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DWCNewsline

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Division of Workers' Compensation asks the California Supreme Court to resolve conflict in apportionment methods

The California Division of Workers' Compensation (DWC) has submitted an amicus curiae letter to the California Supreme Court. The letter supports the efforts of the parties to the consolidated *Welcher vs WCAB* cases requesting the court resolve the confusion about how to apportion permanent disability.

Conflict and uncertainty currently exists in published case law regarding the proper method for calculating permanent disability indemnity where apportionment is involved under Labor Code sections 4663 or 4664(b). Because there is no uniformity of decision on the issue of apportionment of permanent disability, no guidance exists for the workers' compensation administrative law judges and the workers' compensation community regarding how the issue should be handled.

The conflict exists because, in cases involving successive industrial injuries with the same employer and a prior award of permanent disability, there are two courts applying the "subtract old dollars from new dollars" variant of formula C (i.e., *Dykes* and *Nabors*), there is one court applying the "subtract new dollars from new dollars" variant of formula C (i.e., *Brodie*), and there is one court applying the "subtract percentages from percentages" approach of formula A (i.e., *Welcher*). The uncertainty exists because, in cases not involving successive industrial injuries with the same employer (i.e., cases involving successive industrial injuries with different employers or involving an industrial injury with a prior or subsequent non-industrial injury or condition), it is not clear whether only formula A applies (i.e., *Welcher*) or whether the "subtract new dollars from new dollars" variant of formula C (i.e., *Brodie*) might also apply.

The DWC's letter to the court requests that the petition for review be granted to provide clear guidance on these important issues of statutory interpretation for the division's workers' compensation administrative law judges, the parties who appear before them and all members of the workers' compensation community.

The division's amicus curiae letter may be read at http://www.dir.ca.gov/dwc/dwc_newsline/2006/WelcherAmicusLetter.pdf

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