



New Case Brief
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Brodie v. WCAB, Welcher v. WCAB
S146979, S147030
Supreme Court of California
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The issue presented in this case is how an injured worker's current level of permanent disability should be discounted for a previous industrial or non-industrial disability.

On April 19, 2004 SB899 was adopted into law. In addition to many other changes, this law revised Labor Code Section 4663 and repealed Labor Code Section 4750. Those two sections of the California Labor Code were the basis of the California Supreme Court's decision in Fuentes v. Workers' Compensation Appeals Bd. (1976) 16 Cal.3d 1 (Fuentes). That decision held that the percentage of an applicant's pre-existing permanent disability should be deducted from the overall percentage of his/her current level of permanent disability, leaving the employer liable for only the percentage of the injured worker's disability resulting from the current work related injury. This method of apportionment became known as "Formula A."

Because SB899 did away with the statutes that Fuentes was based upon, applicants' attorneys challenged the legitimacy of "Formula A". The California Supreme Court granted review to resolve a split in authority between Court of Appeal decisions addressing apportionment. In Brodie v. Workers' Compensation Appeals Bd., the First District Court of Appeal concluded that the percentage of disability awarded to the applicant for his previous injury should be converted to the current dollar value of that percentage of disability and that the current dollar value should then be deducted from the dollar value of the applicant's overall current level of permanent disability. That method of apportionment results in higher costs to employers and/or insurance carriers. In Welcher v. Workers' Compensation Appeals Bd., Strong v. Workers' Compensation Appeals Bd., Lopez v. Workers' Compensation Appeals Bd. and Williams v. Workers' Compensation Appeals Bd. the Third District Court of Appeal consolidated the cases and held that the Fuentes formula still applied and upheld decisions that deducted the percentage of an injured worker's pre-existing disability from the percentage an injured worker's current overall level of permanent disability.

In its decision The California Supreme Court unanimously upheld the apportionment formula adopted in Fuentes. The Court discussed the fact that the Legislature's intent behind SB899 was to address skyrocketing workers' compensation costs and stated that the revision of Labor Code Section 4663 and the repeal of Labor Code Section 4750 were necessary to carry out the Legislature's intent to allow for apportionment based on causation. The Court held that while there was clear intent to charge employers only with that percentage of permanent disability directly caused by the current industrial injury and thereby the method of identifying the

percentage of permanent disability an employer is responsible for, there was no intent to change how one calculates the compensation due for that disability once a percentage is determined.