

## Good News for State-Funded Employers, Finally

**In a 5-2 decision, the Ohio Supreme Court has determined that the Ohio Bureau of Workers' Compensation (the "BWC") must wait until a final determination is made regarding the compensability of a claim before charging payments made to a claimant to an employer's risk. (*Arth Brass & Aluminum Castings, Inc. v Conrad*.)**

Arth Brass is a state-funded employer who participated in a group rating program. A claim was filed against the employer and allowed by a District Hearing Officer. The employer appealed and a Staff Hearing Officer affirmed the allowance. Despite the employer appealing to the full Industrial Commission, the BWC began making medical payments and charging those payments to the employer's risk. The Commission refused the appeal and the employer appealed to the Court of Common Pleas.

As a result of these payments, the employer was re-assigned to a lower group rating program, thus increasing their premiums. During the pendency of the Court appeal, the employer filed a Declaratory Judgment Action alleging the BWC improperly charged their risk while the claim allowance was pending.

The Court of Common Pleas in the underlying claim appeal ruled in favor of the employer and the claim was denied. Additionally, in the separate Declaratory Judgment Action, a separate Court of Common Pleas ruled against the employer, indicating the BWC had properly charged the employer's risk with the medical payments. The employer filed an appeal to the Court of Appeals who also ruled in favor of the BWC. Again the employer appealed and the Ohio Supreme Court accepted the appeal.

The Ohio Supreme Court addressed three separate issues:

- 1) At what point in the claim process may the BWC pay a claimant's medical bills;
- 2) once the BWC pays medical bills, when can it charge an employer's risk for those payments; and;
- 3) when bills are paid on a claim that is eventually denied, to what extent must the BWC credit an employer whose risk has been improperly charged?

The Court held that the BWC properly paid the medical bills pursuant to Ohio Revised Code 4123.511(I). However, the Court also determined the mere fact that the BWC could make payments does not necessarily mean that those payments should be charged to an employer's risk. The Court held that R.C. 4123.511(H) "does not open the door to an immediate charge to an employer's risk account; to the contrary, it slams the door shut for such a charge until a final determination."

Lastly, the Court addressed the third issue, to what extent must the BWC credit an employer's risk for improperly charged payments. After reviewing the Code provisions governing group rating programs, the Court concluded that an employer has no way of recovering increased premiums paid to the BWC. Likewise, the BWC has no system in place for the calculation of such a refund. The Court concluded that the BWC "should be liable to credit Arth [the employer] to the extent that the premiums it received exceeded those Arth would have made had the medical benefits not been charged to its risk account."

This is great news to the state-funded employer community, who challenge, and ultimately prevail in Court, on allowances of claims and/or portions of claims. While the BWC has always credited an employer's risk, there has been no avenue available for an employer to receive credit or be placed retroactively back into a group rating program as a result of improperly charged payments to its risk.

As it now stands, the BWC must credit an employer's increased premiums due to a change in its group rating status when a claim, or portion thereof, is denied in Court.

Does this mean the BWC will not remove or disqualify an employer from a group rating program during the pendency of an appeal? That remains to be seen. Obviously, the BWC will need to establish a method to reimburse and/or credit an employer whose group rating status is adversely impacted when their risk is improperly charged. We urge our clients to stay in constant communication with their third party administrators to insure their group rating status is not adversely affected when an appeal is filed in Court.

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