



COUNTY OF LEHIGH
OFFICE OF THE CONTROLLER

LEHIGH COUNTY GOVERNMENT CENTER
17 SOUTH SEVENTH STREET
ALLENTOWN, PA 18101-2400
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THOMAS SLONAKER
COUNTY CONTROLLER

JOHN A. FALK
DEPUTY CONTROLLER

TO: Final Report Distribution
FROM: Thomas Slonaker, County Controller
DATE: December 31, 2009
RE: Collection of Forfeited Bail Bonds

We have completed our internal audit of the collection of forfeited bail bonds at the department of law, County of Lehigh for the period January 1, 2005 to December 31, 2008. Our report number 09-65 is attached.

The results of our audit are:

- The management of the department of law did not adequately supervise/monitor the collection of forfeited bail bonds.
- The staff of the department of law negotiated down the court-ordered bail amounts on 86% of the cases settled during the period January 1, 2005 to December 31, 2008. Negotiated settlements of forfeited bail bonds reduced county collection by \$345,519.
- Actual amounts paid by insurance companies to bail bond agents could not be confirmed.

COUNTY OF LEHIGH, PENNSYLVANIA

DEPARTMENT OF LAW

*Collection of Forfeited Bail Bonds
for the Period January 1, 2005 to December 31, 2008*

REPORT NO. 09-65

COUNTY OF LEHIGH, PENNSYLVANIA
DEPARTMENT OF LAW
COLLECTION OF FORFEITED BAIL BONDS

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COUNTY OF LEHIGH, PENNSYLVANIA
DEPARTMENT OF LAW
COLLECTION OF FORFEITED BAIL BONDS

Background

The court grants the following types of bail: cash bail; 10% cash bail; unsecured bail; released on own recognizance (ROR); and bail bond (insured appearance). This audit focused on court activities where the defendant obtained a bail bond and subsequently failed to appear in court.

The clerk of judicial records—criminal division processes the defendant's bail bond activity. In cases where the defendant fails to appear for the scheduled court hearing/trial, the bail bond is declared forfeited by the judge presiding over the case. The management of the clerk of judicial records – criminal division furnishes a list (along with the appropriate court documents) of defendants who fail to appear for their scheduled court hearing/trial to the department of law. The department of law then makes a claim with the insuring bail bonding agent, insurance company or individual for payment to the County of Lehigh. There are situations that may mitigate collecting the amount of the forfeited bail bond (defendant already incarcerated, vacated or voided cases by judicial order or the financial condition of the bail bondsman or related insurer, etc). The department of law has overall responsibility for monitoring the amount of uncollected defendant bail bonds and the actual collection of the forfeited bail bonds.

Our last audit report (#05-44) of the collection of forfeited bail bonds for January 1, 2002 to December 31, 2004 was issued on August 31, 2005. The total revenue collected from forfeited bail bonds during the current audit was \$125,981 (2005 - \$72,745; 2006 - \$5,127; 2007 - \$12,309; 2008 - \$31,375; and 2009 up until July 14 - \$4,425). We commenced our current audit in June 2009. Since July 14, 2009, over \$217,000 has been collected from forfeited bail bonds.

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THOMAS SLONAKER
COUNTY CONTROLLER

JOHN A. FALK
DEPUTY CONTROLLER


Matthew R. Sorrentino, Esquire, County Solicitor
Department of Law
Lehigh County Government Center
17 South Seventh Street
Allentown PA 18101-2400

We have recently completed an internal audit of the collection of forfeited bail bonds at the department of law, County of Lehigh. The scope of our detail audit testing was January 1, 2005 to December 31, 2008. Our objective was to review the case status of all outstanding forfeited bail bonds issued by bonding agents/insurance companies.

We conducted our audit in conformance with the "International Standards for the Professional Practice of Internal Auditing", promulgated by the Institute of Internal Auditors. Our audit included examination of the accounting records, documentation, discussions with staff of the department of law and other county personnel, and such other auditing procedures we considered necessary in the circumstances.

