

Chartwell Attorneys Kris Kachline and Cliff Goldstein Argue First Act 46 Case to the Commonwealth Court and Win a Reversal of Award of Benefits

Act 46, signed into law in 2011, provides that firefighters with cancer are entitled to a presumption that any cancer is work-related. Although at a gut level this presumption may seem logical, Kachline and Goldstein have assembled a massive library of scientific information and expert opinions demonstrating that overall, firefighters are at no greater risk for most cancers than the population generally. Despite the statutory presumption of causation, Kachline and Goldstein have won more than 35 Act 46 cases and have saved Chartwell clients more than \$15 million in benefits payments to date.

Scores of Act 46 cases are on appeal on a variety of legal issues including constitutional challenges. The first appellate decision of the Commonwealth Court of Pennsylvania in an Act 46 case was issued on July 18, 2016 in the case of City of Williamsport v. WCAB (Cole), 620 C.D. 2015.

Cole was a firefighter for the City of Williamsport and he died of stomach cancer. The case was litigated by another defense firm. Cole's expert, Dr. Gelfand, testified that decedent's cancer was the result of exposures on the job, and particularly, exposure to asbestos. The City presented an expert who attributed decedent's stomach cancer to factors including a history of acid reflux disease, smoking, obesity, and who denied that there was any proven relationship between stomach cancer and asbestos. Dr. Gelfand's testimony was accepted, and the Judge awarded over \$215,000 of back benefits, and ongoing benefits likely to exceed \$1 million. The case was then directed to Chartwell for a determination of whether an appeal should be pursued. Generally, in workers' compensation matters, if a Judge believes the claimant's expert, there is little opportunity for success on appeal.

Kachline and Goldstein recommended appealing on two very specific issues. One was whether claimant had an obligation under the new law to allege direct exposure to a specific carcinogen, as opposed to "generic" exposures which a firefighter might encounter, and if so, whether claimant presented adequate proof of a cancer related to such specified carcinogen. The other issue appealed was whether Dr. Gelfand violated Pennsylvania Rule of Evidence 702 and the holding of the Frye v. U.S. by failing to rely on a generally accepted scientific methodology in reaching his novel conclusions about causation of stomach cancer. It is extremely rare that a "Frye" challenge is raised in a workers' compensation action, but Kachline and Goldstein have been pressing for application of the rule, intended to eliminate "junk science" from evidence. There is considerable controversy as to whether stomach cancer is ever related to firefighting, let alone related to asbestos exposure while firefighting.

The WCAB affirmed the award of benefits, but the Commonwealth Court reversed the Board and the Judge. The Court held that the evidence submitted to the WCJ was insufficient to prove that the Decedent was exposed to asbestos while working and the doctor's "general knowledge" about the exposures of firefighters was no substitute for proof of actual direct exposure to a known carcinogen. The Court held that Claimant was required to prove that Decedent was directly exposed to asbestos in the course his employment and failed to do so. Because the City prevailed on this issue, the Frye issue was not addressed, but is being pressed forward by Chartwell in other pending appeals.

For more information about Act 46 defense and defense of other cancer claims, contact Kris Kachline at 610 666 7700 or kkachline@chartwelllaw.com

