BEFORE THE

STATE OF CALIFORNIA

OCCUPATIONAL SAFETY AND HEALTH

APPEALS BOARD

In the Matter of the Appeal of: MCM CONSTRUCTION, INC. P.O. Box 620 North Highland, CA 95660 Employer	Dockets. 13-R1D2-3851 through 3854 **ERRATUM**

On February 22, 2016, the Occupational Safety and Health Appeals Board (Board) issued a Decision After Reconsideration (DAR) in the above-entitled matter. An error has been noted in the Summary Table. By this Erratum to the DAR, is corrected as follows:

> The 'Total Amount Due*' is incorrectly listed as $**36,506**. The correct amount should read $**36,881**.

This Erratum to the DAR relates back to the issuance date of February 22, 2016.

ART R. CARTER, Chairman
ED LOWRY, Member

JUDITH S. FREYMAN, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: MAR 22, 2016

BEFORE THE

STATE OF CALIFORNIA

OCCUPATIONAL SAFETY AND HEALTH

APPEALS BOARD

In the Matter of the Appeal of: MCM CONSTRUCTION, INC. P.O. Box 620 North Highland, CA 95660 Employer	Dockets 13-R1D2-3851 through 3854 **DECISION AFTER RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code and having taken the petition for reconsideration filed by the California Division of Occupational Safety and Health (Division) matter under submission, renders the following decision after reconsideration.

JURISDICTION

Beginning on June 17, 2013, the Division of Occupational Safety and Health (the Division) conducted an accident inspection at Highway 101 on Crazy Horse Canyon Road, Prunedale, California. On December 13, 2013, the Division cited employer for one regulatory violation, one serious violation, and two accident-related serious violations of workplace safety and health standards codified in California Code of Regulations, Title 8, and proposing civil penalties.[1]

Employer filed timely appeals of the citations.

Administrative proceedings were held, including a contested evidentiary hearing before an Administrative Law Judge (ALJ) of the Board. After taking testimony and considering the evidence and arguments of counsel, the ALJ issued a Decision on June 6, 2015.

[1] Unless otherwise specified, all references are to California Code of Regulations, Title 8.

The Board took the Decision under reconsideration on its own motion and granted the Employer's timely filed a petition for reconsideration of the ALJ's Decision on July 8, 2015. The Division filed a response to the Order of Reconsideration of August 7, 2015.[2]

ISSUES

1. Is the accident that occurred on June 17, 2013 within the scope of employment as contemplated by the Act?
2. If the accident was within the scope of employment, did the ALJ properly find a violation of Citation 2, Item 1?
3. If the accident was within the scope of employment, did the ALJ properly find a violation of Citation 3, Item 1?
4. If the accident was within the scope of employment, did the ALJ properly find a violation of Citation 4, Item 1?

FINDINGS OF FACT

1. The parties have stipulated that on June 14, 2013, the date of the accident, the injured employee, Raul Esparza (Esparza), was an employee of MCM. Esparza had worked for MCM as a carpenter since 2011.
2. Esparza's supervisor on June 14, 2013 was carpenter foreman Robbie Zablosky (Zablosky).
3. On the day of the accident, Zablosky was driving a work truck belonging to MCM.
4. Zablosky and Esparza parked their vehicles on an inclined ramp on June 14, 2013, at the Crazy Horse worksite.
5. Employer had not trained Zablosky or Esparza on hitching trailers while on an incline.
6. The incline of the ramp where the trailer was parked was 8.9%, as measured by CalTrans Engineer David Galarza (Galarza) with a smart level measuring tool.
7. Zablosky removed the chocks from the trailer during the hitching process.
8. Raul Esparza suffered a serious injury as a result of the accident that occurred on June 14, 2013.[3]

DECISION AFTER RECONSIDERATION

Is the accident that occurred on June 17, 2013 within the scope of employment as contemplated by the Act?

[2] Neither party raises an issue with respect to the ALJ's Decision in Citation 1, and the Board declines to disturb the ALJ's findings in that Citation. Citation 1 is therefore final as a matter of law.

[3] The parties stipulated to the serious nature of Esparza's injury.

