

EMPLOYMENT SERVICES ALERT

1/2/13

Ohio Court Rules that Bureau of Workers' Compensation Overcharged Thousands of Small Employers for Premiums

A Cuyahoga County Common Pleas Court judge ruled on Friday, December 28, 2012, that the Ohio Bureau of Workers' Compensation ("BWC" or "Bureau") overcharged thousands of Ohio employers that did not qualify for membership in group rating programs from 2001 to 2008 for workers' compensation premiums during those years. The case was filed in 2007 by Corky & Lenny's, a suburban Cleveland deli, on behalf of a class that may include up to 270,000 small Ohio employers. The plaintiffs claimed that employers that were not permitted into groups organized by third-party administrators throughout the state paid excessive premiums into the BWC's state insurance fund in order to subsidize deep discounts that were offered to employers that did qualify for group membership. While the complaint initially alleged that damages to those employers could exceed \$1.7 billion, counsel for the plaintiffs conceded that the damages were actually more in the neighborhood of \$800 million. Judge Richard McMonagle gave the plaintiffs until January 28, 2013, to provide an updated estimate of the current damage figure. In a 28-page opinion, Judge McMonagle relied on the testimony of current and former BWC employees, as well as outside consulting actuaries retained by the Bureau, to reach his decision; including a current actuarial director who testified that the "BWC knew that at least by 2001 that non-group employers were paying 'excessive premiums' beyond what should have been paid." Moreover, the opinion listed numerous exhibits and witnesses that referenced the BWC admitting that its faulty group rating plan was overcharging non-group employers during the years in question.

The court determined that the Bureau had violated statutes that called for it to develop an equitable and fair rating system for employers, along with other statutes that require a reasonable way of charging workers' compensation premiums. The court also ordered the BWC to "disgorge" the excessive premiums that it collected from non-group rated employers according to a formula discussed in testimony by the plaintiffs' actuarial expert. A final order has not been issued by the court, but it is certain that the BWC will appeal the decision to the Eighth District Court of Appeals.

Should you have any questions about the ramifications of the decision and how it might affect you as an Ohio employer, please contact any of the following Roetzel attorneys:

Doug Kennedy

614.723.2004 | dkennedy@ralaw.com

Chris Debski

330.849.6717 | cdebski@ralaw.com

Doug Spiker

216.696.7125 | dspiker@ralaw.com

Alex Kipp

216.820.4204 | akipp@ralaw.com

Eric Bruestle

513.361.8292 | ebruestle@ralaw.com

Nathan Pangrace

216.615.4825 | npangrace@ralaw.com

Bob Blackham

216.615.4839 | rblackham@ralaw.com

Brian Tarian

614.723.2028 | btarian@ralaw.com

Tim Webster

216.696.7795 | twebster@ralaw.com