was not honored. The Trustees did not heed warnings from senior District employees about financial irregularities. The Trustees put total trust in the Manager to fulfill the mission of the District and seemed oblivious to the business operations and its problems.¹¹ Statements by Trustees in earlier reviews of the Manager showed confusion among the Trustees regarding the Manager's general performance capabilities. One Trustee told the Grand Jury that the evaluation process was inadequate and should be reviewed by a qualified human resources consultant.

LAFCo

Local agency formation commissions were established by the State of California in 1963 to oversee the formation, expansion, dissolution, and reorganization of all special districts. LAFCo is an independent seven-member commission with jurisdiction over the boundaries of the County's 20 cities, 22 independent special districts, and many of the 35 County-governed special districts. LAFCo is composed of two members of the County Board of Supervisors, two members of city councils, two board members of independent special districts, a public member, and four alternate members (County, city, special district, and public).

Local agency formation commissions oversee districts but have limited powers. The Cortese-Knox-Hertzberg Act of 2000 requires that they conduct Service Reviews every five years.¹² LAFCo's executive officer, with the help of a part-time administrative assistant, conducts the Service Reviews. LAFCo's current staffing level makes it difficult to conduct Service Reviews in a timely manner as required by law. The 2002-2003 Grand Jury recommended that the Board of Supervisors provide additional resources to LAFCo, but the recommendation has not been implemented.

Service Reviews provide the public with information about the special district including "[a]ccountability for community service needs, including governmental structure and operational efficiencies."¹³ They can also recommend whether a special district should be merged with another district or dissolved and services transferred to another agency. If LAFCo recommends that a district be dissolved or merged with another district, generally speaking, the approval of 75% of the voters in the special district is required. LAFCo's authority is thus limited. Recommendations made by LAFCo are usually the result of a Service Review.

Subsequent to the Service Review of the District, the LAFCo executive officer recommended that the District be dissolved and incorporated into the CEHD, which might result in a cost savings, from the sharing financial services, laboratories, and other facilities. It should also be noted that LAFCo's executive officer recommended dissolution of both special districts where embezzlements occurred, but the LAFCo Commissioners did not approve these recommendations.

¹¹ Grand Jury interview and evaluation document.

¹² LAFCo website.

¹³ Government Code Section 56430.

Cities' Responsibilities to the District

The District encompasses the entire County. Health & Safety Code Section 2021 states that the Board of Supervisors may appoint one person to the Board and the city councils of each city located in whole or in part within the District may appoint one person to the Board. Health & Safety Code Sections 2022(c) and (d), states:

- Applicants should be qualified in fields that will assist in governance of the district.
- Cities may appoint a councilmember to the Board if they are unable to find a qualified candidate.

The Board of Supervisors and city councils often suffer from a lack of applicants from which to select a representative. At the time of this report, the Town of Colma had no representation on the Board. This might be due in part to unsuccessful recruitment efforts. Although applicants may be conscientious and well meaning, they may not have the necessary skills or experience to sit on the Board. While all cities should have representation on the Board, it appears that providing representation is not a city priority.

During interviews, the Grand Jury learned that most cities do not mention the District on their websites, nor do they require their representatives to give regular updates to the city councils about the District's operations.

Survey of Independent Special Districts

The Grand Jury distributed a survey to all independent special districts to better understand the compensation for their board members and the amount of public funds for which they are responsible. The survey yielded the following information:

- Most districts have a 5 member elected board; a few have a 3 member elected board, while the District has a 21-member non-elected board.
- More than half of the board members are compensated from \$100 per month to \$600 per month. The District Board is paid \$100 per month
- More than half of the boards compensate members for workshop or conference events and some have medical and life insurance benefits. A few boards are not compensated at all. The District Board is also compensated for workshops or conferences events.
- The reserves of districts range from \$775,000 to \$47 million dollars. The District's reserves are \$5 million.

It should be noted that not all districts responded to the survey request.¹⁴

¹⁴ San Mateo County Grand Jury Special Districts Survey 2013.

