

GL & L Enterprises (Precision Drywall)

ASSESSMENTS

Prime contractor liability (RCW 51.12.070)

Because RCW 51.12.070 makes the letting contractor primarily and directly responsible for all premiums due for work performed by sub contractors, the Department need not exhaust collection remedies against subcontractors or their bonds before collecting from the letting contractor and may apply payments received first to interest, then fees, then penalties, and then to premiums.*In re GL & L Enterprises (Precision Drywall)*, BIIA Dec., 05 13857 (2008)

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**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

1 **IN RE: GL & L ENTERPRISES INC DBA) DOCKET NOS. 05 13857, 05 18266, 05 18356**
2 **PRECISION DRYWALL INC) & 06 15457**
3 **IN RE: LEA'S DRYWALL INC.) DOCKET NOS. 05 18262, 05 18265, 05 24037,**
4 **) 06 14434 & 06 19738**
5 **FIRM NOS. 370,533-01 & 926,709-00) DECISION AND ORDER**

6 Firm, GL & L Enterprises, Inc., dba Precision Drywall, Inc., by
7 Clausen Law Firm, PLLC, per
8 Mark A. Clausen

9 Firm, Lea's Drywall, Inc., by
10 Clausen Law Firm, PLLC, per
11 Mark A. Clausen

12 Department of Labor and Industries, by
13 The Office of the Attorney General, per
14 Diane Hunter-Cornell, Assistant

15 The firm, GL & L Enterprises, Inc., dba Precision Drywall, Inc., filed appeals with the Board
16 of Industrial Insurance Appeals, from Notices and Orders of Assessment under:

17 **Docket No. 05 13857:**

18 On June 3, 2005, from a Notice and Order of Assessment dated May 4, 2005. In the Notice
19 and Order of Assessment the Department affirmed Notice and Order of Assessment
20 No. P-0374056-6 issued on November 9, 2004, in the amount of \$7,054.21 for taxes owed to the
21 State Fund by its subcontractor, Victor's Drywall. The Department Notice and Order of Assessment
22 is **AFFIRMED.**

23 **Docket No. 05 18266:**

24 On October 12, 2005, from a Notice and Order of Assessment dated September 12, 2005.
25 In the Notice and Order of Assessment the Department affirmed Notice and Order of Assessment
26 No. P-387418-5 issued on March 31, 2005, in the amount of \$50,882.23 for taxes owed to the State
27 Fund by its subcontractor, Chivos Drywall. The Department Notice and Order of Assessment is
28 **AFFIRMED.**

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Docket No. 05 18356:

On October 12, 2005, from a Notice and Order of Assessment dated September 12, 2005. In the Notice and Order of Assessment the Department affirmed Notice and Order of Assessment No. P-386263-5 issued April 1, 2005, in the amount of \$32,982.27 (later stipulated to be \$21,200.01) for taxes owed to the State Fund by its subcontractor, Zagy's Drywall. The Department Notice and Order of Assessment is **AFFIRMED AS MODIFIED.**

Docket No. 06 15457:

On May 23, 2006, from a Notice and Order of Assessment dated May 11, 2006. In the Notice and Order of Assessment the Department affirmed Notice and Order of Assessment No. 0406987 issued December 22, 2005, in the amount of \$60,299.10 for taxes owed to the State Fund by its subcontractor, Rodriguez Drywall. The Department Notice and Order of Assessment is **AFFIRMED.**

The firm, Lea's Drywall, Inc., filed appeals with the Board of Industrial Insurance Appeals, from Notices and Orders of Assessment under:

Docket No. 05 18262:

On October 11, 2005, from a Notice and Order of Assessment dated September 12, 2005. In the Notice and Order of Assessment the Department affirmed Notice and Order of Assessment No. P-391928 issued April 13, 2005, in the amount of \$3,575.39 for taxes owed to the State Fund by its subcontractor, Romero's Drywall. The Department Notice and Order of Assessment is **AFFIRMED.**

