

Resolutions Possible After Landmark *Protz* Decision

■ By Regina M. Parker

IS IT POSSIBLE TO LIMIT EXPOSURE IN workers' compensation claims following the June 20, 2017 Supreme Court of Pennsylvania's ruling in *Protz v. Workers' Compensation Appeal Board* (Derry Area School District)? This question was answered in the affirmative during the Philadelphia Bar Association CLE hosted by the Workers' Compensation Section titled "Reaching Reasonable Resolutions in the Absence of Impairment Rating Caps" on Nov. 17. The panel included Matthew B. Essingler, associate at The Chartwell Law Offices, LLP, and Frank J. Udinson, associate at Martin Law LLC.

For 21 years, the Pennsylvania Workers' Compensation Act provided the means in which employers could limit a claimant's benefits to 500 weeks by requiring a claimant to submit to an impairment rating evaluation after 104 weeks of compensation benefits. Employers have utilized the impairment rating process to modify a claimant's disability status from total to partial, thus capping the receipt of indemnity benefits at 500 weeks. The panel explained that this 500 week clock was a helpful tool utilized by both claimants and employers in evaluating cases for the possibility of settlement and determining future value of claims.

In light of the June 20 decision in

Protz, the impairment rating process is no longer a viable option. The decision struck down the impairment rating process as unconstitutional. The panel agreed that the decision potentially took away the incentive to settle, and that it will be more challenging to evaluate claims after *Protz*. Claimants now have more leverage than the employers, Udinson said. He said that without a cut-off point in the receipt of benefits, it could lead to an unrealistic value of cases. Udinson pointed out that we are seeing higher settlement demands because we are now dealing with the possibility of lifetime claims.

However, Essingler said that there is still hope for the employer. He noted that

there are other methods and strategies that can be utilized in order to get the clock running on a claimant's receipt of benefits. Several viable options include performing Labor Market Surveys, funded employment and independent medical evaluations for termination of benefits or a work release. The panel agreed that following the *Protz* decision, we can expect to see more job offers, more people back to work and more suspensions. These approaches will aid in determining future value of claims.

The panel explained that following *Protz*, we have seen the parties argue for and against retroactivity. The decision
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was silent on this issue. We have also seen employers present argument that claimant's have not properly preserved the constitutional challenge to the impairment rating process or modification of benefits. Claimants, of course, present argument to the contrary, the panelists said. These arguments are applied on a case by case basis, and there remain many uncertainties in the law. The panel said that these ambiguities in the law are incentives to encourage settlement.

The panel concluded by talking about the recently introduced Pennsylvania House Bill 1840 that will essentially

reinstate the impairment process. It says that the impairment rating process itself was not unconstitutional. Rather, the way the act provided for updates involving the standards was unconstitutional. If this house bill is enacted, the retroactive question becomes a moot point.

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