



Santa Ana Unified School District

Superintendent's Office
Jane A. Russo, Superintendent

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LAWSUIT FAQ

Answers to Frequently Asked Questions about the Superior Court Judgment on Undisclosed Commissions Paid to Health Benefit Consultants

Q: What was the judge's ruling and when was it issued?

A: On May 2, 2011 Riverside County Superior Court judge Dallas Holmes issued a final decision in a lawsuit brought by the Santa Ana Unified School District against two former employee benefits consultants who improperly concealed \$3,682,702.87 in commissions they received from Blue Cross of California (now known as Anthem Blue Cross). The judge ordered Kirk Montgomery (dba KM Employee Benefits Services) and Bridget Sirkegian to re-pay the Santa Ana Unified School District \$2,481,399.96 from commissions they were paid over a 39-month period (2001-2004). The court also imposed a constructive trust against the Montgomery and Sirkegian to collect on the judgment.

SAUSD relied on KMEBS to keep the District fully informed about all financial transactions involving the employee benefits package. The court validated District concerns that these two fiscal advisors withheld vital information and avoided their professional responsibility to fully disclose commissions they were being paid by the insurance carrier. The District argued that it hired the consultants to manage the benefits program and to negotiate with insurance carriers to obtain the most favorable rates and coverage available. The inclusion of the commissions actually resulted in higher insurance premiums, according to District legal counsel.

Q: When did the District file its complaint against the insurance consultants?

A: Trustees began asking questions about commissions in 2003 shortly after new trustees were seated on the Board of Education. The consultants refused to provide detailed information about any commissions they received. In working with Blue Cross (assuring them indemnity from prosecution), the District was able to gather sufficient evidence of non-disclosed commissions over the ensuing months. In April 2004 the District filed its civil complaint against the insurance brokers for their failure to disclose commissions.

Q: Why did it take almost eight years to get a ruling from the courts?

A: Due to the case backlog of civil lawsuits in the Riverside Superior Court and some illnesses among the parties an initial trial on this issue was not set until June 2008. A subsequent hearing was held in January 2011. Once the District argued its case at that hearing, it took the court three months to issue its formal written opinion finding the parties liable. The trial was held in Riverside because Montgomery and Sirkegian invoked a rule which allows a trial to be moved to a neutral location outside of the county where a public entity plaintiff is located.

Q: How much did the consultants get paid in commissions?

A: Beginning in 2001, the consultants were routinely paid 5% commissions for placing the District employee health policy with Blue Cross. Overall, KMEBS received over 3.6 million dollars (\$3,682,702.87) in commissions from Blue Cross (now Anthem Blue Cross) and other carriers over a two and half year period (July 2001 to January 2004).

Q: Did the contract allow KMEBS to receive commissions?

A: Only in some cases, but not to the extent that they did. For the term of the contract (November 1, 2000 to October 31, 2003) the consultants were paid a \$60,000 annual retainer to manage the insurance account. Payments were made at the rate of \$5,000 per month. The contract specifically contained a clause accounting for the possibility of commissions in some health insurance plans. However, here is the language in the agreement on how those commissions were to be handled: "All parties agree that certain carriers have as part of their underwriting process, built-in commissions that are not removed from the rating formula. In these cases, *the*

Consultant will remit any commissions, overrides or other carrier compensation to the District to One Hundred Percent (100%) of the total fee." (emphasis added)

On the surface this agreement states that commissions up to the \$60,000 annual management fee needed to be rebated back to the District. The district assumed that because SAUSD was self-insured there would only be minor commission amounts above the basic retainer. If commissions were paid, the district would at least get its management fee back off the top. KMEBS did this in only a few cases involving small commissions from lesser insurance carriers, but never disclosed that Blue Cross was paying them millions. The decision to shift from self-insured to covered insurance at KMEBS suggestion opened the door for higher commissions to be paid.

Q: How are employee health benefit plans handled now? Are there safeguards in place?

A: KMEBS no longer handles District insurance policies and the District has established rigorous oversight of its new contracts. Brokers, agents or consultants are no longer allowed to accept commissions as part of their contracts with the District and the insurance companies are required to report any commission paid to the school District each year. This practice was followed when Mercer was selected in 2004 and again in the last open RFP (request for proposals) when Alliant was selected in 2011 to manage the health plans.

Q: Will Montgomery and Sirkegian file an appeal?

A: It is not clear at this point, but they have the option of challenging the decision. The defendants request for reconsideration on technical grounds was denied by the judge on May 2.

Q: Are there criminal accusations involved over forgery, falsification of documents, etc?

A: The evidence gathered by the District was turned over to the Orange County District Attorney in 2007.

Q: Have preventive steps been taken to keep this from happening again?

A: In addition to stricter internal contract management and reporting requirements enacted by the District, the District is complying with new state regulations regarding insurance commissions. At the official request of Board member Rob Richardson in 2008, Assembly Member Jose Solorio (D-Santa Ana) authored AB 2589. This newly enacted law (now Insurance Code §10604.5) requires insurance carriers to report annually to the governing board of a public agency the name, address, and amount of fees or commissions paid to any agent, broker, or individual relating to the public agency's group health insurance policy.

Q: When will SAUSD get the money and will that help close the budget gap this year?

A: Depending on whether an appeal is filed, the District will seek repayment as soon as possible. However, this will not come in time to be applied to the current year budget gap. The funds will go back to the District General Fund.

Q: Is it true that a former SAUSD trustee was also paid a commission relating these insurance policies?

A: Yes. In court documents, KMEBS revealed that it had paid former trustee Sal Mendoza \$1,041,367 to be associated with the firm as its contract was being adopted by the SAUSD Board of Education and this health benefits contract was negotiated with the carrier. Mendoza was not a sitting trustee during this time period.