No. S282013

IN THE
SUPREME COURT
FOR THE STATE OF CALIFORNIA

California Dept. of Corrections and Rehabilitation,
Petitioner,
v.
Workers' Compensation Appeals Board and Michael Ayala,
Respondents.

FOURTH DISTRICT COURT OF APPEAL E079076 (DIV. 2)
WCAB CASE NUMBER ADJ1310387

CALIFORNIA WORKERS' COMPENSATION INSTITUTE'S AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

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I. CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

[California Rule of Court 8.208]

Name of Interested Entity or Person	**Nature of Interest**
California Department of Corrections and Rehabilitation	Employer, Petitioner below
State Compensation Insurance Fund	Adjusting Agency, Petitioner below
Workers' Compensation Appeals Board	Trial court, Respondent below
California Workers' Compensation Institute	*Amicus Curiae*

Respectfully submitted,

March 17, 2024

/s/ *Ellen Sims Langille*
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II. DECLARATION OF COMPLIANCE

[California Rule of Court 8.200(c)(3)]

No party nor any counsel for a party in the pending appeal has authored this brief in whole or in part. Petitioner State Compensation Insurance Fund, the entity administering workers' compensation benefits on behalf of the State of California, is a regular member of the California Workers' Compensation Institute and has paid generalized dues and assessments for the current fiscal year. No party nor any counsel for a party in the pending appeal has made a monetary contribution intended to fund the preparation or submission of this *amicus curiae* brief. No person or entity, other than CWCI and its members, has made a monetary contribution intended to fund the preparation or submission of this *amicus curiae* brief.

I declare under penalty of perjury that the foregoing is true and correct based on my own knowledge, except as to matters stated on information and belief, and as to those matters I believe them to be true. Executed this 17th day of March 2024, at Mount Dora, Florida.

Respectfully submitted,

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Ellen Sims Langille, CWCI Amicus Counsel
Counsel for *Amicus Curiae* CWCI

III. CERTIFICATION OF COMPLIANCE

[California Rule of Court 8.204]

I, Ellen Sims Langille, swear that I have read the within *amicus curiae* Brief and know the contents thereof; that the brief contains 5,186 words inclusive of tables, signature blocks, and these certificates, based on the automated word count of the computer word-processing program; that I am informed and believe that the facts stated therein are true and on that ground allege that such matters are true; and that I make such verification because the officers of the California Workers' Compensation Institute are absent from the County where my office is located and are unable to verify the petition, and because as amicus counsel for the California Workers' Compensation Institute I am more familiar with such facts than are the officers.

Respectfully submitted,

March 17, 2024

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VI. INTRODUCTION AND SUMMARY OF ARGUMENT

In this brief, *amicus curiae* California Workers' Compensation Institute seeks to provide this Honorable Court with an alternative legal basis to uphold the decision of the Court of Appeal below.[1]

This amicus curiae brief initially examines exactly what "means" means, and provides a basis of interpretation that distinguishes "Industrial Disability Leave" from "Industrial Disability Leave Benefits." In addition, the brief provides authority on statutory interpretation, an examination of potentially contrary case law, and an analysis of jurisdictional issues raised in this case. Finally, the brief concludes with a review of relevant statutory phrasing, and a look to a future that might overwhelm the WCAB should the Court of Appeal's decision below be annulled.

VII. LEGAL ARGUMENT

A. This Court Should Adopt an Interpretation of Government Code Section 19870(a) Such That "Industrial Disability Leave" Is Equivalent to "Temporary Disability," But Not to Temporary Disability Benefits.

Prior appellate decisions have misconstrued Government Code section 19870 by erroneously equating "Industrial Disability Leave" with "Industrial Disability Leave Benefits." This Court should adopt an interpretation of Government Code

[1] The decision below is now reported at *Dept. of Corr. & Rehabilitation v. Workers' Comp. Appeals Bd. (Ayala)* (2023) 94 Cal.App.5th 464, 311 Cal. Rptr.3d 861 (*rev. granted*, 12/13/2023).

section 19870(a) such that "Industrial Disability Leave" is equivalent to "Temporary Disability" (as indicated by the plain language of the statute), but not to temporary disability benefits (as construed by some courts).

