

## COURT RULES THAT OHIO BUREAU OF WORKERS' COMPENSATION OVERCHARGED NON-GROUP RATED EMPLOYERS

Insights

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After a long bench trial which began on August 20, 2012, Judge Richard McMonagle recently issued his decision in an important class-action lawsuit. The suit was brought on behalf of certain employers doing business in Ohio, and alleged 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 class includes employers who were not group-rated and who paid workers' compensation premiums to the BWC for any policy year from July 1, 2001 through and including policy year July 1, 2008. *San Allen v. Buehrer, Administrator, Ohio Bureau of Workers' Compensation*.

### Details Still To Come

In its decision, the Cuyahoga County court of Common Pleas found the BWC implemented a group rating system which overcharged premiums to non-group rated employers in violation of Ohio law governing calculation of premiums. In light of the court's findings that the BWC charged excessive and unreasonable premiums to non-group rated class members, it ordered the BWC to "disgorge" the excessive premiums collected from the non-group rated class members.

The court also held that restitution would be calculated based upon the formula created by the class members' expert. However, the Court refused to award pre-judgment interest to the class members on the overpaid premiums.

Based upon the expert's formula, the final amount of damages awarded is likely in the \$750,000,000 to \$1 Billion range. But the court refrained from issuing any final determination on the amount of restitution pending a final report from class

members' expert. Further, the BWC has until the end of February 2013 to file objections to the expert's figure or method of calculation, and the court has scheduled a final hearing in March 2013 to discuss the issue of restitution.

We expect the BWC to appeal the decision, and this matter will likely continue to be litigated up to the Ohio Supreme Court for a final determination. That means that – assuming the court's decision is upheld – class members will not likely receive a payout for several years to come.

For more information about how this decision might affect your company, contact any attorney in the Cleveland office of Fisher Phillips at (440) 838-8800.

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*This Legal Alert contains an overview of a particular state court decision. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*