

State of California
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION AGENDA
Government Code § 11126 (a), (c)(3), and (e)
for
Tuesday, November 20, 2007
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: November 9, 2007

RE: Closed Session of the Board on November 20, 2007

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.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

(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. FRONTIER FENCE, 05-R2D3-4378 AND 4379 (11/7/2007)
2. CITY OF LOS ANGELES; HOUSING AUTHORITY [HACLA], 05-R4D2-2541 (10/30/2007)
3. MERCO CONSTRUCTION ENGINEERS, INC., 04-R4D3-3377 AND 3378, 04-R4D3-4145 AND 4146 (11/7/2007)
4. ROUNDTREE PLUMBING, HEATING INC., 06-R1D3-731 THROUGH 734 (11/1/2007)
5. SAMSON MOTORCYCLE PRODUCTS, INC., 05-R3D1-93 (11/1/2007)
6. VALENTE CONCRETE, 06-R3D3-2011 (10/26/2007)

CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
For November 20, 2007
Page 2

7. WEATHERFORD, 05-R3D5-3150 AND 3151 (10/24/2007)

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.)

1. AC SQUARE INC., 05-R1D3-2890 AND 2891
2. A & P GROWERS, 06-R4D3-1457 THROUGH 1459
3. AIR-TRO HEATING AND AIR CONDITIONING, 06-R4D4-4988 THROUGH 4991
4. ALCOA FASTENING SYSTEMS, 06-R3D1-1825
5. ALLEN MOLD INC., 07-R6D2-3190 THROUGH 3192
6. ALEXANDER DEMOLITION AND HAULING, 06-R3D5-4276 AND 4277
7. AMERICAN EAGLE AIRLINES, 07-R4D1-3148
8. AMERICAN EAGLE INTERIOR INC., 07-R3D3-2841
9. AMERICAN GUNITE INC dba AMERICAN CONTRACTORS, 04-R4D1-1885 THROUGH 1887
10. APEX DESIGN BUILDERS, 06-R4D1-5309 THROUGH 5311
11. ARENA PAINTING CONTRACTORS, 06-R3D5-4372
12. ARROWHEAD TIMBER STRUCTURES, 06-R3D3-947 AND 948
13. AYALA BORING, INC., 05-R5D2-2160
14. BLF, INC., dba LARABURE FRAMING, 05-R4D3-3993
15. BARN FURNITURE MART, INC., 07-R4D3-4048 THROUGH 4052
16. BARREL STOP WINERY, LLC, 07-R1D5-1256 AND 1257
17. BAYSCAPE MANAGEMENT, INC., 07-R1D2-1251
18. BEN DAVIS COMPANY, 05-R1D1-2184 THROUGH 2186

CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
For November 20, 2007
Page 3

19. BIMBO BAKERIES USA, 06-R4D4-642 AND 643
20. BONANZA SEEDS INTERNATIONAL, INC., 06-R2D3-5139 THROUGH 5144
21. BOULAY CONSTRUCTION, INC., 06-R2D1-2683 AND 2684
22. BOWEN ENGINEER & ENVIRONMENTAL, 05-R2D5-2922
23. BUBBLE BATH CAR WASH, 06-R3D2-1593 THROUGH 1596
24. CALIFORNIA EXPANDED METALS, 04-R6D2-4342
25. STATE OF CALIFORNIA/FAIRVIEW DEVELOPMENT CENTER, 05-R3D3-3953
26. CAL TRANS, 06-R3D2-1588 AND 1589
27. CHEMIQUE PHARMACEUTICALS, 07-R4D4-1810
28. CLASS AUTO CENTER, 04-R3D5-3590 THROUGH 3593
29. CLASSIC CABINETS, 05-R6D1-4588 THROUGH 4592
30. COLICH CONSTRUCTION, LP, 07-R5D2-1083 AND 1084
31. CROWN SHEET METAL, 07-R3D3-2711 AND 2712
32. DIEGO BOLT & WELDING INC., 07-R3D2-3044 THROUGH 3046
33. EASTMAN ROOFING AND WATERPROOFING, 07-R1D4-357
34. ENRIQUE A. CRUZ MASONRY, INC., 06-R3D5-4046 THROUGH 4048
35. EXXON MOBIL, 03-R3D5-3561 THROUGH 3563
36. FOLEY ELECTRIC, INC., 05-R1D2-2765
37. FORCE FRAMING, INC., 07-R3D1-1789
38. FU SHING CHINESE FOOD EXPRESS, 07-R4D1-3074
39. GCI GENERAL CONTRACTORS, 06-R1D4-2127
40. HNR FRAMING SYSTEMS, 05-R3D2-2402 AND 2403

