

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

2520 Venture Oaks Way, Suite 300  
Sacramento, CA 95833  
(916) 274-5751  
FAX (916) 274-5785

RECEIVED

DEC 31 2013

OSH Appeals Board

APPEAL FORM

315776005

Inspection Number on Citation

Schindler Elevator Corporation

Employer Name on Citation

Employer Legal Name or DBA (Optional)

555 McCormick Street

Address

San Leandro, CA 94577

DOCKET \_\_\_\_\_

(Leave blank- Appeals Board will fill in.)

1. You only have 15 working days from receipt of a citation to appeal.

2. A copy of this form must be attached to each citation or notification appealed. Failure to file a completed form may result in dismissal of the appeal.

FIRST READ IMPORTANT INFORMATION ON THE REVERSE SIDE THEN COMPLETE ONE APPEAL FORM FOR EACH CITATION

1. This is an Appeal from:

CITATION NO(s): 1 \_\_\_\_\_ Item No(s): 1 \_\_\_\_\_

NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION  
CITATION NO(s): \_\_\_\_\_ Item No(s): \_\_\_\_\_

SPECIAL ORDER/SPECIAL ACTION NO: \_\_\_\_\_  
Item No(s): \_\_\_\_\_

2. Specific ground(s) for this appeal are: (Check all that apply)

The safety order was not violated.

The classification (i.e. serious, willful, repeat) is incorrect.

The abatement requirements are unreasonable.

Required changes     Time allowed to complete changes

The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated. Some important affirmative defenses are listed on the OSHAB website at: <http://www.dir.ca.gov/OSHAB/oshab.html>  
The statute of limitations has passed for a citation. Employer had no actual or constructive knowledge

of any violation. The cited safety orders do not apply or exceptions in the standards were met. The cited cited safety orders are unconstitutionally vague and the Division has exceeded its authority (next page)

**Inspection No. 315776005****Appeal Form, ¶ 3, Citation 1, Item 1, cont'd**

by interpreting the cited safety order to require the means of compliance specified in the citation. Employer's IIPP identified and included procedures for eliminating all hazards described in the citation, the incident resulted from an unforeseeable, isolated act, and the IEAD applies to bar any citation. The logical time for compliance had not yet arrived at the time of the alleged violation. It was infeasible or impossible to implement the means of compliance the Division asserts was required at the time of the alleged violation. The citation and item is barred because a more specific safety order applies to the working condition. The Division lacked jurisdiction and the cited standard was barred and/or pre-empted by regulations of another agency, including, but not limited to, the Division's Elevator Unit, which apply to the working conditions.

4.



(Signature of Employer or Employer's Representative)  
{If there is any change in representation after you file your appeal, you must notify the Appeals Board in writing}

Paul J. Waters

(Type or print name)

Attorney

(Title)

1465 S. Fort Harrison Avenue, Suite 205

(Address) {Address where all communications from the Appeals Board will be sent}

Clearwater

Florida

33756

(City)

(State)

(Zip Code)

727-474-4736

pwaters@oshattorney.com

(Telephone)

(E-Mail Address)

(Date)

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- G. Mail each completed Appeal form and citation or notification to the Occupational Safety and Health Appeals Board, 2520 Venture Oaks Way, Suite 300, Sacramento, CA 95833.
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**State of California**  
 Division of Occupational Safety and Health  
 Cal/OSHA District Office (0950613; 4019)  
 1065 East Hillsdale Blvd., Suite 110  
 Foster City, CA 94404

**Inspection Number:** 315776005  
**Inspection Dates:** 06/11/2013- 12/10/2013  
**Issuance Date:** 12/10/2013  
**CSHO ID:** R1120  
**Optional Inspection Nbr:** 024-13



Phone: (650) 573-3812 Fax: (650) 573-3817

### Citation and Notification of Penalty

**Company Name:** Schindler Elevator Corporation  
**Inspection Site:** 4900 Centennial Blvd., Santa Clara, CA 95054

### Citation 1 Item 1 Type of Violation: **Serious**

T8CCR 1509(a): Every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program in accordance with section 3203 of the General Industry Safety Orders.

