

## Chartwell Wins Reversal of Large Workers' Compensation Award Based on Constitutional Challenge

Thomas Haines was a career firefighter for the City of Warren, PA. The last time he was at a fire scene was December 25, 2002. He died of colon cancer on August 18, 2009. His widow filed two Claim Petitions seeking workers compensation benefits: one for lifetime benefits and seeking over \$400,000 in medical expense reimbursement, and one seeking death benefits. Both petitions sought benefits for the cancer as an occupational disease, as defined by Sections 108(r) and 301(f) of the Pennsylvania Workers' Compensation Act, which were added to the Act by Act 46 of 2011. Act 46 added cancer in firefighters as an enumerated occupational disease, carrying with the occupational disease designation a presumption that cancer is work-related. Act 46 extended from the time for filing a claim from 300 to 600 weeks from last date of relevant exposure to a particular set of carcinogens.

In addition to legal challenges to the competency of claimant's medical expert's testimony pursuant to Frye v

At the trial level, the Judge denied the lifetime Claim Petition, but granted the Fatal Claim Petition, and the Decision was affirmed on appeal to the Workers' Compensation Appeal Board. Mrs. Haines was paid death benefits retroactive to August of 2009, totaling just over \$200,000 as of the date of the WCAB's Decision, as well as ongoing benefits of over \$26,000 per year.

Chartwell took an appeal to the Commonwealth Court, arguing that the law at the time of Mr. Haines' last date of employment and at the time of his death would act as a bar to any potential claim for benefits because the 300-week statute of repose had run. A claim for benefits made pursuant to the sections added by Act 46 of 2011, which extended the statute of repose from 300 weeks to 600 weeks, could not be applied retroactively to revive an already extinguished claim. Raising both constitutional and statutory construction issues, the case was argued by Kristopher Kachline to the full Commonwealth Court *en banc*.

On March 9, 2017, the Commonwealth Court issued a unanimous published Opinion accepting Chartwell's constitutional arguments and ruling that retroactive application of Act 46 would be a violation of the City's constitutional right to an accrued defense. As such, the Court ruled that the Fatal Claim Petition was not timely filed. The award was reversed in its entirety, not only sparing the City of Warren enormous exposure for on-going benefits (roughly \$26,768 per year for the rest of Claimant's life), but also allowing the City to seek reimbursement of over \$200,000 in benefits already paid.

This case is one of the many won by the Chartwell team of Kristopher Kachline and Cliff Goldstein, saving Chartwell's clients over \$30,000,000 and setting precedent in a string of favorable appellate decisions. Chartwell is now reaching out to employers and carriers in other states to demonstrate how an employer can prevail, even against the natural sympathy for firefighters, a gut-level, but erroneous, belief that firefighters have a higher incidence of cancer than workers in other occupations, and a presumption of causation, which is the hallmark of similar firefighter legislation in many states.

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