

Chartwell Law Attorneys Argue Against The Retroactive Application of the Protz Opinion

Pennsylvania's workers' compensation system is still reeling from Supreme Court of Pennsylvania's Opinion in *Protz v. Derry* which held the IRE provisions of the Act are unconstitutional and unenforceable. Claimants' attorneys have now begun filing reinstatement petitions based upon the Protz Opinion. Consequently, employers and insurers must now struggle with questions about the retroactive application of the Opinion to cases on appeal, cases within the 500 weeks post-IRE, and even post-IRE cases where claimants are no longer receiving benefits.

On December 6, 2017, Chartwell Law attorneys Steve Fireoved and Barak Kassutto appeared for oral argument before the Commonwealth Court of Pennsylvania to argue against the retroactive application of the Protz Opinion. The case before the court concerned a reinstatement petition filed by a claimant which was pending on appeal when the Supreme Court of Pennsylvania issued the Protz Opinion. The Commonwealth Court requested Chartwell Law's attorneys to submit supplemental briefs addressing the retroactive application of the Protz Opinion and the oral argument was held before the Commonwealth Court *en banc*, before a full panel of Judges.

Chartwell Law attorneys argued strongly against retroactive application because claimant had waived the issue, failed to "raise and preserve it" during a prior appeal, it was barred by the doctrine of administrative finality, and because retroactive application would violate the Pennsylvania constitutional right to due course of law. The Court received these arguments well and seemed to focus on the issue of waiver.

Chartwell Law is active in the litigation surrounding the Protz Opinion and is fully engaged in the ongoing dispute concerning its potential retroactive application. We will keep our clients updated on these matters as the cases progress. We're happy to field any questions you may have about this issue and how these cases should be handled at trial and on appeal.