

Case No. S182581

**IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA**

CALIFORNIA ATTORNEYS, et al.
Plaintiffs/Respondents,

vs.

ARNOLD SCHWARZENEGGER, etc., et al.,
Defendants/Appellants/Petitioners;

JOHN CHIANG, etc., and JAN FRANK, etc.,
Defendants/Respondents.

**OPPOSITION OF JAN FRANK, AS PRESIDENT OF STATE
COMPENSATION INSURANCE FUND, TO PETITIONERS'
REQUEST FOR JUDICIAL NOTICE**

On Review of an Opinion of the Court of Appeal, First District,
Division Three, Case No. A125292, Affirming a Decision of the
Superior Court, County of San Francisco, Case No. CPF-09-509205
Honorable Peter J. Busch

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OPPOSITION TO REQUEST FOR JUDICIAL NOTICE

Petitioners have requested that this Court take judicial notice of numerous documents that were not part of the record in either the trial court or the Court of Appeal and are irrelevant to the issue identified by this Court. These documents all relate to the broad question of the Governor's authority to order furloughs. As set forth in the Answering Brief of Jan Frank ("Frank"), named as President of the State Compensation Insurance Fund ("State Fund"), whether the Governor has the general authority to order furloughs is not at issue here; rather, the primary issue presented in this case is whether the employees of State Fund are exempt from any furlough order under Insurance Code § 11873(c). Accordingly, this Court should deny Petitioners' Request for Judicial Notice as an improper attempt to raise irrelevant issues and to expand this Court's review to issues that were never litigated in the lower courts.

Petitioner seek judicial notice of three groups of documents: (1) the legislative history of Government Code § 19851; (2) the Memorandum of Understanding ("MOU") between the State and Respondent California Attorneys, Administrative Law Judges and Hearing Officers in State Employment ("CASE"); and (3) various

proclamations and orders regarding the State's fiscal crisis. None of these documents was part of the record below. None of these documents is relevant to this Court's review in this case.

Petitioners argue that the legislative history of Government Code § 19851 is "directly relevant to the issue of Governor Schwarzenegger's authority to furlough the state workforce by executive order." (RJN, p. 6.) However, the Governor's general "authority to furlough the state workforce" is not what is at issue here. What is at issue here is whether State Fund employees specifically are exempt from such a furlough. By its express terms, the exemption of State Fund employees created by Insurance Code § 11873(c) applies "[n]otwithstanding any provision of the Government Code or any other provision of law." Thus, the legislative history of Government Code § 19851 is irrelevant because, whatever authority the Governor may have under Government Code § 19851, it is expressly overridden by Insurance Code § 11873(c).

Likewise, the MOU is irrelevant to the Court's review. In their Opening Brief on the Merits, Petitioners argue that the MOU is relevant because it incorporates Government Code § 19851. (Petitioners' Brief, pp. 41-44.) However, because Government Code

§ 19851 is irrelevant, the MOU's incorporation of that section is irrelevant.

The proclamations and orders regarding the State's fiscal crisis are also not relevant here. As discussed in Frank's Answer Brief on the Merits, a furlough of State Fund employees would have no impact whatsoever on the State's fiscal crisis because State Fund's moneys are entirely separate from the State's moneys. Accordingly, these documents similarly have no bearing on the issue presented here.

Further, through their Request for Judicial Notice, Petitioners are effectively asking this Court to expand the record to include documents that were not considered by either the trial court or the Court of Appeal, for the purpose of deciding issues that were never considered by those courts. Indeed, throughout their Opening Brief on the Merits and their Request for Judicial Notice, Petitioners ignore the proceedings in the lower courts altogether and ignore the fact that the petition in this case sought relief for State Fund employees based on the unique operation of Insurance Code § 11873(c). Petitioners instead seek to recast the issue as involving the Governor's broad authority to order furloughs, but that is not what this case is about.

This Court should not reach out to consider an issue that is not properly before it.

For all the foregoing reasons, Frank respectfully requests that this Court deny Petitioners' Request for Judicial Notice.

Dated: June 29, 2010

MANATT, PHELPS & PHILLIPS, LLP

By: Ronald B. Turovsky
RONALD B. TUROVSKY
Attorneys for Defendant and Respondent
Jan Frank, named as President of State
Compensation Insurance Fund

PROOF OF SERVICE

I, Regina Coprich , declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 11355 West Olympic Boulevard, Los Angeles, CA 90064-1614. On June 29, 2010 I served the within document:

OPPOSITION OF JAN FRANK, AS PRESIDENT OF STATE COMPENSATION INSURANCE FUND, TO PETITIONERS' REQUEST FOR JUDICIAL NOTICE

- (BY MAIL)** By placing such document(s) in a sealed envelope, with postage thereon fully prepaid for first class mail, for collection and mailing at Manatt, Phelps & Phillips, LLP, Los Angeles, California following ordinary business practice. I am readily familiar with the practice at Manatt, Phelps & Phillips, LLP for collection and processing of correspondence for mailing with the United States Postal Service, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.

- by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.

SEE ATTACHED SERVICE LIST

I am readily familiar with the Manatt, Phelps & Phillips, LLP's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 29, 2010, at Los Angeles, California



Regina Coprich

Service List

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