

INTER-OFFICE MEMORANDUM

TO: ALL ATTORNEYS/ALL OFFICES/CLIENTS

FROM: JOE TRUCE

DATE: November 19, 2002

RE: LANDMARK CASE ON AVERAGE WEEKLY EARNINGS

As workers' compensation benefits will be increasing as of January 1, 2003, it is time to re-visit the Court of Appeal decision in Grossmont Hospital v. Workers' Compensation Appeals Board 62 CCC 1649; 59 Cal. App. 4th 1348.

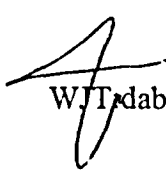
An injured worker with an average weekly earnings of \$735.00 per week currently qualifies for maximum temporary total disability benefits of \$490 per week. Therefore, **even though** the temporary disability compensation rate will increase on January 1, 2003 to \$602, an average weekly wage of \$735.00 will still justify a temporary disability rate of \$490 per week, since temporary disability benefits are computed by taking two-thirds of an applicant's average weekly wage.

Therefore, I anticipate that as of January 1, 2003, applicant's attorneys will begin claiming that their clients wages should be increased, as said wages would have increased had the applicant not been injured.

In making such an argument, applicant's attorneys for years have been relying on the Court of Appeal decision in Thrifty Drug Stores, Inc. v. Workers' Compensation Appeals Board (1979) 95 Cal. App. 3rd, 937; 44 CCC 809. In Thrifty the Court of Appeal held that upon a proper showing such increases can be considered.

Under Thrifty the Court of Appeal held that an applicant's average weekly wages may be increased "based upon unanticipated increases..."

On this particular issue the court in Grossmont overruled Thrifty holding that a wage increase may be considered only when the increase is **scheduled** or reasonably anticipated at the time of injury and that said increase would occur during a period of disability. Therefore, if at the time of injury an injured employee does not have a scheduled wage increase or could reasonably expect a wage increase, then the average weekly earnings are to be determined as of the date of injury.


W.J. Truce