Docket No. 05 18265:

On October 12, 2005, from a Notice and Order of Assessment dated September 12, 2005. In the Notice and Order of Assessment the Department affirmed Notice and Order of Assessment No. P-387418-4 issued March 31, 2005, in the amount of \$7,284.16 for taxes owed to the State Fund by its subcontractor, Chivo's Drywall. The Department Notice and Order of Assessment is **AFFIRMED.**

1 **Docket No. 05 24037:**

2 On December 30, 2005, from a Notice and Order of Assessment dated December 22, 2005.
3 In the Notice and Order of Assessment the Department affirmed Notice and Order of Assessment
4 No. 0404676 issued November 29, 2005, in the amount of \$7,399.68 for taxes owed to the State
5 Fund by its subcontractor, Zagy's Drywall. The Department Notice and Order of Assessment is
6 **AFFIRMED.**

7 **Docket No. 06 14434:**

8 On April 21, 2006, from a Notice and Order of Assessment dated April 10, 2006. In the
9 Notice and Order of Assessment the Department affirmed Notice and Order of Assessment
10 No. 0408919 issued January 30, 2006, in the amount of \$12,606.37 for taxes owed to the State
11 Fund by its subcontractor, Roman Drywall. The Department Notice and Order of Assessment is
12 **AFFIRMED.**

13 **Docket No. 06 19738:**

14 On October 9, 2006, from a Notice and Order of Assessment dated September 19, 2006.
15 In the Notice and Order of Assessment the Department affirmed Notice and Order of Assessment
16 No. 0392370 issued April 15, 2005, in the amount of \$19,781.71 for taxes owed to the State Fund
17 by its subcontractor, Supreme Quality Drywall. The Department Notice and Order of Assessment is
18 **AFFIRMED.**

19 **DECISION**

20 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
21 and decision on a timely Petition for Review filed by the Department to a Proposed Decision and
22 Order issued on August 6, 2007, in which our industrial appeals judge reversed the Notices and
23 Orders of Assessment issued by the Department dated May 4, 2005; September 12, 2005; May 11,
24 2006; December 22, 2005; April 10, 2006; and September 19, 2006; and remanded them to the
25 Department of Labor and Industries with direction to (1) recalculate the premiums owed by
26 Precision Drywall, Inc., and Lea's Drywall, Inc., by first applying any money collected on the
27 subcontractor's accounts to the payment of delinquent subcontractor premiums before applying any
28 of the proceeds to the payment of penalties and interest; (2) grant a credit to GL & L Enterprises,
29 Inc., dba Precision Drywall and Lea's Drywall for premiums owed for the full amount of
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1 the surety bonds that were on file with the Department of Labor and Industries when each
2 subcontractor's premiums became delinquent and not collected by the Department; (3) reissue
3 Notices of Assessment to GL & L Enterprises, Inc., dba Precision Drywall, Inc., and Lea's Drywall,
4 Inc., for any balances owing on the delinquent subcontractor accounts after reducing the accounts
5 by monies received first to premiums and granting credit for each uncollected surety bond.

6 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that
7 no prejudicial error was committed. Those rulings are affirmed. In the employer's response to the
8 Department's Petition for Review an objection was raised to the inclusion of the declaration of
9 W. Alan Jorgenson as an attachment. We agree that this material is evidentiary in nature and not
10 appropriate for inclusion in a Petition for Review. Accordingly, this material will be stricken from the
11 record and not considered. The attorney for the employers has also objected to a letter from the
12 Assistant Attorney General representing the Department asking the Board to consider the recent
13 court of appeals decision in *Lee's Drywall Co., Inc. v. Department of Labor & Indus.*, No 35613-9-II
14 (November 27, 2007). As this is a published decision by an appellate court of the state of
15 Washington, we must consider it to the extent that it is relevant to the present appeals.

