

# COMPENSATION NEWS

MONTHLY REPORT

## THE COURT OF APPEAL DISCUSSED SERIOUS AND WILFUL MISCONDUCT AND INDICATED THAT NEGLIGENCE IS NOT ENOUGH

*This is an unpublished Court of Appeal case*

**T**his is a very significant case for workers' compensation principles.

The applicant sustained industrial injuries after being crushed by a compactor. The applicant sustained these injuries because a fellow employee moved the compactor forward rather than backward. It was alleged the

fellow employee was not properly trained or given an operating manual to learn how to use the compactor.

The case was settled by way of compromise and release for \$60,000. However, the settlement did not include settlement of the Serious and Wilful Misconduct (S & W).

The case went to trial and the Workers' Compensation Judge (WCJ) indicated that although the employer was negligent, this did not rise to the level of an S&W allegation. The applicant filed a petition for reconsideration and the Workers' Compensa-

tion Appeals Board (WCAB) agreed with the WCJ.

The applicant then filed a writ for review with the appellate court. The appellate court reviewed existing case law and indicated that serious and wilful misconduct is the antithesis of negligence or even gross negligence.

This is a good case to review for case law on the subject.

**Editor: Harvey Brown**

**Firm: Samuelsen, Gonzalez, Valenzuela and Brown**

**Address: 18881 Von Karman # 250 Irvine 92612**

**Phone: 949 252-1300**

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(KINLEY CONSTRUCTION)**