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

For November 20, 2007

Page 4

41. HNR FRAMING SYSTEMS, 06-R3D2-2009
42. HALEY BROS., INC., 05-R3D3-3956 AND 3957
43. IFCO SYSTEMS N A, INC., 07-R3D3-915 AND 916
44. INTERWALL DEVELOPMENT SYSTEMS, INC., 06-R4D4-644 AND 645
45. INTL MARINE FUELS GROUP dba SF PETROLEUM CO., INC., 05-R1D1-4210
AND 4211
46. J & M ASSOCIATES, 05-R6D2-4323
47. JENNIFER AND JANET FASHIONS INC., 07-R4D1-314 AND 315
48. K.B.S., INC., 07-R4D3-1206
49. L. A. FITNESS SPORTS CLUB, 06-R3D5-2285
50. LG ELECTRONICS, 07-R3D2-501 AND 502
51. L.H. WOODS & SONS INC., 06-R3D2-2758
52. LNA CONCRETE STRUCTURES, INC., 07-R3D3-905
53. LSI CONSTRUCTION, 04-R4D3-2943 THROUGH 2945
54. LAKE PROVIDENCE SALVAGE & DISMANTLING, LLC, 07-R2D3-139
THROUGH 149
55. LAMME KITCHENS, 05-R6D2-591 THROUGH 597
56. LECKEY LAND CLEARING, 07-R2D3-1262
57. LEFEVRE CORPORATION, 06-R3D5-4049 AND 4050
58. LIBERTY PACKING COMPANY, 07-R2D4-1785
59. LIFT SERVICES, INC., 07-R2D1-633
60. LONG BEACH DIALYSIS, LLC, 06-R3D5-4371
61. MBC CONSTRUCTION INC., 06-R4D4-4848
62. M & S SEWING CONTRACTING SERVICES, 06-R3D5-4145, 07-R3D5-461
THROUGH 463

CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
For November 20, 2007
Page 5

63. MARIA'S TACOS, 06-R2D1-2170
64. MARSHALL B. EQUIPMENT, 06-R1D4-736 AND 737
65. MICHAEL MARSHALL dba SEDONA WEST, 07-R3D3-4257 AND 4258
66. MARUHACHI CERAMICS OF AMERICA INC. dba MCA TILE, 07-R3D3-4255 AND 4256
67. LOUIS McCUMBER, dba McCUMBER'S GLASS, 07-R2D3-2694 THROUGH 2698
68. McLELLAN EQUIPMENT, 07-R2D5-296
69. MERCER FRASER COMPANY, 07-R5D1-86 AND 87
70. MIRAGE CONSTRUCTION, 07-R1D2-1898 AND 1899
71. MARVIN MIRELES, 04-R4D4-4702 THROUGH 4706
72. MOTORCAR PARTS OF AMERICA, INC., 07-R3D5-1804 THROUGH 1806
73. NBC GENERAL CONTRACTORS CORPORATION, 06-R1D4-876 THROUGH 878
74. NATIONAL CEMENT COMPANY, 05-R5D2-2721 THROUGH 2723
75. NEIL'S CONTROLLED BLASTING, L.P., 05-R2D1-3894 AND 3895
76. NORTHERN CALIFORNIA UNIVERSAL ENTERPRISE CO., 06-R2D3-3084 THROUGH 3087
77. OTIS ELEVATOR, 05-R4D1-818 AND 819
78. PALM DESERT DOOR AND HARDWARE, 07-R3D3-2714
79. PLEASANTON GARBAGE SERVICE, INC., 06-R1D4-2124
80. POLLACK GROUP LTD. dba NICK'S LIGHTHOUSE, 05-R1D1-4510
81. PRESIDENTIAL FLOOR MAINTENANCE, LLC, 06-R1D2-1501 AND 1502
82. PRESTIGE CONCRETE, 06-R3D2-4956 AND 4957
83. R & G FOOD BASKET, INC., 07-R6D2-3842 AND 3843

CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
For November 20, 2007
Page 6