The initial issue before the Board is whether the accident that occurred on June 14, 2013 arose within the scope of the injured employee's employment. There is no dispute that on the date in question, Esparza was employed by Employer. Esparza testified that he generally worked an 8 hour day, beginning at 6:30 am, and would meet his crew at 'the yard', where Esparza and his co-workers would gather the material needed for the day and connect a generator they would be using to the hitch of foreman Robbie Zablosky's truck. This hitching process would take about 5 minutes, and involved two employees. The carpenters would also hitch the generator back to the truck at the end of the workday. Esparza's testimony regarding carpenters regularly hitching generators and trailers to work vehicles was corroborated by two Caltrans engineers, Yusuf Shatnawi (Shatnawi) and David Galarza, who were regularly onsite and familiar with many of the Employer's employees.

On the day of the accident, Esparza and another coworker unhitched the generator from Zablosky's truck at the 'Crazy Horse' worksite. That morning, Zablosky also told the crew it was to be his last day at this particular job. Zablosky left the site. Around noon, or about 2 hours from the end of the workday, Zablosky returned to the worksite, released his crew for the day and gave them their checks for the week. Esparza was scheduled to return to Crazy Horse that following Monday; his unrebutted testimony was that he believed the carpentry crew had another 3 weeks of work on the job. Indeed, the Division's inspector met Esparza in person when he was visiting his work friends at the job, after his accident.

After receiving his paycheck, Esparza walked to his car, which was parked on a ramp still closed to traffic, where he had been instructed to park it that day, as another crew was building a frame on the flat area where he usually parked. Zablosky's trailer, usually parked in the company yard, was also parked on the ramp. Esparza was able to see that a skilsaw and torches that employees often used on the job were on the trailer. The torches were used for making cuts or holes in rebar. The two Caltrans witnesses testified to having seen this kind of work done at the site by the carpenters. There were hoses that feed the torches visible from under the tarp that covered most of the trailer.

As Esparza walked down the ramp to his car, Zablosky was attempting to connect the trailer to the truck, a job that always took two people, according to the testimony of Esparza and the two Caltrans engineers who frequented the worksite. Esparza asked his foreman if he needed assistance. Zablosky said yes. The two men tried twice to get the trailer hitched but could not. Zablosky got out of the truck and moved the chocks that were behind the trailer. Esparza and Caltrans engineer Shatnawi estimated that the trailer weighed over 1000 pounds. Esparza told Zablosky that it was not a good idea to remove the chocks because of the slope of the bridge. Esparza said they should attach signals to the trailer, but before he could say anything further, the trailer

began to roll. Esparza started to push the trailer, to try to keep it from rolling off the ramp and onto Highway 101. Another trailer belonging to the construction crews had rolled into traffic from the ramp only the prior week, according to Esparza's testimony.

Esparza was pushing the trailer towards the barrier wall to keep it from rolling into traffic when Zablosky's truck tapped Esparza. Esparza had his back turned to the truck and did not see the slow-moving truck. Although the truck was moving less than 5 miles per hour, his leg was pinched between the truck and the trailer, causing his injury. Esparza was dragged approximately 20 to 30 feet down the ramp. At this point, according to Esparza's recollection, Zablosky jumped from the truck, apparently not seeing Esparza and yelled 'my trailer'. Zablosky attempted to catch the trailer, leaving the truck driverless. As the truck continued to roll, it hit the barrier. During these few seconds, the trailer also kept rolling, and Esparza fell to the ground, bleeding profusely. A cement worker found Esparza and called for help. Esparza was eventually picked up by helicopter and taken to Stanford Medical Center, where his leg was amputated.

Employer argues that the Cal/OSH Act does not apply to the events that occurred on the ramp on June 14, 2013, because Esparza was not acting within the scope of his employment. The Board first turns to the applicable portions of the Labor Code for guidance in determining what constitutes the scope of an employee's employment. The Labor Code defines an "Employee" at section 6304.1 subdivision (a) as: "every person who is required or directed by any employer to engage in any employment or to go to work or be at any time in any place of employment." "Employment" is defined by the Labor Code as:

> the carrying on of any trade, enterprise, project, industry, business, occupation, or work, including all excavation, demolition, and construction work, or any process or operation in any way related thereto, in which any person is engaged or permitted to work for hire, except household domestic service. (Labor Code section 6303 subdivision (b).)