Location: 4900 Centennial Blvd., Santa Clara, CA 95054

On or before June 11, 2013 the employer failed to implement and/or ensure implementation of the required elements of an Injury and Illness Prevention Program including but not limited to:

1. Failure to identify, evaluate, and correct the hazard of mounting electrical equipment within the counterweight runway such that employees may be required to be in the zone of danger during installation and maintenance of the equipment.
2. Failure to identify, evaluate, and correct the hazard of allowing the activation of the elevator while any employee is situated within the zone of danger created by the movement of the elevator platform or counterweight.
3. Failure to establish effective procedures for ensuring that employees are outside the zone of danger created by moving parts of an elevator prior to activating the elevator.

As a result, on June 11, 2013, an employee was fatally injured when he was struck by the elevator counterweights while working within the counterweight runway.

Ref: T8CCR 3203(a)

Date By Which Violation Must be Abated:	12/20/2013
Proposed Penalty:	\$ 18000.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

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APPEAL FORM OSH Appeals Board

315776005

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Schindler Elevator Corporation

Employer Name on Citation

Employer Legal Name or DBA (Optional)

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[X] CITATION NO(s): 2 Item No(s): 1

[ ] NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION CITATION NO(s): Item No(s):

[ ] SPECIAL ORDER/SPECIAL ACTION NO: Item No(s):

2. Specific ground(s) for this appeal are: (Check all that apply)

[X] The safety order was not violated.

[X] The classification (i.e. serious, willful, repeat) is incorrect.

[X] The abatement requirements are unreasonable.

[X] Required changes [X] Time allowed to complete changes

[X] The proposed penalty is unreasonable.

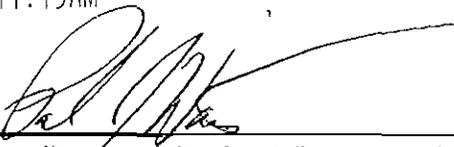
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of any violation. The cited safety orders do not apply or exceptions in the standards were met. The cited cited safety orders are unconstitutionally vague and the Division has exceeded its authority (next page)

**Inspection No. 315776005****Appeal Form, ¶ 3, Citation 2, Item 1, cont'd**

by interpreting the cited safety order to require the means of compliance specified in the citation. Employer's IIPP identified and included procedures for eliminating all hazards described in the citation, the incident resulted from an unforeseeable, isolated act, and the IEAD applies to bar any citation. The logical time for compliance had not yet arrived at the time of the alleged violation. It was infeasible or impossible to implement the means of compliance the Division asserts was required at the time of the alleged violation. The citation and item is barred because a more specific safety order applies to the working condition. The Division lacked jurisdiction and the cited standard was barred and/or pre-empted by regulations of another agency, including, but not limited to, the Division's Elevator Unit, which apply to the working conditions.

4.




---

 (Signature of Employer or Employer's Representative)

{If there is any change in representation after you file your appeal, you must notify the Appeals Board in writing}

---

 Paul J. Waters

(Type or print name)

---

 Attorney

(Title)

---

 1465 S. Fort Harrison Avenue, Suite 205

(Address) {Address where all communications from the Appeals Board will be sent}

---

 Clearwater

Florida

33756

(City)

(State)

(Zip Code)

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 727-474-4736

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 pwaters@oshattorney.com

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**State of California**

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Cal/OSHA District Office (0950613; 4019)  
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Inspection Number: 315776005  
Inspection Dates: 06/11/2013- 12/10/2013  
Issuance Date: 12/10/2013  
CSHO ID: R1120  
Optional Inspection Nbr: 024-13



Phone: (650) 573-3812 Fax: (650) 573-3817

**Citation and Notification of Penalty**

Company Name: Schindler Elevator Corporation  
Inspection Site: 4900 Centennial Blvd., Santa Clara, CA 95054

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**Citation 2 Item 1 Type of Violation: **Serious****

T8CCR 3318: All counterweights shall be enclosed with a guard which shall extend from the working level to at least the midpoint of the counterweight when it is in its highest position, or shall be otherwise guarded to afford at least equivalent protection unless they are so located that their falling would create no hazard or the area directly below the counterweight is effectively barricaded against passage.

