

## **EIA Wins Major Court Victory – Favorable Ruling Affects All Counties, Cities and JPAs in California**

On September 28, 2005, a Los Angeles Superior court overturned a finding by the Commission on State Mandates on three test claims and in so doing established six new reimbursable state mandates.

In 2002, a series of six test claims were filed by CSAC Excess Insurance Authority (CSAC-EIA) jointly with the County of Tehama and the City of Newport Beach on recent changes in workers' compensation law. The changes were similar in that they created presumptions in favor of the peace officers, firefighters and others to ensure that in cases of cancer, meningitis, tuberculosis, hepatitis, lower back injury from utility belts and skin cancer for lifeguards, the employees would have an easier time obtaining benefits from employers. Although the cost increases were significant and real, the Commission on State Mandates found there was no mandated program chiefly through application of recent case law on optional programs not being reimbursable state mandates. The Commission found raising a defense in a workers' compensation action is optional and not reimbursable. The Commission also found that CSAC-EIA, a joint powers authority, was not a proper party to bring the test claim.

The first of the six presumptions, the Cancer Presumption for Peace Officers and Firefighters, went down to defeat in May 2004. This was soon followed by Lower Back Injury Presumption for Law Enforcement and Skin Cancer Presumption for Lifeguards (City of Newport Beach) in December. The quick filing of a writ (appeal) in Los Angeles County Superior Court (Case number BS092146) by the CSAC-EIA's Legal Counsel, Steve Underwood of Santa Barbara County Counsel's Office, with the assistance of Juliana Gmur of MAXIMUS convinced the Commission to hold the remaining three test claims in abeyance until the court case reached resolution.

Resolution came last Wednesday as Underwood brought back a victory. At the hearing, Judge Yaffe gave a tentative ruling from the bench in favor of CSAC-EIA and the City. He had been sufficiently persuaded by the written materials filed with the court that these were state-mandated programs. It was then up to attorneys on behalf of the Commission and the State Department of Finance to try to convince the judge otherwise. In the end, their arguments failed to impress. The court will next send the case back to the Commission to change its prior decision.

This superior court decision can still be appealed to a higher court if the Commission wishes to pursue that option. If it is not appealed, the decision stands and is binding on these test claims. If the matter is appealed, the decision of an appellate court would establish new law that would be binding on the Commission on these and other test claims pending before it. The Commission will have a month or so to weigh this risk before deciding to proceed. We will keep the members apprised of the situation. If you have questions in the meantime, please contact [Jack Blyskal](mailto:jblyskal@csac-eia.org) at [jblyskal@csac-eia.org](mailto:jblyskal@csac-eia.org), [Gina Dean](mailto:gdean@csac-eia.org) at [gdean@csac-eia.org](mailto:gdean@csac-eia.org), or the firm you use to prepare your mandated cost claims.

If you do not currently utilize a firm for this service, you can contact the EIA's service provider, [Allan Burdick](#) at [allanburdick@maximus.com](mailto:allanburdick@maximus.com) at MAXIMUS.