

OHIO WORKERS' COMPENSATION CLASS ACTION NOTICE: SHOULD YOU STAY IN OR OPT OUT?

Insights

Jan 5, 2012

A class action lawsuit is currently pending in the Court of Common Pleas for Cuyahoga County, Ohio, on behalf of certain employers doing business in Ohio. The case alleges that the Bureau of Workers' Compensation (BWC) charged excessive workers' compensation premium rates to employers who were not able to participate in Ohio's group rating program (referred to as "non-group-rated").

The companies' allegation in this action is that group-rated employers – those who participated in the BWC's group rating program – paid inappropriately low premiums, and that because group rating was a "revenue neutral" program, non-group rated employers paid higher premiums to compensate for the difference. *San Allen, Inc., et al. vs. Stephen Buehrer, Administrator of the Ohio BWC.*

The seven named plaintiff employers are seeking compensation from the BWC on behalf of all class members. The class includes employers who were not group-rated and paid workers' compensation premiums to the BWC for **any policy year** from July 1, 2001 through and including policy year July 1, 2008.

The BWC denies that it owes money to the class and denies that its rating system for workers' compensation premiums was prejudicial to non-group rated members. The court certified the class, which means that any employer that paid premiums to BWC on a non-group-rated basis during any one or more of the policy years in question is automatically part of the class. Notice of this pending lawsuit is currently being sent to potential class members. As with any class action lawsuit, any class member can choose to stay in the class or to drop out.

A class-member employer does not need to file any paperwork to stay in the class. However, an employer who remains in the class will not be able to bring its own case

regarding the issues in the lawsuit and will be bound by the outcome of the lawsuit. A class-member employer may choose to drop out of the class, but must file a Notice of Exclusion with the court and counsel by February 29, 2012. By dropping out of the class, an employer reserves the right to bring its own suit against the BWC, but will not be permitted to participate in or receive benefits from the pending lawsuit.

We have received numerous calls from clients seeking advice on whether or not to stay in or drop out of the class. While each employer's decision must be considered separately, in general the primary reason to opt out would be to pursue your own recovery rather than a your pro-rata share of the potential award. The decision to opt out and hire independent counsel depends largely on the money at stake, as well as the size and resources of the company. For the majority of employers, we advise that staying in the class would be the most beneficial option.

If you wish to discuss your own company's rights and options, please feel free to contact any one of our workers' compensation attorneys in the Cleveland office at (440) 838-8800.

This Legal Alert provides an overview of a specific pending lawsuit. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.