Location: 4900 Centennial Blvd., Santa Clara, CA 95054

On or before June 11, 2013, the employer failed to enclose the counterweights that had been installed for freight elevators D-1 and D-2 with guards, as required. As a result, on June 11, 2013, an employee was fatally injured when he was struck by the counterweight of freight elevator D-1 while installing equipment within the counterweight runway.

Date By Which Violation Must be Abated: 12/20/2013  
Proposed Penalty: \$ 18000.00

---

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

## OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

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**A P P E A L F O R M**

315776005

Inspection Number on Citation

Schindler Elevator Corporation

Employer Name on Citation

Employer Legal Name or DBA (Optional)

555 McCormick Street

Address

San Leandro, CA 94577

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NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION  
CITATION NO(s): \_\_\_\_\_ Item No(s): \_\_\_\_\_

SPECIAL ORDER/SPECIAL ACTION NO: \_\_\_\_\_  
Item No(s): \_\_\_\_\_

2. Specific ground(s) for this appeal are: (Check all that apply)

The safety order was not violated.

The classification (i.e. serious, willful, repeat) is incorrect.

The abatement requirements are unreasonable.

Required changes     Time allowed to complete changes

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**Inspection No. 315776005****Appeal Form, ¶ 3, Citation 3, Item 1, cont'd**

by interpreting the cited safety order to require the means of compliance specified in the citation. Employer's IIPP identified and included procedures for eliminating all hazards described in the citation, the incident resulted from an unforeseeable, isolated act, and the IEAD applies to bar any citation. The logical time for compliance had not yet arrived at the time of the alleged violation. It was infeasible or impossible to implement the means of compliance the Division asserts was required at the time of the alleged violation. The citation and item is barred because a more specific safety order applies to the working condition. The Division lacked jurisdiction and the cited standard was barred and/or pre-empted by regulations of another agency, including, but not limited to, the Division's Elevator Unit, which apply to the working conditions.

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**Paul J. Waters**

(Type or print name)

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(Title)

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Issuance Date: 12/10/2013  
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Optional Inspection Nbr: 024-13



Phone: (650) 573-3812 Fax: (650) 573-3817

**Citation and Notification of Penalty**

Company Name: Schindler Elevator Corporation  
Inspection Site: 4900 Centennial Blvd., Santa Clara, CA 95054

**Citation 3 Item 1 Type of Violation: Serious**

T8CCR 4002(a): All machines, parts of machines, or component parts of machines which create hazardous revolving, reciprocating, running, shearing, punching, pressing, squeezing, drawing, cutting, rolling, mixing or similar action, including pinch points and shear points, not guarded by the frame of the machine(s) or by location, shall be guarded.

Location: 4900 Centennial Blvd., Santa Clara, CA 95054

On or before June 11, 2013, the employer failed to guard the counterweights that had been installed for freight elevators D-1 and D-2. Such failure exposed employees working within the elevator hoistway and pit to the hazardous reciprocating and running actions of the counterweights. As a result, on June 11, 2013, an employee was fatally injured when he was struck by the counterweight of freight elevator D-1 while installing equipment within the counterweight runway.

Date By Which Violation Must be Abated: 12/20/2013  
Proposed Penalty: \$ 18000.00



Compliance Officer/District Manager

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

No. 0072 P. 1  
**RECEIVED**

DEC 31 2013

**OSH Appeals Board**



**Facsimile**

---

From: Paul J. Waters

Date: December 31, 2013

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Please Deliver 18 Pages (including cover sheet) to:

<b>Name:</b>	<b>OSH Appeals Board</b>	<b>Facsimile Number:</b> 916-274-5785
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Please call (727) 474-4736 x1 if there are any problems with transmission.

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**Comments / Special Instructions**

**Appeal forms for Schindler Elevator Corporation, Inspection # 315776005.  
Original will NOT follow by mail. Please contact me with any questions or  
problems with transmission.**

The information contained in this transmission may be a confidential attorney-client communication or otherwise privileged and confidential, intended only for the recipient above. If the reader is not the intended recipient, or its employee or agent, you are hereby notified that any dissemination, distribution, or copying of this communication is prohibited. If you have received this facsimile in error, please call us immediately and return the original transmittal to us by mail. Thank you.