We concluded that increased management attention to monitoring open bail forfeitures would result in increased revenue to the County of Lehigh. A complete description of our recommendations is detailed in the accompanying "*Schedule of Audit Findings and Recommendations*".

We wish to thank the staff of the department of law for their cooperation during our audit. This report is intended for the information of the department of law and other affected county offices. However, this report is a matter of public record and its distribution is not limited.



THOMAS SLONAKER
County Controller

December 21, 2009
Allentown, Pennsylvania

Final Distribution:

Board of Commissioners
Donald Cunningham, Jr., County Executive
Brian Kahler, Fiscal Officer
James Martin, District Attorney

Andrea Naugle, Clerk of Judicial Records
The Honorable William H. Platt, President Judge
Susan Schellenberg, Court Administrator

EXHIBIT A

County of Lehigh, Pennsylvania
 Department of Law
 Summary of Forfeited Bail Bonds (Bonding Agents / Insurance Companies)
 Turned over for Collection
 January 1, 2005 to December 31, 2008

Year the Case Originated	Total Cases ----To Be Collected----		Total ----Cases Vacated----		Total ----Cases Settled----		Total Open Cases --December 31, 2008--	
	Total # of Cases	Total Face Amount of Bonds	Total # of Cases	Total Face Amount of Bonds	Total # of Cases	Total Face Amount of Bonds	Total # of Cases	Total Face Amount of Bonds
Current Audit								
2008								
	11	\$ 235,500	3	\$ 52,500		\$ -	8	\$ 183,000
2007	5	117,500	2	57,500	1	25,000	2	35,000
2006	16	149,500	5	36,000	6	92,500	5	21,000
2005	15	310,000	3	110,000	5	65,000	7	135,000
Not Estreated*	5	60,000	-	-	5	60,000	-	-
Total Current Audit	<u>52</u>	<u>872,500</u>	<u>13</u>	<u>256,000</u>	<u>17</u>	<u>242,500</u>	<u>22</u>	<u>374,000</u>
Prior Audit - Open Cases								
2004								
	16	254,000	-	-	11	204,000	5	50,000
2003 and Prior	22	240,500	1	2,500	1	25,000	20	213,000
Total Prior Audit	<u>38</u>	<u>494,500</u>	<u>1</u>	<u>2,500</u>	<u>12</u>	<u>229,000</u>	<u>25</u>	<u>263,000</u>
Grand Total	<u>90</u>	<u>\$ 1,367,000</u>	<u>14</u>	<u>\$ 258,500</u>	<u>29</u>	<u>\$ 471,500</u>	<u>47</u>	<u>\$ 637,000</u>

*Estreat is a true copy extracted from the court record certified to a proper officer authorized and required to make collection.

County of Lehigh, Pennsylvania
 Department of Law
 Summary of Forfeited Bail Bond Settlements
 January 1, 2005 to December 31, 2008

