



Vol. 33 - No. 10
November/
December, 2008

At a Glance

Law Talk:
Contractual duty

Safety: Watch those
wet floors!

Web Corner: The
debut of 'Joe the
Green Plumber'

... and more

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



The California Contractor

News for the Western Regional Master Builders Association



Bad Economy = Increase in Fraud and Abuse

Compare Our Rates To State Fund

With the economy struggling, we are seeing a spike in questionable workers compensation claims.

Make sure you have a representative that will fight against fraudulent claims. Heffernan's carriers aggressively fight fraud and abuse and save you money.

If you are not already working with Heffernan, please contact us or fax back the attached form so we can get you a quote and get started. Below is a comparison of some of our construction rates compared to those of State Fund's.

Contact us at:

Toll Free: 866.500.6359

Email: wrmba@heffgroup.com

Class Code	Our Rates	State Fund
42	\$7.38	\$11.38
5183	\$7.78	\$12.03
5201	\$8.16	\$12.62
5205	\$5.30	\$8.19
5213	\$7.71	\$11.89
5214	\$7.49	\$11.57
5348	\$5.54	\$8.54
5403	\$20.67	\$31.95
5432	\$5.95	\$9.22
5446	\$9.50	\$14.50
5447	\$5.15	\$7.95
5474	\$11.06	\$17.08
5482	\$5.18	\$8.00
5484	\$13.28	\$20.53
5485	\$8.75	\$13.54
5542	\$4.64	\$7.18
5645	\$20.67	\$31.95
5697	\$5.95	\$9.22

"Heffernan Insurance Brokers has been very instrumental in negotiating the insurance requirements set forth in the contracts between myself and the developers and builders I work with. This coupled with helping keep us competitive by offering premium savings have kept our relationship strong. I strongly recommend Heffernan."

Brent Fratto, California Construction & Development



HEFFERNAN INSURANCE BROKERS

A Member of the Heffernan Group



Fax Heffernan at 925.934.8278 for a free quote.

Company Name: _____ Contact Name: _____
Address: _____
Current Policy #: _____ Policy Renewal Date: _____
Email: _____ Website: _____
Phone: _____ Fax: _____ FEIN: _____

Please provide your estimated annual payrolls by class code below or simply provide a copy of your most recent State Fund payroll report.

Classification	Code	Rate	Estimated Payroll
		\$	\$
		\$	\$
		\$	\$
		\$	\$

Heffernan Insurance Brokers • 1350 Carlback Avenue, Walnut Creek, CA 94596 • Toll Free: 866.500.6359 Fax: 925.934.8278 Email: wrmba@heffgroup.com • License #0564249

Tackling climate change may boost the economy

Most people in the US say tackling climate change will boost the economy, according to new consumer research published by The Climate Group and brand strategy and design consultancy Lippincott. And, despite the crisis on Wall Street, Americans are more committed than ever to taking action: consumer commitment to personally doing something about climate change by making a significant effort in how they live their lives has risen—even among those who feel financially worse off. Climate change is also seen as a more pressing issue than it was last year.

specific measures that help them save energy and save money, such as permanent price reductions on energy efficient light bulbs, discounts on insulation and help in finding simple ways to reduce energy use such as washing clothes in cold water.

Results of the survey show that people are prepared to make changes to their lifestyles and spend extra time to fight climate change. People also believe that tackling climate change will not cost them money, and many realize they can save money by combating climate

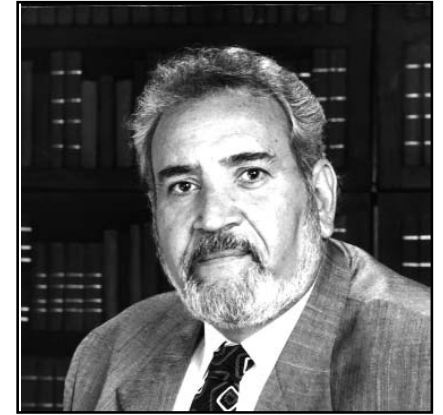
Consumers also expressed a strong preference for

Please see CLIMATE, page 2

LAW TALK



By Sam Abdulaziz
Abdulaziz, Grossbart & Rudman



Contractor who did nothing wrong may have to defend and indemnify

The California Supreme Court affirmed a Court of Appeal ruling that a subcontractor may be obliged to defend a developer even if it turns out that the subcontractor was not negligent.

This matter does not deal with insurance policies but a contractual duty. A material supplier/subcontractor supplied wood-framed windows for this particularly large residential project. As part of the contract the subcontractor agreed that (1), "to indemnify and save [builder] harmless against all claims for damages... loss,... and/or theft... growing out of the execution of [subcontractor's] work" as well as, (2) "at [its] own expense to defend any suit or action brought against [builder] founded upon the claim of such damage... loss or theft."

