

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 FIRM NEWS

TID WELCOMES ATTORNEY DARYN DIAZ

Experienced workers' compensation defense attorney Daryn Diaz has joined TID effective June 2019. Ms. Diaz attended the University of Southern California for her undergraduate degree and earned her Juris Doctor degree from Southwestern Law School. Ms. Diaz was admitted to the State Bar of California in 1998 and has limited her practice to the defense of workers' compensation claims for more than 18 years.

In her free time, Ms. Diaz volunteers with pet rescue organizations and as a docent for the Pasadena Symphony. Ms. Diaz has joined the firm in our Pasadena office. Please welcome her to TID. Ms.

WHEN IS AN INJURY "CATASTROPHIC" TO ALLOW FOR INCREASED IMPAIRMENT?

The Workers Compensation Appeals Board issued an en banc decision on May 10, 2019 regarding what constitutes a catastrophic injury pursuant to Labor Code 4660.1(c)(2)(B) in the case of *Kris Wilson v. State of Ca Cal Fire, 84 Cal.Comp.*

Labor Code 4660.1(c)(1) states that there shall be no increases in impairment ratings for sleep dysfunction, sexual dysfunction, and psychiatric disorders that arise out of a compensable physical injury. Labor Code 4660.1(c)(2) contains exceptions for these rules if the injury is the result of being a victim of a violent act or direct exposure to a significant violent act and for "[a] catastrophic injury, including, but not limited to, loss of a limb, paralysis, severe burn, or severe head injury." If one of these exceptions exists, an injured worker can receive increased permanent disability for sleep dysfunction, sexual dysfunction and psychiatric injury.

Kris Wilson claimed injury to his lungs, psyche, left eye, head, and brain as a result of inhaling fumes and smoke from the Lompoc wildfire while employed as a firefighter by the Department of Forestry. The medical reports following the injury indicate that the Applicant developed significant respiratory symptoms; vigorous tremors; nausea; chills and

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ATTORNEY MICHAEL HANSEN
TRANSFERS TO SAN DIEGO

Attorney Michael Hansen has transferred from our Pasadena office to our San Diego office effective June 2019.

Mr. Hansen originally started his employment with TID in the San Diego office and TID is happy to welcome him "home" to San Diego.

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fevers with night sweats; ulcerations of the tongue, mouth, and lips; a rash all over his body; vomiting; impaired cognition and memory; headaches; an isolated episode of likely syncope; difficulty sleeping; cataract in the left eye; refractive error; vitreous liquefaction in both eyes; toxic metabolic encephalopathy; and fatigue.

The court initially inquired as to whether the psychiatric injury was directly caused by the events of employment or whether the injury was a compensable consequence of the physical injury. The W.C.A.B. found that the psychiatric injury was a compensable consequence of the physical injury based upon the opinions of the psychological qualified medical evaluator, who opined that the applicant's post-traumatic stress disorder "arose out of the effects of and treatment for a compensable physical injury."

Since the Labor Code does not define "catastrophic injury" the W.C.A.B. looked outside the Labor Code to clarify the definition of a catastrophic injury. The American Heritage Dictionary defined catastrophic as "relating to a serious illness or injury that results in a long period of incapacity and often high treatment costs". The W.C.A.B. declined to adopt this definition as it is too indefinite as to the actual length of time the employee would need to be incapacitated or what monetary amount would be required before an injury became catastrophic.

The W.C.A.B. noted that the purpose of Labor Code 4660.1(c) was to limit additional impairment for psychiatric injuries on questionable claims of disability and to reduce litigation regarding permanent disability ratings. The court found that this did not give any insight as to the definition of catastrophic, causing them to look at the Education Code and Government Code for a definition. The Education Code and Government Code definitions of "catastrophic" focus on the length of time of incapacitation. The W.C.A.B. failed to adopt these definitions, noting that the value of discerning the legislature's intent outweighs the value of terminological uniformity in different code sections.

The W.C.A.B. finally looked towards other jurisdictions' catastrophic definition as relating to the employee's earning capacity or level of permanent disability, particularly the definition which requires permanent total disability. The W.C.A.B. declined to adopt this definition of catastrophic as there was no indication by the legislature that they wanted catastrophic to be tied to disability levels and would potentially result in fruitless endeavors as there would be no benefit to psychiatric impairment in an already permanent total disabled case.

The court looked at the delineated examples in Labor Code 4660.1(c)(2) to determine that a catastrophic injury under Labor Code 4660.1 needs to focus on the nature of the injury itself. The W.C.A.B. found that the physical injury itself must be independently catastrophic in order for the 4660.1(c)(2)(B) exception to apply. This is a factual/legal driven inquiry that requires judicial determination. The W.C.A.B. provided guidance to the trier of fact in determining whether an injury may be deemed catastrophic by considering the following factors:

- The intensity and seriousness of treatment received;
- The outcome of the employee's physical injury at permanent and stationary status.
- The severity of the physical injury and its effect on activities of daily living.
- Whether the physical injury is closely analogous to the specified injuries in the statute (loss of a limb, paralysis, severe burn or severe head injury).
- If the physical injury is an incurable and progressive disease.

The WCAB stated that the determination of catastrophic was not limited to these factors and that not all of these factors may be relevant in every case. The employee need not prove all of these factors in order to prove a "catastrophic injury."

The W.C.A.B. looked at the serious nature of the applicant's injury, the medical treatment received, the fact that it caused permanent impairment to multiple body parts, the

level of permanent impairment, and the significant effect on the applicant's activities of daily living to determine that the injury was catastrophic in nature and that the applicant was entitled to permanent disability for their psychiatric injury.

The W.C.A.B. reversed the lower court's decision and remanded the case back to the lower court to issue an opinion consistent with their findings.

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