



WESTON HURD CLIENT ADVISORY July 2014

BWC Settles Group Rating Lawsuit

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The Ohio Bureau of Workers' Compensation and a group called Pay Us Back (PUB) announced an agreement to settle a class action lawsuit filed by employers who alleged the BWC's group experience rating plan improperly granted group-rated employers excessive discounts which were subsidized by overcharging non-group-rated employers through inflated base rates for the period of July 1, 2001 through and including July 1, 2008.

In the class action, Common Pleas Judge Richard McMonagle agreed with the plaintiffs' claims and ordered the BWC to pay the plaintiffs \$860 million. The BWC appealed and on May 15, 2014, the Eighth District Court of Appeals agreed with Judge McMonagle. The appellate court referred to the group sponsors and the BWC as a "cabal of Ohio Bureau of Workers' Compensation bureaucrats and lobbyists for group sponsors who rigged workers' compensation insurance premium rates so that for employers who participated in the BWC's group rating plan, ... it was 'heads we win,' and for employers who did not participate in the group rating plan, ... it was 'tails you lose'" When settlement negotiations to resolve the case failed, the BWC appealed to the Ohio Supreme Court.

In a turn of events, the agreement was reached, creating a \$420 million fund to pay claims to employers participating in the lawsuit, attorneys' fees, court costs and the costs of administering the fund. Court approval of the settlement is required. Once that happens, class members will receive instructions for submitting claims.

Since the filing of the lawsuit, the BWC has addressed the issues by lowering the maximum discount on premiums that employers in a group plan would receive. Most employers who are in the class affected have already received notices from the plaintiffs' lawyers in the class action. If you are unsure whether your company is eligible to participate in the settlement, ask your Weston Hurd lawyer to check for you.



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