



**New Case Brief**  
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**CIGA v. WCAB (Weitzman)**  
**(2005) 128 Cal.App.4th 307, 70 CCC 556 [Court of Appeal]**

The Court of Appeal annulled the WCAB's order that had allowed solvent insurer a right of reimbursement against California Insurance Guarantee Association holding that a claim is not a "covered claim" within the meaning of Insurance Code §1063.1 when insurer was ordered by WCJ to administer awards for several injuries, including injuries for which insurer was never on risk, since other insurers who had been on risk for latter injuries had become insolvent. The Court of Appeal held that, because Labor Code §4600 imposes joint and several liability on employers in successive injury cases, the solvent insurer was "other insurance" available within meaning of Insurance Code §1063.1.

In Weitzman, the first claim was a specific injury to the low back while employed at Capstar Hotels, insured by AMIC. A stipulated settlement for 14.75% PD was reached prior to the second specific injury to the low back at Cal Poly Foundation, insured by Cal Comp. A third injury followed during a CT period at Cal Poly Foundation, insured by Legion. A petition to re-open the Capstar Hotels claim for new and further disability was granted. Both Cal Comp and Legion were liquidated, and CIGA assumed liability. The three pending cases were consolidated because the first injury contributed to the subsequent need for medical treatment and TD, and vice versa. There were joint findings and an award for PD of 55% with future medicals. AMIC was ordered to administer the claims and was allowed lien rights of reimbursement against CIGA. AMIC petitioned for reimbursement for medical treatment, TD, and for PD.

The issue of whether CIGA was required to reimburse AMIC was decided by looking at statute, not in terms of equity. The Weitzman court found that LC §4600 "imposes joint and several liability on employers in successive injury cases," interpreting the scope of the statute beyond the limited facts in Garcia relating to CT claims. Joint and several liability includes circumstances where either the injured worker or the insured (but not an insurer) has a right to proceed against one or another insurer for payment of medical treatment or TD. The court rejected the argument that "other available insurance" is limited in scope by policy risk periods, thus overturning Gomez "on that point."

In the Weitzman case, the injured worker had the right to proceed against any one of the three insurers because there was an award for future medical treatment in all three cases. Each insurer could claim that there was "other available insurance."

The court decided that where there is "other available insurance," by statute, CIGA is not "statutorily liable" for medical treatment or TD. If CIGA is not liable, then there is no duty to reimburse other available insurers. However, the Weitzman court went one step further and quoted from Garcia that "CIGA was statutorily prohibited from making any payment" toward the award when there was other available insurance.