

State of California
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION AGENDA
Government Code § 11126 (a), (c)(3), and (e)
for
Wednesday, May 13, 2009
10:00 a.m.
Sacramento, California
&
West Covina, California

TO: Members of the California Occupational Safety and Health Appeals Board

FROM: J. Jeffrey Mojcher, Chief Counsel

DATE: May 1, 2009

RE: Closed Session of the Board on May 13, 2009

Pursuant to Government Code section 11126, subdivisions (a), (c)(3), and (e) and the Labor Code sections 6609 and 6620, the Appeals Board will hear the following items in Closed Session.

DECISION OF ADMINISTRATIVE LAW JUDGE:

(Written decision issued by an Administrative Law Judge. The decision summarizes the evidence received from the Division of Occupational Safety & Health and the Employer, makes findings of fact for all issues involved in the appeal and gives reasons and grounds for the decision. The Board Members review the decision and decide if they will reconsider the ALJ decision on their own motion.)

1. LANDAVAZO CORP., 08-R4D1-4039 AND 4040

DECISION AFTER REMAND

1. P G & H CONTRACTING, INC. dba ROYAL ROOF CO., 06-R4D3-1657 AND

1658

ORDERS OF ADMINISTRATIVE LAW JUDGES:

(Written order issued by an Administrative Law Judge after a pre-hearing conference in which the Division of Occupational Safety & Health and the Employer agree to settle an appeal without a hearing. The Board Members review the order and decide if they will reconsider or remand the issued order.)

**CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM**

For May 13, 2009

Page 2

1. A & F FORKLIFT, INC., 08-R4D2-5121
2. ABSOLUTE POWER SYSTEMS, 08-R4D4-1642 AND 1643
3. ALCO METAL FABRICATORS, 09-R3D1-1273 THROUGH 1275
4. AMERICAN CONCEPTS, INC. dba APPLIED COMPUTER CONTROLS, 09-R6D2-0018 AND 0019
5. AWARD CONSTRUCTION, 07-R2D5-3131 AND 3132
6. B.S.E. INDUSTRIAL CONTRACTORS, INC., 08-R5D2-2942
7. BLF, INC. dba LARRABURE FRAMING, 08-R3D2-1865
8. BRISTOL OMEGA, INC., 08-R6D2-4480 THROUGH 4484
9. CAMPANILE II LP, 08-R6D2-4989
10. JESUS CARDENAS dba CARDENAS MARKETS, INC., 09-R6D2-0089 AND 0090
11. WILLIAM CAREY INTERNATIONAL UNIVERSITY, 08-R4D2-5033
12. CLEAN FOODS, 08-R6D2-4974 AND 4975
13. CLOSET MAID CORPORATION, 08-R3D3-4583
14. D & L MOULDING AND LUMBER CO., 08-R6D2-4099 THROUGH 4104
15. DESIGN BUILDERS, INC., 08-R4D4-1899 THROUGH 1901
16. DIVISION THREE CONSTRUCTION SERVICES, INC., 08-R4D2-2807 AND 2808
17. EAGLE IRON ERECTORS, INC., 08-R3D2-2763 THROUGH 2765
18. EL CAMINO AUTO BODY & PAINT, 08-R6D5-2639
19. FAHRNEY AUTOMOTIVE GROUP, 07-R2D5-1279 THROUGH 1281
20. DAN FITZGERALD dba CON TEC DEVELOPMENT, 08-R4D1-4555 AND 4556

**CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM**

For May 13, 2009

Page 3

21. GOLDEN PACIFIC SCREEN PRINTING, INC., 08-R6D5-3780 AND 3781
22. GUTIERREZ TIRE, INC., 08-R4D3-1105
23. HAAS AUTOMATION, INC., 08-R4D5-2340
24. HAMROCK, INC., 09-R6D2-0129 THROUGH 0131
25. HINEY CONSTRUCTION, 08-R6D2-3637 THROUGH 3639
26. HONEYCUTT TEAR-OFF, INC., 08-R3D1-3984
27. I.S.A. CONTRACTING SERVICES, INC., 08-R6D5-3850 AND 08-R6D5-4668
28. IRVINE EUROCARS, LLC, 09-R3D1-0852
29. J.K. RESIDENTIAL SERVICES, 08-R4D3-3306 AND 3307
30. J-M MANUFACTURING CO., INC. dba J-M PIPE MFG., 07-R3D3-4893
THROUGH 4895
31. JR ELECTRICAL, 08-R3D3-2395 AND 2396
32. KING PALLETS, INC., 08-R6D2-4845 THROUGH 4848
33. KORMX, INC., 08-R6D2-4340 THROUGH 4342
34. L.A. COUNTY INTERNAL SERVICES DEPT., 08-R4D4-2204
35. L & L NURSERIES SUPPLY, INC., 08-R6D2-5070 AND 5071
36. LEADING INDUSTRIES, INC., 08-R4D5-3082 THROUGH 3084
37. LEHIGH CEMENT, 08-R5D2-4015
38. LI MEI FOOD COMPANY dba T.W. BAKERY, 08-R6D2-5066 THROUGH 5069
39. MAGCO DRILLING, INC., 08-R4D2-5041
40. MARK COMPANY [SANTA ANA CREEK DEVELOPMENT COMPANY], 09-
R3D1-0878
41. MARTINEZ MOBILE SERVICE TIRE AND DIESEL REPAIR, 09-R3D2-0241

**CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM**

For May 13, 2009

Page 4

42. MCM CONSTRUCTION, INC., 07-R1D4-2162 THROUGH 2167
43. MERVYN'S, LLC., 08-R3D5-2322 THROUGH 2325
44. MR. ROOTER PLUMBING, 08-R4D3-3305
45. MWS WIRE INDUSTRIES, 09-R6D2-0647 THROUGH 0649 AND 09-R6D2-0796
46. NEIGHBORCARE PHARMACY SERVICES, 07-R3D2-2832
47. NORTH AMERICAN CURTAINWALL, LLC., 08-R3D5-2109 AND 2110
48. OC ALPHANETICS, INC., 08-R6D2-4485 THROUGH 4494
49. OKAMI, INC., 09-R6D2-0054 THROUGH 0056
50. ORGANIC MILLING CO., 08-R6D2-4076 THROUGH 4081
51. ORVAL KENT FOOD CO., INC. 08-R6D2-3601 THROUGH 3603
52. PARAMOUNT PRE-CAST, INC., 08-R4D3-3358
53. PASSMORE GAS AND OIL, INC., 08-R3D3-2555
54. PORTS AMERICA MANAGEMENT CORP., 09-R6D2-0360
55. PRL GLASS SYSTEMS, INC., 08-R4D4-0211 AND 0212
56. RED RIVER RANCH & FARMS, INC., 08-R4D5-3943
57. RICH'S JON DONAIRE DESSERTS, 08-R4D4-1914
58. ROSS SOUTHWEST DISTRIBUTION CENTER, 08-R3D3-2202
59. S A RECYCLING, LLC dba A-1 RECYCLING, 08-R6D2-4852 THROUGH 4854
60. SAFE T SCAFFOLDING, 08-R4D1-1622 AND 1623
61. JESUS SANTANA dba VISTA VICTORY OUTREACH, 08-R3D2-1601 AND 1602
62. M. SANTOS & SONS CONTRACTORS, INC., 08-R6D5-4112 THROUGH 4115
63. STD WIRE PRODUCTS, INC., 08-R6D2-3317 THROUGH 3322
64. STOUT ROOFING OF CA., INC., 08-R2D4-1209

**CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM**

For May 13, 2009

Page 5

65. STRAIGHTLINE ENGINEERING, 07-R3D2-3963 THROUGH 3965
66. SUN PACIFIC, 08-R4D5-3355 THROUGH 3357
67. TDJ COMPANY, INC., 08-R6D2-4713 THROUGH 4715
68. TORN & GLASSER, INC., 09-R6D2-0464 THROUGH 0468
69. VAN CAN COMPANY, 09-R3D2-0811 AND 0812
70. VAN GRONINGEN & SONS, INC., 08-R6D5-3973
71. VERY SPECIAL CHOCOLATES, INC., 09-R6D2-0367 THROUGH 0370
72. ARRIAN WHEELER dba ABSOLUTE WINDOW CLEANING, 08-R1D1-2878
AND 2879
73. WIBERG CORPORATION OF CALIFORNIA, 09-R6D2-0132 THROUGH 0134
74. WIRE TECH, INC., 09-R6D2-0361 THROUGH 0366
75. JOHN ZURO, 08-R4D4-2337 THROUGH 2339

ORDERS DISMISSING APPEALS:

1. LORTZ & SON MFG. CO. dba LORTZ MANUFACTURING COMPANY, 08-R4D3-0529
2. R & R CONSTRUCTION, 08-R3D2-1871 THROUGH 1874

ORDERS DENYING-DISMISSING LATE APPEALS

1. GREIF, INC., 09-R2D4-9094
2. WESTROW, INC., 09-R2D5-9109

ORDER GRANTING LEAVE TO FILE LATE APPEAL:

1. PREMIUM PACKING, INC., 09-R6D5-1495

ORDERS GRANTING APPEALS AND DISMISSING CITATIONS

3. PREFERRED FRAMING, INC., 07-R6D5-5255
4. REFLECTIONS CAR WASH, 08-R6D5-1943

**CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM**

For May 13, 2009

Page 6

STIPULATIONS:

1. CALIPATRIA STATE PRISON, 08-R3D2-3766 THROUGH 3770
2. HOT DESERT KNIGHTS, 08-R6D2-244 AND 245
3. JAM CONSTRUCTION, 07-R2D5-3436 THROUGH 3439
4. MOUNTAIN CASCADE, INC., 05-R5D1-2012
5. PACIFIC COAST PRODUCERS, INC., 07-R2D3-0641
6. RUIZ FOODS, 06-R2D5-2582
7. STRATFORD GROWERS, INC., 07-R2D5-0952
8. WAWONA FROZEN FOODS, 07-R2D5-1536 AND 1537
9. WEST COAST INFRASTRUCTURE, INC., 05-R2D5-3504 AND 3395

PETITIONS FOR RECONSIDERATION:

(The Division of Occupational Safety & Health and the Employer each has the right to petition the Appeals Board to reconsider a decision or order of an Administrative Law Judge. The Appeals Board must decide to grant or deny each petition.)

1. CIRBY DENTAL GROUP, 06-R2D1-3070
2. DANIEL L. ELLISON dba AUBURN CONCRETE PUMPING & MATERIAL
BELTING, 07-R2D1-2507 AND 2508

DENIAL OF PETITION FOR RECONSIDERATION (DRAFT)

1. HILTON LOS ANGELES AIRPORT, 07-R4D1-4722 and 4723

DECISIONS AFTER RECONSIDERATION (DRAFTS):

(If the Appeals Board grants a petition for reconsideration it reviews the facts of the appeal and then issues a decision after reconsideration upholding, reversing or modifying the underlying ALJ decision.)