EXHIBIT B

<u>Case Number</u>	<u>Insurance Company</u>	<u>Face Amount of Bond</u>	<u>Who Actually Paid It</u>	<u>Amount Paid To Lehigh County</u>
<u>Negotiated Settlements:</u>				
2003/2689	Harco National	\$ 40,000	Surety Admin- Harco	\$ 20,000
2003/3813	Harco National	25,000	Surety Admin- Harco	6,250
2004/956	Harco National	2,500	Surety Admin- Harco	250
2006/1796	Evergreen National	20,000	Lehigh Valley Bail Defendant	3,000 77
2005/950	Evergreen National	7,500	Lehigh Valley Bail Defendant	750 125
2005/776				875
2005/949	Evergreen National	25,000	Lehigh Valley Bail	6,250
2007/4072	Evergreen National	7,500	Blaze Bail Bonds of Pa	397
2007/874	Evergreen National	15,000	Lehigh Valley Bail	6,647
2008/96	Contintental Heritage	10,000	Lehigh Valley Bail	1,125
2008/2479	Contintental Heritage	25,000	Lehigh Valley Bail	3,750
2008/394	Contintental Heritage	2,500	Lehigh Valley Bail	300
2004/622	Ranger	2,000	Lehigh Valley Bail	375
2004/2448	Ranger	50,000	Lehigh Valley Bail	1,844
2003/3799	Ranger	25,000	Lehigh Valley Bail	7,543
2003/3800	Ranger	25,000	Lehigh Valley Bail	3,000
2004/785	American Contractors	5,000	Lehigh Valley Bail	3,000
2005/469	American Contractors	5,000	Lehigh Valley Bail	100
2005/508	American Contractors	5,000	Lehigh Valley Bail	100
2002/1070	Lexington	25,000	Lehigh Valley Bail	100
2003/4083	Lexington	10,000	International Fidelity & Allegheny Casualty	2,870
2003/3980	Lexington	20,000	ABC Bail Bonds Inc	1,254
2005/3026	Seneca	20,000	ABC Bail Bonds Inc	3,434
2004/3346	Seneca	5,000	A-1 Marks Bonding	362
2005/3153	Seneca	25,000	A-1 Marks Bonding	43
2005/4178	Seneca	15,000	A-1 Marks Bonding	1,132
			A-1 Marks Bonding	300
Sub-Total Negotiated Settlements (25 cases)		\$ 417,000		\$ 71,481
<u>Full Amount :</u>				
2004/802	Seneca	\$ 2,000	Bail USA	\$ 2,000
2004/2358	Seneca	2,500	Bail USA	2,500
2004/506	Ranger	45,000	Lehigh Valley Bail	45,000
2002/3866	Ranger	5,000	Blaze Bail Bonds of Pa	5,000
Sub- Total Full Amount (4 cases)		\$ 54,500		\$ 54,500
Grand Total (29 cases)		\$ 471,500		\$ 125,981

COUNTY OF LEHIGH, PENNSYLVANIA
DEPARTMENT OF LAW
COLLECTION OF FORFEITED BAIL BONDS

Schedule of Audit Findings and Recommendations

1. Inadequate Supervision

Condition: The management of the department of law did not adequately supervise the staff charged with the collection of forfeited bail bonds.

- The law department spreadsheet that tracks the status of all outstanding forfeitures is not updated as to forfeiture activity.
- Civil judgments were not filed in 22 percent of forfeiture cases involving bonding agents/insurance companies for cases turned over for collection during the period January 1, 2005 to December 31, 2008.
- Civil judgments were not filed in 75 percent of forfeiture cases involving unsecured, ROR (released on recognizance), or percentage cash bail turned over for collection during the period January 1, 2005 to December 31, 2008.
- No follow-up has taken place since January 25, 2008 on the forfeiture cases where an “Interrogatories in Aid of Execution” has been filed (but no response was received).

Recommendation: The management of the department of law should supervise more closely the staff handling the collection of outstanding bail forfeitures. Quarterly status reports should be distributed to the county fiscal officer, the district attorney, the president judge of the court of common pleas and the clerk of judicial records as to how many cases have been settled and for how much. Civil judgments should be filed for all open bail forfeitures (unsecured, released on recognizance, percentage cash and bail bondsmen/insurance companies). Also, management should investigate the possibility of turning over the collection of all outstanding bail forfeiture cases (except for bail bonds involving a bonding agent/insurance company) to a private collection agency.

2. Negotiated Settlements Reduced Collections by \$345,519

Condition: The staff of the department of law negotiated down the court-ordered bail amount on 86 percent of the cases (25 of 29) settled during the period January 1, 2005 to December 31, 2008 that involved a bail bondsmen/insurance company. The defendant or another individual paid a fee to the bail bondsmen for a guaranteed coverage in the amount of the bail bond, however, only 27% was collected because \$345,519 was given up in negotiated settlements.