FINDINGS

- F1. The Board and the Manager share in responsibility for the lack of oversight that was instrumental in allowing the embezzlement to occur.
- F2. The Manager and the Board's finance committee did not recognize red flags in the financial reports that could have revealed the embezzlement far sooner.
- F3. The insurance company's denial of the District's embezzlement loss claim reinforces the conclusion that there were inadequate management practices, insufficient accountability, and inadequate oversight of the District.
- F4. The District's Manager did not follow policies and procedures in the hiring of one of the employees subsequently charged with embezzlement.
- F5. The District did not have adequate internal financial controls in place to prevent the embezzlement or lead to its early discovery.
- F6. Trustees and senior District staff should receive monthly financial reports.
- F7. The Board in general and its finance committee in particular did an inadequate job of overseeing the District's operations.
- F8. The Board's evaluation of the Manager revealed significant differences in the levels of confidence in the Manager's ability to manage the District.
- F9. The District would benefit from a redesigned Manager evaluation process.
- F10. Trustees are confused about their responsibilities, some feeling their only role is to make district policy, while others feel they have more oversight responsibility.
- F11. Even though LAFCo Commissioners rejected the recommendation to dissolve the District and transfer its functions to the CEHD, this issue needs further evaluation.
- F12. Cost savings could possibly be achieved with a transfer of the District's functions to the CEHD.
- F13. LAFCo would benefit from additional resources to ensure Service Reviews, as mandated by state law, are performed in a timely fashion.
- F14. Not all cities appoint a representative to the Board in a timely fashion or select a qualified individual as stipulated in the Health Code.

RECOMMENDATIONS

The Grand Jury recommends that the **Board** do the following:

- R1. Instruct the Manager to follow the Policies and Procedures manual at all times.
- R2. Instruct the Manager to provide complete financial reports to the Board on a monthly basis.
- R3. Improve its oversight of the District through an improved governance structure and hold the Manager accountable for its operations.

- R4. Evaluate its Policies and Procedures manual on an annual basis and make the manual available to employees and the public.
- R5. Emphasize the importance of the finance committee's role in ensuring that internal controls and policies are in place and are being followed.
- R6. Hire a human resources consultant to redesign the Manager's evaluation process in order to better assess the Manager's job performance.
- R7. Clarify Trustees' roles and reinforce and discuss expectations of the position at an annual meeting.

The Grand Jury recommends that the ***County Board of Supervisors*** do the following:

- R8. Provide increased resources to LAFCo so it can meet state mandates with regard to Service Reviews.

The Grand Jury recommends that ***LAFCo*** do the following:

- R9. Further study the dissolution of the District and evaluate the cost savings that might result from transferring the function to the County Environmental Health Department.

The Grand Jury recommends that the ***City/Town Councils*** do the following:

- R10. Appoint a council member to the District Board if a representative cannot be found after vetting applicants.
- R11. Require regular reporting about the District's operations by their representative at a scheduled council meeting.

REQUEST FOR RESPONSES

Pursuant to Penal code section 933.05, the Grand Jury requests the following to respond to the foregoing Findings and Recommendations referring in each instance to the number thereof:

- District Board of Trustees
- County Board of Supervisors
- LAFCo
- City/Town Councils

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda and open meeting requirements of the Brown Act.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.
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DISCLAIMER

This report is issued by the Grand Jury with the exception of one member who sits on the District Board. This individual was excluded from all parts of the Grand Jury's investigation and the making and acceptance of this report. This report is based on information from outside sources with none of the information being obtained from the excluded Grand Juror.

