



The California

Contractor

News for the Western Regional Master Builders Association

Vol. 33 - No. 6
June, 2008

At a Glance

Law Talk: Good faith settlements

Take a concrete approach to masonry safety

Getting the best mileage for your money

... and more

Great rates for 2008!

As you probably know, your association, Western Regional Master Builders Association (W.R.M.B.A.), is no longer working with the State Compensation Insurance Fund.

A select group of our members have been pre-approved* to participate in a new money-saving insurance program. You are one of those select members (*based on Employers Direct's underwriting guidelines)!!! W.R.M.B.A. is recommending that you request a quote from *Employers Direct Insurance Company*.

Employers Direct works directly with you, the insured, and passes along that savings in their workers' compensation insurance rates. Call to request a quote and see how you can begin saving on your worker's compensation today.

Check out the 2008 base rates comparison below and make sure to get a quote for your company A.S.A.P!!!

Workers' Comp Class Code	New Employers Direct 2008 base rate*	Compare	SCIF 2008 base rate	Class Code Description
5645	\$18.09	vs.	\$31.95	Construction- N.O.C.
5482	\$4.54	vs.	\$8.00	Painting or Decoration- Over \$23
5474	\$9.67	vs.	\$17.08	Painting or Decoration- Under \$23
5606	\$1.68	vs.	\$2.96	Construction Executive Supervisor
5213	\$6.75	vs.	\$11.89	Concrete Construction
5205	\$4.63	vs.	\$8.19	Concrete or Cement work
5140	\$3.39	vs.	\$5.98	Electrical work- Over \$27
5190	\$4.52	vs.	\$7.98	Electrical work- Under \$27
5183	\$6.80	vs.	\$12.03	Plumbing- Over \$24
5187	\$3.85	vs.	\$6.80	Plumbing- Under \$24
5447	\$4.51	vs.	\$7.95	Drywall/ Wallboard Application- Over \$25
5446	\$8.32	vs.	\$14.59	Drywall/ Wallboard Application- Under \$25
5348	\$4.84	vs.	\$8.54	Tile or Stone Work
5028	\$6.38	vs.	\$11.31	Masonry- Over \$23
5027	\$9.18	vs.	\$16.21	Masonry- Under \$23

* All 2008 rates are the filed base rates and do not include any individually earned merits or credits. Actual rates may be lower.

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Don't miss out on these savings! Call today for a quote!



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Americans misunderstand 'green' messages: Five guidelines for effective enviro-marketing

Americans misunderstand key phrases commonly used in environmental marketing and advertising, giving products a greater environmental halo than they deserve and creating a growing risk of backlash. At the same time, a majority of Americans support government regulation of such messages.

These are among the findings of the 2008 Green Gap Survey, conducted by Cone LLC and The Boston College Center for Corporate Citizenship.

A Green Gap

According to the survey, almost four in 10 (39%) Americans are preferentially buying products they believe to be "environmentally friendly." At the same

time, almost half (48%) of the population erroneously believes a product marketed as "green" or "environmentally friendly" has a positive (i.e., beneficial) impact on the environment. Only 22 percent understand these terms more accurately describe products with less negative environmental impact than previous versions or competing products.

The survey clearly shows that Americans do not realize this green gap exists:

47 percent trust companies to tell them the truth in environmental messaging

45 percent believe companies are accurately communicating information about their impact on the environment

Please see **MARKETING**, page 4

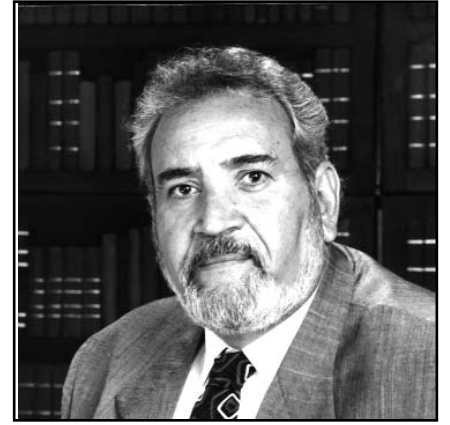
Please visit your association, Western Regional Master Builders Association, at its new website: www.wrmba.com



LAW TALK



By Sam Abdulaziz
Abdulaziz, Grossbart & Rudman



Good faith settlements

Construction disputes quite often involve numerous parties. A recent case highlighted how California law looks at settlements where there are multiple parties and at least one of them would like to settle the case and get out. I am not going to follow the facts of the case. However, the facts are going to be relatively close.

