

## Changes at the Ohio Bureau of Workers' Compensation

As you are aware, there have been many changes at the Ohio Bureau of Workers' Compensation, and we anticipate more in the near future. These changes include the following:

### Credibility and Experience Modification Caps

**Within Year Cap:** The Ohio Bureau of Workers' Compensation's Board of Directors voted earlier this year to reduce their credibility table from 85% to 77%. In addition, they also discussed capping the impact on Ohio's employers as a result of this change.

CompManagement was one of several third party administrators advising the BWC on how this "cap" should be implemented. It was recently agreed that the BWC will cap an employer's or group's experience modification (EM) by 30% due to the change in the credibility table.

What this means to you as an employer is that if you have been participating in a group rating program in 2008 receiving an 85% discount, should you again qualify for a group at the maximum discount, you should be realizing an 80% discount for 2009. While the discount is not as high as it was in 2008, the cap does help, and we are very hopeful that the BWC's base rates will also decrease for 2009.

**100% Year-to-Year EM Cap:** Should you no longer qualify for a group rating program in 2009, the BWC is implementing a 100% EM cap for you. This means that if you had been participating in a group with a 75% discount, your EM was .25. Therefore, if you become ineligible to participate in a group program for 2009, your EM cannot be any worse than a .50. While you would still experience increased workers' compensation expense, that impact has been greatly reduced compared to previous years.

### New Rating Programs

The BWC has formed a workgroup comprised of association representatives, TPAs and BWC personnel to help create new alternative rating programs for Ohio employers. Two programs that are getting the most attention are Group Retrospective Rating and Deductibles.

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**Group Retrospective Rating:** This is a program that the State of Washington currently offers. It is performance-based, in the sense that employers in the group programs can achieve a refund of their premiums if their total claims costs are less than the premiums they pay into the system. Therefore, claims management and loss control are crucial components of this program.

**Deductibles:** Like any other line of insurance, this program is being designed to incentivize employers to assume some level of risk in exchange for a discount on their premiums. We are hopeful that this program will be available to all types of employers with many deductible options.

For questions on these changes or any other topics, be sure to contact your CompManagement Account Executive.

BWC MEDIA ADVISORY: OCT. 6, 2008

## New Law to Lower Workers' Compensation Costs for Many Ohio Employers

*New interstate jurisdiction law reduces premiums, limits duplicate claims*

Ohio businesses operating across state lines are expected to save on future workers' compensation costs following a law change (SB 334) that allows them to reduce the payroll they report to the Ohio Bureau of Workers' Compensation (BWC). Employers are no longer required to include employees working outside of Ohio on their payroll report, if they are carrying workers' compensation coverage in the other states.

"Ohio-based businesses, with employees working in multiple states, often find they are paying twice for workers' compensation insurance coverage," said BWC Administrator Marsha Ryan. "By eliminating this duplication of coverage, approximately 40,000 Ohio employers will now be on a level playing field with their out-of-state competitors."

The new law went into effect last month and allows employers to now pay premiums to BWC based on payroll for labor and services performed only in Ohio. Ohio businesses can first take advantage of this change when they file their payroll report and pay their premiums for the January 1 to June 30, 2009 payroll period.

Another provision of the law prevents injured workers from receiving workers' compensation benefits on claims filed in multiple states for the same injury or occupational disease. Injured workers must now select a specific state from which to file a claim and receive workers' compensation benefits.

The law also requires out-of-state employers, with employees working in Ohio, to provide workers' compensation coverage for their workers when they come into Ohio to perform their duties. Previously, Ohio did not require out-of-state employers to obtain coverage in Ohio for temporary workers (less than 90 days). With the implementation of SB 334, employers based in another state with employees working temporarily in Ohio must obtain workers' compensation coverage from BWC unless their state affords Ohio employers some degree of reciprocity. This applies even if they have workers' compensation coverage in their home state.

BWC is in the process of contacting other states to encourage participation and cooperation.

## MIRA II Update

The Bureau of Workers' Compensation (BWC) has implemented their new reserving system called MIRA II. Under the MIRA II system, claim reserves will be a better predictor of future costs and should avoid volatile fluctuations.