CERTIFIED PUBLIC ACCOUNTANTS & CONSULTANTS

Robert Gay
District Manager
San Mateo County Mosquito and Vector Control District
1351 Rollins Road
Burlingame, CA 94010

Description of Loss	Amount
1. Unauthorized Pay to Vika and Jo Ann	\$ 55,451.87
2. Incorrect pay calculation to employees	\$ 30,995.32
3. Fraudulent Deferred Compensation	\$ 15,480.00
4. Unauthorized and personal use of credit cards	\$ 335,432.00
5. Unauthorized and personal use of electronic fund transfers	\$ 183,364.62
6. 2 trucks removed from property	\$ 4,500.00
7. Unsupported checks cashed	\$ 1,149.33
8. Unsupported checks written to 3rd parties	\$ 8,591.14
9. Rebuild of the 2010/2011 Books	\$ 153,067.00
10. Fraudulent reporting of time off for FMLA	\$ 8,750.00
Total Loss Identified	\$ 796,781.28

Sincerely,


Jeffrey J. Ira, CPA

333 M. D. L. Drive, Suite 120 • Redwood City, CA 94065 • Phone (650) 802-8668 • Fax (650) 802-0866

APPENDIX B



C. G. UHLENBERG LLP
CERTIFIED PUBLIC ACCOUNTANTS & CONSULTANTS

October 26, 2011

Robert Gay
District Manager
San Mateo County Mosquito and Vector Control District
1351 Rollins Road
Burlingame, CA 94010

We were engaged by the San Mateo County Mosquito and Vector Control District (the "District") to perform a forensic accounting investigation. The nature of our procedures are limited, therefore, additional fraud not identified in this report may exist. As a result of our investigation we identified ten distinct loss activities that were executed against the District by 2 former employees Jo Ann Dearman ("Jo Ann"), former Finance Director and Vika Sinipata ("Vika"), Accounting Supervisor. A "loss activity" is defined as a deliberate action by Jo Ann and/or Vika that resulted in monetary loss to the District.

The report describes each of loss activities identified by our firm during its investigation. They are listed as follows:

1. Unauthorized and excessive pay to Vika and Jo Ann – extra payments and incorrect pay rate
2. Incorrect pay calculation to employees
3. Fraudulent Deferred Compensation contributions – Vika and Jo Ann
4. Unauthorized and personal use of credit cards – Vika and Jo Ann
5. Unauthorized and personal use of electronic fund transfers (ACH) – Vika and Jo Ann
6. 2 Trucks removed from property (2/2011) – Jo Ann
7. Unsupported checks cashed - Jo Ann
8. Unsupported checks written to 3rd Parties for personal benefit
9. Rebuild of the 2010/2011 Books
10. Fraudulent reporting of time off for FMLA – Jo Ann

The dollar value and description of their actions that created these losses are described in attachment *Results of Forensic Accounting Investigation by C.G. Uhlenberg LLP*. We have prepared two copies of supporting documentation of the losses in two binders, which have already been provided to you. The descriptions of what is contained in those binders are included in the *Results of Forensic Accounting Investigation by C.G. Uhlenberg LLP*.

Per your request, we have provided some of the information contained in this report to the District Attorney's office. If you have any questions, please do not hesitate to contact me or Jennifer Derrmon.

Sincerely,

Jeffrey J. Ira, CPA

Attachments: *Results of Forensic Accounting Investigation by C.G. Uhlenberg LLP*

333 Twin Dolphin Drive, Suite 230 • Redwood City, CA 94065 • Phone (650) 802-8668 • Fax (650) 802-0866

APPENDIX C

Meredith, Weinstein & Numbers, LLP

Attorneys at Law
115 Ward Street
Larkspur, California 94939

Telephone (415) 927-6920

Facsimile (415) 927-6929

April 11, 2013

Via E-mail and USPS

Gary J. Valeriano
Anderson, McPharlin & Connors LLP
444 South Flower Street, 31st Floor
Los Angeles, CA 90071-2901
Email: gjv@amclaw.com

Re: San Mateo County Mosquito and Vector Control District Employee Theft
Hartford Claim No.: 11392634
Your File No.: 0022-638

Dear Mr. Valeriano:

This will respond preliminarily to your letter dated March 5, 2013, in which you advise that Hartford has denied coverage in this matter. The District is both surprised and offended that after dragging this matter on for nearly two years, Hartford has chosen to avoid its responsibilities by denying coverage for the very misconduct that Hartford agreed to insure under policies for which Hartford received at least 6 years of premium! Hartford's "investigation" of this claim, including repeated requests for the same information it had already received, plainly demonstrates that Hartford has spent considerable resources looking for ways to avoid honoring its obligations, rather than assisting its insured in responding to this catastrophic loss. I will not review the chronology of events in this letter, but the correspondence over the past two years speaks for itself.

