

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3 **Case No. SFO 0501425**

4 **PAUL CRUZ,**

5 *Applicant,*

6 **vs.**

7 **MERCEDES-BENZ OF SAN FRANCISCO,**  
8 **and AUTO DEALERS COMPENSATION**  
9 **OF CALIFORNIA, administered by**  
10 **INTERCARE INSURANCE COMPANY,**

11 *Defendant(s).*

**OPINION AND DECISION**  
**AFTER RECONSIDERATION**  
**(EN BANC)**

12 The Appeals Board granted defendant's petition for reconsideration to allow time to study  
13 the record and applicable law. Because of the important legal issue as to the scope of the  
14 amputation exception to the two-year/104-week cap on temporary disability indemnity in Labor  
15 Code section 4656(c)(2)(C),<sup>1</sup> and in order to secure uniformity of decision in the future, the  
16 Chairman of the Appeals Board, upon a majority vote of its members, assigned this case to the  
17 Appeals Board as a whole for an en banc decision. (Lab. Code, § 115.)<sup>2</sup>

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23 <sup>1</sup> All further statutory references are to the Labor Code.

24 <sup>2</sup> En banc decisions of the Appeals Board are binding precedent on all Appeals Board panels and workers'  
25 compensation judges. (Cal. Code Regs., tit. 8, § 10341; *City of Long Beach v. Workers' Comp. Appeals Bd. (Garcia)*  
26 (2005) 126 Cal.App.4th 298, 313, fn. 5 [70 Cal.Comp.Cases 109, 120, fn. 5]; *Gee v. Workers' Comp. Appeals Bd.*  
27 (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236, 239, fn. 6]; see also Govt. Code, § 11425.60(b).)

1 For the reasons discussed below, we hold that the word “amputations,” as used in section  
2 4656(c)(2)(C),<sup>3</sup> means the severance or removal of a limb, part of a limb, or other body appendage,  
3 including both traumatic loss in an industrial injury and surgical removal during treatment of an  
4 industrial injury. This definition conforms to our understanding of the common meaning of the  
5 term “amputation,” which encompasses external projecting body parts, not internal parts, even if  
6 they include bone.

### 7 **BACKGROUND**

8 The pertinent facts in this case are undisputed. Applicant sustained an admitted injury to  
9 his back on January 4, 2005. He has been off work since his injury and received temporary  
10 disability indemnity for the period January 6, 2005, through January 17, 2007. Applicant  
11 underwent back surgery on January 9 and 10, 2006. The procedures included anterior L5-S1  
12 discectomy, partial L5-S1 vertebrectomy, L5-S1 fusion with a graft from the left iliac crest bone,  
13 bilateral L4-L5 laminotomy, and decompression of L5 nerve roots bilaterally. Applicant remains

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15 <sup>3</sup> Labor Code section 4656(c), as amended by Senate Bill 899, effective April 19, 2004, provides in full:

16 “(c)(1) Aggregate disability payments for a single injury occurring on or after the  
17 effective date of this subdivision, causing temporary disability shall not extend  
18 for more than 104 compensable weeks within a period of two years from the date  
19 of commencement of temporary disability payment.

20 (2) Notwithstanding paragraph (1), for an employee who suffers from the  
21 following injuries or conditions, aggregate disability payments for a single injury  
22 occurring on or after the effective date of this subdivision, causing temporary  
23 disability shall not extend for more than 240 compensable weeks within a period  
24 of five years from the date of the injury:

- 25 (A) Acute and chronic hepatitis B.
- 26 (B) Acute and chronic hepatitis C.
- 27 (C) Amputations.
- (D) Severe burns.
- (E) Human immunodeficiency virus (HIV).
- (F) High-velocity eye injuries.
- (G) Chemical burns to the eyes.
- (H) Pulmonary fibrosis.
- (I) Chronic lung disease.”

1 temporarily totally disabled.

2 Pursuant to section 4656(c)(1), defendant stopped paying temporary disability indemnity on  
3 January 17, 2007, because two years had passed since payment commenced.

