



Safety News

News for Members of the Contractors Insurance Safety Council – Group 44 Program

5150 Fair Oaks Blvd., #101-111, Carmichael, CA 95608 * Phone 916/813-1206 * FAX 916/944-3930

February, 2010

Roofing Contractor Convicted of Cheating State Fund

An Orange County roofing contractor faces up to nearly 49 years in prison after his recent conviction on 33 felony counts of insurance fraud for cheating the State Compensation Insurance Fund out of millions in premiums.

Laguna Beach resident Michael Vincent Petronella, also known as Michael Constantine, 51, was accused of fraudulently submitting 42 claims for uninsured injured workers and for underreporting \$29 million in payroll to State Fund to avoid paying workers' comp insurance premiums, according to the Orange County District Attorney's office.

Petronella, a roofing and general building contractor, and his wife Devon Lynn Kile, 44, owned three businesses in Costa Mesa and Cathedral City. Kile is also charged in this case.

When they were arrested last spring, the couple owned five properties in California and Texas and multiple luxury vehicles including a Bentley, two Ferraris, and a Range Rover. Between 2005 and 2007, they spent more than \$2.1 million on their American Express credit card for personal items, including thousands of dollars on jewelry, shoes, clothes, and other personal items.

The event that raised suspicions at State Fund was a claim with a March 2006 date of injury, when one of Petronella's workers fell from a roof. The employer submitted a payroll stub to SCIF, and SCIF staffers realized that the insurer's policies did not provide coverage for the claim. The insurer reported the potentially fraudulent claim to the county district attorney and the Department of Insurance.

CONTRACTOR—see page 4

IN THIS ISSUE

Contractor Convicted of Cheating State Fund

Cal-OSHA Rulemaking Proposals For 2010

Clean House for a Safer Workplace

Sacramento Judge Applies 15% Increase to PTD Award

and more....

Cal-OSHA Rulemaking Proposals For 2010

The Cal/OSH Standards Board faces a busy rulemaking year in 2010, featuring required action on probable combustible dust and cranes/derricks regulations from Fed-OSHA.

State-generated rulemaking projects include footnotes for so-called "sensitizing substances" in the Title 8 airborne contaminants standard (GISO §5155), revision of the standard on emergency eyewash and shower requirements (GISO §5162), new rules in Construction Safety Orders (§1670) on fall protection to prevent orthostatic intolerance and many others.

Here is a synopsis of the board's 2010 rulemaking agenda. Not all the projects will see rulemaking action, and the board anticipates fewer proposals than in the past because of continuing furlough days for state workers, which equal about seven workweeks for the year.

Combustible Dust: Spurred by the Imperial Sugar disaster in Georgia two years ago, this proposed federal regulation aims to prevent dust explosions and is based on National Fire Protection Association standards. Fed-OSHA expects to issue a final rule this summer and Cal/OSHA will then have six months to adopt its version.

Cranes and Derricks: Crafted in the federal negotiated rulemaking process, this package will address cranes developed over the past 30 years, redefine the role of a qualified person in addressing assembly/disassembly hazards, provide new standards to prevent contact with energized overhead lines, as well as crane operator certification standards. California already has certification standards, but they must be "at least as effective as" the federal regulation.

Definition of Manifold: Revisions to CSO §§ 1504 and 1742, based on an Appeals Board decision, would clarify the terms "manifold," "regulator," "header" and "in use."

Construction Haulage Vehicles: Revisions to CSO §§ 1590, 1591 and 1597 would prohibit retrofits on diesel equipment if they impair the operator's visibility.

Pile Driving/Extraction: An update of CSO §1600, *et seq.*, for consistency with ANSI/ASSE A10.19-2008.

Fabricated Decking and Planking: CSO would be amended to meet minimum design and construction requirements. The board has a consensus proposal based on advisory committee recommendations.

Underground Vaults: Changes to HVESO §2813 would conform to Title 8 and Fed-OSHA requirements on headroom clearance.

Tree Work: Revisions to GISO §3420, *et seq.*, would consolidate requirements and conform to industry standards.

