



**New Case Brief**  
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*CNA Casualty of California v WCAB (Kirkeby), 71 CCC \_\_\_, 2/27/06, Court of Appeals, 1<sup>st</sup> District, Unpublished.*

An employee who is injured due to the negligence of a third party is entitled to pursue both workers' compensation remedies against his employer and a civil action against the negligent third party. If the employee receives an award from the third party, the employer is entitled to a credit against all further worker's compensation benefits in the amount of the employee's net recovery (subject to certain limitations based on employer negligence). The employer however cannot take a credit for an award to the employee's spouse for "loss of consortium". This distinction encourages plaintiff's attorneys to place the maximum portion of the award on the consortium claim, and the lesser amount of the employee's claim.

In this case, the settlement of the cases between the employee (and his spouse) and the third party placed the entire award on the consortium claim, and none of the employee's claim. The underlying facts of the case however made the consortium claim of marginal value, at most. CNA Casualty, the worker's compensation carrier, brought an action before the WCAB to "reallocate" the credit, i.e., determine what portion of the settlement really was based on the underlying claim, vs. the consortium claim. The WCJ and WCAB refused to reallocate the credit, but rather relied on the settlement documents between the employee and spouse and the third party. The Court of Appeals, relying on *Reid v WCAB*, 60 CCC 360, stated that the WCAB has the duty to look behind the settlement documents and reallocate the credit in accordance with the relative value of the employee's and spouse's claims. Accordingly the Court of Appeals reversed the WCAB and ordered the WCAB to review the matter and reallocate the credit.