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Ohio Employers To Receive Refunds of Overpaid Workers' Compensation Insurance Premiums from \$420 Million Settlement Reached In Ohio Bureau of Workers' Compensation Class Action

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On July 23, 2014, the Ohio Bureau of Workers' Compensation's (the "BWC") Administrator/CEO, Stephen Buehrer, announced that the BWC has reached a settlement in *San Allen, Inc., et al. v. Stephen Buehrer, Administrator, Ohio Bureau of Workers' Compensation* (the "San Allen Case"), which will result in a pool of \$420 million being distributed amongst a class of 270,000 private, Ohio employers who overpaid premiums as non-group rated employers from 2001 to 2008.

History of the Litigation

The San Allen Case originally was filed in December 2007 in the Cuyahoga County Court of Common Pleas (Case No. CV-07-644950). The Complaint alleged that the BWC had inflated premium rates for non-group rated, private, Ohio employers from 2001 to 2008, due to the effects of a group rating program that granted steep discounts (as much as 90%) to employers who could join rate groups. The discounts for group-rated employers were offset by higher premiums for non-group employers. Under the terms of the BWC's group rating program, an employer could be excluded from group membership for a certain number of years if the employer had even one workers' compensation claim filed against it. After a seven-day bench trial in 2012, Judge Richard McMonagle found for the employers on certain liability issues. In March 2013, the court entered judgment for the class in the amount of \$859,440,258.79. That amount was reduced to \$650,978,738.82 on appeal to the Eighth District Court of Appeals (Case No. CA-13-099786) due to an offset for benefits received by class members in the years in which they were group-rated. The BWC intended to appeal the decision to the Ohio Supreme Court before ultimately reaching a settlement figure of \$420 million on July 23, 2014.

Only Class Members Are Eligible For A Refund

Not all private, Ohio employers are eligible for a refund under the settlement. Refunds are available only to employers who are members of the certified class, which is limited to private, Ohio employers who, in one or more policy years from 2001 to 2008: (1) subscribed to the state workers' compensation fund; (2) were not group-rated; and (3) reported payroll and paid premiums in a classification for which the rate was inflated due to application of the group experience rating. The class also includes employers who were group-rated in only *some* of the years of the class period; but those employers are subject to a reduction in their refund amount for benefits they received as group-rated employers. Employers who do not meet these criteria are not eligible for a refund.

To Receive A Refund, A Claim Form Must be Filed By September 22, 2014

Receipt of a refund is not automatic. Class members must file a claim form to be considered for a payment from the \$420 million settlement fund. The preliminary settlement agreement (a copy of which is available [here](#)) sets forth a September 22, 2014 deadline for submitting claim forms. The claim form must be submitted timely to the settlement fund's Claims Administrator. An employer who fails to submit a claim form on time will not be able to recover any owed refund amount by other means unless, for example, the employer previously opted out of the class or the employer has filed a timely objection to the settlement. Payments will be made on a pro rata basis from the \$420 million settlement fund.

The Settlement Is Not Yet Final

Before any refunds are issued, the court must approve the \$420 million settlement, which currently is only preliminary. A final approval hearing will be scheduled in coming weeks. A final notice to class members with specific instructions on how to file a claim and pertinent deadlines will be issued once the court approves of the settlement. Employers may submit a written objection to the settlement for the court's consideration by September 22, 2014.

If you would like further information or would like to discuss the potential impact on your company, please contact your regular Hahn Loeser attorney, or contact Eric or Josephine directly:



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