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Judge Orders the Ohio Bureau of Workers' Compensation to Eliminate Its Current Group-Rating Plan in a Groundbreaking Decision

Last week, a Cuyahoga County Common Pleas judge issued a groundbreaking decision that could significantly impact workers' compensation premium costs for the policy year beginning July 1, 2009 and beyond. In *San Allen, Inc. v. Ryan*, the court entered a preliminary injunction prohibiting the Ohio Bureau of Workers' Compensation (BWC) from using its current group-rating plan for the policy year beginning July 1, 2009 and instead ordered it to enact a "retrospective" group-rating plan in accordance with the governing statute. The decision is wide-reaching, as nearly 100,000 employers participate in group rating, and many rely on anticipated group-rating discounts when budgeting workers' compensation costs. This decision does not impact what employers will pay on their December 2008 or July 2009 premium bills but could have a significant impact on subsequent bills and the group-rating program for years to come.

Ohio's group-rating plan was created to provide savings on workers' compensation costs to smaller employers. The plan allows businesses to group their claims history and receive premium discounts similar to large employers, which typically have a more consistent claims history that allows for a better prediction of future costs and often results in lower pricing. Group-rated employers often realize significant savings. However, while employers may receive a sizeable premium discount under the current group-rating plan, they also face uncertain and wildly fluctuating premium costs from year to year due to the unpredictability of whether they will continue to qualify for group rating.

The court determined that there is a "probability" that the BWC's group-rating plan violates the group-rating statute because it is a "prospective" plan (i.e., based on

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Contacts:

[Steven M. Loewengart](#)
+1.614.365.2791

[Greta M. Kearns](#)
+1.614.365.2835

[Kevin E. Hess](#)
+1.614.365.2794

[W. Michael Hanna](#)
+1.216.479.8699

[Timothy J. Cosgrove](#)
+1.216.479.8562
+1.614.365.2704

[Mary Amos Augsburger](#)
+1.614.365.2804

[Alex Shumate](#)
+1.614.365.2739

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anticipating injuries that will occur in the coming year). The statute specifically authorizes group rating "for purposes of retrospective rating" (i.e., based on injuries that occur during the policy period). The court noted that if the legislature in fact intended to allow prospective group rating, then the legislature is responsible "for fixing it." As a result, the court ordered the BWC to enact a retrospective group-rating plan in place of the current group-rating plan for the policy year beginning July 1, 2009. The court also noted that this order would negatively affect group-rated employers "in that their premiums would likely go up" from their currently discounted premiums.

Notably, the court rejected the complaint that the BWC's group-rating plan is inequitable in that it requires non-group employers to subsidize the claims costs of group employers. The court determined that "while this may be true, it is up to the Bureau to decide how to properly deal with the equity issues." The court further noted that the Bureau is working to eliminate the subsidies and recognized that the court "should defer to the Bureau to determine how to set the rates in an equitable manner."

The court's decision presents a hurdle for the Ohio business community as employers plan for next year and budget future workers' compensation costs in uncertain economic times. It is not known if this case will be appealed, or if there will be a final decision, before July 2009; whether the BWC realistically can enact a retrospective group-rating plan before next July; and most significantly, what impact a retrospective group-rating plan will have on an employer's bottom line. While employers should continue to explore group rating in an attempt to streamline workers' compensation costs, they also should be prepared for a vastly changed landscape in terms of group rating and premiums.

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For further information on the court's decision or the BWC's group-rating plan or our government relations practice, please contact your principal Squire Sanders lawyer or one of the individuals listed in this Alert.

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations. Counsel should be consulted for legal planning and advice.

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Squire, Sanders & Dempsey L.L.P., 2000 Huntington Center, 41 South High Street, Columbus, Ohio 43215