1. PURSUANT TO GOVERNMENT CODE SECTION 19870(A), "INDUSTRIAL DISABILITY LEAVE" IS EQUIVALENT TO A PERIOD OF "TEMPORARY DISABILITY" BUT NOT TO TEMPORARY DISABILITY BENEFITS.

Government Code section 19870(a) defines "industrial disability leave" and confirms that such leave means the same thing as "temporary disability" as defined in Division 4 of the Labor Code.[2] Both of these terms relate to a *period of time* in which the employee is unable to work due to medical infirmity. Neither of these terms are indicated to reference *benefits payable* under either system during the period of infirmity.

How do we know that the statute speaks to a period of disability and not to associated benefits? Because section 19870(a) goes on to further define industrial disability leave as "includ[ing] any period in which the disability is permanent and stationary and the disabled employee is undergoing vocational rehabilitation." Here,

[2] Govt. C. §19870(a): "Industrial disability leave" means temporary disability as defined in Divisions 4 (commencing with Section 3201) and 4.5 (commencing with Section 6100) of the Labor Code and includes any period in which the disability is permanent and stationary and the disabled employee is undergoing vocational rehabilitation."

the Legislature is referring to a *period of time* and the employee's medical condition, not to *benefits* payable during that time.

We can further confirm the validity of this interpretation by simply referencing the subsequent statutes in the series:

- Government Code section 19871 specifically addresses the payments at issue here, and does so not by merely repeating the reference to "industrial disability leave" as in section 19870, but rather specifying "industrial disability leave *and payments*."[3] The statute goes on to mandate the amount of "these *payments*" and then further to note that such payments are to be "adjusted to offset disability *benefits*."[4] In other words, the Legislature intended in section 19871 to address the money amounts, and did so by specifically referencing *payments* and *benefits*.
- Government Code section 19871.1 also addresses "industrial disability leave *benefits*,"[5] further delineating the distinction from "industrial disability leave" referenced in section 19870.
- Government Code section 19871.2 discusses the enhanced industrial leave *benefit* due to certain employees after a defined period of disability.

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[3] Govt. C. §19871(a) [emphasis added].
[4] Govt. C. §19871(a) [emphasis added].
[5] Govt. C. §19871.1(a) [emphasis added].

Throughout this section, the Legislature distinguishes between "[e]ligibility and benefits" and culminates in a provision for the periodic review of "the employee's *condition*…to determine an employee's continued eligibility for enhanced *benefits*."[6]

- Government Code section 19871.3 repeats the distinction between *disability* and *benefits* when it speaks to the eligibility of certain employees for enhanced benefits while temporarily disabled.[7]

- Government Code section 19872 provides an important counterpoint by outlining when an employee may receive temporary disability *indemnity* versus industrial disability leave *payments*.[8]

- Government Code section 19874 contemplates a continuing temporary *disability* condition after industrial leave *benefits* have been exhausted, noting that such employees remain eligible for temporary disability *benefits* under the Labor Code.[9]

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[6] Govt. C. §19871.2 [emphasis added].

[7] "If an employee who is a member of State Bargaining Unit 8 is *temporarily disabled* by illness or injury arising out of and in the course of state employment, he or she shall receive an enhanced industrial disability leave *benefit*." Govt. C. §19871.3(a) [emphasis added].

[8] Govt. C. §§19872(a) & (b).

[9] Govt. C. §19874(a).

- Government Code section 19875 outlines the circumstances in which an employee who sustains a temporary disability shall be placed on industrial disability leave; here, there is no mention of benefits under either system because the statute addresses only the leave in question.[10]

If the Legislature intended the phrase "industrial disability leave" to mean "industrial disability leave payments," it would not have used those terms separately in the same statutory scheme.