Elevating Employees with Rough-Terrain Forklifts: Revisions to GISO §3657 would adopt new standards from ASME B56.6-2002.

Fire Prevention and Suppression Procedures — Welding: Would amend GISO §4848 to adopt NFPA 51B-2009 standard, specifically on welding blankets.

Wheel Guarding for Rubber-Tired Gantry Cranes: GISO §4906(c) revisions would restore prior requirements to require guards to push workers out of the path of crane wheels.

Crane Oiler Communication: A revision to GISO §4999 to require crane operators and oilers to remain in communication before initiating crane movement.

Lead Acid Batteries: Amendments to GISO §5185 would address safety standards for VRLA-type batteries that power computer servers.

Handling and Use of Explosives: Would clarify in GISO §5278 when the 50-foot protection rule applies when loading explosives into holes.

Tank Vats and Containers — Flammable Liquids: GISO §5420 revisions would

(PROPOSALS—continued on page 4)

SAFETY... It Pays



CISC

Contractors Insurance
Safety Council

Group 44 Program

Participating Exchanges

Valley Builders Exchange

Modesto—Chapter 12

Karen Bowden, Executive Director
Phone 209/522-9031

Kern Co. Builders Exchange

Bakersfield—Chapter 16

Roy Alvarez, Executive Director
Phone 661/324-4921

Southern California Builders Association

Whittier—Chapter 17

John Troccoli, Insurance Administrator
Phone 909/792-9190

Santa Maria Valley Contractors Association, Santa Maria—Chapter 27/29

Robin Hayhurst, Executive Director
Phone 805/925-1191

San Luis Obispo County Builders Exchange. San Luis Obispo—Chapter 28

Leslie Halls, Executive Director
Phone 805/543-7330

Builders Exchange of Merced Mariposa

Merced—Chapter 30

Bernice Vigil, Manager
Phone 209/722-3612

Santa Barbara Contractors Association

Santa Barbara—Chapter 32

Karin Perissinotto, Executive Director
Phone 805/884-1100

Tulare Kings Builders Exchange

Visalia—Chapter 38

George Elam, Executive Director
Phone 559/732-4568

www.ciscgroup44.org

Clean House for a Safer Workplace

There is a direct correlation between a clean, neat, well-organized workplace and a safe, successful workplace. Our Safety Training Tips editor urges you to impress on your workers the importance of performing housekeeping tasks every day and every shift

Remind employees that good housekeeping:

- * Eliminates accident and fire hazards
- * Maintains safe and healthy working conditions
- * Saves time, money, materials, space, and effort
- * Improves productivity and quality
- * Boosts employee morale
- * Reflects an image of a well-run organization

Poor housekeeping, on the other hand, creates hazards and invites accidents. Describe the problems poor housekeeping causes, including:

- * Slips from slick or wet floors or platforms
- * Trips from objects or materials left in walkways and work areas
- * Falls from holes in walking and working surfaces, uneven flooring, uncovered pits or drains, and boxes and pallets used instead of adequate platforms
- * Collisions caused by poorly stored materials, overhanging or protruding objects, and materials and equipment stored in aisles
- * Fire hazards created by piles of combustible scrap and trash, improperly stored flammable materials, and blocked emergency exits
- * Chemical hazards caused by leaking or damaged containers, improper storage, and inadequate or improper cleanup of spilled materials

Press the reality home by relating any incidents in your workplace (maintaining confidentiality) that have occurred because of poor housekeeping.

You can also emphasize the importance of housekeeping by focusing on the Five S's that the Japanese use. Most companies in Japan follow a simple but rigorous housekeeping program known as the Five S's:

Seiri, which can be translated as sorting, refers to the practice of sorting through all the tools and materials in the work area and keeping only the essential items. Everything else is stored or discarded. This leads to fewer hazards and less clutter to interfere with productive work.

Seiton, or organizing, focuses on the need for an orderly workplace. Tools, equipment, and materials must all be systematically arranged for the easiest and most efficient access. In other words, "A place for everything, and everything in its place."

