



MILPITAS UNIFIED SCHOOL DISTRICT V. WORKERS' COMPENSATION APPEALS BOARD (GUZMAN), 74 CCC 470 (2009)

The California Supreme Court has declined to review the 6th District Court of Appeal decision which affirmed what is now known as *Alvarez/Guzman II*. The Supreme Court's denial means that for the time being at least, the AMA Guides are rebuttable, but only under close parameters. The now current state of the law, as it interprets Labor Code section 4660, is that the medical evaluator may determine a claimant's disability based upon analogy to other Chapters of the AMA Guides, **but only after the evaluator provides a sufficient explanation as to why the particular Chapter that addresses the particular body part or system does not accurately describe the impairment resulting from the injury.** The evaluator must then provide further explanation as to why a different Chapter, by analogy, provides a more accurate description of the claimant's impairment. The burden is on the evaluator to provide a quantitative analysis as opposed to simply an unsubstantiated statement or opinion as to the inaccuracy of the intended Chapter of the Guides.

Note: While there are still appeals pending in other District Courts, there is a very strong likelihood that those cases will be denied so as to avoid contrary rulings, given the Supreme Court's decision to let the 6th DCA's opinion stand. However, with the results of the recent election, the next session of the legislature may bring some changes to the entire rating system.