Instead, throughout these sections, the Legislature has specifically and repeatedly differentiated disability (*i.e.*, the employee's medical condition) from the benefits owed. Under the definitions provided by section 19870, it is not the benefits that are defined by the Labor Code -- it is the disability.[11] The two terms are naturally related, but they are not interchangeable.

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[10] Govt. C. §19875.

[11] It is acknowledged that the court in *Brooks v. Workers' Comp. Appeals Bd.* (2008) 161 Cal.App.4th 1522, 75 Cal. Rptr.3d 277, considered and rejected a similar argument brought by amicus in that case. Coming as it does at the conclusion of the decision and after the court had already reached its decision, little analysis is provided. Indeed, the *Brooks* court seemed to not truly comprehend the argument that "leave" can and should be distinguished from "benefits."

2. ORDINARY RULES OF STATUTORY CONSTRUCTION MANDATE ADOPTION OF THE PROPOSED INTERPRETATION OF GOVERNMENT CODE SECTION 19870.

It is axiomatic that courts must apply the plain language of the statute if it is unambiguous on its face.[12] If the statutory language is clear and unambiguous, judicial construction is unnecessary.[13] In construing a statutory provision, courts presume that the Legislature meant what it said.[14]

In this instance, the Legislature said: industrial disability leave means temporary disability as defined in Divisions 4 and 4.5 of the Labor Code. The Legislature did *not* say: industrial disability leave benefits are the same as temporary disability indemnity benefits.

Had the Legislature intended to equate "industrial disability leave benefits" with "temporary disability indemnity," it surely could have done so in plain language by simply adding those words; it did not. The language actually used must be construed to mean exactly what it says: industrial disability leave means temporary disability as defined in Division 4.

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[12] *Bohem & Associates v. Workers' Comp. Appeals. Bd*. (1999) 76 Cal.App.4th 513, 515-516, 90 Cal. Rptr.2d 486.

[13] *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 113, 56 Cal. Rptr.3d 880.

[14] *Smith v. Workers' Comp. Appeals Bd*. (2009) 46 Cal.4th 272, 277, 92 Cal. Rptr.3d 894.

3. THIS INTERPRETATION DOES NOT INVALIDATE *BROOKS*, BUT MERELY LIMITS IT TO ITS FACTS.

Prior appellate decisions have misconstrued Government Code section 19870 by erroneously equating "Industrial Disability Leave" with "Industrial Disability Leave Benefits." But contrary to the findings in *Brooks v. Workers' Comp. Appeals Bd.*,[15] and as outlined in detail above, the statute does not speak to any equivalency of benefits paid as between the two systems.

In reaching its conclusion, the *Brooks* court stated simply that "the Government Code defines 'industrial disability leave,' not the term 'industrial disability.'" But the *Brooks* court did not investigate why the Legislature might have omitted any mention of "benefits." Had the Legislature intended to equate "industrial disability leave benefits" with "temporary disability indemnity," it surely could have done so in plain language by adding those words; it did not. Under the definitions provided by section 19870, it is not the benefits that are defined by the Labor Code -- it is the disability. The two terms are naturally related, but they are not interchangeable; that is the error made by the *Brooks* court.

Notwithstanding that the *Brooks* court overreads Government Code section 19870 to equate "industrial disability leave" with "industrial disability leave

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[15] *Brooks v. Workers' Comp. Appeals Bd.* (2008) 161 Cal.App.4th 1522, 75 Cal. Rptr.3d 277.

benefits," the error does not therefore invalidate the ultimate conclusion of that decision. Ultimately, *Brooks* determined that industrial disability leave benefits must be considered in calculating the "aggregate" payment limitation pursuant to Labor Code section 4656(c); this result can certainly stand alone despite the earlier conflation.

Brooks solely addressed the interpretation of the maximum period for temporary disability payments pursuant to Labor Code §4656(c)(1), which addresses "aggregate disability payments." Neither *Brooks* nor §4656 address the question of aggregate *compensation* or the interplay between temporary disability indemnity and Industrial Disability Leave payments at issue herein. Most importantly, *Brooks* was not constrained by the limitation to "compensation" in §4553 nor the "by this division" restriction in §3207.

