



New Case Brief
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Kenneth Dee Welcher v. WCAB
<http://www.courtinfo.ca.gov/opinions/>
(8/31/06)
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The Third District Court of Appeal held that the long-standing holding (Formula A) in the *Fuentes* case regarding apportionment has not changed after SB899.

The *Welcher* Court affirmed the decisions of the WCAB in four consolidated cases, *Welcher, Strong, Lopez, & Williams v. WCAB*, C051263, 8/31/06 applying Formula A from the *Fuentes* decision which established that permanent disability is apportioned by **subtracting the percentage** of the disability attributable to factors other than the current industrial injury from the overall percentage of disability to determine the percentage of the disability that is compensable.

The Third District Appellate Court ruled that in repealing Labor Code section 4750 and in enacting new sections 4663 and 4664 to govern apportionment, the Legislature did not intend to alter the apportionment method adopted by the California Supreme Court 30 years ago in *Fuentes*. The court disagreed with the Fifth Appellate District, who reached the opposite conclusion in *E & J Gallo Winery v. Workers' Comp. Appeals Bd. (2005)* 134 Cal. App. 4th 1536 (*Gallo*) as well as with Division Two of the First Appellate District, who followed *Gallo* in *Nabors v. Workers' Comp. Appeals Bd.*

Editor's comment: Because of the contrary holdings, this issue will probably be heard by the California Supreme Court in the near future.