

FINNEGAN, MARKS, THEOFEL & DESMOND

A PROFESSIONAL CORPORATION
P.O. BOX 478011, SAN FRANCISCO, CALIFORNIA 94147-8011
PHONE: (415) 931-9284 FAX: (415) 931-6247

KATHERINE F. THEOFEL
SEAN J. DESMOND
VICTOR M. ANDERSEN
ELIZABETH A. HUDSON
JAMES W. JONES
TRISHA E. O'NEIL
JOHN C. MORLEY
JARRED S. LAUTMAN

August 17, 2017

RANDALL G. POPPY
AMANDA L. HART
DOROTHY C. YAMAMOTO
MICHAEL I. NEALE
TEJAL K. NAIK

ADMINISTRATORS
CAROLYN D. GOMES
LYNNE R. KAPOVICH

The Honorable Tani Cantil-Sakauye, Chief Justice, and Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4797

RE: REQUEST FOR DEPUBLICATION

Maureen Hikida v. WCAB; Costco Wholesale Corporation
Court of Appeal, Second Appellate District, Division Four
Case No. B279412

Dear Honorable Justices:

Pursuant to Rule of Court 8.1125, the California Chamber of Commerce (CalChamber) and the California Coalition on Workers' Compensation (CCWC), respectfully request de-publication of Maureen Hikida v. WCAB; Costco Wholesale Corporation, Appellate Case No. B279412. The court filed the Hikida opinion on June 22, 2017. This de-publication request is timely filed within 30 days after the decision became final on July 21, 2017. See Rule of Court 8.1125(a) (4).

I. Statement of Interest

The California Chamber of Commerce (CalChamber) is comprised of over 13,000 member employers, both large and small. CalChamber is dedicated to improving California's business climate by providing businesses with a voice in state politics, legislative activities, and judicial matters. CalChamber is interested in administrative, statutory, and judicial matters that substantively affect the system of workers' compensation created by Article XIV, section 4, of the California Constitution of the State of California. CalChamber has taken a leading role in advancing and protecting the interests of California businesses by, among other things, submitting amicus briefs and letters before the Courts of Appeal and California Supreme Court.

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The California Coalition on Workers' Compensation (CCWC) is a non-profit education and advocacy association representing California employers the CCW C membership consists exclusively of California employers, both large and small, and includes corporations, non-profit entities, trade associations, and public entities. CCWC serves its memberships by directly advocating on their behalf in front of the California State Legislature, as well as administrative agencies that regulate the workers' compensation system. CCWC is a recognized leader in workers' compensation advocacy in California, and has a long history of working towards a reasonable workers' compensation system that provides timely benefits to injured workers while maintaining a fair and affordable system for employers. CCWC is interested in administrative, statutory, and judicial matters that substantively affect the California Workers' Compensation System. CCWC has been granted amicus status in past workers' compensation cases.

II. Request for Depublication

CalChamber and CCWC respectfully request de-publication of the Hikida decision, as it does not present any new rule of law, and as such, fails to meet the standards for publication in Rule of Court, Rule 8.1105 (c). Specifically, the Hikida court relies on a 1968 California Supreme Court case, Granado v. Workmen's Comp App. Bd. (1968) 69 Cal.2d 399, 405-406, and its progeny, which confirms the legal fact that medical treatment is non-apportionable. This concept actually dates back further to a 1936 California Supreme Court decision, Fitzpatrick v. Fidelity and Casualty Co. of New York (1936) 7 Cal.2d 230,232, also cited in Hikida.

In Fitzpatrick, the court stated "an employee is entitled to compensation for a new or aggravated injury which results from the medical or surgical treatment of an industrial injury, whether the doctor was furnished by the employer, his insurance carrier, or was selected by the employee." (Fitzpatrick, supra at pp. 233-234) Accordingly, this concept dates back 83 years. Granado, another California Supreme Court decision, is cited for its rationale regarding the fact that medical expenses are not apportionable, as if they were, an injured worker "may not be able to pay his share of the expense and thus forgo treatment." (Granado, supra at pp. 405-406.) It is axiomatic in California workers' compensation that employers must pay for all medical treatment caused by an industrial injury, including the foreseeable consequences of such medical treatment.

While the Hikida court does discuss the changes in apportionment with the 2004 legislation to apportionment based on causation (Labor Code Sections 4663 and 4664) as discussed in the Escobedo v. Marshalls decision ((2005) 70 Cal Comp. Cases 604), the court itself notes that the issue presented was not apportionment of the underlying carpal tunnel syndrome from which applicant suffered, but rather the CRPS resulting from the medical

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treatment her employer-provided. As such, the lengthy discussion of the changes wrought by the 2004 amendments is a red herring.