16 We have granted review because we find that the Department has acted appropriately in
17 collecting "premiums" in these appeals. Premiums are defined in RCW 51.08.015 as "the money
18 payments by an employer or worker which are required by this title to be made to the state treasury
19 for the accident fund, the medical aid fund, the supplemental pension fund, or any other fund
20 created by this title." In applying RCW 51.12.070 and RCW 51.08.015 to the facts of these appeals
21 we are required to keep in mind one of the fundamental legislative intents in adopting and
22 amending the Industrial Insurance Act.

23 Consistent with the legislative intent behind the Industrial Insurance Act, this
24 court has repeatedly emphasized that the Industrial Insurance Act should be
25 given a liberal interpretation. The act "is remedial in nature and is to be
26 liberally applied to achieve its purpose of providing compensation to all covered
27 persons injured in their employment." *Sacred Heart Med. Ctr. v. Department of*
Labor & Indus., 92 Wn.2d 631, 635, 600 P.2d 1015 (1979); *Johnson v.*
Tradewell Stores, Inc., 95 Wn.2d 739, 743, 630 P.2d 441 (1981); *Johnson v.*
Weyerhaeuser, Co., 134 Wn.2d 795, 799, 953 P.2d 800 (1998).

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29 *Brand v. Department of Labor & Indus.*, 139 Wn.2d 659, 668 (1999).

30 In considering the collection of "premiums" under RCW 51.12.070, we must give effect to the
31 underlying purpose of this statute in the context of the Industrial Insurance Act as a whole. "[T]he
32 obvious purpose of RCW 51.12.070 is to facilitate and broaden the premium collection of the

1 Department. The more the statute facilitates full collection of premiums, the better it serves the
2 accident fund from which compensation is paid." *Littlejohn Construction v. Department of Labor &*
3 *Indus.*, 74 Wn. App. 420, 426 (1994). The Department, in collecting "premiums" from GL & L
4 Enterprises and Lea's Drywall, and their subcontractors, acted in a manner consistent with the
5 broad grant of authority provided by the legislature in enacting RCW 51.12.070 and chapter 51.16
6 RCW.

7 Under RCW 51.12.070 the "letting" contractor is "responsible primarily and directly for all
8 premiums upon the work" performed by their subcontractors. This statute also provides two ways
9 to avoid this responsibility. "[t]he . . . person, firm, or corporation letting the contract is entitled to
10 collect from the contractor the full amount payable in premiums and the contractor in turn is entitled
11 to collect from the subcontractor his or her proportionate amount of the payment." RCW 51.12.070.
12 This provision in particular is useful in the situation faced by these firms as the premiums for work
13 done in drywall installation are based upon the square footage installed, this information is readily
14 available to all the parties to the contract. The sections of RCW 51.12.070 that follow also provide
15 that "a contractor registered under chapter 18.27 RCW . . . shall not be responsible for any
16 premiums upon the work of any subcontractor if" the requirements set forth in the five numbered
17 provisions are met.

18 Neither firm took advantage of these options, and both stipulated that they, as "letting
19 contractors," are responsible for the premiums assessed in the Notices and Orders of Assessment.
20 This leaves before us the issues that are common to all of these appeals. The firms challenge the
21 Department's action, or lack thereof, in collecting funds from the subcontractors and in the
22 application of the funds collected. The firms object to the Department's action in first applying the
23 funds collected from subcontractors to interest and penalties owed, and the remainder being
24 applied to premiums owed by the subcontractor. They contend that the money collected from the
25 subcontractors should first be applied to the assessed premiums for which the firms are
26 responsible. In addition, the firms seek further credit or offset for monies that the Department failed
27 to collect through legal action against the subcontractors' assets, in particular the subcontractors'
28 surety bonds, filed with the Department pursuant to RCW 18.27.040(1).