The District timely reported discovery of the scheme involving Seeney and Sinipata in June of 2011. There is no dispute that the loss is a covered loss under Section A.1.A of the Hartford policy. Seeney and Sinipata were "employees" who embezzled money from the District, causing a covered loss.

Hartford asserts that if the District had looked into Seeney's background prior to hiring her it would have discovered her criminal past. However, whether or not this is true, it is irrelevant. There was no requirement that the District check for past criminal activity. In fact, Section C of the application asks several questions about whether the District conducted pre-employment background checks, and the District answered "no" to each of them. Accordingly, the District's failure to conduct background checks does not support a denial of the claim, and Hartford's reference to background checks demonstrates Hartford's attempt to manufacture reasons for its denial.

Hartford also relies on Section F of the Policy, v void in any case of fraud by you as it relates to this Policy at any time. It is also void if you or any other insured, at any time, intentionally conceal or misrepresent a material fact concerning ...This Policy" The terms "You or any other insured" clearly refer to the named insureds only; here, the District is the named insured. The term is not defined to include misrepresentations by employees or agents of the District, and there is no evidence that the District intentionally concealed or misrepresented a material fact concerning the Policy. Any ambiguities as to who must engage in the misrepresentations will be construed against Hartford. "[A]n insurer who wishes to condition its contractual liability upon the insured's conformance with certain conduct must do so in clear, unambiguous language." *Holz Rubber Co., Inc. v. Am. Star Ins. Co.*, 14 Cal. 3d 45, 59 (1975).

In addition, the policy also provides coverage for the failure of an employee to faithfully perform his or her duties as prescribed by law, which results in loss of money or other property. *Endorsement 3*. If Sinipata's failure to faithfully and accurately complete the application for insurance resulted in loss for which the District would otherwise be entitled to coverage under this policy, then this loss itself would be covered under the Policy.

The 2010 policy was renewed for the same premium as the previous years. Hartford received its full premiums to insure against this very risk. Hartford has earned its premium for continuous coverage, and it would be inequitable to allow Hartford to forfeit the coverage because of the very theft it agreed to cover, simply because the perpetrator happened to be the same person that was assigned the administrative task of filling out the renewal application. See *Root v. American Equity Specialty Ins. Co.*, 130 Cal.App.4th 926 (2005).

As far as the District was concerned, the answers on the application for 2010 were correct. The District concealed nothing. If anyone else had filled out the application instead of Seeney or Sinipata, the answers undoubtedly would have been the same and there would be no issue as to misrepresentation or concealment. Furthermore, the answers on the 2010 renewal application were virtually the same as on the prior application; nothing material in the District's procedures had changed.

Neither Seeney nor Sinipata was authorized to access the signature plates without prior approval. The fact that they improperly accessed the plates, unbeknownst to anyone else in the District, was part of how they perpetrated their embezzlement scheme. Moreover, in Section E.2 of the 2010 application the District states that facsimile plates are used for signatures, but does not respond to the question of who can use them or how they are safeguarded. Hartford did not even follow up on this question and, accordingly, the information clearly was not material to Hartford's underwriting.

Hartford argues that the District misrepresented the computer controls, and or should have had systems in place to detect unusual activity. However, on both the 2010

and the prior application, the District answered "no" to the question at Section E.5, "are internal control systems designed so that no employee can control a process from beginning to end (e.g. request a check, approve a voucher and sign the check)?" Hartford did not follow up on this, either. Hartford was aware of the District's lack of control systems designed to prevent the exact type of scheme that Seeney and Sinipata were able to perpetrate. Accordingly, Hartford cannot prove that the District misrepresented the safeguards in place, or that this was material to the decision to issue the policy.

