



ATTORNEYS AT LAW



**John Garcia**  
Senior Attorney

John Garcia presently serves as the Head of Homan & Stone's Workers' Compensation Department. He has been practicing law for twenty years. His practice is 100% devoted to Workers' Compensation cases. Mr. Garcia has published several articles on Workers' Compensation Law topics. Mr. Garcia uses his considerable expertise to resolve cases expeditiously and economically. In addition, he is the lead trial attorney at Homan & Stone before the Workers' Compensation Appeals Board. Mr. Garcia represents Insurance Companies, both regional and national, Self-Insured Private Companies, Governmental Agencies and Employers, Third-Party Administrators, relating to Workers' Compensation, Section 132a Claims and Serious and Willful Claims.

## EVENTS



### CSIA's 2013 Annual Meeting & Educational Conference

**- Date:**  
Thursday and Friday,  
March 14 and 15, 2013

**- Location:**  
Disneyland Hotel in Anaheim California USA.

Our 2013 Annual Meeting and Educational Conference will be held on Thursday and Friday, March 14 and 15, 2013 at the Disneyland Hotel in Anaheim, CA. On the afternoon of Thursday, March 14th CSIA will present a mini seminar for employers and TPA claims personnel only. This mini seminar will be free for CSIA Employer and Associate members and \$75 for non-members. Visit <http://caself-insurers.com/events-alt/> for all information.

## DISABLING TRACTOR SAFETY DEVICE LEADS TO DEATH OF VINEYARD EMPLOYEE, JAIL FOR VINEYARD MANAGER

Written by [WWW.WORKERSCOMPENSATION.COM](http://WWW.WORKERSCOMPENSATION.COM)



Santa Rosa, CA (WorkersCompensation.com) - District Attorney Jill Ravitch announced the resolution of a case involving the removal of a safety device from a tractor that killed a vineyard worker when the defendants pled no contest to a misdemeanor violation of Labor Code section 6425, which prohibits removal of a manufacturer's safety device. The Honorable Peter Ottenweller sentenced defendant James Poole, 61, of Windsor, to 30 days in jail and 80 hours of community service work for an organization dedicated to worker safety. Additionally, VINO Farms, Inc. was ordered to pay restitution and fines totaling two-hundred thousand dollars (\$200,000).

District Attorney Ravitch stated: "All workers have the right to expect that they will come home at the end of the workday and that their employers will keep in place all manufacturers' safety devices on equipment used for work. Companies and supervisors who disable safety devices will be held accountable for the sake of workers who depend on them.

"The single misdemeanor charge resulted from an investigation by the Occupational Safety and Health Administration (OSHA) which revealed that the victim was working alone at a local vineyard on a tractor that had its "kill switch" removed. (The "kill switch" causes the tractor's engine to stop running and moving forward when the driver leaves the seat.) OSHA investigators concluded that on January 22, 2011, when Mr. Ambriz-Luquin tried to get out of the tractor's narrow opening, his clothing was caught, and, without the kill switch operable, the tractor moved forward pinning him beneath it over night. The victim survived for several days before the injuries he sustained resulted in his death. OSHA discovered that VINO Farms, Inc.'s manager, James Poole, had ordered the safety device removed from the tractor seat.

As part of the plea agreement, VINO Farms, Inc. agreed to pay restitution to the family of the deceased victim in the amount of one-hundred thousand dollars (\$100,000) and be placed

on probation for two years. The company was ordered to pay an additional fine in the amount of seventy-five thousand dollars (\$75,000) to the State of California, as well as twenty-five thousand dollars (\$25,000) to Ag Safe, an organization dedicated to worker safety. An additional penalty in the amount of seventy-five thousand dollars (\$75,000) was suspended, pending successful completion of probation by VINO Farms, Inc. VINO Farms, Inc. agreed to change some of its procedures to comply with worker safety laws and to strengthen some of its policies to ensure that its workers will be able to get emergency help when working alone.

The case was prosecuted by Deputy District Attorney Ann Gallagher White, and was investigated by the Division of Occupational Safety and Health's Associate Engineer, Mark Harrington, by Senior Engineer, Steven Fenton and by OSHA Bureau of Investigation's Mike Byrne.

## NOTEWORTHY PANEL DECISION

*Maria De Jesus Flores, Applicant v. Carl Karcher Enterprises, Inc. dba Carl's Jr, Travelers Insurance Co., Defendants, 2012 Cal. Wrk. Comp. P.D. LEXIS 461*

Post-termination Claims—WCAB, reversing WCJ, held that applicant/fast food worker's claim for industrial injuries to her back, upper extremities, lower extremities, neck, head, neurological system, and psyche during period 1/1/2008 to 5/22/2009, was not barred by post-termination defense in Labor Code § 3600(a)(10), when applicant was not terminated but rather quit her job with two weeks' notice, and WCAB found that Labor Code § 3600(a)(10) does not apply to employees who voluntarily quit their jobs, and fact that employer requested that applicant leave her employment prior to expiration of the two-week notice period did not convert applicant's voluntary resignation into a termination so as to justify application of Labor Code § 3600(a)(10). [See generally Hanna, Cal. Law of Emp. Inj. and Workers' Comp. 2d §§ 3.23, 4.65[1], 25.21[3], 26.06[3].]

FOR MORE PANEL DECISIONS YOU SHOULD KNOW VISIT  
[WWW.HOMAN-STONE.COM](http://WWW.HOMAN-STONE.COM)



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