<u>Year the Case Originated</u>	<u>Total No. of Cases</u>	<u>Amount Received</u>	<u>Amount Not Received</u>	<u>Total Face Amount of Bonds</u>
2008	0	\$ ---	\$ ---	\$ ---
2007	1	6,646	18,354	25,000
2006	6	5,790	86,710	92,500
2005	5	6,300	58,700	65,000
Not Estreated	5	9,300	50,700	60,000
Subtotal Current Audit	<u>17</u>	<u>\$ 28,036</u>	<u>\$ 214,464</u>	<u>\$242,500</u>
		12%	88%	100%
2004	11	\$ 95,075	\$108,925	\$204,000
2003 and Prior	<u>1</u>	<u>2,870</u>	<u>22,130</u>	<u>25,000</u>
Subtotal Prior Audit	<u>12</u>	<u>\$ 97,945</u>	<u>\$131,055</u>	<u>\$229,000</u>
		43%	57%	100%
Grand Total	29	\$125,981	\$345,519	\$471,500
	==	=====	=====	=====
		27%	73%	100%

Recommendation: The management of the department of law should not negotiate court-ordered bail amounts with bail bondsmen/insurance companies. Bail bondsmen and/or their insurance companies should be required to meet their obligations as to the full amount of the bail forfeiture.

3. Negotiated Settlement Amounts Could Not Be Confirmed (\$35,269)

Condition: In 84% of cases (21 of 25) where a negotiated settlement took place, the bail bondsmen paid the settlement amount to the County of Lehigh. We attempted to confirm directly with the insurance companies involved, the amount paid out and to whom it was paid for each of the 25 cases. The insurance companies involved did not supply us with the requested information for 60% (15 of 25) of the cases. Without a written confirmation from the insurance company, there is no way to determine if the County of Lehigh received the correct amount of money from the bail bondmen.

	<u>Cases</u>	<u>Negotiated Amounts</u>	<u>Amount Not Received</u>	<u>Total Face Amount of Bonds</u>
No insurance co. funds paid out	4	\$ 1,837	\$ 63,163	\$ 65,000
Amounts paid out by insurance co. agree to the amounts recorded	<u>6</u>	<u>34,375</u>	<u>75,625</u>	<u>110,000</u>
<i>Subtotal – Confirmed</i>	<u>10</u> 40%	<u>\$ 36,212</u>	<u>\$138,788</u>	<u>\$175,000</u>
Insurance company did not confirm amount paid out and to whom it was paid	9	\$ 27,411	\$144,589	\$172,000
Confirmation not returned	<u>6</u>	<u>7,858</u>	<u>62,142</u>	<u>70,000</u>
<i>Subtotal – Not Confirmed</i>	<u>15</u> 60%	<u>\$ 35,269</u>	<u>\$206,731</u>	<u>\$242,000</u>
Grand Total	<u>25</u> ==== 100%	<u>\$ 71,481</u> =====	<u>\$345,519</u> =====	<u>\$417,000</u> =====

Recommendation: The management of the department of law should only accept insurance company checks made payable to the “County of Lehigh” to settle bail forfeiture cases. If the bonding agent decides to pay the negotiated forfeit amount and not make a claim with the insurance company, the bonding agent should include a certifying letter from the insurance company confirming what amounts, if any, were paid to the bonding agent.

4. Compliance Monitoring Not Done

Condition: The staff of the department of law does not monitor compliance to Lehigh County Criminal Procedure 531 (Leh.R.Cr.P.531), which states:

“No bond shall be executed by any corporate surety where the aggregate maximum amount of unsettled and outstanding bail forfeitures, as determined by the Lehigh County Solicitor, Department of Law, is \$250,000 or more.”

“No bond shall be executed by any surety agent of a corporate surety authorized to do business in Lehigh County where the aggregate amount of unsettled and outstanding bail forfeitures for all corporate sureties for which the surety agent is writing bonds, as determined by the Lehigh County Solicitor, Department of Law, is \$100,000 or more.”

We noted two instances where the surety agent aggregated outstanding bail forfeitures in excess of \$100,000.

Recommendation: The management of the department of law should monitor compliance to Lehigh County Criminal Procedure 531 (Leh.R.Cr.P.531).

