



New Case Brief
Prepared by San Francisco Office
Brenda K. Wong, Esq.

June 23, 2006

**ALDI v. CARR, McCLELLAN, INGERSOLL, THOMPSON; and REPUBLIC
INDEMNITY COMPANY OF AMERICA**
(June 21, 2006) SFO 0485703 [WCAB En Banc]

In this en banc decision, the WCAB addressed the issue of whether the AMA Guides for rating permanent disability under SB-899 can apply to dates of injuries prior to 1/1/05, where there has been no medical evidence of permanent disability until 1/1/05 or later. In its decision, the WCAB concluded that the AMA Guides for rating permanent disability, as adopted under SB-899, do apply to injuries which occurred before 1/1/05, provided that there had been no finding prior to 1/1/05 of permanent disability as defined under Labor Code Section 4660(d).

Labor Code Section 4660(d) reads in relevant part that for claims arising before January 1, 2005, the rating schedule as revised by SB-899 “shall apply to the determination of permanent disabilities when there has been either no comprehensive medical-legal report or no report by a treating physician indicating the existence of permanent disability, or when the employer is not required to provide the notice required by Section 4061 to the injured worker.”

The trial judge in the Aldi decision, read Section 4660(d) together with 4660(e) which states, “On or before January 1, 2005, the administrative director shall adopt regulations to implement the changes made to this section by the act that added this subdivision.” In reading the two sections together, the trial judge concluded that 4660(d) was meant to apply only if the rating schedule was adopted prior to 1/1/05, and since the rating schedule was not adopted until 1/1/05, 4660(d) was a moot point and all injuries occurring prior to 1/1/05 were to be rated under the old schedule.

The WCAB in its en banc decision looked to legislative intent in reversing the trial judge’s findings, concluding that the revised schedule under Labor Code section 4660 is applicable to pending cases for dates of injury prior to 1/1/05, where none of the exceptions under Labor Code Section 4660(d) have been met.