**Waters Law Group**  
1465 S. Fort Harrison Avenue, Suite 205 | Clearwater, Florida 33756  
WEB: [www.oshattorney.com](http://www.oshattorney.com) | TEL: (727) 474-4736

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**A P P E A L F O R M**

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CITATION NO(s): \_\_\_\_\_ Item No(s): \_\_\_\_\_

SPECIAL ORDER/SPECIAL ACTION NO: 1  
Item No(s): 1

2. Specific ground(s) for this appeal are: (Check all that apply)

The safety order was not violated.

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The abatement requirements are unreasonable.

Required changes     Time allowed to complete changes

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The statute of limitations has passed for a special order. Employer had no actual or constructive knowledge of any violation. The terms of the special order exceed the Division's jurisdiction and power.

The cited labor code provision is unconstitutionally vague and the Division has exceeded its (next page)

**Inspection No. 315776005****Appeal Form, ¶ 3, Special Order 1, Item 1**

Authority by interpreting Labor Code § 6401 to allow it to demand the means of compliance specified in the special order. Further, Division lacked jurisdiction, exceeded its authority and deprived Employer of due process by circumventing the rulemaking process vested in the Standard's Board by attempting to impose stricter conditions or requirements than that already imposed upon employers by specific safety orders, including but not limited to 8 CCR § 1509, and with which Employer fully complied.

The Division also exceeded its authority by issuing a special order requiring acts purportedly already required by specific safety orders that apply to the working conditions, including but not limited to 8 CCR § 1509 and safety orders specifically applying to elevators used in construction work, and by attempting to require abatement in circumstances not required in specific safety orders already adopted by the Standards Board that apply directly to the working conditions. Employer's IIPP and other safe work policies identified and included procedures for eliminating all hazards described in the special order and required by Labor Code § 6401 and 8 CCR § 1509, the incident resulted from an unforeseeable, isolated act, and the IEAD applies to bar the special order. The Division lacked jurisdiction and the cited standard was barred and/or pre-empted by regulations of another agency, including, but not limited to, the Division's Elevator Unit.

4.

  
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(Type or print name)

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STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

1. Office:  
San Mateo District Office  
1065 E. Hillsdale Blvd., Suite #110  
Foster City, CA 94404

SPECIAL ORDER

2. Schindler Elevator Corporation  
555 McCormick Street  
San Leandro, CA 94577

3. Page 1 of 2

4. Special Order Number 1

5. An inspection or investigation of a place of employment located at 4900 Centennial Blvd.,  
Santa Clara, CA 95054 was conducted by Pam Sekhon

on June 11, 2013. This Special Order is being issued in accordance with California Labor Code (L.C.) Sections 6305 and 6308 for unsafe condition(s) described below that were found during that inspection or investigation.

6a. Item No.	6b. No. of Instances	7. Basis of Special Order L.C. Provision	8. Special Order	9. Abatement date by which this Special Order must be complied with
1	1	6401	<p>The employer shall develop and implement written procedures to ensure that personnel are not exposed to hazardous energy created by moving parts within an elevator hoistway and/or pit.</p> <p>These written procedures shall include:</p> <ol style="list-style-type: none"> <li>1. A requirement that all personnel ensure, through both verbal, two-way communication and visual confirmation, that all personnel within an elevator hoistway and/or pit have removed themselves from the zone of danger created by moving parts prior to setting an elevator platform and/or car in motion.</li> <li>2. Means and methods to prohibit personnel from entering the zone of danger until it is safe to do so.</li> <li>3. A requirement for training of all affected personnel on these procedures; and</li> </ol> <p>(continued on next page)</p>	January 11, 2014

10. Signature \_\_\_\_\_  
Safety Engineer

Signature \_\_\_\_\_  
Industrial Hygienist

Signature \_\_\_\_\_  
District Manager

Date of issuance 12/10/13

This Special Order or a copy thereof shall be prominently posted upon receipt by the employer at or near the location of each unsafe condition described above until said condition(s) is/are corrected or for three working days, whichever is longer.

The employer has 15 working days after receipt of the above Special Order within which to notify in writing the California Occupational Safety and Health Appeals Board, 2520 Venture Oaks Way Suite 300, Sacramento, CA 95833, of his or her intention to contest any action or provision of this Order. The above Special Order will become a final Order of the Appeals Board not subject to review or appeal unless contested by the employer, employee, or employee representative.