1 The Industrial Insurance Act, when originally enacted in 1911, included a provision making
2 the "contractor . . . responsible, primarily and directly, to the accident fund for the proper
3 percentage of the total pay roll of the work and the owner of the property affected by the contract
4 shall be surety for such payment." Laws of 1911, ch. 74, §17. Laws of 1921, ch. 182, §8,
5 eliminated the provision designating the owner as surety, and Laws of 1923, ch. 136, §5, changed
6 the language of this provision to state that "[T]he person, firm or corporation who lets a contract for
7 such extra-hazardous work shall be responsible primarily and directly for all payments due to the
8 accident fund and medical aid fund upon the work." As the years have passed this provision has
9 been further modified, but not changed in substance, to the language now in RCW 51.12.070,
10 providing that "the person, firm, or corporation who lets a contract for such work is responsible
11 primarily and directly for all premiums upon the work." The "premiums" for which the "letting"
12 contractor are responsible, primarily and directly, are defined in RCW 51.08.015 as being the
13 "taxes, which are the money payments by an employer or worker which are required by this title to
14 be made to the state treasury for the accident fund, the medical aid fund, the supplemental pension
15 fund, or any other fund created by this title." RCW 51.16.035(2) authorizes the Department of
16 Labor and Industries to "formulate and adopt rules and regulations governing the method of
17 premium calculation and collection . . . consistent with recognized principles of workers'
18 compensation insurance which shall be designed . . . to facilitate collection."

19 The provisions cited above contain clear and unambiguous statements of legislative intent
20 to provide broad collection powers to the Department. Keeping in mind the definition of "premiums"
21 contained in RCW 51.08.015 it is clear that the Legislature intended to provide the Department of
22 Labor and Industries with plenary powers in collection of "taxes," which are by definition money
23 payments required to be made by an employer or worker to any fund created by Chapter 51 RCW.
24 This all-inclusive definition includes payments other than those designated as "premiums" in a
25 Notice and Order of Assessment. These payments include charges imposed for the failure to file
26 reports and for the failure to pay premiums on time. The collection of penalties and interest are part
27 of the action required of the Department in order to collect the payments necessary to fully fund the
28 act in accordance with "recognized principles of workers' compensation insurance."
29 RCW 51.16.035(2).

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1 The Legislature has provided the Department with the power to collect premiums from either
2 the subcontractor employer, under chapter 51.16 RCW, or the contractor "who lets a contract . . ."
3 under RCW 51.12.070. Chapter 51.16 RCW provides the Department with the power to initiate
4 action to collect taxes from a defaulting employer, but it does not require the Department to take
5 such action. Rather, RCW 51.12.070 and chapter 51.16 RCW provide alternative nonexclusive
6 collection methods without a statutory requirement to employ one before the other. There is no
7 statutory requirement placed on the Department to exhaust remedies against subcontractors for
8 failure to pay premiums, penalties, and interest before collecting against the letting contractor under
9 RCW 51.12.070.

10 In light of the Legislature's removal of the provision making the owner a surety for the
11 payments, it is not appropriate to consider the "letting" contractor's responsibility as being that of a
12 surety as that term is defined as a legal term of art. The "letting" contractor's "surety like" premium
13 responsibility described in *Hildahl v. Bringolf*, 101 Wn. App. 634 2000, is not limited to that of a
14 surety. Rather "the person, firm, or corporation who lets a contract ... is responsible **primarily and**
15 **directly** for all premiums upon the work." RCW 51.12.070. (Emphasis added.) It also should be
16 noted that the court in *Hildahl v. Bringolf* did not determine the "letting" contractor's responsibility for
17 the amounts assessed in the Notices and Orders of Assessment that were the subject of appeals to
18 this Board. The amount that Mr. Bringolf had to pay was based upon an agreement between the
19 parties to those appeals limiting his responsibility to the assessment for taxes in the amount of
20 \$1,168.78, and not upon a decision by the Court of Appeals. This case does not stand for the
21 proposition that the Department of Labor and Industries is limited to collecting premiums and not
22 allowed to collect penalties and interest from a "letting" contractor.

