

COMPENSATION NEWS

MONTHLY REPORT

NEW APPORTIONMENT CASE OVERRULES DYKES

This is a published
appeals court decision

This is a significant
appellate court
decision which ensures
that this issue will be decided
ultimately by the Supreme Court.

The applicant suffered an
industrial injury that made her
100 percent permanently
disabled. She had suffered a prior
workers' compensation injury for
which she previously received an
award of 35 % permanent
disability.

The matter came before a
Workers' Compensation Judge

In this issue..

Davis v. WCAB

(WCJ) who used the formula
prescribed by the Supreme Court
in the Fuentes case. The WCJ
subtracted 35% from 100 % to
give the applicant an award of
65%. This equated to
\$65,662.50. The applicant
contended the Dykes formula
should have been applied
resulting in payment to the
applicant of \$420,649.21.
Obviously, this a huge difference.

Fuentes relied on a different
apportionment statute. The
apportionment statute changed in
April of 2004. The court
indicated they can not rely on
cases decided under prior law.
However, they indicate that the
legislature did not intend on
overthrowing long-established
principles of law in creating the
new statute.

This court looked at Fuentes
and Formula A,B, and C .They
determine that Formula A is still
appropriate under SB 899.

They concluded this is a
conclusive presumption. There
are now "other factors" which
can result in apportiionment.

They then analyzed the Dykes
decision. The court indicated the
removal of the language in
former Labor Code section 4750
did not reject the Fuentes ruling.

They also looked at the
legislative history of SB 899 and
the policy of hiring and retaining
workers. They concluded
Formula A and Fuentes should
still be followed

=====
Editor: Harvey Brown
Firm: Samuelsen, Gonzalez,
Valenzuela and Brown
Address: 18500 Von
Karman #470, Irvine
Phone: 949 252-1300