Hartford argues that Seeney's and Sinipata's knowledge of their own wrongdoing should be imputed to the District, based on principles of agency, and therefore it should be absolved from any coverage responsibility. However, knowledge is not imputed where the agent is acting on his own behalf and adversely to the interests of the principal. "While in general the knowledge of an agent which he is under a duty to disclose is to be imputed to the principal, it is well established that where the agent acts in his own interest or where the interest of the agent is adverse to his principal, the knowledge of the agent will not be imputed to the principal." *People v. Park*, 87 Cal. App. 3d 550, 566 (Cal. Ct. App. 1978) (citations omitted); see also *River Colony Estates Gen. P'ship v. Bayview Fin. Trading Group, Inc.*, 287 F. Supp. 2d 1213, 1227 (S.D. Cal. 2003) ("Courts, furthermore, will not impute an agent's actions to his or her principal when the agent's action is adverse to the principal.").

Hartford relies on *In re Payroll Express Corp.*, 186 F.3d 196 (2nd Cir. 1999), for the proposition that the insured, rather than the insurer, should bear the risk in such a situation. *Payroll Express* relies on New Jersey law for this finding, and is not in accordance with other jurisdictions that have addressed this issue. See, e.g., *Maryland Cas. Co. v. Tulsa Indus. Loan & Inv. Co.*, 83 F.2d 14, 16-17 (10th Cir. 1936); *Puget Sound Nat'l Bank v. St. Paul Fire & Marine Ins. Co.*, 32 Wash.App. 32, 645 P.2d 1122, 1126-28 (Wash.App.1982); *BancInsure, Inc. v. U.K. Bancorporation Inc./United Kentucky Bank of Pendleton County, Inc.*, 830 F. Supp. 2d 294, 301 (E.D. Ky. 2011); *Federal Deposit Ins. Corp. v. Lott*, 460 F.2d 82, 88 (5th Cir.1972). But more importantly, *Payroll Express* is clearly distinguishable on the facts. There, the founder, President and CEO and his wife, who jointly owned 100% of the interest in the company were engaged in a long-standing embezzlement scheme prior to initially applying for the policies at issue. *Payroll Express Corp.*, 186 F.3d at 200.

Likewise, in *West American Finance Co. v. Pacific Indemnity Co.*, 17 Cal. App.2d 225 (1936), the individuals involved in the fraudulent scheme included the president and three other officers who jointly made up a majority of the board of directors and owned all the stock of the insured company. In effect, they were "taking out indemnity bonds insuring their own fidelity." *Id.* at 229. The Court made this a central focus of its decision to deny the company the benefits of the policy:

while this group of men were thus proceeding to fasten these losses on the corporation's shoulders they were at the same time, as the governing board of directors of the corporation, obtaining from the [insurer] fidelity

bonds insuring their own honesty for the very purpose of placing the corporation, and incidentally themselves as the owners of the majority of the vote controlling stock therein, in a position to recoup from the surety the losses which they were bringing about by their own wrongful acts.

Id. at 235. On these facts, the Court determined that the knowledge of the majority shareholders was imputed to the company. The Court refused to apply the adverse interest exception because it found that the officers were acting for the corporation in the transaction, even though they had an opposing personal interest. *Id.* at 236. The reason for this exception is obvious; where the officers control the corporation itself, their actions are deemed to be the actions of the corporation.

These cases are best explained by the "sole actor" exception to the adverse interests doctrine. "California courts have recognized a limited exception to the rule that the acts of an officer acting adversely to a company will not be attributed to it." *In re California TD Investments LLC*, 1:07-BK-13003-GM, 2013 WL 827718 (Bankr. C.D. Cal. Mar. 6, 2013); see also *Federal Deposit Ins. Corp. v. Lott*, 460 F.2d 82, 88 (5th Cir.1972). This doctrine is used to impute the "fraudulent conduct of an officer and sole-shareholder to the corporation in spite of the fact that his actions were adverse to it." *Id.* (citing *Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP*, 133 Cal. App. 4th 658, 679 (2005)); see also *Coit Drapery Cleaners, Incl. v. Sequoia Ins. Co.*, 14 Cal.App.4th 1595 (1993). This exception does not apply in the present case, however, because Seeney and Sinipata were not the District's decision makers: "Courts have declined to impute this exception, however, where it has not been established that all relevant decision makers for the corporation were engaged in the fraud." *Id.* (citing *Casey v. U.S. Bank Nat'l Ass'n*, 127 Cal.App.4th 1138, 1143 (2005)).

