

Magistrate Ruling Vacates Ohio BWC Decision On 2018 Group Retrospective Refunds

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Spooner, Inc. →

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WESTLAKE, Ohio, Feb. 10, 2023 /PRNewswire/ -- On February 6, 2023, a magistrate for the Tenth District Ohio Court of Appeals ruled in favor of plaintiff Kent Elastomer Products, Inc. of Kent, Ohio, vacating a 2020 Ohio Bureau of Workers' Compensation (BWC) decision to withhold 2018 Group Retrospective program refunds from participating Ohio employers. Kent Elastomer's Third-Party Administrator (TPA) for workers' compensation, Spooner, Inc., based in Westlake, Ohio, also aided in the formal complaint process. The employer was represented by Doug Spiker of Roetzel & Andress. Together, they presented the winning argument that resulted in this unprecedented victory for Ohio employers.

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Joe Spooner, CEO of Spooner Risk Control

In response to COVID-19 and its financial impact on employers, BWC approved a dividend of \$1.6 billion to be distributed amongst Ohio employers in April 2020. Each company's share reflected 100% of their BWC premiums from 2018. BWC, a monopolistic insurer, has issued similar dividend rebates in the past - eight of them in the last nine years.

"Kent Elastomer Products is very pleased with the recent ruling of the Appellate Court," said Don Leeper, Senior Vice President of Finance, Kent Elastomer Products, Inc. "Attorney Douglas Spiker did an excellent job in interpreting the Ohio Administrative code regarding how excess premiums are handled and how the Group Retro program works. And that the rules that govern "excess premiums" do not mention or allow for modifications to the Group Retro program."

Group Retro is a rebate-based program available to Ohio employers (private and public), pooled by industry and can be refunded a portion of premiums based on lower-than-expected losses. Historically, companies receiving a dividend were still awarded their performance-based refunds from Group Retro. In April 2020, Ohio Revised Code prevented Retro refunds

from being impacted by dividends. After filing of the initial complaint alleging that BWC lacked the authority to withhold Retro refunds – BWC then changed the Revised Code, granting themselves the authority. This was a key point in the argument that BWC's decision to withhold Retro refunds was unsanctioned and unjustified.

This decision may impact all 2018 Group Retro participants, not just Kent Elastomer and other Spooner clients. The total pool of Group Retro dollars that could be received by participating employers is estimated at \$244 million. BWC can still appeal the decision, so the refunds are not guaranteed at this time. Spooner hopes that BWC chooses to comply and return the funds owed to Ohio employers.

Joe Spooner is the CEO of Spooner Risk Control. "We knew we could win if the magistrate stuck to the law," he said. "This was the right thing to do for employers, which has always been one of our guiding principles. It was frustrating that our competitors had no interest in joining the fight. We tried, but the majority of TPAs felt that employers had already received enough money from the state."

For more information or to make inquiries, contact Spooner, Inc., at 440-249-5260 or info@spoonerinc.com. Additional details on the missing refunds can be found at <http://bit.ly/3x5R16s>.

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