For the foregoing reasons, the opinion does not meet the standards for publication in Rule of Court Rule 8.1105 (c), as it fails to present any new rule of law. Rather, the decision relies primarily on the 1936 California Supreme Court decision, Fitzpatrick (supra) and the 1968 California Supreme Court decision in Granado (supra). Specifically, the decision does not establish a new rule of law (Rule of Court Rule 8.1105 (c)(1)), does not apply an existing rule of law to a set of facts significantly different from those stated in published opinions (Rule of Court Rule 8.1105 (c)(2)), does not modify, explain or criticize with reasons given, an existing rule of law (Rule of Court Rule 8.1105 (c)(3)), does not advance a new interpretation, clarification, criticism, or construction of a provision of a constitution, statute, ordinance, or court rule (Rule of Court Rule 8.1105 (c)(4)), does not address or create an apparent conflict in the law (Rule of Court Rule 8.1105 (c)(5)), does not address a legal issue of continuing public interest (Rule of Court Rule 8.1105 (c)(6)), does not make a significant contribution to legal literature by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law (Rule of Court Rule 8.1105 (c)(7)), does not invoke a previously overlooked rule of law, or reaffirm a principle of law not applied in a recently reported decision (Rule of Court Rule 8.1105 (c)(8)), and finally, is not accompanied by a separate opinion concurring or dissenting on a legal issue, where publication of the majority and separate opinions would make a significant contribution to the development of the law (Rule of Court Rule 8.1105 (c)(9)). Rather, as noted above, the opinion simply reiterates long-standing case law dating back to 1936 requiring employers to pay for all medical treatment caused by an industrial injury, including the foreseeable consequences of such medical treatment. For the above stated reasons, CalChamber and CCWC respectfully request the court de-publish Maureen Hikida v. WCAB; Costco Wholesale Corporation, Appellate Case No. B279412.

Very truly yours,

FINNEGAN, MARKS, THEOFEL & DESMOND
A Professional Corporation



Randall Poppy
Attorneys for CalChamber and CCWC

1 Re: Hikida v. WCAB

2 2nd Dist. Court of Appeal, Div. 4 B279412

3 FMTD File No.: 15653/650.918

4 **PROOF OF SERVICE**

5 I, Matthew Martin, am a citizen of the United States of America and am employed in the City
6 and County of San Francisco, State of California. I am over the age of eighteen years and not a
7 party to the within action. My business address is: Finnegan, Marks, Theofel & Desmond, P.O.
8 Box 478011, San Francisco, CA 94147.

9 On the date noted below, I served the attached

10 **REQUEST FOR DEPUBLICATION**

11 Supreme Court of California
12 350 McAllister Street
13 San Francisco, CA 94102
14 (by hand filing)
Original and one copy

15 Second Appellate District
16 Court of Appeal
17 Division Four
18 300 S. Spring Street
19 Second Floor, North Tower
20 Los Angeles, CA 90013

21 Workers' Compensation Appeals Board
22 PO Box 429459
23 San Francisco, CA 94142

24 Alan Zane Gurvey
25 Rowen, Gurvey & Win
26 5900 Sepulveda Blvd., Suite 500
27 Sherman Oaks, CA 91411

28 Jay Cohen
Mullen & Filippi
5990 Sepulveda Blvd., Suite 200
Sherman Oaks, CA 91411

Justin Sonnicksen
Law Office of Mark Gearhart
367 Civic Dr., Suite 17
Pleasant Hill, CA 94523

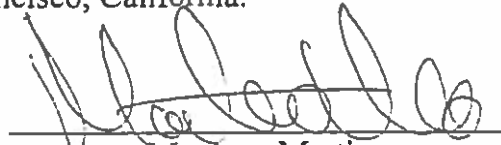
1 Kiran A. Seldon
2 Seyfarth Shaw LLP
3 2029 Century Park East, Suite 3500
4 Los Angeles, CA 90067

5 Ms. Erika Frank
6 California Chamber of Commerce
7 1215 K Street, Suite 1400
8 Sacramento, CA 95814

9 Jason Schmelzer
10 Shaw/Yoder/Antwih, Inc.
11 1415 L Street, Suite 1000
12 Sacramento, CA 95814

13 I declare under penalty of perjury that the foregoing is true and correct.

14 Executed on August 17, 2017 at San Francisco, California.

15 
16 _____
17 Matthew Martin