

# COMPENSATION NEWS

MONTHLY REPORT

## Supreme Court finally decides apportionment case

This is a published  
supreme court  
decision

This is a significant  
decision from the  
supreme court.

The court looked at five different decisions of the Workers' Compensation Appeals Board (WCAB). All of the cases had an apportionment issue. In each case there was either a previous industrial injury or a nonindustrial cause for the permanent disability. In each case the workers' compensation judge (WCJ) applied the formula for apportionment used in

In this issue..

Brodie v. WCAB; Welcher v  
WCAB

Fuentes v. WCAB.

These cases went up on appeal resulting in differing appellate decisions. In Brodie v. WCAB the court did not adopt Fuentes. In Welcher v. WCAB the appellate court followed Fuentes.

In a very lengthy opinion the supreme court then went into the apportionment problem. In a great discussion they discussed the history and reasoning of the apportionment laws. In there analysis they discuss Labor Code sections 4658 and 4750.

The law was settled for 28 years until SB 899 was passed in 2004. Labor Code sections 4663 and 4750 were repealed. A revised section 4663 and a new 4664 section were enacted. This resulted in the court questioning whether Fuentes was still good law.

This resulted in three different approaches being applied by various Courts of Appeal and the WCAB. The Supreme Court needed to review to solidify opinion under one approach.

The Supreme Court reviewed SB 899 and its legislative history. They compared the old and new statutes. They asked the question whether the legislature intended to adopt a new and different formula and determined the answer was no.

Therefore, Fuentes is still the law for apportionment.

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