Finally, section 6303 subdivision (a) defines a "Place of employment" as:

> any place, and the premises appurtenant thereto, where employment is carried on, except a place where the health and safety jurisdiction is vested by law in, and actively exercised by, any state or federal agency other than the division.

In *Gal Concrete Construction Co.* Cal/OSHA App. 91-271 Decision After Reconsideration (Feb. 28, 1992), petitioner argued that the Division did not have jurisdiction to issue citations because the employee was not "working", but was "walking" at the time of the inspection. The Board addressed that

argument by highlighting the scope of the term "employment" in the Labor Code:

> "Employment" is defined in Section 6303(b) of the Labor Code, as follows: 'Employment' includes the carrying on of any trade, enterprise, project, industry, business, occupation or work, including all excavation, demolition, and construction work, or any process or operation in any way related thereto, in which any person is engaged or permitted to work for hire except household domestic service. (Emphasis added.)

The Board looked to the definition of employment found in the Labor Code to reach the conclusion that employee's activities were covered by the OSH Act. The Board also found that the Act was applicable, despite unusual circumstances, in *The Herrick Corporation*; in that instance, the petitioner argued that the individual was not acting under the direction of the employer when he engaged in an emergency rescue operation and therefore was acting outside the scope of his employment. (See, *The Herrick Corporation*, Cal/OSHA App. 97-1373, Decision After Reconsideration (Feb. 27, 2001), writ denied by Court of Appeal in unpublished opinion, Nov. 2006.) The Board rejected this argument and again found that the employee's activity constituted "work."

The applicable definitions of "employee", "employer", and "place of employment" found in the Labor Code similarly lead the Board to conclude that Esparza, at the time of the accident, was acting as an employee in the scope of his employment. Notably, his usual supervisor, Zablosky, was attempting to hitch a trailer loaded, at least in part, with work equipment to a work vehicle. Esparza also testified that it was part of his regular job duties to ensure that his foreman and supervisor were packed up and ready to leave at the end of the day. Esparza, Zablosky and other workers regularly hitched generators and other towed materials to Zablosky's MCM truck for the benefit of MCM. The hitching activity took place in a construction zone closed to the general public, where Employer's employees had been directed to park their vehicles.

Wage and hour regulations promulgated by the Department of Labor Standards Enforcement (DLSE) have been interpreted in a similar vein by the courts. Just as "employment" in the Cal/OSHA context is defined as "engaged *or permitted* to work", the wage and hour regulations define "hours of work" as:

> the time during which an employee is subject to the control of an employer, and includes all the time the employee is *suffered or permitted* to work, whether or not required to do so. (*Emphasis added.*)

This broad language ensures that employees receive compensation for all work, even in those instances where the employees were not working "on the clock," or were never formally hired. The California Supreme Court has explained:

> A proprietor who knows that persons are working in his or her business without having been formally hired, or while being paid less than the minimum wage, clearly suffers or permits that work by failing to prevent it, while having the power to do so. (*Martinez v. Combs* (2010) 49 Cal. 4th 35, 69.)

An employer need not direct an employee to work in order for the employee to be within the scope of employment—it is enough that the employer has either permitted by acquiescence, or suffered by a failure to hinder". (*Martinez v. Combs* (2010) 49 Cal. 4th 35, 70, citing *Curtis & Gartside Co. v. Pigg* (1913) 39 Okla. 31 134 P. 1125, 1129.) Given the similar protective nature of the OSH Act, we are able to find that Esparza was permitted to work after the formal workday had ended, even if he was not explicitly directed to engage in the work at issue.[4]

---

[4] Under yet another similar statutory scheme, although one that has an explicit directive for liberal construction with the aim of providing benefits to workers injured in the course of employment, California Workers' Compensation Insurance, this act would undoubtedly fall within the scope of employment. (Labor code section 3202.) The Workers' Compensation Appeals Board will examine a variety of factors, including the nature of the employment and the nature of the act, to determine if the act can be reasonably considered within the scope of the employee's employment. For example, in *North American Rockwell Corp. v Workmen's Comp. App. Bd.* (1970) 9 Cal.App.3d 154, an employee was injured when struck in the employer's parking lot by a coworker's car. It was about 15 minutes after the shift had ended, and the employee was helping to jumpstart a coworker's car. A car lurched forward and injured the employee. The Court found that the activity was within the scope of the employment, and had this to say:

> Every human act has a personal aspect. No contract of employment can list every act that an employee may or may not do in the course of his employment. Purely personal activities on the employment premises which reflect an intent to abandon the employment are not compensable. In drawing the line between those acts which shall be deemed work-related and those considered to be purely personal, it is generally stated as a basic principle that an employee is in the course of his employment when he does those reasonable things within the time and space limits of the employment which his contract with his employer expressly or impliedly permits him to do. (Citations) In determining whether a particular act is reasonably contemplated by the employment the nature of the act, the nature of the employment, the custom and usage of a particular employment, the terms of the contract of employment, and perhaps other factors should be considered. Any reasonable doubt as to whether the act is contemplated by the employment, in view of this state's policy of liberal construction in favor of the employee, should be resolved in favor of the employee. (Citations) (*North American Rockwell Corp. v Workmen's Comp. App. Bd.* (1970) 9 Cal.App.3d 154, 157-158.)

While the Board is not required to look to or follow analogous Federal OSHA case law, we note that in the Federal system there is little question that the Occupational Safety and Health Act has a remedial purpose aimed at worker protection, and that the definitions of "employee" and "workplace" are expansively defined on that basis. The Tenth Circuit Court of Appeals has cautioned against using "narrow" common law definitions of these terms, as might arise in tort, wage, or other contexts, when considering issues arising under the OSH Act. (*Clarkson Constr. Co. v. OSHRC* (1976) 531 F.2d 451, 457-458.) Guided by this protective logic, an off-the-clock and voluntary picnic accident has been found to be covered by the Act, as has been the housing of farm laborers provided by their employers. (*Safeway, Inc., v. OSHRC* (2004) 382 F.3d 1189; *C.R. Burnett and Sons, Inc.; Harllee Farms*, 1980 OSHARC LEXIS 115; 9 OSHC (BNA) 1009; 1980 OSHD (CCH) P24, 964.) The Board similarly interprets the Cal/OSH Act with its protective purposes of worker health and safety in mind. (*Carmona v. Division of Industrial Safety* (1975) 13 Cal.3d 303.)

Even if the Board were to turn to principles fleshed out in California's tort law, we would reach the same result. Scope of employment is interpreted generously and where or when an accident occurs is not determinative. Rather, the courts ask whether the act was "foreseeable, within the scope of [the employee's] employment." (*Moradi v. Marsh USA, Inc.* (2013) 219 Cal.App. 4th 886, 904.) In those instances where the employee is engaged in an act that mixes his own purposes with those of his employer, California courts will not split hairs as to what the employee was engaged in at the time when a third party is injured. (*Moradi* at p. 905; *Lazar v. Thermal Equip. Corp.* (1983) 148 Cal. App. 3d. 458.) Here, the employee's actions, even though technically "off the clock", were taken for the benefit of the Employer, and were foreseeable as part of Esparza's usual morning and afternoon routine, in which he would assist his foreman and superintendent with loading up work materials before leaving the worksite.

The Board finds the hitching activity was within the scope of Esparza's employment and falls within the scope of the California Occupational Safety and Health Act. We now turn to the citations at issue.

Citation 2

Citation 2, Item 1 alleges an accident-related serious violation of section 1509(a) referencing section 3203(a)(6) [failure to implement a procedure for protection against the inadvertent movement of trailers on sloped ramps attempting to hitch trailers to trucks]. Section 1509(a) requires construction employers to establish an IIPP. The citation references 3203(a)(6) and subdivisions (A) and (B), which state the following:

> (a) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum:
> […]
> (6) Include methods and/or procedures for correcting unsafe or unhealthy conditions, work practices and work procedures in a timely manner based on the severity of the hazard:
> (A) When observed or discovered; and,
> (B) When an imminent hazard exists which cannot be immediately abated without endangering employee(s) and/or property, remove all exposed personnel from the area except those necessary to correct the existing condition. Employees necessary to correct the hazardous condition shall be provided the necessary safeguards.

The Division's AVD (alleged violative description) reads as follows:

> On or around June 14, 2013, the employer failed to correct an unsafe condition by implementing a procedure for protection against the inadvertent movement of trailers on sloped ramps while employees are attempting to hitch trailers to trucks. The employer had not implemented a procedure requiring the use of effective wheel chocks in this circumstance. As a result, a carpenter employee was serious injured while he and his foreman were attempting to hitch a trailer to a truck.

