

October 5, 2011

The Honorable Edmund G. Brown Jr.
Governor, State of California
State Capitol
Sacramento, CA 95814

**RE: AB 1155 (Alejo) - Workers' Comp: Apportionment
REQUEST FOR VETO**

Dear Governor Brown:

We respectfully **REQUEST** your **VETO** of **AB 1155 (Alejo)**. We strongly believe the changes to the statute undermine apportionment in the Workers' Compensation system.

Apportionment is a tool established to obtain sufficient and objective evidence when determining an injured workers' disability or impairment; and is a long-standing concept intended to protect employers from being forced to pay for disability that is not directly caused by an industrial injury. There is currently nothing in the Labor Code that allows for discrimination based on protected classes when adjusting the workers' compensation disability rating. This legislation is unnecessary because the courts have upheld apportionment and the judicial process have clearly applied the law.

The author and the proponents have indicated repeatedly that their intent was to clarify existing law and not to change how apportionment is conducted. They have accepted intent language that is consistent with the application of the law but have not changed their proposed language that changes the statute. This contradiction will create confusion and lead to costly litigation which we all want to avoid.

We believe that the current statute already does not allow apportionment as to race, gender and other characteristics.

Unintended Consequences and Cost Increase

If **AB 1155** is passed it will automatically increase litigation, questioning every reasonable apportionment case. Injured workers should indeed be protected from discrimination but there is no court case evidence that the apportionment process is set up to discriminate against an injured worker. There are protections in place through the judicial process to reverse any adverse action in this direction. The Labor Code is very clear — apportionment is the process of protecting employers from paying for disability that is not a result of the industrial injury suffered at their place of employment. The courts have also been very clear — discrimination based on protected classes is not allowed under current law.

Confusion surrounding the application of the word cause will undermine years of case law. In the Vaira case it is re-enforced that "...apportionment is only proper where a preexisting condition or prior

injury contributes to the employee's disability, rather than the employee's injury." The proponents of AB 1155 are interchanging case of injury with cause of disability. These differences are critical in the application of the medical evaluation. Therefore, using the word cause in the statute may result in denying apportionment to any factor that could in any way be related or caused by one of the protected classes. It is essential that the words "cause or other" be removed to avoid this confusion and in fact clarify existing law.

AB 1155 as currently written can muddy the waters on apportionment law and create uncertainty and costly litigation. This increased cost to the system only hurts businesses currently struggling in this recession. Further, the increased litigation will result in undue delays in the provision of Workers' Compensation benefits to our injured employees. **AB 1155** as currently written would further erode the reforms that were put in place to create objectivity and fairness.

For these reasons and more we respectfully request your **VETO** of **AB 1155**.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Wells", with a long horizontal flourish extending to the right.

Rick Wells
President and CEO
San Rafael Chamber of Commerce