In this case, Geocon contracted to provide geotechnical services on a parcel of real property that was being prepared for construction of an apartment complex. Geocon contracted with Sunbow. However, Geocon would not enter into a contract unless its liability was limited. Accordingly, they entered into an agreement wherein... Sunbow agreed to limit Geocon's liability to Sunbow and to all other parties for claims arising out of Geocon's performance of the service described in the agreement. The total limits of liability for negligence professional

The good faith settlement law essentially says, "... that any party to an action in which it is alleged that two or more parties are jointly liable on a contract can agree to a settlement that would absolve them from any further liability as to any other parties.

acts, errors and omissions, including attorneys fees was limited to \$50,000.00. Sunbow agreed to indemnify and hold Geocon harmless from any and all judgments against Geocon in excess of the \$50,000.

As would be the case, a dispute arose and there were multiple parties

involved. The damages alleged by the parties amounted to a few million dollars, well in excess of the limits of liability of Geocon.

Geocon and Sunbow agreed to settle for the \$50,000 limitation of liability. However, what happens to the Cross-Complaints of the other parties? As an example, lets assume that there are four other parties. If Geocon's liability is limited to \$50,000 yet its damages are alleged to be much greater than that based on indemnification agreements, Geocon may seek a determination of a "Good Faith Settlement" and be absolved from further liability and thereby hurt the other Defendants. This is where a good faith settlement rule comes into affect.

Geocon and Sunbow went to court to have the good faith settlement affirmed. If the court agreed, Sunbow's liability would be limited to

\$50,000 for the entire project. All of the other parties would have to make up the difference. If the court upheld the agreement, then the court would have to determine that the settlement was in good faith.

The other parties disagreed and fought the good faith settlement because they stated that the \$50,000 to be paid was not close to Geocon's proportionate share of liability. They stated that Geocon's liability to the other Defendants should not be affected. They also argued that Geocon was primarily responsible for approximately \$3.4 million of damages. This brought into the determination of what a good faith settlement is.

The good faith settlement law essentially says, "... that any party to an action in which it is alleged that two or more parties are jointly liable on a contract can agree to a settlement that would absolve them from any further liability as to any other parties. However, a judge would have to make a determination that the settlement was made in good faith. This would keep all of the other parties from coming after the settled Defendants. A finding of good faith by the court also reduces the claims against the non-settling defendants by the amount of the good faith settlement.

In making a determination as to whether a settlement is a "good faith settlement" some of the factors that the court looks at are the rough approximation of the Plaintiffs total recovery and the settling contractors proportionate liability, the amount paid in settlement for that liability, and the allocation of the settlement proceeds among Plaintiff's, and the financial condition and insurance policy limits of settling defendants as well as the existence of collusion, fraud, or tortious conduct aimed to injure the interests of the non-settling parties. Therefore, a key factor a trial court should consider is whether the amount paid in settlement bears a

reasonable relationship to the settler's proportionate share of liability. One of the parties presented evidence that Geocon was responsible for approximately \$3.4 million in damages. However, Geocon only paid \$50,000 in settlement or 0.8% of the damages the prime contractor claimed.

In this case, the court looked at the percentage that would have been required to be paid by Geocon and determined that it was not a good faith settlement because Geocon settled its liability for \$50,000, which is much less than the proportionate share of all of the other potential defendants.

The settlement was not in good faith.

Attorney Sam Abdulaziz of Abdulaziz, Grossbart & Rudman has been practicing construction law for 30 years. He has written a book called "California Construction Law" which is updated annually. He represents numerous construction trade associations and contractors. He appears at Contractors State License Board meetings and has argued a number of cases before the appellate courts, including the California Supreme Court dealing with the "Pay-If-Paid Clause." Abdulaziz, Grossbart & Rudman provides this information as a service to its friends & clients. The documents are of a general nature and are intended to highlight areas of the subject matter and should not be used as a substitute for specific legal advice. You should seek the aid and advice of a competent attorney and/or accountant instead of relying on the presentation and/or documents. Sam Abdulaziz can be reached at Abdulaziz, Grossbart & Rudman, P.O. Box 15458, North Hollywood, CA 91615-5458; (818) 760-2000, Facsimile (818) 760-3908; or by E-Mail at info@aglaw.net .