23 The firms also contend that the Department did not have a legal basis for their application of
24 the funds collected to the subcontractor's obligations. Although the Department's internal Policy
25 No. 64.30 has not been adopted as a regulation, it is consistent with the broad powers granted to
26 the Department by the Legislature to fully fund the Act. "Application of payment . . . to the oldest
27 open item first . . . in this order: interest, fees, penalties, premiums" is consistent with the Legislative
28 direction to collect the payments necessary to fully fund the Act in accordance with "recognized
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1 principles of workers' compensation insurance." RCW 51.16.035(2). The collection of premiums
2 months and years after they were due does not provide "the payments necessary to fully fund the
3 act" in a way that is equivalent to the collection of premiums when they are due. The collection of
4 interest and penalties provides the additional money that is necessary to insure that the Industrial
5 Insurance Act is fully funded.

6 While the Department clearly has the ability under RCW 18.27.040(3) to proceed against
7 the subcontractors' bonds or assets, there is no statutory requirement that it do so. It is possible for
8 the Department to perform an audit that results in a Notice and Order of Assessment long after the
9 taxes and contributions owing the state of Washington became due. RCW 18.27.040(3). The
10 delay caused by the "subcontractors'" failure to meet their obligations to file timely reports and to
11 pay premiums when due frequently makes it impossible for the Department to take action against
12 the bond as a claim would have to be filed "within one year from the date . . ." that "taxes and
13 contributions owing the state of Washington became due . . ." RCW 18.27.040(3). In any event
14 the Department's claim would be subordinate to the claims of "(a) Employee labor and claims of
15 laborers, including employee benefits; (b) Claims for breach of contract by a party to the
16 construction contract; (c) Registered or licensed subcontractors, material, and equipment."
17 RCW 18.27.040(4) In any action, other than that taken by a "residential homeowner," against the
18 bond of a general contractor the recovery is limited to one-half of the bond amount, and against the
19 bond of a specialty contractor the recovery is limited to one-half of the bond amount or four
20 thousand dollars, whichever is greater. RCW 18.27.040(5). Had the Department elected to
21 proceed with a claim against a contractor's bond it would not have been able to recover the full face
22 value of the bond. Also, the record does not provide any information regarding the amount that
23 could have been collected as the result of a timely claim against the subcontractors' bonds other
24 than the face amount of the bond. It is clear that even in the best of circumstances the Department
25 would not be able to claim the entire face value of the bonds.

26 Although we are sympathetic to the firms' situation, we can find no basis for our application
27 of equitable remedies. This Board does not have authority to provide equitable relief unless such
28 relief can be applied under the principle of stare decisis. *In re Isaiah Chavez Dec'd.*, BIIA Dec.,
29 85 2867 (1987). Thus, the Board may grant equitable relief only under circumstances where the
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1 facts before it are controlled by established precedent. *In re AEX Corp.*, BIIA Dec., 90 5314 (1992).
2 *In re State Roofing & Insulation, Inc.*, BIIA Dec. 89,1770 (1991) provides an example of equitable
3 relief being provided in the collection of taxes based on the application of an established precedent
4 analogous factual situation. The principle reason equitable relief was provided in *State Roofing &*
5 *Insulation* is absent in these appeals. State Roofing & Insulation relied, to its detriment, on
6 incorrect information provided by the Department in calculating and paying premiums. The record
7 here does not establish reliance by the firms on information provided by the Department, or on the
8 Department's action or failure to take action in securing payment of the subcontractors' "premiums."
9 We can find no appellate decision by a Washington court supporting the application of equitable
10 remedies to the fact pattern presented by these appeals. The only possible equitable remedy
11 available is through an appeal to superior court.

12 Applying the broad legislative grant of authority to the Department regarding collections to
13 the facts of these appeals we find that each Notice and Order of Assessment must be affirmed.
14 GL & L Enterprises and Lea's Drywall have failed to establish that the Department exceeded its
15 legislated authority in assessing, collecting, and applying the amounts owed by, and collected from,
16 the subcontractors, including premiums, interest, and penalties as authorized by
17 chapter 51.16 RCW; or in assessing the "premiums" in the Notices and Orders of Assessment that
18 are the subjects of these appeals.

