

EMPLOYMENT SERVICES ALERT

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Appellate Court Agrees Bureau of Workers' Compensation's Group-Rating Plan was Unlawful, but Remands to Lower Court to Review Damages

By *Nathan Pangrace*

An appellate court has ruled that the Ohio Bureau of Workers' Compensation ("BWC") violated Ohio law by developing and maintaining an unlawful rating system under which excessive premium discounts were given to group-rated employers at the expense of nongroup-rated employers. In an opinion issued on May 15, 2014, the Eighth District Court of Appeals affirmed the trial court's decision ordering the BWC to refund the overcharges it unlawfully collected from nongroup-rated employers, but remanded the case for recalculation of the refund amount.

The litigation began in 2007 when a group of Ohio employers brought a class action lawsuit against the BWC alleging that its group-rating plan gave group-rated employers excessive discounts off their workers' compensation premiums, which were subsidized by charging nongroup-rated employers inflated base premium rates. The plaintiffs alleged the group-rating plan exceeded the BWC's rulemaking authority and unjustly enriched the BWC at the plaintiffs' expense. The court granted class certification and an injunction restraining the BWC from using its prospective group-rating plan. Following a bench trial, the trial court held in favor of the class members and awarded approximately \$860 million in restitution.

Both parties appealed. The Eighth District agreed the BWC violated its ratemaking authority when it knowingly maintained an inequitable rating system that resulted in excessive premium payments by nongroup-rated employees. The court noted that the BWC admitted, both publicly and privately, that rates paid by nongroup-rated employers were inflated and resulted in premium inequity. The court also agreed the BWC was unjustly enriched by the premium overcharges it received from class members who were nongroup-rated during the class period from 2001-2008 and that the class members were entitled to restitution.

However, the Eighth District held the trial court failed to account for class members who migrated between nongroup and group-ratings during the class period. Therefore, it remanded the case back to the trial court to recalculate the restitution for class members who were group-rated during part of the class period by including an offset for the subsidies those class members received during the years that they were group-rated.

Roetzel & Andress will continue to closely monitor this case as it heads back to the trial court. In keeping with its mandate, we expect the trial court to significantly reduce its original \$860 million restitution award. Reimbursement of any premium overcharges will be paid from the state insurance fund. Previously the Bureau has indicated this will not impact the solvency of the fund. As the award is not yet final, the court has not approved a plan for class members to submit a claim and receive a portion of the award.

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