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SAFETY MATTERS



A concrete approach to safety

Do you know how much concrete weighs? A cubic yard (3 feet by 3 feet by 3 feet) weighs 4000 pounds! That's 2 tons, more than twice the weight of the average small car on the road today. Think about that when a concrete truck is placed next to an excavation. All that weight plus the load shift during mixing will cause a super imposed load on the sides of an excavation or trench and could result in a cave-in. Be on guard during any concrete placement.

When pouring concrete be sure that you wear the proper personal protective equipment. Rubber boots are a must to prevent you from getting lime burns on your feet and ankles. If you get wet concrete on your socks change them immediately to prevent concrete burns. Your eyes also need protection. Goggles will provide you with excellent coverage.

Another area that has potential for serious injury is when a concrete chute is raised or lowered at the rear of a concrete truck. Always keep your fingers out of pinch points. One slip can mean the loss of fingers or even a hand. The same thing applies any time an extra chute is added to the truck. Watch where you put your hands and get help to lift the add-on chute.

Pinch points are all around concrete buckets. Never ride a



KEEP A SAFE DISTANCE FROM MOVING TRUCKS OR EQUIPMENT, ESPECIALLY WHEN THEY ARE BACKING UP.

THE OPERATOR MAY HAVE A LIMITED FIELD OF VISION.

bucket and make sure that no one is working under the load. If the crane or pump truck operator cannot see the pour be sure to use a qualified signal person. When placing concrete with a bucket, know the capacity of the crane, don't overload. A test lift is advisable. Avoid swinging the

bucket near power lines. Contact with an energized power line can kill or injure.

When applying curing compound to concrete wear the right personal protective equipment. Chemical additives can cause burns. Check the appropriate

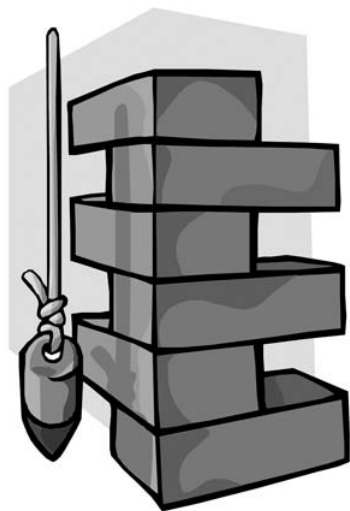
MSDS sheet with your supervisor. Also remember that wet concrete conducts electricity. All tools and cords must be grounded, and don't allow metal bull float handles to come in contact with electrical wiring or light bulbs.

Concrete and masonry construction

Let's review some of the safety requirements for concrete and masonry construction. Do not place any loads on any portion of a concrete structure until your employer has determined that it is capable of supporting those loads. This determination must be based on information provided by someone who is qualified in structural design [1926.701(a)].

All protruding reinforcing steel, onto and into which someone could fall, has to be guarded to eliminate the hazard of impalement. (Note: It should be understood that the little plastic end caps commonly found on rebar do not prevent impalement; they are there primarily to prevent injuries from occurring while handling there bar. And the orange caps without the steel embeds may not prevent an impalement injury.)

Do not ride on or in concrete buckets. A loaded bucket weighs about as much as a full-sized pick-up truck -- you certainly wouldn't want to be under one if it fell. Employees are not per-



mitted to work under concrete buckets while they are being raised or lowered into position -- so make sure that you don't. Plan the route for elevated concrete buckets so that as few employees as possible are underneath them.

Formwork must be designed, fabricated, erected, supported, and maintained so that it is capable of supporting all loads, vertical & horizontal, that may be applied to it

If a masonry wall over 8 ft. high is not adequately supported by itself or another structure then it has to be braced to prevent it from tipping over or collapsing. You have to keep that bracing in place until the wall is permanently supported by the rest of the structure. A limited access zone must be established before starting to construct a masonry wall. The zone must be 4 ft. wider than the height of the wall, and be on the unscaffolded

side of the wall. Only those employees who are actively engaged in constructing the wall may enter the zone. The limited access zone must remain until the wall is adequately supported to prevent overturning or collapse.

WET CONCRETE CONDUCTS ELECTRICITY, SO BE ALERT WHEN USING BULL FLOATS; CONTACT BETWEEN THE FLOAT HANDLE AND ELECTRIC WIRES COULD BE DISASTROUS.



OSHA CORNER

Cal/OSHA Safety Publications

Please visit the following address on the web to download helpful safety posters, guides and pamphlets for a safer workplace.

<http://www.dir.ca.gov/dosh/PubOrder.asp>

Marketing: People are listening to environmental messages

61 percent of Americans say they understand the environmental terms companies use in their advertising.