4 Following an expedited hearing on the issue of whether removal of a portion of a disk and a  
5 bone graft constitute an amputation, within the meaning of section 4656(c)(2)(C), entitling  
6 applicant to temporary disability indemnity beyond the two-year/104-week cap, the workers'  
7 compensation administrative law judge ("WCJ") issued her Findings and Award on April 4, 2007,  
8 finding that applicant's surgeries do constitute an amputation, entitling applicant to continuing  
9 temporary disability indemnity. She found that defendant provided 104 weeks of temporary  
10 disability indemnity within a two-year period ending January 17, 2007, and that applicant remains  
11 temporarily disabled. She awarded temporary disability indemnity from January 17, 2007, to date  
12 and continuing, less an attorney's fee.

13 The WCJ explained, in her Opinion on Decision, that removal of a portion of applicant's  
14 spine and bone from the hip comes within the general definition of amputation found in *Webster's*  
15 *New World Dictionary, College Edition*: "to cut off, especially by surgery." She added,

16 "In reviewing the other exceptions enumerated in the statute, it  
17 appears clear that the legislature intended that temporary disability  
18 should continue to compensate injured workers who suffer serious  
19 consequences of an industrial injury. The invasive procedures  
20 performed on the applicant herein appear to be of a severity that is  
21 similar if not equal to the other exceptions contained in the statute.

22 Moreover, the lack of synchronicity in the provision of medical  
23 benefits with temporary disability can only have a detrimental  
24 effect on this applicant's progress in reaching maximal medical  
25 improvement within a reasonable time frame. In this case,  
26 applicant's need to remain off work recuperating from these  
27 surgeries without receipt of any temporary disability benefits is  
contrary to the scheme of providing injured workers with the  
means to recover and return to the labor market without  
jeopardizing their livelihoods and well-being. Labor Code §3202  
requires liberal construction with the purpose of extending benefits  
for the protection of persons injured in the course of their  
employment." (Opinion on Decision, pp. 3-4, also quoted in the

1 Report, p. 3.)

2 Defendant petitioned for reconsideration, contending that the WCJ erred in awarding  
3 additional temporary disability indemnity. In addition to arguing that the WCJ's definition of  
4 amputation is overly broad and includes removal of any bodily tissue, however trivial, and that  
5 applicant's condition is not as severe as the enumerated exceptions in section 4656(c)(2),  
6 defendant argues that the WCJ's interpretation is contrary to the intent of the Legislature, which  
7 could have included spinal surgery in the exceptions, if it wished; that even a liberal construction  
8 of the statute on behalf of the injured worker "will not extend temporary disability benefits where  
9 they are not authorized" (*Signature Fruit Co. v. Workers' Comp. Appeals Bd. (Ochoa)* (2006) 142  
10 Cal.App.4<sup>th</sup> 790 [71 Cal.Comp.Cases 1044, 1047]); and that the WCJ and the Appeals Board lack  
11 the authority to correct any perceived unfairness in section 4656. Defendant states,

12 "Defendant can understand that some might find the limitations on  
13 the duration of temporary disability benefits imposed by Labor  
14 Code §4656(c) to be unfair. However, it is not the role of the  
15 WCAB or its judges to correct that perceived unfairness by  
16 interpreting statutes in a manner contrary to what the legislature  
17 intended. If the statute is unfair, it is the job of the legislature to  
18 correct it, not the WCAB." (Petition for Reconsideration, p. 9.)

19 Applicant responds essentially that the statute is ambiguous and the legislative intent  
20 indiscernible, therefore requiring use of the "liberal construction rule" of section 3202 to adopt an  
21 interpretation beneficial to injured workers.

## 22 DISCUSSION

23 The only issue presented in this case is whether applicant's January 9 and 10, 2006  
24 surgeries fall within the meaning of "amputations,"<sup>4</sup> as used in section 4656(c)(2)(C), thereby  
25 entitling applicant to temporary disability indemnity beyond the two-year/104-week cap on  
26 temporary disability indemnity set forth in section 4656(c)(1).

