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Gallagher Sharp Newsflash: Ohio Bureau of Workers' Compensation Ordered to Refund \$859 Million in Excessive Premiums

On March 20, 2013, a Cuyahoga County Common Pleas Court judge ordered the Ohio Bureau of Workers' Compensation ("BWC") to refund approximately \$859 million in "excessive" workers' compensation premiums collected from a class of employers who were former members of group rating programs. *San Allen, Inc., d/b/a Corky & Lenny's, et al. v. Stephen Buehrer, Administrator*, Cuyahoga County Common Pleas Court Case No. CV-07-644950.

We have been reporting on the *San Allen* case for several years (See *Gallagher Sharp Workers' Compensation Shop Talk*, 8/6/08 and 5/18/11), which challenged the BWC's method of calculating premiums for members of group rating programs. Essentially, the Plaintiff-employers are former members of group rating programs who argued that the BWC set rates of group members too low, and that former members would often have their rates doubled or tripled when they lost membership in a group. In response to *San Allen*, the BWC changed its method of calculating discounts in 2009, lowering the maximum savings from 90 percent to just over 50 percent. The Plaintiffs in *San Allen* then sought and received permission to certify a class of employers who were former group members for the purpose of assessing damages, thereby permitting them to represent hundreds of thousands of employers. The matter proceeded to a bench trial before Judge Richard McMonagle in December, 2012, and on March 20, 2013, Judge McMonagle ordered the BWC to pay as much as \$859,000,000 in restitution to the affected employers in amounts ranging from a few cents to millions of dollars. In press reports following the announcement of the order, officials from the BWC indicated that it would appeal both the award and the basis for damages.

If allowed to stand, this order would be a stunning victory for the plaintiffs and a crippling blow to the State Fund. There are several issues involved, including whether employers who initially availed themselves of the excessive discounts should have those amounts deducted from their damages, and whether the refunds will constitute a "windfall" to employers. Should the award hold, it will potentially have a significant impact on the future viability of "group" membership, as well as further erosion of discounts available to group-rated employers.

If you would like to submit a question to Shop Talk, or would like to discuss this or any other workers' compensation issues, you can contact me.

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