Here, the District decided to obtain insurance from Hartford long before hiring Seeney and Sinipata. Neither Seeney nor Sinipata were members of the board, let alone owners and/or sole representatives of the District. Seeney and Sinipata were in no position to directly benefit from the policy, and the District obtained no benefit from their alleged misrepresentations. If Seeney or Sinipata had not filled out the application, some other employee would have, with the same answers. The failure to disclose losses due to their own fraud on the application for insurance only prevented the District from discovering it sooner and timely reporting the loss under the prior policy, which neither Seeney nor Sinipata was involved in procuring.

Hartford has cited no cases dealing with an innocent corporation where an officer who did not have sole control of the company lied on a renewal application. On the other hand, in *BancInsure, Inc. v. U.K. Bancorporation Inc./United Kentucky Bank of Pendleton County, Inc.*, 830 F. Supp. 2d 294 (E.D. Ky. 2011), the court was faced with this very scenario. The court reviewed the state of the law nationally, and found that "the few jurisdictions that have addressed this particular issue have handed down opposite results." *Id.* at 301. The court disagreed with *Payroll Express*, and held that the actions of a dishonest officer who lied on a renewal application to cover up her own misdeeds was not imputed to the insured, and therefore the policy was not rescindable. *Id.* The

court found Wood "was acting adverse to [the insured's] interests when she lied on the renewal application. Had she been honest in completing the applications, [the insured] would have been able to submit a timely claim under the FIB [financial institution bond]. Thus, by lying on the application, [the insured] did not benefit in any way." *Id.* at 302. As in the current case, "had any other officer or director filled out the application, there would be no question that Wood's knowledge would not be imputed to [the insured] and the ... Policy would remain in effect. It would be unjust to rescind the policies now, simply because the [employee] happened to be the one who filled out the application." *Id.* at 305.

The same result was reached in *Puget Sound Nat'l Bank v. St. Paul Fire & Marine Ins. Co.*, 32 Wash. App. 32, 645 P.2d 1122 (Wash.Ct.App.1982). There the court held that the adverse interest exception applied, and even though the defalcating officer was a Director, he was not the "sole representative." The insured had a board of directors, at whose behest he filled out the application, and who had no knowledge of the director's wrongdoing. The Court found that concealment of his wrongdoing on the application "was not in the best interests" of the insured, and therefore their interests was adverse. *Id.* at 43; see also *Maryland Cas. Co. v. Tulsa Indust. Loan & Investment Co.*, 83 F.2d 14 (10th Cir.1936). In the present case, Seeney and Sinipata were not acting in the interest of the District and therefore their knowledge will not be imputed to defeat coverage.

Regardless of whether Hartford is able to convince a court that coverage under the 2010 policy was forfeited by the very fraud Hartford had agreed to insure, Hartford ignores the fact that when the fraud was committed, Hartford afforded coverage under its 2007 policy. Although the insured may not have "discovered" the theft during that policy period, because Hartford asserts that it would not have issued the 2010 policy but for the statements in the application, then a court certainly will find coverage under Hartford's earlier policy to avoid a forfeiture. "Forfeitures . . . are not favored; hence a contract, and conditions in a contract, will if possible be construed to avoid forfeiture. This is particularly true of insurance contracts." *O'Morrow v. Borad*, 27 Cal. 2d 794, 800-801 (1946) (citations omitted); see also *Root v. Am. Equity Specialty Ins. Co.*, 130 Cal. App. 4th 926, 948 (2005).

We appreciate Hartford's expressed willingness to continue discussing this matter. The District would be happy to meet for further discussion.