As the Board has described in several prior Decisions After Reconsideration, section 3203 subdivision (a)(6) is a performance standard, and creates a goal or requirement while leaving it to employers to design appropriate means of compliance under various working conditions. (*Davey Tree Service*, Cal/OSHA App. 08-2708, Decision After Reconsideration (Nov. 15, 2012).) In a 3203(a)(6) citation, the issue is generally not that IIPP is flawed, but that the employer has neglected to implement that IIPP, as it has failed to correct a hazard at the workplace. (*Contra Costa Electric, Inc.*, Cal/OSHA App. 09-3271, Decision After Reconsideration (May 13, 2014).) Employers are given wide latitude in how they choose to correct hazards, and presumably, creation of a new written procedure may not always be necessary.

The question for the ALJ, and now the Board, is this: did the Employer fail to implement its IIPP, by failing to identify and correct a hazard? There is no dispute that Zablosky is a worksite foreman, with the corresponding responsibility for safety. Knowledge of a foreman is imputed to the employer. (See, *Greene and Hemly, Inc.*, Cal/OSHA App. 76-435, Decision After Reconsideration (Apr. 7, 1978).) Zablosky did not act to correct the hazard of lack of effective wheel chocks for trailers on sloped ramps. Although a trailer had managed to escape from a work crew and roll down the ramp only the

prior week, Zablosky nonetheless attempted to hitch the truck and trailer with the chocks removed. Employer had no verbal or written policy or procedure developed regarding this hazardous condition. Employer cannot be said to have identified or corrected the hazard, as required by section 3203 subdivision (a)(6).

A violation is found. The violation is properly classified as serious accident-related as found by the ALJ.[5] A penalty of $18,000 is assessed.

Citation 3

Citation 3 alleges a violation of section 1509:

> (a) Every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program in accordance with section 3203 of the General Industry Safety Orders.
> Reference: Title 8 CCR Section 3203. Injury and Illness Prevention Program.
>
> (a) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum:
> […]
> (7) Provide training and instruction:
> (A) When the program is first established;
> […]
> (B) To all new employees;
> (C) To all employees given new job assignments for which training has not previously been received;
> (D) Whenever new substances, processes, procedures or equipment are introduced to the workplace and represent a new hazard;
> (E) Whenever the employer is made aware of a new or previously unrecognized hazard; and,
> (F) For supervisors to familiarize themselves with the safety and health hazards to which employees under their immediate direction and control may be exposed.

The alleged violative description states:

> Location: Hwy 101 northbound off-ramp at Crazy Horse Canyon Rd., Prunedale, CA

[5] Neither party raises an issue with respect to the ALJ's Decision regarding the classification of Citation 2 as Serious and Accident-Related, and the Board declines to disturb the ALJ's findings regarding the classification.

On or before 6/14/13, the employer failed to provide training and instruction to employees on how to hitch a trailer to a truck when both are on an incline. (ref.: title 8 CCR Section 3203(a)(7))

Employer argues in its Petition for Reconsideration that the citation is defective, as it does not provide enough information for the Employer to prepare a defense to any "particular" violation. This argument fails. All that is required by due process is general notice pleading. (*Cranston Steel Structures*, Cal/OSHA App. 98-3268, Decision After Reconsideration (Mar. 26, 2002).) Administrative hearings, such as Cal/OSHA proceedings, are not bound by strict civil rules of pleading. (*Stearns v. Fair Employment Practices Commission* (1971) 6 Cal.3d 205, 213.) Furthermore, it is clear that the Division is alleging a violation of section 3203 subdivision (a)(7) as referenced in its alleged violative description, and from the descriptive statement itself, which plainly references a "failure to provide training and instruction." (See, *Hypower Inc. dba Hypower Electrical Services, Inc.*, Cal/OSHA App. 12-1498, Denial of Petition for Reconsideration (Sep. 11, 2013).) Employer was provided appropriate notice of the allegations.

As to the failure to train, Esparza testified that he had not received any training from Employer on how to hitch a trailer to a truck. (Decision, p. 11.) Employer also informed the Division's inspector that it did not have any training records for the two employees in relation to trailers. Lack of records, coupled with employee testimony indicating that no training was provided, may lead to a reasonable inference that no such training was provided. (*Blue Diamond Materials, A Division of Sully Miller Construction*, Cal/OSHA App. 02-1268, Decision After Reconsideration (Dec. 9, 2008).)