1. A & C LANDSCAPING, INC. aka A & C CONSTRUCTION, INC., 03-R4D4-4791
2. AC FRAMERS INC., 03-R2D3-3475

**CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM**

For May 13, 2009

Page 7

3. AC TRANSIT, 08-R1D4-0135
4. AMERICAN REMEDIAL TECHNOLOGIES, 08-R4D2-3154 THROUGH 3156
5. AMISH COUNTY GAZEBOS, INC., 08-R6D2-227
6. ASC PROFILES, INC., 06-R2D1-1181
7. ANNING-JOHNSON COMPANY, 06-R1D3-1976
8. BART, 03-R1D1-5170
9. BIMBO BAKERIES USA, 03-R1D3-5215 THROUGH 5217
10. BLF, INC. dba LARRABURE FRAMING, 03-R4D3-4428 AND 4429
11. BLF, INC. dba LARRABURE FRAMING, 02-R4D1-4675 THROUGH 4680
12. C & M FINE PACK, INC. 07-R6D2-4149 THROUGH 4155
13. CA RASMUSSEN, INC., 08-R4D5-219 AND 220
14. CALDWELL-ROLAND ROOFING, INC., 03-R1D4-2905
15. CALIFORNIA FAMILY FITNESS, 03-R2D1-95 AND 96
16. CALIFORNIA FRESH FARMS, 06-R2D4-4127
17. CENTRAL VALLEY CONTRACTING, 05-R4D3-2351
18. COLES CARBIDE CORPORATION, 08-R4D3-2012 THROUGH 2014
19. CVS PHARMACY GARFIELD BEACH LLC, 08-R3D1-9368
20. DAKOTA COMPANIES UNLIMITED, 05-R4D3-392 AND 393
21. DAVIS BROTHERS FRAMING, INC., 03-R3D1-114
22. DAVIS BROTHERS FRAMING, INC., 05-R3D3-634 THROUGH 636
23. DUKE PACIFIC, INC., 06-R3D3-5175 THROUGH 5177
24. DUKE PACIFIC, INC., 08-R3D3-574
25. DYNALECTRIC, 03-R1D1-4101

**CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM**

For May 13, 2009

Page 8

26. ESTENSON LOGISTICS LLC 05-R1D4-1755 AND 1756
27. ETTER & SON CONSTRUCTION, INC., 03-R1D5-3131
28. FORKLIFT SALES OF SACRAMENTO, INC., 05-R2D1-3477
29. FORTUNA IRON WORKS 06-R2D3-4222
30. G.T. ALDERMAN, INC., 05-R4D3-3513
31. GENERAL TRUSS CO. INC., 06-R2D1-783 AND 784
32. GHILOTTI BROS. CONTRACTORS, 04-R1D5-2321 AND 2322
33. GLASS PAK, 03-R2D2-750 AND 751
34. GOLDEN WEST INDUSTRIES, INC., 08-R3D2-3930
35. HB PARKCO, 07-R4D2-1730 AND 1731
36. HELPMATES STAFFING SERVICES, 05-R3D3-2239
37. THE HERRICK CORP., 07-R3D1-495
38. HUSSMAN CORPORATION, 03-R3D1-2939
39. INDUSTRIAL MASONRY, INC., 07-R3D2-735 AND 736
40. IRWIN INDUSTRIES, INC., 08-R6D4-1454 THROUGH 1456
41. JENSEN PRECAST, 05-R2D1-2377
42. JOHN LAING HOMES, 04-R3D1-194 AND 195
43. JOHN M. FRANK CONSTRUCTION, 06-R4D3-968
44. KELLY SERVICES, INC., 06-R1D2-1024
45. KENNY-SHEA-TRAYLOR-FRONTIER/KEMPER, JV, 03-R5D2-323
46. LOS ANGELES, CITY OF, FIRE DEPARTMENT, 03-R2D5-3960
47. LOS ANGELES, CITY OF, HOUSING AUTHORITY, (HACLA), 05-R4D2-2541
48. LOS ANGELES, COUNTY OF, DEPT. OF PUBLIC WORKS, 07-R4D2-2540

**CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM**

For May 13, 2009

Page 9

49. HARRY L. MURPHY, INC., 06-R1D2-218 AND 219
50. BILL NELSON GENERAL ENGINEERING & CONSTRUCTION, 06-R2D5-1552 THROUGH 1554
51. O & M INDUSTRIES, 04-R1D5-1597
52. PMR RACE CARS, 03-R3D3-1825
53. POUK & STEINLE, INC., 03-R4D2-1495 AND 1496
54. R & L BROSAMER, INC., 03-R1D5-4832
55. REAL PARTY DEVELOPMENT, INC., 07-R2D4-4129 AND 4130
56. SANTA ROSA CITY TRANSIT AND PARKING DEPARTMENT, 05-R1D5-1417
57. STACY & WITBECK, INC., 05-R1D1-1142
58. STATE CENTER COMMUNITY COLLEGE DISTRICT, 05-R2D5-1688 THROUGH 1692
59. STRUCTURAL SHOTCRETE SYSTEM, 03-R4D3-986
60. A. TEICHERT & SON, INC., A CORPORATION DBA TEICHERT AGGREGATES, 04-R5D2-850 AND 851
61. A. TEICHERT & SON, INC. DBA TEICHERT CONSTRUCTION, 05-R2D4-2650 AND 2651
56. A. TEICHERT AGGREGATES, 04-R5D1-2982
57. TRADER DAN'S DBA ROOMS N. COVERS, ETC., 08-R6D2-4978 THROUGH 4980
58. TRIO METAL, 03-R4D4-317
59. UKIAH FORD-LINCOLN-MERCURY, INC., 06-R1D5-2256 AND 2557
60. UNITED PARCEL SERVICE, 07-R3D3-3322
61. WEBCOR CONSTRUCTION, 06-R1D1-2093 THROUGH 2095
62. WESTCOAST COMMUNICATION, 05-R2D3-2801 AND 2802

**CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM**

For May 13, 2009

Page 10

PENDING LITIGATION:

(If the Division of Occupational Safety & Health or the Employer disagrees with a decision after reconsideration or a denial of a petition for reconsideration, either one or both parties may apply to the California Superior Court for a writ of mandate. The Appeals Board receives legal advice from its Legal Unit and provides policy direction regarding pending litigation.)

SUPERIOR COURT:

1. HARRIS CONSTRUCTION COMPANY, INC., 07CS00518 (02-3914)
2. JERLANE v DIVISION OF OCCUPATIONAL SAFETY & HEALTH, 37-2007-0005631-CU-WM-NC, (01-4344/4345)
3. J.F. SHEA CONSTRUCTION, INC. (DOSH V OSHAB), 34-2007-00882187-CU-WM-GDS, (02-801)
4. E.L. YEAGER CONSTRUCTION COMPANY, INC. (DOSH v OSHAB), 34-2007-00882192-CU-WM-GDS, (01-3261)
5. BRUTOCO ENGINEERING & CONSTRUCTION, INC., 30-2007 00100159 (07-9223)
6. MCI WORLDCOM, 34-2008-00006043-CU-WM-GDS (00-440)
7. KHS & S CONTRACTORS, 32-2008-00107284-CU-WM-GDS CJC (06-2759)
8. ARTHUR J. BREWSTER CORP. dba PRESTIGE KITCHENS, INC., 30-2008-00110573 (08-1121)
9. EMPIRE PRO-TECH INDUSTRIES, 37-2008-00091916-CU-WM-CTL (07-2837)
10. MENDOTA UNIFIED SCHOOL DISTRICT, 08-CE CG 04 324 (07-3572)
11. SHIMMICK CONSTRUCTION CO., 34-2008-80000121-CU-WM-GDS (06-1136)
12. INTERNATIONAL TRANSPORTATION SERVICE (07-3824)
13. UNITED AIRLINES, 07CS00331 (00-2844)
14. SOUTHERN CALIFORNIA EDISON COMPANY v CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD, BS 119297, LOS ANGELES SUPERIOR COURT (08-9062)

CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
For May 13, 2009
Page 11

15. KFM AND DIVISION OF OCCUPATIONAL SAFETY AND HEALTH v
OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD, RG 09442652
(06-2452)

APPELLATE COURT:

1. MURRAY COMPANY, BS112469
2. HARRIS CONSTRUCTION COMPANY, INC. 07CS00518 (02-3914)

PERSONNEL (*Issues regarding staff.*)

Any matter not completed at this Closed Session may be continued to subsequent meetings.