19 Consideration of the Proposed Decision and Order, the Department's Petition for Review
20 filed thereto, the firms' Response to the Department's Petition for Review, and a careful review of
21 the entire record before us, persuades us that the Notices and Orders of Assessment are correct
22 and must be affirmed, with the modification based on the parties' stipulation.

23 **FINDINGS OF FACT**

- 24 1. On November 9, 2004, the Department of Labor and Industries issued
25 Notice of Assessment No. P-0374056-6 against GL & L Enterprises,
26 Inc., dba Precision Drywall in the amount of \$7,054.21 for taxes owed to
27 the State Fund by its subcontractor, Victor's Drywall, which was
28 communicated to the firm on November 29, 2004. On December 13,
29 2004, the firm filed a protest with the Department. On January 10, 2005,
30 the Department issued an order in which it held the assessment in
31 abeyance. On May 4, 2005, the Department issued an order in which it
32 affirmed the November 9, 2004 assessment. On June 3, 2005, the firm
filed a Notice of Appeal, assigned Docket No. 05 13857, with the Board
of Industrial Insurance Appeals and on June 14, 2005, the Board
granted the appeal.

- 1 2. On March 31, 2005, the Department of Labor and Industries issued a
2 Notice of Assessment No. P-387418-5 against GL & L Enterprises, Inc.,
3 dba Precision Drywall in the amount of \$50,882.23 for taxes owed to the
4 State Fund by its subcontractor, Chivos Drywall. On April 29, 2005, the
5 firm filed a Notice of Appeal to the Board of Industrial Insurance Appeals
6 and on June 1, 2005, the Board granted the appeal. The Department
7 resumed jurisdiction and issued a Notice of Assessment on
8 September 12, 2005, in which it affirmed the March 31, 2005
9 assessment. On October 12, 2005, the firm filed a Notice of Appeal,
10 assigned Docket No. 05 18266, with the Board and on November 17,
11 2005, the Board issued an order in which it granted the appeal.
- 12 3. On April 1, 2005, the Department of Labor and Industries issued Notice
13 of Assessment No. P-386263-5, against GL & L Enterprises, Inc., dba
14 Precision Drywall in the amount of \$32,982.27 (later stipulated to be
15 \$21,200.01) for taxes owed to the State Fund by its subcontractor,
16 Zagy's Drywall. On April 29, 2005, the firm filed a Notice of Appeal to
17 the Board of Industrial Insurance Appeals. The Department resumed
18 jurisdiction and on September 12, 2005, issued a Notice of Assessment
19 in which it affirmed its April 1, 2005 assessment. On October 12, 2005,
20 the firm filed a Notice of Appeal, assigned Docket No. 05 18356, with
21 the Board of Industrial Insurance Appeals and on November 17, 2005,
22 the Board issued an order in which it granted the appeal.
- 23 4. On December 22, 2005, the Department of Labor and Industries issued
24 a Notice of Assessment No. 0406987 against GL & L Enterprises, Inc.,
25 dba Precision Drywall in the amount of \$60,299.10 for taxes owed to the
26 State Fund by its subcontractor, Rodriguez Drywall. On January 5,
27 2006, the Department issued an order to reconsider its decision. On
28 May 11, 2006, the Department issued a Notice of Assessment in which
29 it affirmed its December 22, 2005 assessment. On May 23, 2006, the
30 firm filed a Notice of Appeal, assigned Docket No. 06 15457, with the
31 Board of Industrial Insurance Appeals and on June 13, 2006, the Board
32 issued an order in which it granted the appeal.
5. On April 13, 2005, the Department of Labor and Industries issued Notice
 of Assessment No. P-391928 against Lea's Drywall in the amount of
 \$3,575.39, for taxes owed to the State Fund by its subcontractor,
 Romero's Drywall, which was communicated to the firm on April 19,
 2005. On May 19, 2005, the firm filed a Notice of Appeal with the Board
 of Industrial Insurance Appeals and on June 16, 2005, the Board issued
 an order in which it granted the appeal. On August 16, 2005, the
 Department held the April 13, 2005 notice in abeyance and on