As such, to the extent that it interprets the maximum period for temporary disability payments pursuant to Labor Code §4656(c)(1), *Brooks* continues to be valid authority for its conclusion that "a state employee is entitled to only 104 weeks of temporary disability indemnity, whether consisting of IDL, enhanced IDL, or TD…."[16] But *Brooks* can carry no weight in the present challenge of interpreting compensation as defined in Labor Code §4553 or §3207.

[16] *Brooks*, *supra*, 161 Cal.App.4th at 1536-1537.

B. The WCAB Does Not Have Jurisdiction to Award Increased Benefits Based on the Amount of Applicant's Industrial Disability Leave Benefits.

Similar to the present case, the Court of Appeal in *Cal. v. Workers' Comp. Appeals Bd. (Ellison)*[17] addressed imposition of a penalty as it related to Industrial Disability Leave benefits. In *Ellison*, based largely on jurisdictional principles, the Court of Appeal assessed a penalty – but on only that portion of benefits that would have been due in temporary disability indemnity, not the full amount of Industrial Disability Leave benefits.[18]

It is an important question before this Court as to whether there is even jurisdiction in the workers' compensation system to award benefits and/or increased benefits of a nature outside of Division 4.[19] Indeed, a fatal flaw in applicant's argument is the very real question of how the Workers' Compensation Appeals Board could have jurisdiction to award a 50% increase based on benefits where it

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[17] *Cal. v. Workers' Comp. Appeals Bd. (Ellison)* (1996) 44 Cal.App.4th 128, 51 Cal. Rptr.2d 606.

[18] "[I]t is clear the penalty is a part of the compensation provided for in division 4, and a WCAB award of a penalty involves proceedings which concern the recovery of compensation and a right or liability arising out of or incidental thereto within WCAB jurisdiction." *Ellison, supra*, 44 Cal. App. 4th at 140. Notably, the penalty in *Ellison* was not imposed for unreasonable delay in paying IDL benefits, but in the failure to pay any benefits for ongoing temporary disability. *Id*. at 142.

[19] *State Comp. Ins. Fund v. Ind. Acc. Com.* (1942) 20 Cal.2d 264, 266, 7 Cal. Comp. Cases 102 (recognizing the "limited jurisdiction" exercised by the Workers' Compensation Appeals Board).

concedes it has no jurisdiction to award those benefits.[20] In any event, *Ellison* explains that to the extent that the Appeals Board has jurisdiction to award any benefit related to IDL, the increase can only be based on what applicant would have received in temporary disability indemnity and not what he received in IDL benefits.[21]

C. While *Ferguson* Expanded Section 4553 to Include Compensation Beyond Indemnity, Such Payments Nonetheless Remain Limited to Compensation Under Division 4.

Respondent also relies upon *Ferguson v. Workers' Comp. Appeals Bd*.,[22] in which the Court of Appeal held that section 4553 applies to all benefits under Division 4, and not just indemnity.[23] Applicant cites *Ferguson* as support for his

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[20] Opinion and Decision After Reconsideration, p. 4 ("There is no dispute that the Appeals Board does not have jurisdiction to award IDL, enhanced or otherwise."); see also *Blankenship v. Workers' Comp. Appeals Bd.* (1986) 51 CCC 38, 1986 Cal. Wrk. Comp. LEXIS 3065 (Appeals Board has no jurisdiction to award IDL benefits). For a full discussion of the failure of jurisdiction in this case, see Respondents' Answer Brief on the Merits, pp. 18-21.

[21] The State of California Memorandum issued by the Department of Personnel Administration provides that an "employee may appeal a decision regarding IDL benefits to the Workers' Compensation Appeals Board with regard to the basic time frames, amounts, and penalties relevant to ***that portion of IDL payment that would be equal to the TD payment it replaces.***" State of California Memorandum, September 24, 2002-Reference Code 2002-060, calhr.ca.gov [emphasis added].

