



Thursday, March 21, 2013

CLEVELAND -- Cuyahoga County Common Pleas Judge Richard J. McMonagle yesterday ordered the Ohio Bureau of Workers Compensation to reimburse more than 272,000 employers nearly \$860 million dollars in overcharges. The judgment follows a hearing last week in which the BWC challenged the damages calculation. The court rejected the bureau's arguments.

BWC says it will appeal McMonagle's decision.

During the trial, BWC experts admitted that small and midsized employers across the state were systematically overcharged for premiums, in some cases in excess of \$1 million, say attorneys representing the plaintiffs. "Representatives of the more than 272,000 businesses are hopeful that Wednesday's decision will prompt the agency to repay what the court says they owe," they state in a press release.

"We've spent years on this case and the BWC never denied that we were overcharged. Now the court has ordered them to pay. Tens of thousands of businesses can now put those dollars back to work, creating and protecting Ohio jobs," said Earl Stein, lead plaintiff in the case and owner of Corky and Lenny's, a delicatessen on this city's east side. "We constantly hear that the state wants to be more business friendly, yet when we were clearly wronged they refused to do the right thing. It's time the BWC remember that they work for us."

Through numerous motions, hearings and the trial, the BWC has never denied that they overcharged over 272,000 businesses, according to the plaintiffs. Last week during a final hearing to determine the damage amount, BWC experts calculated that the overcharges were \$400 million dollars. "The court says we were damaged by nearly \$860 million dollars. Last week I heard the bureau's experts acknowledge \$400 million in damages." Stein said. "My message to the bureau -- pay us the \$400 million and we can fight over the other \$460 million later."

In an official statement posted on the BWC website, the agency said it is "disappointed" in the judge's order and plans to appeal. "We maintain our actions were lawful and restitution is not warranted in this case. ...We believe the dollars we've collected have been spent appropriately and that all Ohio businesses have benefitted and continue to benefit from BWC programs and services."

In its official response to the ruling, BWC explained, "While the plaintiffs have argued that BWC was unjustly enriched by the premiums it charged to members of the class, consider:

The actual claims costs and expenses of the companies in the class exceeded their premiums paid to BWC at a disproportionately higher rate than those companies not in the class. These employers' claims costs were \$861 million more than the premiums they paid during the period, and BWC's net assets decreased by \$2.5 billion over that period.

On a dollar-for-dollar basis, for every dollar of premium collected during the class period, the class members as a whole had \$1.26 in claims costs.

Every dollar BWC collects from employers is spent on the prevention of workplace accidents and the care of those Ohioans injured on the job.

The prolonged legal fight has spurred business owners to form a coalition of Ohio employers called Pay Us Back Ohio BWC. The nonprofit advocacy organization, run by class members, is committed to combating any future attempts by the BWC to resist making the refunds ordered by the court, Stein said. Employers can go to the [website](#) to learn the amount of restitution owed to them by inputting their policy number in the search field.

"Justice has prevailed," said James A. DeRoche, a lead attorney representing the plaintiffs in the landmark class action lawsuit (San Allen Inc. et al. vs. Stephen Buehrer, BWC administrator). "We are thrilled for all of the Ohio businesses who are owed restitution after suffering years of unlawful overcharges at the hands of the Ohio Bureau of Workers' Compensation. As the judge found, the BWC knew for years that it was imposing excessive annual premiums on thousands of businesses, and also destroying many businesses with huge rate increases. Now is the time for the BWC to do the right thing and immediately reimburse these businesses. If the BWC is truly business friendly, it will not further delay payment so tens of thousands of small businesses can reinvest those dollars into creating and protecting Ohio jobs," Stein said.

BWC's official response praises "the leadership of Gov. John Kasich [under which] BWC has worked to maintain low and stable rates. Ohio's private employers have saved an estimated \$210 million in premiums over the past two years, during which time BWC reduced base rates and reduced its administrative budget.

"Until such time as the matter is ultimately resolved by the courts, BWC will continue its emphasis on promoting money-saving programs like Destination: Excellence, which reward employers for creating programs that improve workplace safety and get injured workers healed and back to work sooner."

Published by The Business Journal, Youngstown, Ohio.

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