

# Trovillion, Inveiss & Demakis

Trovillion, Inveiss & Demakis, APC has grown in reputation as one of Southern California's premier law firms specializing in representation of employers, insurance carriers and third party administrators in workers' compensation litigation.

SAN DIEGO    LOS ANGELES    ORANGE COUNTY    INLAND EMPIRE

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## TID WELCOMES NEW ATTORNEYS

TID is pleased to welcome two attorneys to the firm, Dina Chehata and Michael Hansen.

Joining the firm in February, Dina Chehata is based in TID's Los Angeles office. Dina received her Bachelor of Arts degree from UCLA and attended Georgetown University Law Center where she earned her juris doctor degree.

Dina has spent time working in Egypt with the American Society of International Law Fellow challenging human rights abuses and providing legal services to indigent communities.

Dina is experienced in litigating workers' compensation cases throughout Southern California WCAB venues. In her spare time, she enjoys traveling and photography. Please welcome Dina to the firm. Her email address is:

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## CLAIMS MADE UNDER THE SUBSEQUENT INJURIES BENEFITS TRUST FUND

The Subsequent Injuries Benefits Trust Fund (SIBTF) is a source of additional compensation available to injured workers who already had a disability or impairment at the time of the injury. The fund is intended to encourage employers to hire disabled workers without the fear of being held liable for the effects of previous disabilities or impairments. Some applicant attorneys are now filing applications for SIBTF benefits after a workers' compensation claim has settled.

California Labor Code § 4751 holds that an employee who is already permanently partially disabled suffers a new compensable injury that results in additional permanent partial disability that, when combined with the previous injury, results in both disabilities being greater than the original injury AND the combination of the injuries results in a permanent disability rating of 70% or greater the employee is eligible to receive payment not only for the new industrial injury paid by the employer, but for the remainder of the employee's life paid by the Fund. This code section applies in only two situations:

Michael Hansen joins TID in the San Diego office. A San Diego Native, Michael received his undergraduate degree from University of California Irvine and his juris doctor from California Western School of Law graduating Cum Laude. Michael clerked at TID prior to being admitted to the California Bar in 2015.

When not working, you will find Michael cheering on his San Diego sports teams. Michael also enjoys biking and the San Diego craft beer scene. Please welcome Michael to the firm. His email address is [MHansen@TIDLAW.com](mailto:MHansen@TIDLAW.com)



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1. Where the previous disability affected a hand, arm, foot, leg, or eye, and the subsequent injury affects the opposite and corresponding body part (ex: the other foot, the other arm, etc.), and the subsequent injury has a permanent disability rating of 5% or more.
2. Where the permanent disability rating of the second injury, without considering age or occupation of the employee, has a permanent disability rating of 35% or more.

In Hard v. WCAB (1974) 2 CWCR 48, the applicant had lost his left leg in a prior industrial accident. The new industrial injury involved the applicant's back and resulted in corresponding problems with the applicant's right leg. Thus, the subsequent back injury affected the applicant's right leg thereby satisfying the "opposite and corresponding member" that the Code requires.

There is no requirement that the injury be industrial. In order to make a claim against the SIBTF, the injured worker must show:

1. A ratable permanent partial disability attributable to an industrial accident subject to current WCAB jurisdiction and conforming to the minimum levels of disability described in LC Section 4751;
2. Additional permanent disability not caused by the current industrial injury but in existence at the time of the later industrial injury; and
3. A combined permanent disability, ratable at the time of litigation, of 70% or more.

The employee must show more than just a mere preexisting pathology; the condition must actually be labor-disabling. Per Brown v. WCAB (1971) 20 Cal. App. 3d 903, the prior permanent partial disability must be a separate injury from the current one. Any preexisting injury that is ratable as if caused by an industrial accident is sufficient for the purposes of receiving money from the SIBTF. Per Labor Code § 4753, any applications for SIBTF benefits are

governed by the version of the law in effect on the date of the subsequent injury.

There are two methods for apportioning liability between the employer and the SIBTF:

1. Rating the combined disability and the subsequent (current) disability separately, and subtracting the current from the combined to come up with the preexisting disability's rating; or
2. Rating the combined disability and then assigning a proportion of the combined disability to the later injury and a correlative proportion to the preexisting injury.

With several rare exceptions, payments from the SIBTF are reduced by any payments that the employee receives, from any source, for or on account of the preexisting disability. The employer is only responsible for the disability caused by the subsequent injury, not the combined preexisting and second injury disability. SIBTF will begin to pay the injured worker when the employer's payments for the second injury cease. When a workers' compensation claims handler receives an Application for SIBTF benefits, per Title 8, California Code of Regulations § 10946, they are required to serve on the SIBTF copies of any medical reports in their possession within 30 days prior to any hearing unless the service is waived by the SIBTF.

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