Seiso, which means cleaning, indicates the need to keep the workplace clean as well as neat. Cleaning in Japanese companies is a daily activity. At the end of each shift, the work area is cleaned

(**CLEAN HOUSE**—continued on page 4)

Sacramento Judge Applies 15% Increase to PTD Award

An employer is asking the Workers' Compensation Appeals Board to reconsider a decision to increase a permanent total disability (PTD) award by 15% pursuant to Labor Code 4658, which many believed applied only to permanent partial disability awards.

Sacramento Workers' Compensation Judge Gregory Cleveland's Dec. 31 findings and award found its way into a panel discussion at the California Applicants' Attorneys Association's (CAAA) annual winter conference. The attorneys appeared pleasantly surprised to see that Cleveland had opted to apply LC 4658(d)(2) to a permanent total disability award.

Under the statute, an employer with more than 50 workers must offer to return an applicant to his job within 60 days of the worker becoming permanent and stationary or pay a 15% increase in permanent disability benefits. Another subsection of Section 4658 also provides for a decrease of 15% in the PD award if the employer makes a job offer within 60 days of permanent and stationary status.

Northern California applicants' attorney Jason Marcus mentioned the decision because it is one of the first to apply the statute's 15% increase to a PTD award. Up until now, many attorneys believed that the statute's 15% increase only applied to permanent partial disability awards, where the claimant has some chance of returning to work.

Many believe that the statute does not apply to PTD awards because totally disabled workers are extremely unlikely to ever return to any type of work. Cleveland acknowledged in his ruling that it was unrealistic to expect an employer to find a suitable job for a PTD worker.

Bart Melhoff, the applicants' attorney in the Sacramento case, agreed that his client, Rogelio Rojas, has no chance of returning to work. Rojas suffered a brain injury, has limited quadriplegia and is now wheelchair-bound.

Cleveland explained why the statutory language in LC 4658

made the extent of the claimant's permanent disability status a moot point:

"As applicant is permanently totally disabled there is an anomaly created by section 4658, subdivision (d)(1)-(2) in that an employer obviously can't realistically offer any work to someone who is permanently totally disabled (which would therefore entitle all permanently totally disabled persons to the 15% increase) but this anomaly is a matter for correction by the Legislature, not the Division of Workers' Compensation."

The judge also cited the 2nd District Court of Appeal's published decision in *Bontempo v. WCAB*, which stated that Labor Code 4658(d)(2) applies to every case featuring permanent disability.

Cleveland also pointed out that Rojas' case meets all of the statutory criteria in LC 4658(d)(2):

- The injury occurred after Jan. 1, 2005.
- The parties do not dispute Rojas is permanently disabled.
- The employer has more than 50 employees.

Melhoff confirmed that the defense has filed a petition for reconsideration with the Workers' Compensation Appeals Board. "There are sheltered workshops, there are people that are totally disabled, wheelchair-bound, blind . . . but they do work," Melhoff said. "I don't think the statute should exclude people, just because they're totally disabled, from having an alternative or modified job offered to them."

Rojas also benefited from another recent appellate court decision, thanks to the timing of his case. After the parties went to trial, the 6th District Court of Appeal issued its decision in *Duncan v. WCAB (XYZZX)*, which stated that the cost of living adjustment (COLA) begins on Jan. 1, 2004. The Duncan decision differed from what both parties in Rojas' case had argued.

(PTD AWARD—continued on page 4)

SCIF's March 10 Seminar to Focus on Return-to-Work Programs and Cal/OSHA Citations

The State Compensation Insurance Fund's "employer education series" seminar on March 10 will feature two important topics.

Return-to-Work, Job Reimbursement Account

In this presentation you will learn to:

- * Bring your employees back to work and find out if the State of California Return-to-Work Reimbursement Program can work for you
- * Discover the benefits of a written program
- * Develop, implement and monitor your Return-to-Work program

Roslyn Goode, Return-to-Work Coordinator, State Fund

Roslyn's 20 plus years with State Fund began in the Claims Department, where she adjusted for State agencies, which included the Department of Industrial Relations. She worked as a Vocational Rehabilitation Counselor for over a decade, and since 2000 has worked as a Return-to-Work Coordinator. Roslyn currently serves as

a Board member on the Diablo Valley Industrial Claims Association.

