

The California Merchant



November/December, 2008

Vol. 20, No 10

Fall rates – get them now!

As you probably know, your association, California Merchants Safety Association (C.M.S.A.), is no longer working with the State Compensation Insurance Fund. We have partnered with Heffernan Insurance Brokers to bring our members a new workers' compensation insurance program with **AMAZING** rates.

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 Heffernan 2008 base rate*	Compare	SCIF 2008 base rate	Class Code Description
8017	\$4.52	vs.	\$6.52	Stores- Retail- N.O.C.
8018	\$7.61	vs.	\$10.98	Stores- Wholesale- N.O.C.
8387	\$5.44	vs.	\$7.86	Auto Service Stations
8389	\$5.92	vs.	\$8.54	Auto Repair Shops
8392	\$9.21	vs.	\$13.30	Auto or Truck Storage Garages
8061	\$5.69	vs.	\$8.21	Store, Groceries
8391	\$4.24	vs.	\$6.12	Auto Truck Dealers- employees
8324	\$6.08	vs.	\$8.77	Auto Gas Stations
9516	\$5.25	vs.	\$7.58	Television, Video, Audio Equip. - service/repair
9519	\$8.03	vs.	\$11.59	Household Appliance- service/repair
7198	\$11.28	vs.	\$16.28	Parcel Delivery Companies
7232	\$10.86	vs.	\$15.67	Mail Delivery Service Companies

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

Our new workers' compensation program through Heffernan Insurance Brokers offers a substantial savings over the State Fund rates. To participate in this new program, be sure to get your quote today!!!

Call **Heffernan Insurance Brokers** at: **(866) 500-6359** and let them know you are a member of Western Regional Master Builders Association. If you currently use a broker for your insurance needs, you may have your broker call **Tangram Insurance** to get the same program and rates, at **(800) 676-2213 ext. 662** and speak to **Riley Binford**.

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



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Americans ready to spend green on the home

A survey conducted at home shows in 15 cities across the country gauging consumer environmental practices suggests that many Americans are going green when it comes to their homes. Despite “cost” being singled out by 36 percent of respondents as the greatest impediment to going green, half of those surveyed have paid more money for an energy efficient product in the past 12 months and one in three homeowners (30%) claim they would be willing to spend \$5,000 or more on green improvements to increase a home’s appeal to potential buyers. The findings are the result of the Better Homes and Gardens Real Estate Living Green Consumer Survey, which looked at responses from over 2,300 consumers and is considered accurate to within +/- 2.2%.

These and other national survey results are being announced as a part of the Better Homes and Gardens and Green Works Living Green Tour finale - the culmination of an eight-month, 15-city tour promoting healthy and environmentally friendly living. Launched in February 2008 by Better Homes and Gardens magazine and Green Works Natural Cleaners, the tour featured a 2,500 square foot Living Green Home, which showcased how small changes can impact the energy



efficiency of everyday homes.

“As their environmental awareness grows, American homeowners are beginning to take action on green issues and are willing to spend their money accordingly,” explained Sherry Chris, president and CEO, Better Homes and Gardens Real Estate. “These survey results confirm homeowners are identifying greater value in green and when the time comes to sell their homes, they will look to convert high consumer awareness levels on the green issue into a market differentiator.”

Additional survey findings revealed that 82 percent of respondents believe they are informed when it comes to issues pertaining to the environment. When preparing to buy or sell a home, more than half of those surveyed (51%) believe in the importance of working with a green certified real estate agent? professionals who can assist in the identification and marketing of homes

with high green quotient. This would include knowledge in regards to housing materials and construction, energy efficient appliances and systems, as well as the impact of landscaping on a home’s environmental footprint. In the cities of Hartford, Conn., Greenville, S.C., and San Francisco, two out of three respondents indicated that working with a green agent would be important.

“This tour provided us with an outstanding opportunity to extend our green coverage beyond our magazine pages and Web site,” said Gayle Butler, editor in chief, Better Homes and Gardens magazine. “The exhibit offered consumers a hands-on opportunity to learn realistic steps to save money and energy while minimizing their impact on the environment. The added benefits of the survey conducted by Better Homes and Gardens Real Estate gives us qualitative insights into the mindset of consumers regarding the green issue.”

