

# COMPENSATION NEWS

MONTHLY REPORT

## THE COURT OF APPEAL ISSUED A NON PUBLISHED DECISION ON THE ISSUE OF SERIOUS AND WILLFUL MISCONDUCT

### *This is a non published Court of Appeal case*

**T**his is a very significant case for workers' compensation principles in that it discusses the current case law.

The applicant was killed in an industrial accident. The accident occurred when a ripper shank fell off a crane killing the applicant.

After review of the accident OSHA cited the

#### INSIDE THIS ISSUE:

**FORD CONSTRUCTION COMPANY V WCAB (NEWELL)**

employer for a "general safety violation". The widow filed a Serious and Willful Misconduct (S&W) claim under Labor Code sections 4553 and 4553.1.

The case went to trial and the Workers' Compensation Judge (WCJ) found the employer liable for Serious and Willful Misconduct. On petition for reconsideration the Workers' Compensation Appeals Board (WCAB) agreed with the WCJ.

The employer filed a writ and the appellate court issued this opinion. It is a very good synopsis of all current law regarding S&W's and violations of Safety Orders.

In both instances the court of appeal indicated there was

not substantial evidence of a S&W. Even though the death was tragic there was no serious and willful misconduct or a violation of a safety order for workers compensation purposes. Keep in mind the employer was cited by OSHA but this was not sufficient for a S&W.

**Editor: Harvey Brown**

**Firm: Samuelsen, Gonzalez, Valenzuela and Brown**

**Address:**

**18881 Von Karman,  
Suite 250, Irvine, California  
92612**

**Phone: 949-252-1300**