1 September 12, 2005, the Department issued a Notice of Assessment in
2 which it affirmed its April 13, 2005 assessment. On October 11, 2005,
3 the firm filed a Notice of Appeal, assigned Docket No. 05 18262, with
4 the Board and on November 9, 2005, the Board issued an order in
5 which it granted the appeal.

6 6. On March 31, 2005, the Department of Labor and Industries issued
7 Notice of Assessment No. P-387418-4 against Lea's Drywall Inc., in the
8 amount of \$7,284.16 for taxes owed to the State Fund by its
9 subcontractor, Chivo's Drywall. On April 29, 2005, the firm filed a Notice
10 of Appeal with the Board of Industrial Insurance Appeals and on May 24,
11 2005, the Board issued an order in which it granted the appeal. The
12 Department reassumed jurisdiction and on September 12, 2005, issued
13 a Notice of Assessment in which it affirmed its March 31, 2005
14 assessment. On October 12, 2005, the firm filed a Notice of Appeal,
15 assigned Docket No. 05 18265 with the Board and on November 8,
16 2005, the Board issued an order in which it granted the appeal.

17 7. On November 29, 2005, the Department of Labor and Industries issued
18 Notice of Assessment No. 0404676 against Lea's Drywall in the amount
19 of \$7,399.68 for taxes owed to the State Fund by its subcontractor,
20 Zagy's Drywall. On December 22, 2005, the firm protested the issuance
21 of the assessment and on December 22, 2005, the Department issued a
22 Notice of Assessment in which it affirmed its November 29, 2005
23 assessment. On December 30, 2005, the firm filed a Notice of Appeal,
24 assigned Docket No. 05 24037, with the Board of Industrial Insurance
25 Appeals and on January 27, 2006, the Board issued an order in which it
26 granted the appeal.

27 8. On January 30, 2006, the Department of Labor and Industries issued a
28 Notice of Assessment No. 0408919 against Lea's Drywall in the amount
29 of \$12,606.37 for taxes owed to the State Fund by its subcontractor,
30 Roman Drywall, which was received by the firm on February 7, 2006.
31 On March 6, 2006, the firm filed a protest with the Department. On
32 March 8, 2006, the Department issued an order in which it held the
assessment in abeyance. On April 10, 2006, the Department issued a
Notice of Assessment in which it affirmed its January 30, 2006
assessment. On April 21, 2006, the firm filed a Notice of Appeal,
assigned Docket No. 06 14434, with the Board of Industrial Insurance
Appeals and on May 25, 2006, the Board issued an order in which it
granted the appeal.

9. On April 15, 2005, the Department of Labor and Industries issued Notice
of Assessment No. 0392370 against Lea's Drywall in the amount of
\$19,781.71 for taxes owed to the State Fund by its subcontractor,

1 Supreme Quality Drywall, which was not received by the firm. On
2 July 8, 2005, the notice was resent and on July 27, 2005, the firm filed a
3 protest to the assessment. On August 1, 2005, the Department issued
4 an order in which it held the assessment in abeyance. On
5 September 19, 2006, the Department issued a Notice of Assessment in
6 which it affirmed its April 15, 2005 assessment. On October 9, 2006,
7 the firm filed a Notice of Appeal, assigned Docket No. 06 19738, with
8 the Board of Industrial Insurance Appeals and on November 20, 2006,
9 the Board issued an order in which it granted the appeal.