27 "Our task in interpreting a statute 'is to ascertain and effectuate legislative intent.'" (*People*  
*v. Leal* (2004) 33 Cal.4th 999, 1007; see also *Nickelsberg v. Workers' Comp. Appeals Bd.* (1991)

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<sup>4</sup> We attach no meaning to the fact that the word "amputations" is plural, and we note that some of the other exceptions are also stated in their plural forms, with no apparent significance.

1 54 Cal.3d 288, 294 [56 Cal.Comp.Cases 476, 480].) “We are required to give effect to statutes  
2 ‘according to the usual, ordinary import of the language employed in framing them.’” (*DuBois v.*  
3 *Workers’ Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 388 [58 Cal.Comp.Cases 286, 289].) “In  
4 reading statutes, we are mindful that words are to be given their plain and commonsense meaning.”  
5 (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103; see also *In re Jennings*  
6 (2004) 34 Cal.4th 254, 263.) We give a statute’s words “their usual and ordinary meaning.” (*Smith*  
7 *v. Superior Court* (2006) 39 Cal.4th 77, 83; *Day v. City of Fontana* (2001) 25 Cal.4th 268, 272.)

8 Defendant urges us to reject the WCJ’s broad definition of amputation. Our decision  
9 involves more, however, than choosing between definitions, characterized as broad or narrow by  
10 the measure of body parts included. The WCJ relied primarily on the definition “to cut off,  
11 especially by surgery.” She said, “I specifically found that, in this case, the term referred to  
12 ‘removal by surgery of a part of body.’” (Report, p. 4.) Thus, the WCJ chose a definition which  
13 was helpful in resolving this case but which would exclude, since it would not involve surgery,  
14 loss of a limb as the direct result of an industrial injury. The Legislature undoubtedly intended to  
15 include this latter type of injury within the amputation exception. Without excluding the  
16 possibility of an amputation during surgical treatment of an industrial injury, we must interpret the  
17 term generally enough to include non-surgical loss arising out of and in the course of employment.

18 There are many different dictionary definitions of “amputate” and “amputation.” A few  
19 examples are:

20 “The cutting off of a limb or part of a limb, the breast, or other  
21 projecting part.” (*Stedman’s Medical Dictionary*, 27th Edition,  
22 2000.)

23 “To cut off (a projecting body part), especially by surgery.”  
24 (*American Heritage Dictionary of the English Language*, 4<sup>th</sup>  
25 Edition, 2006.)

26 “The surgical removal, by cutting, of a part of the body, as an ear  
27 or a breast, but especially of a limb, or a part thereof. The term  
also applies to the separation of a part or a limb from the body by

1 accidental means, or by a morbid process, as in ainhum.”  
2 (*Attorney’s Dictionary of Medicine and Word Finder*, 1990.)

3 “Removal of a limb, body part, or organ, usually as a result of  
4 surgery but occasionally due to trauma.” (*Taber’s Cyclopedic  
5 Medical Dictionary*, Edition 20, 2005.)

6 “The removal of a limb, part of a limb, or other body appendage.”  
7 (*International Dictionary of Medicine and Biology*, 1986.)

8 “to cut off (an arm, leg, etc.), esp. by surgery.” (*Webster’s New  
9 World Dictionary of American English*, 1988.)

10 “cut off from an animal body (some part, esp. a limb because of  
11 injury or disease). (*The New Shorter Oxford English Dictionary*,  
12 1993.)

13 “cut off (a limb), typically by surgical operation.” (*The New  
14 Oxford American Dictionary*, 2<sup>nd</sup> edition, 2005.)

15 “the removal of a limb or other appendage or outgrowth of the  
16 body.” (*Dorland’s Illustrated Medical Dictionary*, 2003.)