Very truly yours,



Barron L. Weinstein

BLW:cdy

APPENDIX D

June 15, 2012

Mr. Robert Gay
District Manager
San Mateo County
Mosquito and Vector Control District
(SMCMVCD)
1351 Rollins Rd
Burlingame CA 94010

Re: Assessment of SMCMVCD System of Internal Financial Controls and
Recommendations for Improvements

Dear Mr. Gay,

At your request I have conducted an assessment of SMCMVCD's system of financial internal controls for payroll, cash disbursements, equipment disposal, petty cash and credit card usage. Included are eight findings and recommendations for your consideration regarding potential control concerns along with additional procedures that address the concerns identified, that if implemented, would enhance your controls.

Background

In response to an embezzlement scheme that was discovered in June 2011, the District contracted for and obtained an extensive forensic audit by C. G. Uhlenberg for the period February 2009 through June 2011. In addition to the audit, C. G. Uhlenberg rebuilt the District's financial records for the Fiscal Year July 2010 through June 2011 and recommended several internal financial control improvements.

In addition, the San Mateo County Counsel's Office performed an investigation of the position of District Manager's financial oversight during the period the fraud was perpetrated and recommended performance measures for the District Manager.

Based upon C. G. Uhlenberg's audit, it was assessed that the embezzlement scheme was a complex fraud that *"included elaborate efforts to cover up the embezzlement using falsified records presented to the District Manager and the Board of Trustees."*

In addition, it was assessed that the *"conspiracy between the alleged perpetrators was so elaborated and well concealed that it also was not detected in the District's annual audit processes."*

June 15, 2012

Mr. Robert Gay

Re: Assessment of SMC MVCD System of Internal Financial Controls and Recommendations for Improvements

Findings and Recommendations

Finding No.1

The blank check stock while maintained in an office that is locked when no one is in attendance, is kept in an unlocked drawer.

Recommendation No.1

Secure the blank check stock in a locked draw or safe. Unless immediately being used, the blank check stock should always be locked.

Finding No. 2

The blank check stock is not subject to periodic inventory counts to assure the entire supply is properly accounted for and tracked.

Currently the stock is enough for several months' worth of check writing. This fact presents an opportunity for an individual with access to blank check stock to steal blank checks that would not be used and therefore missed for months.

Recommendation No.2

The District Manager along with the Financial Manager should periodically inventory the blank check stock and document their count for the record.

Finding No. 3

The Financial Manager and the Accounting Technician can individually access the blank check stock in the absence of the other.

This provides an opportunity for one to steal blank check stock in the absence of the other and thereby avoid detection. In the event of theft of this stock and the subsequent fraudulent use of it, this situation increases the difficulty of identifying the fraudster and potentially blemishes all individuals who would have access to the blank check stock.

Recommendation No. 3

Limit access to the locked blank check stock to the District Manager or no more than him and the Financial Manager.

Finding No. 4

There is no established limit to the amount a District check can be cashed for with the bank. This situation enables a fraudster to steal a sizable amount of money in one theft and immediately flee, thereby effectively thwarting the extensive internal controls established to detect a theft.

Recommendation No. 4

Establish an upper threshold with the bank for cashing any checks without direct confirmation or advanced clearance.

Finding No. 5

While the bank statement is reconciled monthly, this control typically takes place five to six weeks after the first of the former month thereby potentially giving a fraudster that interval to abscond with the proceeds.

Recommendation No. 5

The Financial Manager should review the online banking statement weekly as an added precaution.

Finding No. 6

There does not appear to be an upper limit to the credit card usage. If accurate, this situation increases the potential of a large theft or misuse.

Recommendation No. 6

Review the thresholds of the credit cards and seek to limit its upper limit to fall within a range of the typical transactions.

June 15, 2012

Mr. Robert Gay

Re: Assessment of SMCMVCD System of Internal Financial Controls and Recommendations for Improvements

Finding No. 7

The current practice is to issue a credit card to most staff. This situation increases the potential of misuse or fraud.

Recommendation No. 7

Evaluate the cost/vulnerabilities and business benefits of the issuance of credit cards and consider limiting their distribution. If the business needs justify the wide issuance of them the issue of upper limits and timely reconciliation's become even more important.

