

KEGEL, TOBIN & TRUCE
INTER-OFFICE MEMORANDUM

TO: ALL ATTORNEYS/CLIENTS
FROM: JOE TRUCE
DATE: September 10, 2004
RE: DATE OF INJURY IN CUMULATIVE TRAUMA CASES

In the case of State Compensation Insurance Fund v. WCAB, California Insurance Guarantee Association (Monica Rodarte), the Court of Appeal has now issued a definitive decision as to the date of a continuing trauma injury.

This case is significant for our purposes in determining whether or not an applicant has suffered more than one injury by way of a repetitive or continuous trauma injury.

Many times in our practice we will be confronted by a case in which the applicant has worked for a specific employer for a lengthy period of time and during the employment has obtained medical treatment for specific injuries or ongoing injuries. For example, if we are dealing with a case in which the applicant through his and/or her attorney filed a continuing trauma injury over a 20 year period, we are always faced with a question as to whether or not we are dealing with one **continuing trauma injury** or a series of continuing trauma injuries.

In other words, in this type of case, we usually search the medical record to see whether or not there was ever a "break" in the continuing trauma injury requiring either a need for medical treatment or disability. In these cases, we would be looking for evidence as to when one continuing trauma ends and another one begins.

The Court of Appeal in the Rodarte case has answered this question by concluding that the date of injury requires compensable temporary or permanent disability.

Therefore, if we are dealing with a 20 year continuing trauma claim and we note that midway through the employment the applicant suffered temporary disability from work, we would probably be dealing with at least two continuing trauma injuries as a new continuing trauma injury would begin once the applicant returned to work from his and/or her period of temporary disability.

However, the court in Rodarte also indicates that the date of the continuing trauma injury may also be indicated by the fact that the applicant was permanently disabled and was unable to perform his and/or her usual and customary occupation.

The Rodarte case would appear to incorporate a decision obtained by Mr. Chuck Maki of our Ventura office in the case of Earl Bowling which was the subject of my memo of April 29, 2003.

WJT/tmm
Enclosure - Rodarte case