[22] *Ferguson v. Workers' Comp. Appeals Bd.* (1995) 33 Cal.App.4th 1613, 39 Cal. Rptr.2d 806.

[23] *Ferguson*, 33 Cal.App.4th at 1621 ("[W]e are persuaded the legislative scheme contemplates that an award for increased compensation due to the serious and willful misconduct of an employer under section 4553 must be calculated with reference to '*every* benefit or payment conferred by Division 4 upon an injured employee,' as

position that "compensation" should have "an expansive meaning, …including every benefit or payment conferred upon employees,"[24] and by extension including IDL. But *Ferguson* cannot properly be read as expansively as applicant would have this court believe.

In quoting *Ferguson,* applicant rather egregiously omits the entire passage. Context is critical, and thus we now emphasize the complete paragraph from which applicant has selectively quoted:

> **Section 4553 cannot be read without reference to section 3207, which defines "compensation."** From the time our workers' compensation scheme was initially established, this critical term has consistently been given an expansive meaning, described as including "every benefit or payment" conferred upon employees. Section 3207 currently provides that " '[c]ompensation' means compensation under Division 4 [Workers' Compensation and Insurance] and includes every benefit or payment conferred by Division 4 upon an injured employee, including vocational rehabilitation, or in the event of his [or her] death, upon his [or her] dependents, without regard to negligence." **This broad language leaves no doubt that compensation includes vocational rehabilitation costs and, by virtue of their location in division 4, medical treatment payments and medical-legal fees.**[25]

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broadly defined in section 3207 to include medical treatment payments, medical-legal fees and vocational rehabilitation costs, as well as all indemnity benefit payments." [emphasis by the court] [citations omitted]).

[24] Petition for Review, p. 13 (internal quotation marks omitted); see also Respondent's Opening Brief on the Merits, p. 24.

[25] *Ferguson*, 33 Cal.App.4th at 1619 (emphasis added) (citations and internal quotations omitted). In 2004, the Legislature amended section 3207 to change "Division 4" to "this division" in two instances; to remove reference to the defunct system of vocational rehabilitation; and to neutralize gender terms, as the *Ferguson* court did in this paragraph.

While arguably endorsing an "expansive" reading of section 3207, *Ferguson* actually takes pains to give import to the entire statute. That statutory language is specifically limited to benefits included in Division 4. Read in its complete context, there is no question that even *Ferguson* limited the definition of "compensation" to the plain language of section 3207, to wit: "compensation under Division 4."

Moreover, the underlying rationale of *Ferguson* is inapposite to applicant's position in this case. In *Ferguson*, the court awarded increased benefits under section 4553 because the workers' compensation system does not fully compensate employees for their injuries.[26] Recognizing that the increase for an employer's serious and willful misconduct under section 4553 avoids constitutional infirmity by providing for full or more nearly full compensation,[27] the *Ferguson* court held that an award under section 4553 is valid so long as it does not provide the injured worker more than is necessary to fully compensate the injured worker.[28]

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[26] *Ferguson*, 33 Cal.App.4th at 1622 (because conventional workers' compensation benefits do not fully compensate employee for sustained injuries and other detriment, increase under section 4553 may only provide full or more nearly full compensation than would be available in the absence of employer's serious and willful misconduct).

[27] *Ferguson*, 33 Cal.App.4th at 1621 (workers' compensation system only authorizes payment of "compensation" for work-related injuries and does not authorize punitive damages).

[28] *Ferguson*, 33 Cal.App.4th at 1624.

But in this case, applicant actually received his **full salary** with his IDL benefits. He was thus "fully compensated" for his temporary disability without application of the 50% increase under section 4553. Indeed, application of a 50% increase to that full salary would exceed the constitutional proscription against punitive damages as set forth in *Ferguson*.

