

# COMPENSATION NEWS

MONTHLY REPORT

## Court of Appeal indicates apportionment under Brodie decision is correct

This is an appellate decision that was not published.

This is a significant decision involving interpretation of subtracting a prior award on a 100 per cent case.

The applicant worked for the employer for 16 years and suffered numerous workers' compensation injuries. In 1994 it was stipulated the applicant had a 60 per cent permanent disability for these injuries.

The applicant continued to work for the employer and filed

In this issue..

Browning-Ferris Industries v. WCAB, Salter

two new claims. The applicant did not reopen the prior cases. The parties stipulated at trial the applicant was 100 per cent disabled. The workers' compensation judge (WCJ) found that there was only one cumulative trauma instead of two injuries. The judge only allowed the monetary amount of the prior award for 60 percent to be deducted from a 100 percent award, instead of deducting the percentage. The Workers' Compensation Appeals Board (WCAB) eventually denied the employers petition for reconsideration.

The appellate court at first denied review. The employer then filed a writ with the Supreme Court who transferred the case back to the appellate court with the instruction to vacate the decision.

On review this court relies on Brodie v. WCAB (2007) 40 Cal 4<sup>th</sup> 1313. Brodie evaluated old

case law under the Fuentes decision and decided the changes in the apportionment law with SB899 did not change using Formula A as was used in the Fuentes decision.

Therefore, in this case even though the applicant was 100 percent disabled, the prior 60 percent needed to be subtracted. Thus, 60 per cent is subtracted from 100 per cent and the applicant only gets 40 per cent. That is the applicant gets the dollar value of 40 percent for that date of injury.

It is of interest to note the WCJ only found one injury although two were filed.

=====  
Editor: Harvey Brown  
Firm: Samuelsen, Gonzalez, Valenzuela and Brown  
Address: 18881 Von Karman # 250 Irvine 92612  
Phone: 949 252-1300