
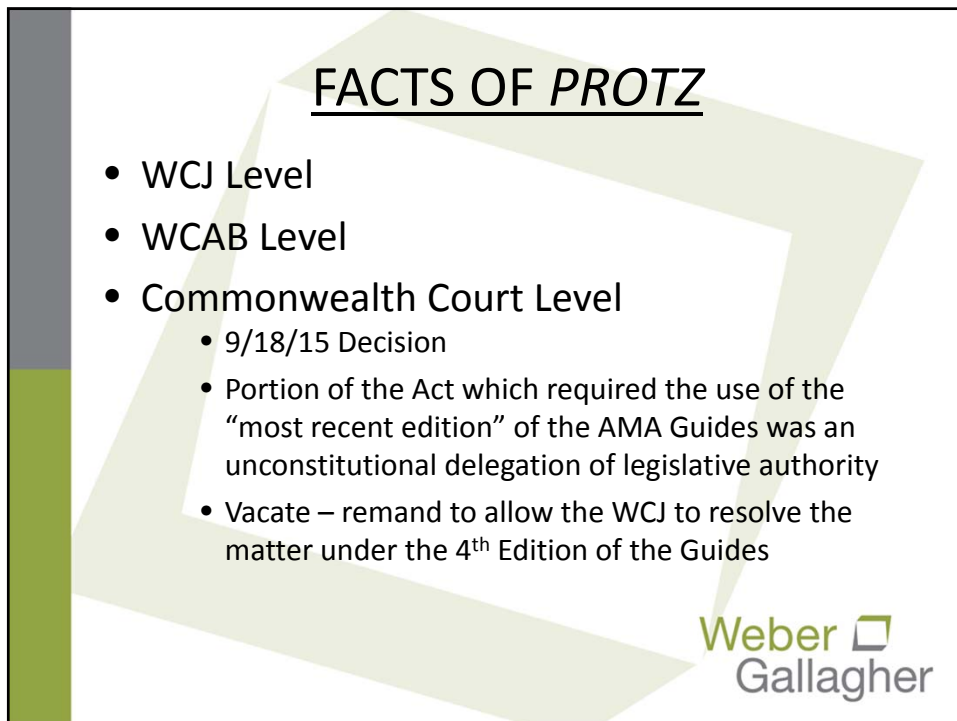


PROTZ:
Where Do We Go From Here?

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FACTS OF *PROTZ*

- WCJ Level
- WCAB Level
- Commonwealth Court Level
 - 9/18/15 Decision
 - Portion of the Act which required the use of the “most recent edition” of the AMA Guides was an unconstitutional delegation of legislative authority
 - Vacate – remand to allow the WCJ to resolve the matter under the 4th Edition of the Guides

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FACTS OF *PROTZ*, con't

- Supreme Court takes appeal on March 22, 2016
- To address:
 - Constitutionality of IRE methodology using 6th Edition of AMA Guides
 - Constitutionality of the IRE System using any version of the AMA Guides

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FACTS OF *PROTZ*, con't

- Supreme Court issues decision on 6/20/2017
- Holds Section 306 (a.2) is an unconstitutional delegation of legislative authority
- The entirety of Section 306(a.2) is unconstitutional
- “most recent edition” language violates the constitutional requirement that all legislative power “be vested in a General Assembly”

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FACTS OF PROTZ, con't

- *Protz* court voids the entire impairment rating system
- *Protz* court did not specify how the new rule will be applied
- 6/21/2017 Bureau of Workers' Compensation announces Bureau will no longer designate physicians to perform IREs

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WHERE DO WE GO FROM HERE?

- Void *ab initio* concept
 - What does it mean?
 - As though the law never existed
 - Big question – Retroactive application in full or in part?

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WHERE DO WE GO FROM HERE?

Category One – Pending IREs (just completed, just requested, to be requested)

- Petition to compel IREs included
- STOP/WITHDRAW
- Nothing new for now
- Explore other traditional options of reducing exposure (settlement/IME/vocational/job offers)

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WHERE DO WE GO FROM HERE?

Category Two – Cases in litigation

- Withdraw petitions before WCJ if appropriate to avoid legal expense
- Use Supplemental Agreement at WCJ level, with provision to protect employers' argument that future legislative change can be applied retroactively

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WHERE DO WE GO FROM HERE?

- For WCAB cases, Comm Ct cases and Supreme Court cases where the employer loses below and appeals -- withdraw if non-Protz issue, wait and see approach if Protz issue.
- For cases where employer wins below, claimant/employee on a partial, and claimant/employee appeals – keep them in place for now
 - Wait and see approach

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WHERE DO WE GO FROM HERE?

Category Three – “Inventory cases”

- Not in litigation cases
- Finalized cases via WCJ decision (no appeal)
 - IRE clock running
- Unchallenged Notice of Change cases or Supplemental Agreement cases
 - IRE clock running
 - Recommend wait and see approach

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WHERE DO WE GO FROM HERE?

Category Four – 500 weeks has expired < three years ago

- Gray area (*Protz* silent on retroactive applications)
- Expect petitions for Review and Reinstatement (of total disability status) by injured workers under Section 413
- Recommendation – no automatic reinstatement at this time

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WHERE DO WE GO FROM HERE?

- No automatic reinstatement because no definitive answer yet from courts
- Court are prone to surprise us (21 years to rule Section 306(a.2) unconstitutional)

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WHERE DO WE GO FROM HERE?

Category Five – 500 weeks plus three years

- All same arguments as 500 weeks
- 413(a) of the Act
- Statute of Repose which extinguishes both the right and the remedy

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WHERE DO WE GO FROM HERE?

Category Six – Settled cases

- Cases settled in the past via C&R
- Employee argues not informed about *Protz* potential lifetime claim
- Possible Petition to set aside a C&R
 - Reinstatement to TTD
- Argue waiver, *Protz* does not apply, matter cannot be re-opened

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WHERE DO WE GO FROM HERE?

- Between the employee's attorney and employee
- Not a workers' compensation situation

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