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Re: Published Court of Appeal decision that challenges *Hikida*

Thomas, Lyding, Cartier, Arnone & Daily successfully represented the petitioner in overturning the denial of apportionment in the case of *County of Santa Clara v Workers' Comp. Appeals Bd.* (*Justice*) (May 27, 2020, No. H046562) ___Cal.App.6th___ (2020 Cal. App. LEXIS 461.)

In a published decision, the Sixth District Court of Appeal held that apportionment must be considered even when permanent disability is attributed to medical treatment.

Notably, the court opposed non-apportionment that results from an overly expansive interpretation of *Hikida v. Workers' Comp. Appeals Bd.* (2017) 12 Cal.App.5th 1249:

> . . . it does not follow that an employer is responsible for the consequences of medical treatment without apportionment, when that consequence is permanent disability. Sections 4663 and 4664 make clear that permanent disability "shall" be apportioned and that an employer "shall" be liable only for the percentage of the permanent disability "directly caused" by industrial injury. There is no case or statute that stands for the principle that permanent disability that follows medical treatment is not subject to the requirement of determining causation and thus apportionment, and in fact such a principle is flatly contradicted by sections 4663 and 4664. *(Justice*, 2020 Cal. App. LEXIS 461, at *18.)

In *Justice*, the Court of Appeal found that the pre-injury nonindustrial degeneration which caused 50% of the employee's permanent disability compelled apportionment, even though medical treatment—in this case, surgery—removed the degeneration.

Justice limits the application of *Hikida* only to those rare circumstances where medical treatment causes an *entirely new* compensable consequence injury, and the compensable consequence injury is the *entire cause* of permanent disability:

> Although parts of the *Hikida* opinion can be read to announce a broader rule that there should be no apportionment when medical treatment increases or precedes permanent disability, it is clear that the rule is actually much narrower. Put differently, *Hikida* precludes apportionment only where the industrial medical treatment is the sole cause of the permanent disability. (*Justice*, 2020 Cal. App. LEXIS 461, at *19.)

California employers now have a published Court of Appeal decision to challenge the notion that permanent disability caused by medical care is non-apportionable.