How can Employers Address Serious CAL/OSHA Citations?

Cal/OSHA's regulations and enforcement policies, and the Cal/OSHA Appeals Board's decisions, are challenging California employers as never before. Learn how to remain profitable while meeting the demands of regulations that can often be difficult to interpret.

This presentation will:

- * Prepare employers for a Cal/OSHA inspection
- * Include invaluable tips for getting through the inspection process
- * Clarify the Cal/OSHA appeal process

Lisa Prince, Attorney at Law, Walter & Prince

As a partner with the law firm of Walter & Prince, Lisa works with employees, safety directors, risk managers

(SCIF SEMINAR—continued on page 4)

(CONTRACTOR - from page 1)

Authorities stated that SCIF incurred more than \$253,000 in uncovered injured worker claims and had insurance premium losses in the millions.

Petronella faces a sentence ranging from probation up to 48 years and eight months in state prison at his sentencing on April 23. Kile remains in custody on \$250,000 bail and is scheduled for a pre-trial mental health competency hearing.

Source: Orange County District Attorney

(CLEAN HOUSE—from page 2)

up and everything is restored to its proper place.

Seiketsu, or standardizing, allows for control and consistency. Basic housekeeping standards are the same throughout the facility. Employees know exactly what their responsibilities are. Housekeeping duties become part of regular work routines.

Shitsike, which means sustaining, refers to maintaining the housekeeping standards and keeping the facility in safe and efficient order day after day, year after year.

Why It Matters

Good housekeeping is fundamental to safety and health. The General Duty Clause of the Occupational Safety and Health Act requires employers to provide a workplace free of recognized hazards. Housekeeping hazards clearly fall into the category of “recognized hazards.”

Housekeeping rules are featured in various OSHA regulations, including general industry standards 29 CFR 1910.22(a) for walking-working surfaces, 29 CFR 1910.106(e)(9) for flammable and combustible liquids, and 29 CFR 1910.141(a)(3) for sanitation.

There is a housekeeping regulation for the construction industry, 29 CFR 1926.25.

Source: BLR's Safety Daily Advisor

Contractors Insurance Safety Council
5150 Fair Oaks Blvd., #101-111
Carmichael, CA 95608

(PROPOSALS—continued from page 1)

delete outdated fire-suppression standards.

Telecom Ladder Rung Width: Amend TSO §8608(a) to address design specifications for telecommunication tower ladder rung width.

Back-up Alarms, Haulage Equipment: Amend the CSO and GISO to allow broadband alarms.

Acetylene: CSO would be amended to update California's welding fire prevention and hot-work standards to NFPA 51B, based on a Fed-OSHA final rule.

Source: Cal/OSHA Reporter

(SCIF SEMINAR—continued from page 3)

and human resource administrators on the development of effective preventative safety programs that answer regulatory mandates. Lisa is a member of the Labor and Employment Sections of the American Bar Association, California State and Sonoma County Bar Associations, the American Society of Safety Engineers, and the Safety and Health Council of the Associated General Contractors of California (AGC).

The March 10 seminar will be held at the State Fund Bay Area Policy Services Office, Pacific/Atlantic Room, 5890 Owens Drive Pleasanton, CA, from 8 a.m. til 12:00 p.m. Registration and complimentary breakfast will begin at 7:30 a.m.

To register go to <https://www.scif.com/seminars/registration/Register.asp?SemSessionID=442&SeminarID=154>

Courtesy of the California State Compensation Insurance Fund

(PTD AWARD—continued from page 3)

At the trial, Melhoff had argued that the COLA should apply to Rojas' award beginning Jan. 1, 2006, because the date of injury was in 2005. The defense had argued that the COLA should apply on Jan. 1, 2010, because Rojas did not become permanent and stationary until 2009.

These factors lead to another noteworthy portion of the case -- its value. While the findings and award did not state the overall value of the case, it did award Melhoff \$386,515 in attorney fees, which represent 18% of the award. Based on those figures, the award is worth about \$2.15 million after the judge's award. *Source: WorkCompCentral*