The Board affirms the ALJ's finding of a serious violation.[6] The Board also affirms the ALJ's penalty reduction of Citation 3, Item 1 to $506 pursuant to the Board's duplicative penalty policy.

Citation 4

Citation 4 alleges a violation of section 1593 subdivision (h):

Haulage Vehicle Operation.

(h) Parking Brakes. Whenever the equipment is parked, the parking brake shall be set. Equipment parked on inclines shall

[6] Neither party has raised an issue with respect to the ALJ's Decision regarding the classification of Citation 3 as Serious, and the Board declines to disturb the ALJ's findings regarding the classification.

> have the wheels chocked and the parking brake set or be otherwise prevented from moving by effective mechanical means.

The alleged violative description reads as follows:

> Location: HWY 101 northbound off-ramp at Crazy Horse Canyon Ro., Prunedale, CA
>
> On or around 6/14/13, the employer failed to ensure that a trailer (CA license 4KW7634) parked on an incline (northbound off-ramp to Bridge #44-0285) had its wheels chocked and a parking brake set or was otherwise prevented from moving by effective mechanical means.

The trailer, on the day of the accident, was parked on an incline. Esparza testified that the trailer was parked on a slope. CalTrans engineer Galarza measured the slope with a tool, which showed the slope to be 8.9%. (Ex. 13.) Although the wheels were initially chocked, the unrebutted testimony of Esparza was that Zablosky removed the chocks in order to expedite the hitching process, despite Esparza's verbal protest. The safety order was violated when this equipment, parked on a slope, had the chocks removed. No other effective mechanical means were provided to prevent the trailer from moving, and indeed, the trailer did move, as soon as it was lightly hit by the truck.

A serious violation of section 1593 subdivision (h) has been established.[7] We now turn to the accident-related classification. As the ALJ properly stated, the Board requires a nexus between the violation of the safety order and injury in order to classify a citation as "injury related." The Director's regulations, based on Labor Code section 6319 subdivision (d) state:

> 336(3) Serious Violation Causing Death or Serious Injury, Illness or Exposure - If the employer commits a Serious violation and the Division has determined that the violation caused death or serious injury, illness or exposure as defined pursuant to Labor Code section 6302, the penalty shall not be reduced pursuant to this subsection, except the penalty may be reduced for Size as set forth in subsection (d)(1) of this section. The penalty shall not exceed $25,000.

The violation need not be the only cause of the accident, but the Division must make a "showing [that] the violation more likely than not was a cause of the injury. (*Mascon, Inc.*, Cal/OSHA App. 08-4278, Denial of Petition for

[7]Neither party having raised any issue with respect to the classification of Citation 4 as Serious, the Board will uphold the ALJ's Decision on this issue.

Reconsideration (Mar. 4, 2011); *Siskiyou Forest Products*, Cal/OSHA App. 01-1418, Decision After Reconsideration (Mar. 17, 2003); *Davey Tree Surgery Company*, Cal/OSHA App. 99-2906, Decision After Reconsideration (Oct. 4, 2002).)." (*Duininck Bros., Inc.*, Cal/OSHA App. 06-2870 Decision After Reconsideration & Order of Remand (Apr. 13, 2012).) In this instance, we are satisfied that such a showing has been made. The Board finds that there is a causal nexus between the Employer's failure to properly chock and keep the wheels effectively chocked until the hitching was completed and Esparza's injury. Although the violation of section 1593, subdivision (h) may not have been the sole factor in Esparza's serious injury, and factors such as Zablosky's failure to place the vehicle in park may also have contributed to the accident, had the safety order been followed, it would have been unlikely that the trailer would have moved and caught Esparza between the truck and the trailer and dragged him down the ramp. (See, *HHS Construction*, Cal/OSHA App. 12-0492, Decision After Reconsideration (Feb. 26, 2015).)

The serious, accident-related citation is upheld, and the Division's proposed penalty of $18,000 is affirmed.

ART CARTER, Chairman
ED LOWRY, Board Member
JUDITH S. FREYMAN, Board Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
FILED ON: FEB 22, 2016