Some of the other factors keeping survey respondents from being greener included convenience (22%), lack of knowledge on how to (18%) and lack of time (17%). However, many consumers reported engaging in “eco-friendly” or “green” acts in the past six months, including recycling (73%), replacing incandescent lights with CFLs (69%), conserving water (57%), adjusting the thermostat (51%) and purchasing energy efficient appliances (30%).

The Living Green Tour and Exhibit included stops in Hartford, Conn.; Greenville, S.C., San Francisco, San Diego, Las Vegas, Los Angeles, Phoenix, Houston, Miami, Nashville, Tenn., Boston, Washington, D.C., Jacksonville, Fla., Atlanta, and New York. More details on the Better Homes and Gardens Real Estate Living Green Consumer Survey, including an executive summary and presentation, are available upon request.

Please visit your association,
California Merchants Safety Association,
at its new website.

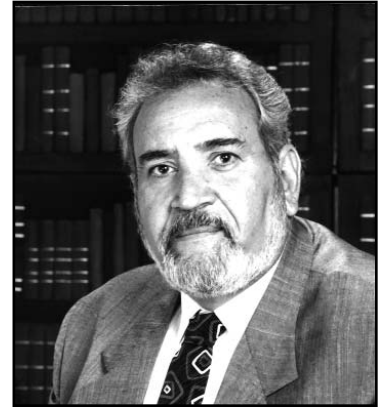
www.califmerchants.com





LAW TALK

By Sam K. Abdulaziz
Law Offices of Abdulaziz, Grossbart & Rudman



Paralegal's mistake is excusable

With the cost of legal representation continuously increasing, a great deal of legal work is delegated to paraprofessionals. A paraprofessional is one who is not trained to be part (member) of a profession but assists a professional. In the legal profession, paralegals and legal secretaries assist the attorney as part of a law firm's staff. Surely, an attorney's hourly rate is substantially higher than that of his/her paralegals. Without such individuals, clients would possibly incur larger legal bills. Regardless, the attorney bears the responsibility for error, whether the error was made by the attorney or the paralegal.

The United States Court of Appeal for the Ninth Circuit, in a recent case, defined what constitutes excusable mistake. The case went to trial and the losing party, essentially saying they do not agree with the trial court's ruling and they want a higher court to review the case, files a notice of appeal. The rules dealing with appeals have time limitations. The rules also allow for a filing of an extension of time within that time period. In this case, the defendants' attorney missed a critical deadline: the 30-day time period in which to file a notice of appeal.

Although the specific facts of the case in question are not important, it suffices to say that the reason for the attorney's error was a mistake made by the paralegal. The attorney relied on the paralegal's advice that the notice of appeal was not due for 60 days. Once the attorney discovered the mistake, the attorney submitted a notice of appeal along with a request for an extension of time to file the Notice.

The court was required to review the filing since it was made after the time period required by statute.

The court found excusable neglect. Excusable means appropriate to excuse, not necessarily a good reason to excuse. Moreover, neglect is merely a failure to do something or carry out a task or duty.

In determining whether excusable neglect exists, the court applied a 4-factor test from a previous case. The factors are: (1) the danger of unfairness to the other party; (2) the length of delay and the impact it will have on the case; (3) the reason for the delay, including whether it was within the reasonable control of the party; and (4) whether the party's conduct was in good faith. The court found that since there was no unfairness, and that the length of the delay was small coupled with the fact that the delay was due to good faith carelessness, the reliance on the paralegals mistake constitutes excusable neglect. Therefore, the court granted the defendants extension and allowed for the filing of the notice of appeal.

Before this modern 4-factor test, many courts would apply a narrower, more restrictive test. It limited excusable neglect to situations that were beyond the party's control. For example, if the messenger was hit by a truck on his way to filing the notice. However, this modern 4-factor test is broader and more flexible. It doesn't require a tragic accident or even a good reason, but merely some reason to excuse the parties failure to file. The court did mention that an attorney's misunderstanding of the law is not a compelling reason to grant an

extension.

The court rules are important and it is up to the attorney to make sure a deadline or other requirement is not overlooked. However, this case shows that in limited circumstances a judge will allow for an honest mistake. Paraprofessionals are an asset to the attorney and the client, therefore some of their mistakes are also excusable.

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 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. 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



SAFETY MATTERS



Don't slip: 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.

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

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>

A wet cell phone may be salvageable

Everyone drops his cell phone, and most of the time they come through the assault in fine shape. But that's not usually the case when they land in a puddle, a lake or heaven forbid the toilet. When that happens, we tend to panic, scream or use unbecoming language.