“The gap creates significant risk of embarrassment for companies and disillusionment for consumers,” says Mike Lawrence, executive vice president of corporate responsibility, Cone LLC. “Activists are closely monitoring green claims and can quickly share information online about the actual environmental impact of a product. The result can be accusations that a company is engaging in ‘greenwashing’ and is misleading the public.”

Americans Want Oversight

Despite not recognizing the existing green gap, more than half of Americans (59%) support a move by the government to ensure the accuracy of environmental messaging by regulating it.

In addition to government, Americans believe other entities can play an important oversight role to ensure accuracy in environmental messaging:

- Certification by third-party organizations – 80%
- Review and reporting by watchdog groups, news media, bloggers, etc. – 78%
- Regulation by government – 76%
- Self-policing by industry or business groups – 75%

“The fact that Americans are so primed to trust companies may suggest the lack of control they feel around complex environmental issues, so it is not surprising that they also seek a third-party

gatekeeper to help ensure the messages they see and hear are accurate,” says Bradley Googins executive director of The Boston College Center for Corporate Citizenship. “The motto really could be ‘trust, but verify.’ Maintaining the trust of consumers needs to be a top priority for companies.”

Five Guidelines for Effective Environmental Marketing

People are listening to, interested in and positively affected by environmental messaging. Fully 38 percent say they feel informed by such messaging and another 11 percent feel empowered or inspired to act. Only 14 percent of the population says environmental messaging makes them either feel cynical or overwhelmed.

Cone LLC and The Boston College Center for Corporate Citizenship believe the research suggests several strategies companies should use to effectively and credibly communicate about how their products or services impact the environment:

Be precise. Make specific claims that provide quantitative impacts.

70 percent of Americans say quantifying the actual environmental impact of a product or service is influential in their purchasing decisions. In addition, the more precise an environmental claim, the more convincing Americans believe it to be. For example, 36 percent found the message “environmentally friendly” credible when used to describe a paper product, but 60 percent found the

message “made with 80% post-consumer recycled paper” credible.

Be relevant. Demonstrate a clear connection between the product or service and the environment.

74 percent of Americans say providing a clear connection between the product/service and the environmental issue (i.e., a hybrid car and lower emissions) influences their purchasing decisions.

Be a resource. Provide additional information for consumers in a place where they want it.

Americans say they are most likely to seek information online via a company’s Web site (54%), a third-party Web site (51%), a search engine (48%) or via product packaging (45%).

Be consistent. Don’t let marketing images send a signal that contradicts the carefully chosen words and facts you use. For example, showing an automobile parked in a virgin forest may be seen as insensitive, while a product growing out of a tree may be seen as exaggeration.

Be realistic. There are always more environmental improvements that can be made to a product or service, and they are but one piece of a much larger environmental journey for society. Communications that include some sense of context, as well as a “work in progress” tone, will be more credible and less subject to criticism.

Periodicals Postage PAID at Sacramento, CA

Getting the best mileage for your money

It looks as if the days of cheap gas are gone. Americans are driving less by carpooling and combining trips, but everyone is feeling the pain. Trading your car for a bicycle isn’t necessary, and there are a few ways to get better mileage from that very expensive tank of gas.

- * Keep your car properly tuned. A poorly maintained car can use up to 25% more gas.
- * Unless your car is pinging and knocking or you have a high-performance engine, don’t use high-octane gas. Check the owner’s manual and use the recommended gas. You don’t have to buy name brands either. Most non-brands use the same product as brand names.
- * Check your tire pressure often. For every pound of underinflation, you can lose up to six percent in gas mileage. Keep tires aligned and in balance.
- * Don’t top off your tank when pumping gas. On a warm day the gas expands and can overflow, and often a lot of the overflow remains in the hose.
- * Don’t warm up your car by letting it idle. The engine warms up faster when driving than when it idles.
- * Keep an eye on the traffic ahead and accelerate and break slowly. Coasting up to a traffic jam is better than approaching at full speed and braking. It takes 20% more gas to accelerate to a normal speed from a full stop than from four or five miles per hour. When possible use cruise control.
- * Don’t drive too fast or too slow. On average it takes 25% more gas to drive at 70 than it does at 50.
- * Keep your junk out of the trunk. For every 250 extra pound of weight you lose 1 mile per gallon in fuel economy.
- * Whenever possible cut the use of the air conditioning, which can lower fuel economy by 10 to 20%.

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