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10. The Department of Labor and Industries has collected money on the subcontractors' accounts; the money collected has been applied first to the interest owed on the subcontractor account; secondly to penalties owed by the subcontractor; and lastly to the premiums owed by the subcontractor.
 11. The Department of Labor and Industries then issued the Notices and Orders of Assessment assessing GL & L Enterprises, Inc., dba Precision Drywall, Inc. and Lea's Drywall for the balance of premiums owed after the application of the funds collected from the subcontractors.
 12. The subcontractors for GL & L Enterprises, Inc., dba Precision Drywall were Victor's Drywall, Chivo's Drywall, Zagy's Drywall, and Rodriguez Drywall. All of these subcontractors had surety bonds on file with the Department of Labor and Industries in the sum of \$6,000, except Chivo's Drywall, which had a \$12,000 surety bond.
 13. The subcontractors for Lea's Drywall were Romero's Drywall, Chivo's Drywall, Zagy's Drywall, Roman Drywall, and Supreme Quality Drywall. All of these subcontractors had surety bonds on file with the Department of Labor and Industries in the sum of \$6,000, except Chivo's Drywall, which had a \$12,000 surety bond.
 14. All of the subcontractors failed at different times commencing in 2001 through 2004 to file timely reports of the square footage of sheetrock installed, pursuant to contracts let by GL & L Enterprises, Inc., dba Precision Drywall and Lea's Drywall, and the subcontractors failed to pay premiums when due, interest when due, and penalties assessed.
 15. The Department of Labor and Industries used the information provided by GL & L Enterprises, Inc., dba Precision Drywall, Inc. and Lea's Drywall regarding the square footage of sheetrock installed in assessing the premiums owed by the subcontractors.

- 1 16. The Department was prevented from filing timely claims against the
2 surety bonds of the subcontractors by their delinquency in filing reports
3 and failing to pay premiums to the State Fund.
- 4 17. The amount of delinquent premiums chargeable against GL & L
5 Enterprises, Inc., dba Precision Drywall are as follows: Victor's Drywall,
6 \$7,054.21; Chivo's Drywall, \$50,882.23; Zagy's Drywall, \$21,200.01;
7 and Rodriguez Drywall, \$60,299.10.
- 8 18. The amount of delinquent premiums chargeable against Lea's Drywall
9 are as follows: Romero's Drywall, \$3,575.39; Chivo's Drywall,
10 \$7,284.16; Zagy's Drywall, \$7,399.68; Roman Drywall, \$12,606.37; and
11 Supreme Quality Drywall, \$19,781.71.
- 12 19. The Department of Labor and Industries' action or failure to take action
13 in securing payment of delinquent premiums from the subcontractors'
14 surety bonds or from other sources did not prevent the letting
15 contractors from taking action on their own to avoid responsibility for
16 their subcontractors' premiums or to collect or withhold the premiums
17 from their subcontractors.

18 **CONCLUSIONS OF LAW**

- 19 1. The Board of Industrial Insurance Appeals has jurisdiction over the
20 parties to and the subject matter of these consolidated appeals.
- 21 2. The Department acted in accordance with the provisions of
22 chapter 51.16 RCW in collecting money from the subcontractors of GL &
23 L Enterprises, Inc., dba Precision Drywall, Inc., and Lea's Drywall Inc.,
24 and in applying the money collected to the obligations of the
25 subcontractors.
- 26 3. The Notices and Orders of Assessment against GL & L Enterprises,
27 Inc., dba Precision Drywall on appeal under Docket Nos. 05 13857,
28 05 18266, 05 18356 and 06 15457 are correct and are affirmed.
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1 4. The Notices and Orders of Assessment against Lea's Drywall, Inc. on
2 appeal under Docket Nos. 05 18262, 05 18265, 05 24037, 06 14434
3 and 06 19738 are correct and are affirmed.

4 It is **ORDERED**.

5 Dated: January 3, 2008.

6 BOARD OF INDUSTRIAL INSURANCE APPEALS

7
8
9 /s/ _____
10 THOMAS E. EGAN Chairperson

11
12 /s/ _____
13 FRANK E. FENNERTY, JR. Member