According to the people at Verizon Wireless, liquid penetration is the biggest reason people return their damaged devices. It seems we just can't resist checking e-mail in the bathroom, chatting on the phone poolside, or washing our clothes without checking the pockets.

Because so many people have turned up at stores demanding a replacement, many manufacturers have installed a moisture indicator on the batteries and inside phones to provide clear evidence of contact with liquid. The meters, which are simple white



stickers, change color when wet, which invalidates the warranty.

There are a few remedies to try to reactivate your phone. The most important thing to remember is never turn on a wet device, because that can zap the circuitry. Should you drop it in less-than-pristine

water, immediate rinse the device with distilled water. This will wash away any chemicals that could alter the electrical charge and cause fatal shorts. Take out the battery, wipe off any moisture, unfasten any screws to open up the device and use an electrical contact cleaning spray to displace the corrosive mois-

ture.

The next step is to get the phone as dry as possible. This can be done one of several ways:

- * dry the device with a hair dryer set on "cool"
- * put the device in a jar with uncooked rice in hopes the grains will absorb the moisture before it corrodes the circuitry deep inside.
- * remove the battery, wrap the device in a dry washcloth and aluminum foil, and bake it in the oven for several hours at the lowest setting.

If you can't resist taking your BlackBerry with you when you are near water, it's a good idea to wrap it in a Ziplock bag. You can still use the keys and it just may save you a lot of aggravation should it accidentally tumble into the water.

'Joe the Plumber' debuts on Treehugger.com

Web Corner

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-conscionable 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 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>.

Two-thirds of Americans don't expect economic bailout to improve their finances

As the government begins rolling out the \$700 billion economic bailout package, nearly two-thirds of American families do not expect the far-reaching plan will improve their personal finances, according to the First Command Financial Behaviors Index.



Results of the Index's October survey indicate that 63 percent of American families do not feel confident that the government rescue plan will have a positive effect on their personal financial situation. And one-third (32 percent) think that it will be at least two years before their household's financial situation stabilizes.

financial plan, and the point spread has been steadily widening (eight points in June versus 17 points in September). The Index among those with a financial plan actually increased four points to 97 in the third quarter while the Index score among those without a financial plan decreased five points to 80.

it will be at least two years before the economy is stable again.

The October survey also reveals that women are not as confident as men regarding the potential of the bailout plan to improve their personal finances. Seventy percent of women are not

confident that the plan will have a positive impact on their personal financial situation, while only 54 percent of men reported the same sentiment. However, men and women report relatively similar thoughts on the length of time it will be before their household's financial situation is stable. Thirty-five percent of women and 30 percent of men think it will be at least two years before their situation stabilizes.

"Americans are realizing that a long-term view is necessary," Spiker said. "They don't expect the \$700 billion plan will lead to a recovery anytime soon."

"The majority of Americans do not believe the \$700 billion plan will bail them out of their personal economic crisis," said Scott Spiker, CEO of First Command. "They don't expect a rapid turnaround, and they are beginning to manage their finances accordingly. In fact, our third quarter Index findings reveal that consumers are already taking matters into their own hands. They are buttoning-down for the downturn by saving more and cutting debt. Short-term savings for the typical family totaled \$901 in September, up 29 percent from \$696 in June."

"Our research also consistently shows that consumers who have a financial plan through a relationship with a trusted advisor are more likely to stay the course during times of market volatility than those without a plan," Spiker said. "The average American family may be more likely to receive a jolt of confidence from a personal financial plan than the government's rescue plan."

Regarding the U.S. economy, only half of Americans believe that the government plan will help to stabilize the national situation. Nearly two-thirds (64 percent) of Americans think that

Financial confidence is considerably higher among those who are planning for the future. Consumers with a financial plan consistently register a higher Index score than respondents without a

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 (800) 823-4038**

Step away from the buffet!

Most of us are tempted by food around the holidays. However, for people on special diets because of health reasons such as diabetes, high cholesterol, high blood pressure or kidney disease, it can be harder to enjoy festivities while limiting foods that are less healthy.

“Many of us are concerned about gaining weight from all the food around us during the holidays,” says Jessica Seymour, R.D., L.D.N., a dietitian with Fresenius Medical Care. “But for people with certain chronic illnesses, this isn’t just a matter of putting on a few pounds. Eating the wrong foods can be harmful to their health. With a little planning, however, they can enjoy social events while still making smart eating decisions.”