84. RITE AID, 07-R1D2-3292
85. RIVER RANCH FRESH FOOD LLC, 06-R1D2-416 AND 417
86. RIVERSIDE CONSTRUCTION COMPANY, 06-R3D3-58
87. S. SLATER & SONS INC dba GOLDEN BEAR SPORTSWEAR, 05-R1D1-3829 THROUGH 3831
88. SACA BUILDERS, INC., 07-R2D1-1258
89. SAFEWAY ROOFING AND SIDING, 05-R1D1-2187 THROUGH 2189
90. ST. MADELEINE SOPHIE'S CENTER, 07-R3D2-3798 AND 3799
91. SAN DIEGO CITY SCHOOLS WEBSTER ACADEMY, 07-R3D2-1867
92. SHAPELL HOMES, 07-R1D2-2817 THROUGH 2819
93. SHEA KENNY JV, 05-R5D3-4011
94. 6920 FAIR OAKS, LLC, 07-R2D1-1259 AND 1260
95. SOUZA AND SOUZA, INC., 07-R3D2-397 AND 398
96. SUBWAY SANDWICHES [DUCK RAN AHN], 07-R3D1-1790 AND 1791
97. SWISSPORT, 07-R4D1-2969
98. T.B. PENICK & SONS, INC., 05-R3D2-3497 AND 3498
99. TAJIMA CORPORATION USA, 07-R4D1-2962
100. THE GAP INC., 06-R3D2-3146
101. TRADESMEN INTL., INC., 05-R6D2-4322
102. 24 HOUR FITNESS, 07-R3D5-3695
103. ULTIMATE BUILDERS, 05-R4D4-2006 THROUGH 2008
104. VINOCOR USA, INC., 07-R6D1-1214 THROUGH 1219
105. VRATSINAS CONSTRUCTION COMPANY, 05-R1D2-3465

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

For November 20, 2007

Page 7

106. WAL-MART STORES INC. dba WAL-MART DISTRIBUTION CENTER 6026,
06-R2D3-3090

107. WATERPROOFING SPECIALTIES, INC., 07-R1D5-1780 AND 1781

108. WESTERN PACIFIC HOUSING MANAGEMENT INC., 06-R2D1-3507

109. WOORI PRODUCTIONS, 07-R4D1-920 AND 921

ORDERS DISMISSING APPEALS:

(Written order issued by an Administrative Law Judge disposing of an Employer appeal.)

1. CNS FASHION, 05-R4D3-1527
2. DIRKSEN CONSTRUCTION, INC., 05-R4D3-739 THROUGH 741
3. GOLD MOON CORPORATION, 04-R4D1-4569 AND 4570
4. O'NEIL CONSTRUCTION CO., 03-R4D5-5143 AND 5144
5. RJ DRYWALL, 06-R2D1-1392
6. SOUTHWEST INDUSTRIES, 06-R4D1-1622
7. VERMAX INC., 05-R4D4-4298 THROUGH 4301

ORDERS GRANTING APPEALS:

1. RM DENNIS GENERAL CONTRACTOR, 03-R3D3-590 AND 591
2. SECURITY PAVING COMPANY, INC., 07-R4D3-1457

CALIFORNIA OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
CLOSED SESSION MEMORANDUM
For November 20, 2007
Page 8

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. AMERICAN CEMENT, INC., 06-R2D5-1061 AND 1062

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. AC FRAMERS INC., 03-R2D3-3475
2. A & C LANDSCAPING, INC., aka A & C CONSTRUCTION, INC., 03-R4D4-4791
3. AGC COMMUNICATIONS, INC., 03-R1D4-3121
4. ASC PROFILES, INC., 06-R2D1-1181
5. AMERIPRIDE UNIFORM 04-R4D2-106 AND 107
6. A. TEICHERT & SON, INC., A CORPORATION dba TEICHERT AGGREGATES, 04-R5D2-850 AND 851
7. BART, 03-R1D1-5170
8. BAY AREA SYSTEMS & SOLUTIONS, dba BASS ELECTRIC, 01-R1D3-106
9. BIMBO BAKERIES USA, 03-R1D3-5215 THROUGH 5217
10. BLF, INC., dba LARRUBURE FRAMING, 02-R4D1-4675 THROUGH 4680
11. BLF, INC., dba LARRABURE FRAMING, 03-R4D3-4428 AND 4429
12. BLUE DIAMOND MATERIALS, 02-R5D2-1268
13. CALDWELL-ROLAND ROOFING, INC., 03-R1D4-2905
14. CALIFORNIA FAMILY FITNESS, 03-R2D1-095 & 096
15. CALIFORNIA FRESH FARMS LLC., 06-R2D4-4127 AND 4224
16. CENTRAL CHEVROLET, 05-R1D4-2615 THROUGH 2618