5. Inadequate Monitoring of Nolle Prosequi Cases

Condition: The staff of the department of law did not follow-up on forfeited bail in three criminal cases that were closed by “Nolle Prosequi”. Current department of law bail forfeiture procedures, Section III, Collection/Judgment Process states: *“If a criminal case is Nolle Prossed or 314’d, the criminal matter is concluded and collection is no longer pursued (where no court order upon bench warrant return specifies that the forfeiture stands)”*. The three criminal cases are:

<u>Criminal Case #</u>	<u>Amount of Forfeited Bail</u>
1991/663	\$10,000
1993/1643	10,000
2004/3997	<u>10,000</u>
Total	\$30,000 =====

Recommendation: The management of the department of law should follow-up on the “Nolle Prosequi” cases and request the Court to make a determination as to the bail forfeiture status.



COUNTY OF LEHIGH
Department of Law

Matthew R. Sorrentino, Esq.
County Solicitor

December 21, 2009

Thomas Slonaker, Lehigh County Controller
Lehigh County Government Center, Room 465
17 S. Seventh Street
Allentown, PA 18101-2400

Dear Mr. Slonaker:

We appreciate the opportunity to respond to the Controller's Report (the "Report") resulting from the audit of the Law Department's collection of forfeited bail bonds, which commenced the week of September 7, 2009. There are several items we would like to address.

First, as noted in the Background section of the Report, collections in 2009 have been over \$217,000.00. This has resulted from a change in personnel responsible for handling these matters. The decision to make this change was initiated through an internal monitoring process in the early Summer of 2009 and actually implemented on August 28, effective September 11. The concerns noted in sections one and four of the Report should be addressed by this personnel change.

Section two of the Report recommends that the County "...should not negotiate court-ordered bail amounts..." and should require the companies to pay the full amounts of the forfeiture. This recommendation fails to comprehend the applicable and controlling law in this field. In order to enforce a bail forfeiture, there must be "prejudice" to the government (i.e.: the prosecution of the government's case against the defendant) as a result of the breach of the bail bond. Working with the Lehigh County Courts, the Department of Law has developed a process requiring payment of an increasing percentage of the bond amount as time elapses, to provide an incentive to the bondsman to return the defendant and, thereby, enable prosecution. This time frame approach is relevant to the determination of "prejudice" to the government, as prosecution may become more difficult the longer a defendant is absent. Because the bail system's purpose is to ensure that the defendant appears for court, and not to raise revenue for the County, facilitating the Court's docket, and the work of the District Attorney, are the most important goals of the collection process. For this reason we work closely with the Court on tailoring the collection process to meet the Court's needs. The Court has expressed satisfaction with this system, which was developed in the mid-1990's with the assistance of then District Attorney and now Judge Steinberg.

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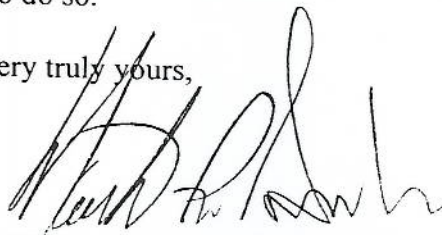
December 21, 2009

Section three of the Report expresses concern that the auditor could not confirm that the insurance company (as opposed to the bonding agent) paid the sum ordered by the court to resolve the matter. The recommendation is that the County not accept checks from the bonding agent as payment for the forfeitures, but only accept checks from the insuring company. This recommendation clearly misapprehends the County's position in these matters. The County is not in a position to interfere with the contractual relationship between the bonding agent and the insurance company. If, for whatever reason, the agent remits the forfeited amount, the County's only responsibility is to collect the correct amount directed by the court and not quibble about the source of payment.

Section five of the Report suggests that the County request the Court to make determinations as to the bail status of *nolle prosequi* cases. These are cases in which the District Attorney has elected to dismiss the prosecution. The Department has made the determination that enforcement of the forfeited bail in such cases cannot occur as there is clearly no "prejudice" to the government. We have chosen not to waste either the Court's time or the County's resources to take these matters any further.

If you require any further explanation or would like a member of my staff to explain the Bail Process in more detail we would be pleased to do so.

Very truly yours,



MATTHEW R. SORRENTINO

MRS/dld