

Now Limited Protz Retroactivity in Workers Compensation Cases

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When the Pennsylvania Supreme Court declared impairment rating evaluations (IREs) to be unconstitutional in the *Protz* case, it did not say anything about whether IREs conducted before the *Protz* decision were also invalid.

The Commonwealth Court has since held that claimants can challenge the validity of IREs at any time within three years of the last payment made, but the Pennsylvania Supreme Court has not yet ratified that relatively extreme position.

Until now. Though in a more limited fashion.

In *Dana Corp. v. Workers' Compensation Appeal Board (Smuck)*, decided today, the state's highest court held that IREs pending on appeal at the time *Protz* was decided are invalid, as if they had never occurred, even if the constitutionality of the IRE was not at issue in the appeal. It is not clear how many cases will be affected by the ruling.

The Pennsylvania Supreme Court explicitly left open the question whether *Protz* should be applied retroactively to cases never appealed or to cases fully litigated before *Protz* was decided. In that sense, employers and carriers have dodged a bullet for now. However, the court expressed sympathy for the position that *Protz* did not announce a "new rule of law," suggesting that the court may in the future invalidate all IREs that occurred prior to 2017. Such a holding would surely open the floodgates to claims that most had thought were closed.

In 2018, Pennsylvania enacted a purported fix for *Protz*, and IREs conducted under the new statute then do not face the same constitutional hurdles as older IREs. The constitutionality of the new statute has not been tested.

If you have any questions about the *Dana Corp.* case or how it could affect your business, please [contact me](#) or [Michael Crocenzi](#).

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