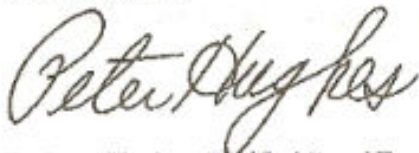
Finding No. 8

The District's new Internal Control Manual while a useful document, still remains a work in progress. It is important to have detailed desk procedures and clear and current policies readily available to management and staff. Well written and current policies and procedures serve as an essential quality assurance and check and balance internal control for any organization. They greatly facilitate the ability of management as well as the external auditors to conduct meaningful reviews and monitoring of the day-to-day business transactions.

Recommendation No. 8

Consider contracting with a firm that specializes in the preparation of business policies and procedures to ensure a timely, thorough and user/reviewer friendly manual.

Very truly yours,

A handwritten signature in cursive script that reads "Peter Hughes". The signature is written in dark ink and is positioned above the printed name.

Dr. Peter Hughes, Certified Fraud Examiner

ABOUT ORANGE COUNTY'S

Director of Internal Audit

Dr. Peter Hughes, CPA

CIA, CFE, CITP, CFF, CCEP

Dr. Hughes is a graduate of the highly selective **UCLA Anderson Graduate School of Management's Corporate Board of Directors Oversight Program** which qualifies him to serve as a board member on both a corporate or governmental entity. He also possesses a Ph.D., from Oregon State University, an MBA with an emphasis in Statistics from the University of California, Riverside, and a BA in Philosophy in Ethics and Political Philosophy from Pomona College in Claremont, California. Additionally, he is a Certified Public Accountant, Certified Corporate Compliance and Ethics Professional, an AICPA Certified Information Technology Professional, Certified Internal Auditor, a Certified Financial Forensic expert, an Institute of Internal Auditors' Accredited Peer Reviewer, a Certified Fraud Examiner and is trained in *Lateral and Creative Thinking techniques and methods*.

Along with his County internal auditing experience, Dr. Hughes has served as the Director of Internal Audit for three world-class organizations including the California Institute of Technology (Caltech), NASA's Jet Propulsion Laboratory (JPL) and the Oregon University System of Higher Education. Additionally, Dr. Hughes served as Acting Controller for Caltech and was a divisional Director of General Accounting and Finance for a major subsidiary of Columbia Broadcasting System (CBS).

Dr. Hughes is recognized as a leading authority in improving the cost effectiveness and efficiencies of local governmental entities having designed and conducted over 100 Control Self Assessment and Process Improvement workshops involving 1500 participations that identified and implemented over 2000 improvements in County business processes. Dr. Hughes' use of *Lateral and Creative Thinking techniques* in combination with his business sense and humor made these workshops the most popular and effective in recent County history.

He also led in the design and implement of Strategic Business Plans having served as the co-lead for the first Strategic Plan for Orange County. In addition, he is also recognized as a leading authority in the development of investment guidelines for municipal and county investment pools having conducted over 50 compliance and financial audits of Orange County's \$7 billion investment pool and in the design of "Best Practice" Audit Oversight Committees (AOC) having been instrumental in the creation of Orange County's AOC which is considered as one of the most successful oversight committees of its kind in local government.

Under the direction of Dr. Hughes, the County of Orange Internal Audit Department was the recipient of the prestigious Institute of Internal Auditors ROC, the Recognition of Commitment to Professional Excellence, Quality Service and Outreach Award. In addition, his department web page received the Bronze Medal for its utility and transparency from the international Association of Local Governmental Auditors (ALGA). Dr. Hughes has led his internal audit department successfully through four Peer Reviews and has developed the department into a world class audit function, with each of his 15 auditors possessing a CPA and at least one other internationally recognized certification; a standard of excellence no other comparably sized county or city has achieved.

Dr. Hughes is a noted speaker at international conferences and is an Adjunct Professor of Accounting at California State University at Fullerton's renowned and accredited School of Accounting where he teaches an advance course in internal controls, audit and risk assessment.