17 Dictionary definitions provide us some limited assistance, but we are guided primarily by  
18 the mandate to give words “their plain and commonsense meaning” and their “usual and ordinary  
19 meaning.” In ordinary usage, the word “amputation” nearly always refers to a limb, or a part of a  
20 limb, including digits. This usage is reflected in most definitions, either directly or in an  
21 explanatory clause modifying a more general definition. Although we are not bound by dictionary  
22 definitions, we find considerable support in dictionaries for the commonsense and ordinary  
23 meaning of “amputation.” Defining amputation as the severance or removal of a limb, part of a  
24 limb, or other body appendage comports with the ordinary meaning, and includes the range of  
25 potentially compensable scenarios, including both traumatic loss of a body part in an industrial  
26 injury and surgical removal during treatment. This definition conforms to our understanding of the  
27 common meaning of the term “amputation,” which encompasses external projecting body parts,  
not internal parts, even if they include bone. It is also consistent with the definitions in the  
*International Dictionary of Medicine and Biology*, *Dorland’s Illustrated Medical Dictionary*, and  
*Stedman’s Medical Dictionary*. To the extent that some definitions refer to organs, appear to

1 encompass all body parts, or include an equivocal “etc.,” we reject them or interpret them in a  
2 manner consistent with our understanding of the term “amputation.”

3 Applicant correctly points out the immateriality of defendant’s arguments that applicant’s  
4 condition is not sufficiently “serious” or “severe” enough to fall within a section 4656(c)(2)  
5 exception. While a persuasive argument can be made that the Legislature intended to create  
6 exceptions for serious conditions, the section does not mention seriousness as a criterion and  
7 certainly does not contain an additional subdivision for “other equally serious conditions.” It is  
8 thus unnecessary for us to decide how “serious” applicant’s condition is. Applicant observes that  
9 the list of exceptions includes conditions that might not always entail extremely severe injuries or  
10 impairment. Applicant argues, for example, that one can imagine someone with chemical burns to  
11 the eyes who might have a shorter period of disability than someone who has undergone back  
12 surgery, or “a person with chronic Hepatitis C that is quiescent and controlled by medication.”  
13 (Applicant’s Answer to Defendant’s Petition for Reconsideration, p. 5.) Applicant’s argument  
14 evokes many issues that need not be addressed at this time, including, for example, the meaning of  
15 “Acute and chronic” in section 4656(c)(2)(A) and (B); and it minimizes the obvious fact that  
16 anyone claiming the benefit of a section 4656(c)(2) exception will have already sustained lengthy  
17 temporary disability. In any event, that the list of exceptions is susceptible to charges of both over-  
18 inclusiveness and under-inclusiveness does not give us liberty to rewrite it.

19 Just as the issue of seriousness of the condition is immaterial in interpreting this code  
20 section, so too is the related issue of fairness. We do not question the WCJ’s determination that  
21 applicant is unable to return to work and requires additional time to recuperate from his surgeries,  
22 or that other, possibly less disabled, workers might fall within an exception to the two-year/104-  
23 week cap. Nevertheless, it is our function to interpret the statute, as enacted by the Legislature, not  
24 to use the guise of interpretation to amend it to our tastes.

25 Finally, we address the WCJ’s reliance on the rule of liberal construction.<sup>5</sup> “As with other

26 <sup>5</sup> Labor Code section 3202 provides, “This division and Division 5 (commencing with Section 6300) shall be liberally  
27 construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course  
of their employment.”

1 workers' compensation provisions, statutes regarding temporary disability are construed liberally in  
2 favor of granting benefits to injured workers. Even a liberal interpretation, however, will not  
3 extend temporary disability benefits where they are not authorized." (*Signature Fruit Company v.*  
4 *Workers' Comp. Appeals Bd. (Ochoa)*, *supra*, 71 Cal.Comp.Cases 1044, 1047.) (Citations omitted.)