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

For November 20, 2007

Page 9

17. CENTRAL VALLEY CONTRACTING, 05-R4D3-2351
18. COX COMMUNICATIONS, 03-R3D2-1942
19. DADE BEHRING, 05-R2D1-2203
20. DAVIS BROTHERS FRAMING, INC., 03-R3D1-0114
21. DAVIS BROTHERS FRAMING, INC., 05-R3D3-634 THROUGH 636
22. DAVIS ROOFING, INC., 05-R3D3-4127
23. DYNALECTRIC, 03-R1D1-4101
24. E. L. YEAGER CONSTRUCTION COMPANY, INC., 01-R5D3-3261
25. ETTER & SON CONSTRUCTION, INC., 03-R1D5-3131
26. GHILOTTI BROS. CONTRACTORS, 04-R1D5-2321 AND 2322
27. GLASS PAK, 03-R2D2-0750 AND 0751
28. HARRY L. MURPHY, INC., 06-R1D2-218 AND 219
29. HEARN CONSTRUCTION, INC., 02-R6D1-3533 THROUGH 3536
30. HELPMATES STAFFING SERVICES, 05-R3D3-2239
31. HEMMINGSEN CONSTRUCTION CO., INC., 07-R2D3-9277
32. HUSSMAN CORPORATION, 03-R3D1-2939
33. ILH CONSTRUCTION, 02-R1D1-4172
34. JOHN LAING HOMES, 04-R3D1-194 AND 195
35. KELLY SERVICES, INC., 06-R1D2-1024
36. KENNY-SHEA-TRAYLOR-FRONTIER/KEMPER, JV, 03-R5D2-0323
37. KIMES-MORRIS CONSTRUCTION, 02-R1D4-1204 THROUGH 1209 & 02-1273
38. LONG BEACH CITY COLLEGE, 03-R3D5-2747
39. LOS ANGELES, CITY OF, FIRE DEPARTMENT, 03-R2D5-3960

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

For November 20, 2007

Page 10

40. MCI WORLDCOM INC., 00-R1D1-440 THROUGH 442
41. NIBBLELINK MASONRY CONSTRUCTION, 02-R3D3-1399 THROUGH 1401
42. O& M INDUSTRIES, 04-R1D5-1597
43. PMR RACE CARS, 03-R3D3-1825
44. POUK & STEINLE, INC., 03-R4D2-1495 & 1496
45. RII PLASTERING INC., 02-R3D1-2679
46. SACRAMENTO MUNICIPAL UTILITY DISTRICT, 02-R2D1-1654 THROUGH
1656
47. SANTA ROSA CITY TRANSIT AND PARKING DEPARTMENT, 05-R1D5-1417
48. STACY & WITBECK INC., 05-R1D1-1142
49. STATE CENTER COMMUNITY COLLEGE DISTRICT, 05-R2D5-1688
THROUGH 1692
50. STRUCTURAL SHOTCRETE SYSTEM, 03-R4D3-986
51. SUN VALLEY SKYLIGHTS, INC., 03-R4D1-2613 & 2614
52. TEICHERT AGGREGATES, 04-R5D1-2982
53. TRIO METAL, 03-R4D4-0317
54. UKIAH FORD-LINCOLN-MERCURY, INC. 06-R1D5-2556 AND 2557
55. WESTCOAST COMMUNICATION, 05-R2D3-2801 AND 2802
56. WESTERN DOOR, 01-R3D1-2827
57. WEST VALLEY CONSTRUCTION COMPANY, INC., 01-R1D2-3017 & 3018

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

For November 20, 2007

Page 11

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. HFS INVESTMENTS, INC., 01CS00981 (96-3079)
2. DESILVA GATES CONSTRUCTION, 05CS00008 (01-2742)
3. UNITED ASSOCIATION LOCAL UNION 246, AFL-CIO; IDEPSCA INSTITUTO DE EDUCACION POPULAR DEL SUR DE CALIFORNIA AND CENTRO LEGAL DE LA RAZA, (HARRIS CONSTRUCTION COMPANY, INC.), 07CS00518 (02-3914)
4. INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, LOCAL LODGE 1781; JULIA SMITH, (UNITED AIRLINES dba UNITED AIRLINES SFO SYC), 07CS00331 (00- 2844)
5. TRIPPLETT MANAGEMENT CORP. dba McDONALD'S RESTAURANT NO. 10660 v OSHAB, CIB464877, (03-4116)
6. WESTERN MILLING, LLC, 06 CE CG 04007 (06- 9039/9040)
7. IRBY CONSTRUCTION COMPANY, ECU03759 (03-2728)
8. JERLANE v DIVISION OF OCCUPATIONAL SAFETY & HEALTH, 37-2007-0005631-CU-WM-NC, 01-R3D2-4344-4348

PERSONNEL *(Issues regarding staff.)*

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