

From: Don Drinko  
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Gallagher Sharp Shop Talk: Workers' Compensation

**Question: What is the status of Ohio law concerning an employer's right to recover the cost of increased workers' compensation premiums resulting from an injury to an employee?**

For nearly as long as there have been workers' compensation premiums, employers have attempted to pass along increases in their premiums resulting from injuries to their employees. Recently, the Ohio Court of Appeals, Eighth Appellate District, considered a case arising from a collision with a municipal garbage truck, and an employer's attempt to recover from the city the cost of increased workers' compensation coverage.

*Minneapolis Flour Co. v. Cleveland*, 188 Ohio App.3d 140, 2010-Ohio-2607, involved a three-vehicle collision initiated by a garbage truck owned by the City of Cleveland. The driver of the third vehicle, a truck owned by Minneapolis Flour Co., was severely injured. A workers' compensation claim was filed, compensation was paid, and it was determined that the employee would not be able to return to work. There was no dispute that the driver of the garbage truck was at fault (the driver was cited), and the employee brought suit against the City and driver claiming negligence. Minneapolis Flour joined this suit against the City, alleging that its truck was totaled, and that it incurred \$210,000 in increased workers' compensation premiums and \$11,180 in additional medical insurance premiums. The City moved for summary judgment on the issue of increased premiums, arguing that Ohio law does not allow for recovery of these sums, and the trial court agreed. Minneapolis Flour promptly appealed, alleging that it was entitled to recover the premiums, that it was entitled to subrogation under R.C. 4123.931, and that it was error to dismiss the property damage claim or to exclude evidence of replacement cost for the truck.

The Eighth District largely agreed with the trial court, holding that an employer may not recover the amount of any increase in workers' compensation or health insurance premiums under a negligence theory. Citing the controlling case, *Cincinnati Bell Tel. Co v. Straley* (1988), 40 Ohio St.3d 372, the Court concluded that the duty owed and breached at the time of the accident was between the City and the employee, not between the City and the employer. Absent some contractual duty or breach of warranty, no action was permitted between the employer and tortfeasor. The Court also rejected the theory that Minneapolis Flour, a state-fund employer, was allowed to recover directly from the tortfeasor (the proper party is the Administrator of the BWC) and that the trial court was entitled to rule on motions in limine without providing seven days to respond, but agreed that the court's exclusion of the replacement cost figure did not "extinguish" Minneapolis Flour's property damage claim.

This was a reiteration of a fairly well-established principle of Ohio workers' compensation law. Absent a contractual obligation or warranty, increased workers' compensation premiums are not recoverable under a tort theory.

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