An employee, or his or her representative, may contest in writing to the California Occupational Safety and Health Appeals Board the reasonableness of the date by which this order must be complied with within 15 working days from the date of issuance of the Special Order.

If the unsafe condition(s) described above is/are not corrected or any action or provision of this Order is not complied with as directed in this Special Order within the period of time set forth by the Division of Occupational Safety and Health, the Division may issue a citation for violation of the special order and may assess a monetary penalty and/or, in some instances, may bring a prosecution for a misdemeanor.

STATE OF CALIFORNIA  
 DEPARTMENT OF INDUSTRIAL RELATIONS  
 DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

**SPECIAL ORDER (Continued)**

Special Order Number 1

Page 2 of 2

6a. Item No.	6b. No. of Instances	7. Basis of Special Order L.C. Provision	8. Special Order	9. Abatement date by which this Special Order must be complied with
			<p>4. A requirement that the employer periodically evaluate the procedures to ensure that they continue to be effective as written and that they are being effectively implemented. The employer shall, as part of these evaluations, consult affected employees and their representatives to assess their views on the effectiveness of the procedures, and to identify any problems. Any problems that are identified during these evaluations shall be corrected.</p>	

DEPARTMENT OF INDUSTRIAL RELATIONS  
OCCUPATIONAL SAFETY  
AND HEALTH APPEALS BOARD  
2520 VENTURE OAKS WAY, SUITE 300  
SACRAMENTO, CA 95833  
(916) 274-5751  
FAX (916) 274-5785



January 2, 2014

Paul Waters, Attorney  
WATERS LAW GROUP  
1465 S. Fort Harrison Avenue, Suite 205  
Clearwater, FL 33756

**SUBJECT: Confirmation of your Intent to Appeal;  
Request for Additional Documents  
SCHINDLER ELEVATOR CORPORATION  
IMIS# 315776005**

Dear Mr. Waters:

The Occupational Safety and Health Appeals Board received your telephone call on December 31, 2013. You indicated your intention to appeal the citation(s) issued by the Division of Occupational Safety and Health.

In order for us to proceed with your appeal, you are required to provide the following documents.

**1. An Appeal Form must be filled out and submitted for each citation you are appealing.**

The citation is the document issued by the inspector indicating the specific regulation(s) you are being charged with violating.

The Appeal Form is located at the following website address: <http://www.dir.ca.gov/oshab/oshab.html>. You may enter information directly into the form, however you cannot file your appeal electronically. You must print out the form and mail it to the Appeals Board at the address below.

Please indicate on the form which citation you are appealing and the grounds upon which your appeal is based. Please take the time to carefully fill out the appeal form completely and accurately. Incomplete appeal forms will be returned to you. (Refer to the "Important Information" section located on the second page of the appeal form.)

**2. A copy of the entire citation packet.**

The citation packet is entitled "Citation and Notification of Penalty", and may contain several citations.

The completed appeal form(s) and the entire citation packet must be postmarked (or received in this office, if via hand delivery) within 10 calendar days of the date of this letter. **Failure to meet this deadline constitutes grounds for dismissal of your appeal.** (Title 8, Cal. Code Regs, Section 359.1). Mail or hand-deliver the above documents to:

Cal-OSHA Appeals Board  
2520 Venture Oaks Way, Suite 300  
Sacramento, CA 95833

We accept express, certified, and regular U.S. Mail.

You should keep copies of all documents for your records. Once the above documents have been timely received, and after verifying all legal requirements are met, your appeal will be entered into our system and assigned a docket number. A copy of the docketed appeal will be mailed to you at the address provided on the Appeal Form.

**Please note:** During this time we are also required, by law, to verify that your telephone call (or other communication to the Board) indicating your intent to appeal was made within 15 working days of receipt of the citation. If, upon completing our review, it appears that your initial communication to the Board indicating your intent to appeal was outside the 15 working day deadline, we will notify you (via separate letter) that your intent to appeal was untimely and request that you show good cause regarding why you did not initiate your appeal within the 15 working day deadline. (See Title 8, Cal. Code Regs, Section Reg. 359.)

Sincerely,



Janis Jonas  
Office Technician

cc: DOSH District Manager - Foster City  
1-3-R1120-024-2013