

CA Supreme Court Asked to Look at 5814 Retroactivity: 05/27/05

1. The California Supreme Court Thursday acknowledged receipt of an employer's arguments that Labor Code section 5814 as amended by SB 899 is, in fact, retroactive.

In March, the Second Appellate District ruled against appellant James Green when it found that SB 899's modification to the penalty statute, LC 5814, applied to his claim, even though he had commenced proceedings prior to the passage of SB 899, and the conduct that was the subject of Green's penalty petition, likewise, occurred long before SB 899.

In *Green vs. WCAB* (B171921, 3/30/05) the Court said, "... we need look no further than to the statute itself. S.B. 899 makes clear that retroactive application is what the Legislature intended. Section 47 states in part that '[t]he amendment, addition, or repeal of, any provision of law made by this act shall apply prospectively from the date of enactment of this act' S.B. 899 was enacted long after the injuries in question. If this is all we had, we very well might conclude uniform prospective application was the rule. However, the use of 'prospectively' in Section 47 is not dispositive when other language is considered. The term is almost immediately followed by the phrase 'unless otherwise specified'. New section 5814(h) is precisely a provision that 'otherwise specifies,' and thus is an exception to the prospective application of the new law. Subdivision (h) states explicitly that the new section applies to all injuries, not just to some injuries or those injuries where other events occur after the operative date of new section 5814. The argument posited by Green and CAAA that new section 5814 applies only where unreasonable delay or refusal occurs after June 1, 2004, has no foundation in the statute, and neither legislative history nor other authority supports such a construction."

Attorney Larry D. Preece of Ontario, who represents the city of Compton in the case, said the central question is whether the tough penalties mandated by the old section 5814 still apply to cases that were filed before passage of SB 899, but not yet resolved.

"If Green holds up, that's basically the end of penalties as a way of making a lot of money for a client," he said.

Preece said a lot of money is at stake in the Supreme Court decision. He said as much as \$100 million in 5814 penalties claimed before passage of SB 899 may still be working their way through the Workers' Compensation Appeals Board.

Green is represented by Wayne McCourt of the Long Beach, CA firm Cantrell Green & Pekich.

The California Supreme Court case number is S133804.