

CHARTWELL WINS ANOTHER SIGNIFICANT ACT 46 CASE

September 2015

Act 46 of 2011 provides Pennsylvania firefighters, both career and volunteer, with a rebuttable presumption that any cancer they develop is caused by firefighting. Like in other states across the country, the Pennsylvania General Assembly singled out firefighters as a protected class of workers and provided them a new cause of action against their employers. Unlike other states, however, the Pennsylvania statute does not limit the presumption of causation to specified cancers and does not provide for exceptions to the presumption based on age, smoking history, or other causative factors. The overly broad presumption statute led to the filing of hundreds of Act 46 claims in Pennsylvania in the last four years, many of which sought benefits for cancers that are simply not related to firefighting.

Chartwell developed a plethora of strategies to defend against Act 46 claims, ranging from legal defenses to the triggering of the presumption to challenging the “junk science” used to support the erroneous notion that firefighting causes all cancers. Despite the presumption of causation and the natural sympathies that flow to firefighters and their dependents, Chartwell has won dozens of Act 46 cases and settled others for a fraction of total exposure.

On August 28, 2015, Kristopher Kachline of the Valley Forge office of the Chartwell Law Offices received a defense decision from a Workers’ Compensation Judge in a significant case. The claimant, a widow of firefighter who died of pancreatic cancer at age 43, filed lifetime and fatal Claim Petition against the volunteer fire company of which the decedent was a member. Had the claimant prevailed, the total exposure to the municipality, the fire department, and its insurer exceeded \$1,500,000.00.

Mr. Kachline presented medical evidence from world-renowned pancreatic cancer researcher, Albert Lowenfels, M.D., who testified that decedent’s cancer was not a result of his volunteer firefighter duties or exposure to carcinogens encountered while volunteering as a firefighter. Along with the strong expert medical opinion, Mr. Kachline presented several procedural defenses to the claims, including an argument regarding the method of proving exposure to carcinogens required in an Act 46 claim filed by a volunteer firefighter.

In his Decision, the WCJ agreed with Mr. Kachline’s reading of the Act 46 and held that a volunteer firefighter is required to present specific evidence establishing exposure to carcinogen identified on a statewide fire reporting system that documents fire responses by volunteer fire companies. As a result of the claimant’s failure to offer such evidence, the WCJ held that the claims could not proceed as Act 46 claims. The claimant also filed her petitions as “regular” occupational disease claims pursuant Section 108(n). With regard to these claims, the WCJ accepted Dr. Lowenfels testimony as credible and persuasive and therefore held that pancreatic cancer is not casually related to working as a firefighter or to the occupational exposure to carcinogens that a firefighter may encounter.

For more information about Chartwell and the defense of Act 46 cases, please contact Kristopher Kachline at (610) 666-8418.