In light of this more complete explanation of *Ferguson*, it is not reasonable to suggest that the Court of Appeal decision below is inconsistent or in conflict with existing case law. The other cases cited as "conflicting" by applicant are similarly inapposite, as well-explained not only by the decision below but also the Answer to Petition for Review.[29] Indeed, the decision below points out that the ultimate holding in *Ellison*[30] is broadly consistent with the ruling in the present case.[31]

D. The Phrase "Otherwise Recoverable" Does Not Mean What Respondent Thinks It Means.[32]

In his pleadings, applicant has sought to create a new world order based on a novel interpretation of language included in Labor Code section 4553: "The amount

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[29] See Answer to Petition for Review, pp. 5-9.

[30] *State of California v. Workers' Comp. Appeals Bd. (Ellison)* (1993) 44 Cal.App.4th 128, 51 Cal. Rptr.2d 606.

[31] *Ayala, supra,* 94 Cal. App.5th at 474 (*rev. granted*, 12/13/2023). The Court of Appeal below explained that the actual holding in *Ellison* (that the WCAB could impose a penalty for delay in payment as against what the injured worker *would have* received in temporary disability, instead of what the injured worker *actually* received in IDL) mirrored the decision in the present case.

[32] Inigo Montoya, *The Princess Bride* (1987).

of compensation *otherwise recoverable* shall be increased by one half…."[33] Based on the use of this rather innocuous phrasing, applicant has argued that the Legislature intended to differentiate between compensation ordinarily recoverable based on California's no-fault system, and compensation covered under all other benefit programs.[34]

In fact, the Labor Code is actually replete with references to "otherwise recoverable" compensation and benefits -- many of which are contained in the same Chapter of the Labor Code as the "serious and willful misconduct" prohibition of §4553. For example,

- Labor Code section 4551 addresses injuries caused by the employee's serious and willful misconduct, and mandates that the "compensation otherwise recoverable" should be reduced by one-half.[35]
- Labor Code section 4554 addresses instances of an employer's willful failure to secure liability for workers' compensation (failure to insure),

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[33] Lab. C. §4553 [emphasis added].

[34] Respondent's Opening Brief, pp. 25-28.

[35] See e.g., *Zenith National Ins. Co. v. Ind. Acc. Com. (Petty)* (1965) 30 CCC 42 (writ denied). It might well be noted that, taken to its logical conclusion, applicant's expansive definition of "compensation" is completely unworkable in situations of willful misconduct of the injured employee pursuant to §4551. Since the Appeals Board has no jurisdiction to award much less reduce benefits paid outside of workers' compensation, applicant's interpretation herein would render §4551 as a nullity.

which results in an increase of compensation otherwise recoverable for injury or death by 10%.[36]

- Labor Code section 4557 addresses a 50% penalty on "the entire compensation otherwise recoverable" where a minor is illegally employed at the time of injury.[37]

- Labor Code section 5801 addresses attorney fees incurred in responding to a frivolous petition for appellate review, mandating that such fees are to be in addition to the amount of compensation otherwise recoverable; courts have confirmed that this language precludes any offset of fee liability that might be asserted based on credit rights.[38]

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[36] See *Leung v. Chinese Six Companies* (1992) 2 Cal.App.4th 801, 3 Cal. Rptr.2d 593 (finding that damages awarded in a civil action under section 3706 cannot be considered as "compensation otherwise recoverable" because compensation is specifically defined in workers' compensation statutes, and cases giving a broad interpretation to "compensation" involve payments directly provided for in the workers' compensation statutes and not outside of them).

[37] Lab. C. §4557. Reference in the penultimate sentence of this statute to "the maximum sum specified by Section 4553" indicates that the Legislature failed to amend this section in 1982 when it deleted the $10,000 maximum previously prescribed in §4553. See Assembly Bill 684 (Stats. 1982, ch. 922, eff. 1/1/1983).