It turns out that numerous homeowners filed complaints alleging numerous construction defects as well as such things as the windows leaked and fogged, which caused much damage due to improper design, manufacturing, and

installation. The developer and subcontractor cross-complained. The homeowners eventually settled with the developer. Declaratory relief was granted by the trial court in favor of the developer against the subcontractor for indemnification of over \$130,000.00. The subcontractor argued that he did nothing wrong.

Declaratory Relief is when a court determines an issue. In this case, who was liable.

The court looked to the contract and its language regarding indemnity in order to come to this decision. The contract stated in a plain and unambiguous manner that the subcontractor would provide defense on "any suit or action brought against [builder] founded upon the claim of such damage..." The court indicated that it was because of the precise language in the contract that the duty to defend was imposed on the subcontractor and that the holding did not go past the language of this contract.

The court also reviewed various cases in an attempt to

The court looked to the contract and its language regarding indemnity in order to come to this decision. The contract stated in a plain and unambiguous manner that the subcontractor would provide defense on "any suit or action brought against [builder] founded upon the claim of such damage..."

determine if the duty to defend was conditioned on the subcontractor being neg-

ligent. It turned out that negligence was not a condition precedent to the liability of the subcontractors. Liability was based on the language in the contract.

The question that was at hand was whether a subcontractor was obligated to defend and/or indemnify a developer in a lawsuit where in the complaints alleged defects, but not from the subcontractor's negligence. Even though the subcontractor was found not to be negligent nor that the builder had no rights to indemnification unless the subcontractor was negligent, the court found that the subcontractor was, in fact, obligated to defend the builder in the suit. Mostly based on the language as stated in the contract.

Keep this in mind when entering into contracts. As in this case, the language in the contract will almost always determine who will be responsible.

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 legal advice. It is intended to highlight the areas being discussed and may not be entirely accurate. This document does not create an attorney-client relationship, or protect any confidential information until a written agreement is signed. You should seek the aid and advice of a competent attorney, accountant and/or other professional 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@agrlaw.net. On the Internet, visit our Website at www.agrlaw.net

Crawford v. Weather Shield Mfg., Inc.

Attorney Sam Abdulaziz of Abdulaziz, Grossbart & Rudman has been practicing construction law for over 30 years. He has written a book called "California Construction Law" which is updated annually. He represents numerous construction trade associations and

Climate: People prefer spending time to money

Continued from page 1

change.

Some highlights of the survey include:

- * 63% of Americans said they believe tackling climate change will benefit the economy
- * 52% said tackling climate change will not personally cost them money
- * Most prefer (as they always did) to contribute by changing their behavior and spending extra time rather than spending extra money
- * Those feeling financially worse off than last year are scarcely less committed than those feeling better off: 41% of people who said they believe themselves to be financially worse off also said "I am focusing on making changes to my life to combat climate change," only three percentage points below those who did not feel financially worse off
- * The percentage of people who selected 6 or 7 on a scale of 1 to 7 for level of agreement to the statement "Climate change and how we respond to it are

Please see ECONOMY, page 4

FREE Theme Park Discount Coupons!!!
Available to all W.R.M.B.A. members and their employees

Call the Association office to request these and other coupons!

Knott's Berry Farm

Legoland

Long Beach Aquarium

Universal Studios-Hollywood

L.A. Zoo

San Diego Zoo and Wild Animal Park

Sea World... ...AND MORE!!!

**To receive these discounted admission coupons...
call the Association office at
(800) 823-4038**



SAFETY MATTERS



Wet weather and work surfaces

Wet surfaces, whether indoors or out, always present a workplace hazard. They can be caused by wet weather, cleaning and accident spills, and work activities that require the use of water or are performed around water. Slipping on a wet surface can result in injuries including bruises, strains and sprains, lacerations, fractures, head trauma and can even be fatal.

Some ways to prevent accidents include:

Use caution signs to clearly identify when a surface is wet or likely to become wet. Remember that signs lose their effectiveness if they are not removed once the surface is dry. Consider posting seasonal caution signs in outdoor work areas and near equipment during the rainy season.

Specifically post signs that identify electrical hazards in wet conditions. Check for equipment and electrical currents that may not be grounded and wires that aren't insulated.

Clean up spills immediately.

Use floor mats at entrances and exits to reduce tracking in of water from outside. Remind employees to slow down and use extra caution.

If possible, organize work schedules based on weather forecasts and plan alternative tasks for inclement weather.



WET FLOOR

Schedule work activities under covered areas during predicted "wet weather days."

Construct temporary shelters such as tents or tarps over work sites that do not have existing overhead coverage.

