

Pennsylvania Supreme Court to Review Constitutionality of Using 6th Edition of the AMA Guides in IREs

By: Sandra Niemotka and Max Kimbrough

Workers' Compensation Alert

3.24.16

In *Protz v. WCAB (Derry Area School District)*, the Commonwealth Court ruled that the use of the current 6th Edition of the American Medical Association's (AMA) Guides to the Evaluation of Permanent Impairment is unconstitutional. Read our alert on this ruling for more background and information.

Given the importance of this ruling, which upended years of accepted workers' compensation practice and understanding, it was not surprising that an appeal was made to the Pennsylvania Supreme Court for a final decision.

The Supreme Court has now accepted appeals from both the underlying Claimant and Employer. The first of which, filed by the Employer, Derry Area School District, seeks to overturn the Commonwealth Court's decision. The Court will address whether or not Section 306(a.2) of the Pennsylvania Workers' Compensation Act unconstitutionally delegates the Pennsylvania legislature's lawmaking authority, in violation of the Pennsylvania Constitution, by incorporating the most recent edition of the AMA Guides for Impairment Rating Evaluations (IREs).

From a practical standpoint, this will resolve the question of whether or not IRE Physicians may continue to use the most current edition of the AMA Guides (currently the 6th Edition) when conducting IREs, or if IRE physicians must evaluate a claimant's impairment using the 4th Edition, which was the "most current edition" at the time that Section 306(a.2) of the Act was enacted.

Second, the Court accepted the appeal filed by the Claimant, Mary Ann Protz, who seeks to overturn the Commonwealth Court's ruling that her impairment should be evaluated using the 4th Edition of the AMA Guides. Since it was the "most current edition" at the time that Section 306(a.2) was enacted, the Commonwealth Court ruled that the 4th Edition should be used for evaluating Claimant's impairment. However, Claimant asserts that *no* edition of the AMA Guides may be used, based on the fact that Section 306(a.2) does not specifically reference the 4th Edition, but rather only the "most current edition" of the AMA Guides.

From a practical standpoint, if the Supreme Court finds in Claimant's favor on her appeal, it could essentially eliminate IREs as a method for employers to limit exposure on claims.

In the coming months, the Court will schedule oral argument, accept briefs, and render a final decision on these issues. Stay tuned for further updates as the case develops.

For questions or further information, please contact Sandra Niemotka (215.864.6338; niemotkas@whiteandwilliams.com) or another member of the Workers' Compensation Group.

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only and you are urged to consult a lawyer concerning your own situation and legal questions.