[38] *Sharma v. Lam Research Corp.* (2014) 2014 Cal. Wrk. Comp. P.D. LEXIS 161 (Appeals Board held that fee awarded under §5801 was not subject to stipulated credit defendant received for applicant's net civil recovery since fee is in addition to amount of compensation otherwise recoverable, making fee distinct from attorney's fee normally allowed as lien against applicant's compensation); see also 2 Hanna CA Law of Employee Injuries and Workers' Compensation §20.02.

In these examples, the question of negligence is either not referenced or specifically obviated by use of terms such as "willful." *In no instance* has any court read "otherwise recoverable" as expensively as applicant seeks herein, to include application of the designated penalty as against any benefit provided on account of the work injury. Instead, courts have simply assigned the ordinary meaning to the phrasing, that is: compensation that is authorized by statutes other than the current one. This simple interpretation precludes any question that there should be unnecessary compounding of benefit and penalty under §4553.[39]

E. The Decision Below Prevents an Avalanche of the Appeals Board Expansion Into Non-Workers' Compensation Benefit Programs.

If this Court were to reverse the holding below, and find instead that "compensation" subject to a section 4553 increase includes compensation received by an injured worker *outside* of Division 4, it is a short stroke to reach compensation, benefits, and payments provided under other Government Code sections[40] or perhaps Education Code sections.[41] And why not attendant Social Security benefits?[42] or

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[39] "[T]he phrase 'otherwise recoverable' restricts 'compensation' by excluding the 50 percent increase provided by section 4553 itself, avoiding a potential recursive loop." *Ayala*, *supra*, 94 Cal.App.5th at 475 (*rev. granted*, 12/13/2023).

[40] See, e.g., Govt. C. §21530 [CalPERS death benefits].

[41] See, e.g., Edu. C. §§89529-89529.11 [Cal. State Univ. industrial disability leave].

[42] See, e.g., Title XVI of the Social Security Act, Supplemental Security Income for the Aged, Blind, and Disabled [United States Code §§1381-1383f, subchapter XVI, chapter 7, Title 42].

even (in certain instances) civil damages?[43] Such an expansive reading would render the definitions and limitations of sections 4553 and 3207 as a nullity.[44]

Yet it is exactly this slippery slope that applicant contemplates climbing in this case: "The computation of the damages for the [serious and willful] award applies to all benefits the applicant received."[45] Such a statement – such an outcome – is simply unwarranted by the enabling statute of Labor Code section 4553, which provides an increase only in compensation payable under Division 4.

VIII. CONCLUSION

The Court of Appeal in this case has issued a well-reasoned opinion based on the plain language of the statutes at issue. As such, we urge this Court to AFFIRM the decision below.

Respectfully submitted,

March 17, 2024

/s/ *Ellen Sims Langille*

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[43] See, e.g., Lab. C. §§3602(b), 4558.

[44] *Ayala, supra,* 94 Cal.App.5th at 476 (*rev. granted*, 12/13/2023) (Sl. Op., p. 15): "When the Legislature uses a term of art, a court construing that use must assume that the Legislature was aware of the ramifications of its choice of language. Of course, if the Legislature wants compensation to include industrial disability leave, or otherwise allow workers in [applicant's] position to receive additional payments, it can say so." [internal citations and quotations omitted].

[45] Applicant's Trial Brief, p. 2.

IX. CERTIFICATE OF SERVICE

I certify that on March 17, 2024, I electronically filed the foregoing

AMICUS CURIAE BRIEF OF THE CALIFORNIA WORKERS' COMPENSATION INSTITUTE IN SUPPORT OF PETITIONER CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

with the Clerk of the California Supreme Court by using the appellate TrueFiling system. The following case participants were served electronically through the TrueFiling system:

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I certify that, unless otherwise noted, all participants in the case are registered TrueFiling users and that service will be accomplished by the appellate TrueFiling system.

Respectfully submitted,

March 17, 2024

/s/ *Ellen Sims Langille*
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STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION v. W.C.A.B. (AYALA)**
Case Number: **S282013**
Lower Court Case Number: **E079076**

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California Workers' Compensation Institute

Law Firm