Ensure good drainage to prevent standing water and speed drying.

Use pumps to disburse water.

Be certain that employees wear shoes and boots with slip-resistant soles.



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>

High voltage overhead

Many workers in both construction and agriculture face a common safety hazard: electrical contact with high voltage overhead lines. Every year they are killed or disabled after accidentally coming in contact with the lines.

What precautions can you take to avoid this type of accident?

What does the law — California Code of Regulations — say about this hazard?

Safe Work Practices

Several safety orders deal with requirements for safe work practices around high voltage overhead lines. When these orders are followed, almost all accidents involving high voltage lines are prevented.

Electrical Safety Order 2946 (b) (4) prohibits storage of irrigation pipe or long metal poles near high voltage overhead lines if they are long enough to reach the lines. In one year, 80 percent of the electrocution deaths of California agricultural workers occurred when the irrigation pipes they were handling came in contact with overhead lines.

Electrical Safety Order 2946 outlines the requirements for prevention of accidents due to nearness of overhead lines. Workers must be guarded against the danger of accidental contact with overhead lines.

With certain exceptions, work done over live (power on) overhead lines is against the law. Section 2946 also prohibits doing work within 6 feet of lines carrying between 600 and 50,000 volts.

Do not store tools, machinery, and equipment near live high voltage overhead lines if it is possible for them to come within the minimum clearance of 6 feet when they are being moved or used.

When moving boom-type equipment with boom lowered and no load attached, keep the end of the boom at least 6 feet away from high voltage lines.

When operating boom-type lifting or hoisting equipment, the minimum clearance is 10 feet when the overhead line is carrying between 600 and 50,000 volts.

The following warning sign must be posted on the equipment, in clear view of the operator as required by Electrical Safety Order 2947:

UNLAWFUL TO OPERATE THIS EQUIPMENT WITHIN 10 FEET OF HIGH VOLTAGE LINES OF 50,000 VOLTS OR LESS.

The following statement must be printed on the sign in smaller lettering:

FOR MINIMUM CLEARANCE OF HIGH-VOLTAGE LINES IN EXCESS OF 50,000 VOLTS, SEE ARTICLE 37, TITLE 8, HIGH-VOLTAGE ELECTRICAL SAFETY ORDERS.

If you don't know whether an overhead line is live, assume that it is until whoever owns or operates the line verifies that the power is not on. If you are working near a dead (power off) line, make sure it is clearly grounded at the worksite. A grounded line has a grounding wire clamped to it, with the other end clamped to either the structure or a grounding rod.

Orchard Hazards

Many employees are injured during pruning operations when they contact high voltage lines with pruning towers, pruning poles, or branches. Use of metal poles for fruit picking or nut harvesting is a violation of General Industry Safety Order 3455.

Discussion Questions

Is there danger on this job site of coming into contact with high voltage overhead lines?

What can be done to prevent such contact?

Are the requirements of the safety orders being followed on this site?

If not, how are they being violated?

Resources

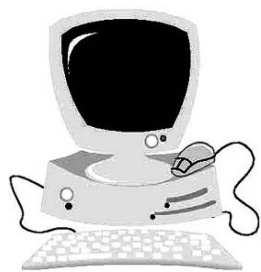
Title 8, California Code of Regulations (Safety Orders) can be reviewed at:
<http://www.dir.ca.gov/samples/search/query.htm>

Cal/OSHA Pocket Guide for the Construction Industry. Copies can be ordered from the Cal/OSHA publications website at:

<http://www.dir.ca.gov/dosh/puborder.asp>, or obtained from a Cal/OSHA District Office.

Web Corner

The Internet is a growing resource for the construction industry. Web Corner is a place for you to share websites that have helped you in your business life. Please send recommendations to greht@aol.com for inclusion in the column.



'Joe the GreenPlumber' debuts on Treehugger.com

Water conservation is an important topic not just for our planet, but for consumers and the economy too. Popular environmental website Treehugger.com brought attention to the connection between conservation and economic savings recently in a front-page feature called "Joe the Green Plumber." In the post, Treehugger contributor Brian Merchant gives his advice to recent political phenom Joe the Plumber: "With the demand for eco-conscienceable services reaching an all time high, Joe could look into getting himself accredited in one of the free GreenPlumber workshops put on by GreenPlumbers USA," Merchant writes. "He could help give a boost

Please see GREENPLUMBER, page 4

Economy: Consumers see that saving energy means saving money

Continued from page 2

among the biggest issues I worry about today" was just 18% in 2007, but climbed dramatically to 24% in 2008

* The percentage of people who selected 6 or 7 on a scale of 1 to 7 for level of agreement to the statement "I am personally making a significant effort to help reduce climate change through how I live my life today" similarly climbed from 13% in 2007 to 21% in 2008

Callum Grieve, Director of External Affairs with The Climate Group, said, "Now, more than ever, consumers see the value of going green. They know that saving energy also means saving money. People also believe fighting climate change will be good for the economy, and they expect business and government to stick to their commitments despite the economic downturn. The Together campaign makes it easy for consumers to purchase energy efficient products—helping people save energy, money and the planet."