Holiday Eating Tips for People on Special Diets

Before the party:

Talk to your host to find out what is on the menu. If needed, offer to bring something you can eat and enjoy.

Make family and friends aware of your diet so they are able to serve foods that are healthy for you.

Have a snack before the party so you are not starving when you arrive.

At the party:

Limit temptation - move away from the buffet table.

Know your diet so you can make wise food choices.

Sauces and gravies are usually salty and full of fat. Limit the amount you have by putting them “on the side.”

At a buffet or cocktail party, keep a plate with a napkin on it in one hand, and a cup in the other. This can dissuade others from urging you to eat and drink more.

When planning your own party:

If you’re cooking or planning the food for a party:

Leave out salty ingredients

Add salt-free seasonings and herbs for more flavor

Have a variety of foods available to meet your dietary needs, along with those of your guests.

Above all, remember that time spent with family and friends is what makes the holidays important, not the food.

Winter weather approaching: Drive accordingly

When weather turns treacherous, GEICO provides the following tips for winterizing your car and driving safely in severe weather conditions.

According to Nancy Pierce, vice president of GEICO claims, “It’s important for motorists to drive carefully and defensively because the biggest hazard of winter driving is slippery roads. We want to make sure motorists are prepared for dangerous winter driving conditions.”

1. Winterize your car. Prepare your vehicle for cold weather by checking your car battery, brakes, fluid levels, exhaust system, lights, windshield wipers and tires.
2. Beware of deer. According to the Insurance Institute for Highway Safety (IIHS), animal collisions, especially deer, are nearly three times higher during November than any other month.
3. See and be seen. Clear the ice and snow from all car windows and lights. Drive with your headlights on when it's snowing or raining so you are visible to other drivers.
4. Allow extra time. If you think the road conditions might be bad, give yourself extra time for your trip. You won't have to rush and you can concentrate on driving safely.
5. Slow down and allow more distance between vehicles. When driving in bad weather, always reduce your speed well in advance of an anticipated stop. If you have an anti-lock brake system, experts recommend applying steady, firm pressure to the brake pedal. If you do not have an anti-lock brake system, apply firm pressure to the brake pedal to a point just before locking.
6. Control your car during a skid. If your car starts to slide, take your foot off the accelerator and turn your car in the direction of the skid until it straightens out.
7. Store a winter driving kit in your trunk with the following emergency equipment: flashlights with extra batteries, a first aid kit, matches, jumper cables, flares, a shovel and snow scraper, a bag of sand, a basic tool kit, a hat, gloves, rain gear and blanket or sleeping bag.
8. Fuel yourself. If you're planning a long trip in potentially bad weather, pack snack foods and water and always remember to keep your gas tank at least half full to prevent freezing your fuel lines. You never know when winter will make a long trip an even longer, very hungry and thirsty one.
9. To get yourself unstuck: Avoid spinning your tires and determine the most direct path between your car and solid ground, keeping the front tires as straight as possible. Clear the snow around all four tires and liberally spread sand or kitty litter to gain traction.
10. Always wear safety belts. This is true regardless of the season - and it's the law. Be sure that all passengers are buckled up as well.

For more information on safe driving, go to GEICO's online auto safety library at <http://geico.com/auto/safety/>.

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WCIRB will increase worker's comp rates in 2009

The Workers' Compensation Insurance Rating Bureau of California has submitted a pure premium rate filing to the California Insurance Commissioner, recommending a 16% rate increase in new and renewal policies. The rate increase would affect policies as of the first anniversary rating date of a risk on or after January 1, 2009.

According to WCIRB, nearly 11% of the increase would reflect rising medical costs, about 3% would reflect increased loss adjustment expenses and about 2% would reflect an annual adjustment to the experience rating off-balance correction factor.



If the 16% rate increase is approved, the average January 1, 2009 pure premium rate will be \$1.95 per \$100 of payroll. That rate, according to

WCIRB, is about 60% lower than the average pre-reform rate of \$4.81.

The recommended 16% rate increase does not reflect the cost impact of the recent changes to the Permanent Disability Rating Schedule proposed by the Division of Workers' Compensation, WCIRB said. If the PDRS changes are adopted, WCIRB indicated it reserves the right to increase its pure premium rate an additional 3.7%.

The filing and related documents can be found in the Regulatory Filings section of wcirbonline.org.

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