5 "The fundamental rule of statutory construction is to ascertain and  
6 effectuate the intent of the Legislature in enacting the statute. We  
7 construe the workers' compensation scheme as a whole and  
8 consider the words used in their usual, commonsense meaning. We liberally construe all aspects of workers' compensation law in  
9 favor of the injured worker. [T]he 'so-called "liberality rule,"'  
10 however, (which is found in section 3202) 'cannot supplant the  
11 intent of the Legislature as expressed in a particular statute.' If the  
12 Legislature's intent appears from the language and context of the  
13 relevant statutory provisions, then we must effectuate that intent,  
14 'even though the particular statutory language "is contrary to the  
15 basic policy of the [workers' compensation law].'" (*Kopping v.*  
16 *Workers' Comp. Appeals Bd.* (2006) 142 Cal.App.4<sup>th</sup> [71  
17 Cal.Comp.Cases 1229, 1233.] (Citations omitted.)

18 Our task in this case is to determine what the Legislature meant by the word "amputations"  
19 in section 4656(c)(2)(C). Applicant's surgeries either constitute an amputation or they do not.  
20 Because we interpret the language according to its commonsense and ordinary meaning, we will  
21 reverse the WCJ's determination that applicant's surgical removal of internal, non-projecting body  
22 parts constitutes an amputation. We will amend the April 4, 2007 Findings and Award to find that  
23 applicant's spinal surgeries do not constitute an amputation and that applicant is not entitled to  
24 additional temporary disability indemnity, and we will return the matter to the trial level for further  
25 proceedings and decision by the WCJ on all remaining issues.

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**CRUZ, Paul**



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For the foregoing reasons,

**IT IS ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the April 4, 2007 Findings and Award, is **AFFIRMED, EXCEPT** that it is **AMENDED**, as follows:

**FINDINGS OF FACT** Nos. 7 and 9 are amended as set forth below:

7. The surgeries performed on 1/9/06 and 1/10/06 do not constitute an amputation pursuant to Labor Code section 4656(c)(2)(C); therefore, applicant is not entitled to additional temporary disability indemnity.

9. There are no funds from which to award a fee for applicant's attorney.

The **AWARD** is amended as set forth below:

AWARD is made in favor of the applicant, PAUL CRUZ, and against MERCEDES-BENZ OF SAN FRANCISCO, insured by AUTO DEALERS COMPENSATION OF CALIFORNIA, administered by INTERCARE INSURANCE SERVICES, as follows:

(a) Medical treatment as set forth in Findings of Fact No.8.

(b) All other issues are DEFERRED.

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1 **IT IS FURTHER ORDERED** that this matter is **RETURNED** to the trial level for further  
2 proceedings and decision by the WCJ, consistent with this opinion.

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4 **WORKERS' COMPENSATION APPEALS BOARD**

5 /s/ Joseph M. Miller

6 **JOSEPH M. MILLER, Chairman**

7 /s/ William K. O'Brien

8 **WILLIAM K. O'BRIEN, Commissioner**

9 /s/ James C. Cuneo

10 **JAMES C. CUNEO, Commissioner**

11 /s/ Janice Jamison Murray

12 **JANICE JAMISON MURRAY, Commissioner**

13 /s/ Frank M. Brass

14 **FRANK M. BRASS, Commissioner**

15 /s/ Alfonso J. Moresi

16 **ALFONSO J. MORESI, Commissioner**

17 **I CONCUR (See Attached Concurring Opinion)**

18 /s/ Ronnie G. Caplane

19 **RONNIE G. CAPLANE, Commissioner**

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21 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

22 SEP 05 2007

23 **SERVICE MADE BY MAIL ON ABOVE DATE ON THE PERSONS LISTED BELOW AT  
24 THEIR ADDRESSES AS SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD:**

24 *Kurlander & Burton*  
25 *Mullen & Filippi*

26 **CB/bea**

27 **CRUZ, Paul**

1 **CONCURRING OPINION OF COMMISSIONER CAPLANE**

2 I concur with my fellow commissioners' definition of amputation but write separately to  
3 state my belief that Labor Code section 4656's two-year/104-week cap on temporary disability  
4 indemnity is unreasonable and unjust, and that the exceptions do not adequately or fairly mitigate  
5 its impact. I share the majority's view that the amputation exception applies only to the loss of a  
6 projecting body part, as opposed to an internal part. I recognize that the Appeals Board's task is to  
7 interpret statutes, not to write them. I feel compelled, however, to express my concern that injured  
8 workers are sorted, based on the random nature of their injuries and without regard to relative need,  
9 and, on that basis, are either entitled to or denied extended temporary disability benefits during  
10 their ongoing recovery.