Simon Glynn, Senior Partner at Lippincott, said, "Consumers are increasingly committed to tackling climate change, despite challenging economic times and do not see any competition between the two. They are prepared to alter their behavior to effect a change, but don't recognize

the lead we know businesses are already taking. Businesses need to improve the way they connect with consumers, by recognizing the roles that consumers are asking them to play and choosing carefully where their brands can have the greatest impact."

The research "Consumers, Brands and Climate Change 2008"—now in its second year—explores trends in consumer attitudes and buying behaviors to brands on climate change. It was commissioned by international non-profit organization The Climate Group, in partnership with global brand strategy and design consultancy Lippincott and UK broadcaster Sky.

2008 US Climate Brand Index

1. GE
2. Toyota
3. Honda
4. BP
5. GM

For the second year, the US Climate Brand Index is dominated by manufacturing and auto brands, with GE retaining its top spot and Toyota retaining second place. Honda rose two places to third, one

slot ahead of energy brand BP. Newcomer GM displaced rival Ford to join the US "top five" for the first time. Respondents were asked which brands they regarded as taking a lead in battling climate change.

The list confirms for the second year running that there is still significant opportunity for brand leadership and connection with consumers on climate change, as two-thirds of US consumers (65 per cent) were unable to name a brand leading on the issue. Again, research showed people continue to look to mainstream brands—not niche green specialists—for climate solutions.

Other Influences on Consumer Buying Behavior

The research shows that, when presented with a clear choice, consumers tend to be more motivated by practical solutions that enable them to cut their individual carbon footprints (such as renewable energy, energy efficient light bulbs, "green" bank accounts, fuel efficient cars, appliances with automatic switch-off) over corporate statements and labels such as "carbon-neutral".

The research also showed that consumers are very sensitive to negative press criticism, particularly if company claims are challenged as "greenwash". Around 44% of people

said they would definitely consider buying products or services from one retailer after reading its corporate stance, but after seeing a media report critical of those claims, buying appetite dropped by 12 percentage points.

The reverse was also true: a favorable news story in the media pushed up the number of people who would consider buying products by 6 percentage points. Membership in a non-profit organization and endorsement through campaigns such as Together (www.together.com) was also a powerful factor: Hearing that a company was "a member of a campaign run by an independent charity, which gives people easy ways to fight climate change in their everyday lives" lifted likelihood to buy or use a product or service by an average of 5 percentage points.

Callum Grieve, Director of External Affairs with The Climate Group added, "People look to brands not only for value but for values. Consumers are more likely to buy from a brand that offers products and services that help reduce an individual's carbon footprint. The research also shows that broader brand commitments are still important, and the views of other influential sources such as the media and non-profit organizations also impact consumer choice."

Periodicals Postage PAID at Sacramento, CA

GreenPlumber

Continued from page 3

to the green economy by joining 'a green army of thousands of plumbers to promote the benefits of water conservation and the reduction of greenhouse gas emissions.'"

Merchant has obviously gotten the word that *GreenPlumbers* is educating plumbers in environmental issues, and that's good news for the earth and great news for consumers looking to conserve more water, energy – and the resources in their wallets, too.

To read the whole post on Treehugger.com, visit <http://www.treehugger.com/files/2008/10/joe-the-green-plumber.php>.

The *GreenPlumbers*® training and accreditation program is open to all recognized plumbers and contractors. The program is partnered with the EPA's WaterSense program, the Alliance for Water Efficiency, the California Center for Sustainable Energy, the California Urban Water Conservation Council, and many more industry leaders in its mission of bringing environmental training to plumbers. For more information, visit www.greenplumbersusa.com.

THE CALIFORNIA CONTRACTOR
4153 Northgate Blvd., #6
Sacramento CA 95834

THE CALIFORNIA CONTRACTOR ISSN 0194-9721. Published monthly except bi-monthly July-August and November-December by SMC Publishers, 4153 Northgate Blvd., #6, Sacramento CA 95834. The California Contractor is devoted to the interests and concerns of contractors and their associations. Annual Subscription is available through membership in the Western Regional Master Builders Association. Periodicals Postage Paid at Sacramento, California. POSTMASTER: Send address changes to The California Contractor, 4153 Northgate Blvd., #6, Sacramento CA 95834