11 "The purpose of temporary disability indemnity is to provide interim wage replacement  
12 assistance to an injured worker during the period he or she is healing." (*Gamble v. Workers'*  
13 *Comp. Appeals Bd.* (2006) 143 Cal.App.4th 71, 79 [71 Cal.Comp.Cases 1015, 1017].) In this case,  
14 applicant is not yet healed but is ineligible to receive indemnity payments because of the two-  
15 year/104-week cap. From this limitation, the Legislature has carved out exceptions for specified  
16 injuries or conditions, while leaving other equally devastating conditions, such as traumatic brain  
17 injuries or failed back syndrome, subject to the cap. There is no rational basis for this disparate  
18 treatment of equally serious injuries.

19 Although he dissented from our holding in *Hawkins v. Amberwood Products* (2007) 72  
20 Cal.Comp.Cases 807 (Appeals Board en banc), Commissioner Brass expressed the following  
21 sentiment, which I share:

22 "The Legislature's goal of reducing workers' compensation costs is  
23 laudable. However, I am troubled by the draconian swing from  
24 unlimited temporary total disability indemnity to the new limit of  
25 104 weeks within two years. **The anticipated savings in  
26 establishing this limit will result from the termination of  
27 payments to those injured workers who are most in need of it  
because of extended periods of temporary disability.**" (*Id.*, at p.  
822, dis. opn., fn. 5.) (Emphasis added.)

1 Underlying the arguments for a liberal interpretation of the exceptions to the cap is the real  
2 issue — the medical and financial impact of the cap on injured workers. Amendment of section  
3 4656 cannot cause workers to recover faster. It can, however, cause workers to return to work  
4 prematurely, thus courting further injury. If injured workers, temporarily disabled beyond the cap,  
5 are unable to return to work, the burden of their financial support will shift from those responsible,  
6 the employer and the employer’s insurance carrier, to the workers’ families and the taxpayers.  
7 Furthermore, in some cases, medical treatment may be driven by the limitation, i.e. awareness of  
8 the impending cap may encourage surgeries before exhaustion of less risky, intrusive, and  
9 expensive treatments.

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1 I am reminded of the words of Justice Mosk in his concurring opinion in *State*  
2 *Compensation Insurance Fund v. Workers' Comp. Appeals Bd. (Meier)* (1985) 40 Cal.App.3d 5  
3 [50 Cal.Comp.Cases 562], a case involving an unlicensed contractor's status as an employee of his  
4 hirer. Concerned over the "element of unfairness in denying the defense of independent contractor  
5 to hirers solely on the basis that the worker was required to be, but was not, licensed," Justice  
6 Mosk stated,

7 "Because the unfairness involved in the dissimilar treatment...does  
8 not appear to be of constitutional dimension, the remedy must  
9 come, if at all, from the hands of the Legislature....What form  
10 legislation should take is not this court's responsibility. But I hope  
11 that once the Legislature is apprised of the problem, it will take  
12 appropriate steps necessary to cure it." (*Id.*, at p. 572.)

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16 ***WORKERS' COMPENSATION APPEALS BOARD***

17 */s/ Ronnie G. Caplane*

18 ***RONNIE G. CAPLANE, Commissioner***

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22 ***DATED AND FILED AT SAN FRANCISCO, CALIFORNIA***

23 SEP 05 2007

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25 ***SERVICE MADE BY MAIL ON ABOVE DATE ON THE PERSONS LISTED BELOW AT  
26 THEIR ADDRESSES AS SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD:***

27  
*Kurlander & Burton*  
*Mullen & Filippi*

***CB/bea***

**CRUZ, Paul**