MIRA II reserves are now available on the BWC's website and will be updated weekly if claim conditions change. One important item to note is that the costs that appear on the website are all costs paid out in the claim and not necessarily the costs that will be charged to an employer's rate-making experience. Non-chargeable costs such as living maintenance and some medical bills are included in the totals on the website. Also, if a handicap reimbursement or subrogation has been granted in a claim, the costs shown do not reflect that deduction.

For more information, please contact the CMI Rate & Underwriting Department at 1-800-825-6755 or visit the BWC's website at [www.ohiobwc.com](http://www.ohiobwc.com).

# CMI Risk Services (formerly RHS Solutions)

## *Specializing in all your Risk, Health and Safety Management needs!*

CompManagement, Inc. (CMI) Risk Services brings a fresh approach to developing and maintaining a risk, health and safety management program. Whether working with an organization where there is no on-staff expertise or consulting with a client's existing staff, our all-encompassing experts offer unbiased, results-oriented recommendations.

A well-designed program identifies areas of opportunity for improvement and resolves workplace issues cost-effectively. Programs developed by CMI Risk Services include the following areas:

### **Safety Management / Accountability**

CMI Risk Services can assist you in developing an effective safety management program. By implementing effective safety management processes, you lower accident-related costs, reduce absenteeism, lower turnover, increase productivity and improve employee morale. CMI Risk Services has an extensive menu of services designed to protect your company and its greatest asset - your employees. A sampling of services includes:

- Outsourced Safety Management
- Safety Programs/Reviews
- Regulatory Self-Compliance
- Contingency and Disaster Planning

### **Loss Control**

Our loss control specialists identify exposure and determine realistic, cost-effective resolutions and contingency plans - making your company a more attractive insurance risk. A sampling of services includes:

- Full Facility Evaluations
- Loss Analysis
- Ergonomic Assessments
- Industrial Hygiene Services
- Mock OSHA Inspections
- OSHA Abatement Assistance

### **Risk Management**

In today's tightening insurance market, it is more important than ever to manage your workers' compensation risks. Higher workers' compensation costs limit the capital resources available for critical investments in your company. CMI Risk Services' experienced team of management consultants can help you manage your risk and related costs. Our approach identifies opportunities for improvement, designs practical solutions, executes strategies, and measures results.

### **Safety Training**

The CMI Risk Services division provides a wide variety of programs and training ranging from online courses to complete package solutions.

Contact us for more information: (888) 264-2635 or [www.compmgt.com/riskservices](http://www.compmgt.com/riskservices).

# Ohio Supreme Court to Decide When a Claimant Can Dismiss an Employer Appeal

*James B. Yates, Esq. and Sarah E. Pawlicki, Esq., Eastman & Smith Ltd.*

On October 1, 2008, the Ohio Supreme Court heard oral arguments in *Thorton v. Montville Plastics & Rubber*, SCT Case No. 2007-1588. Before the Court was the question: “When can a claimant dismiss an employer’s court appeal of a workers’ compensation claim?” Senate Bill 7, enacted in 2006, prohibits a claimant from dismissing an employer’s appeal to common pleas court without the employer’s consent. This was welcome news for employers because before the passage of Senate Bill 7, the Ohio Supreme Court held that even though an employer files the appeal to court, a claimant is still considered the “plaintiff.” Therefore, the Court held that a claimant could voluntarily dismiss an employer’s appeal to court so long as a claimant re-filed the case within one year of the dismissal. This ruling was a source of great frustration to employers because, while the court case is pending and during the one-year dismissal period, the claimant continues to receive workers’ compensation benefits, which are paid dollar-for-dollar by self-insured employers, and state fund employers incur premium increases and risk being removed from group rating eligibility. Utilizing the voluntary dismissal strategy, claimants required an employer to engage in costly discovery and prepare for trial only to dismiss the employer’s appeal – delaying the employer’s right to have the case adjudicated for several years. Recent legislation has provided state fund employers with an even greater incentive to have workers’ compensation court appeals heard quickly. House Bill 100, passed in 2007, clarifies that the BWC will charge claim costs to an employer’s experience as soon as the employer exhausts administrative (not court) appeals. Therefore, the sooner the employer’s appeal is finally adjudicated, the sooner the employer may be able to obtain relief from increased premiums which resulted from a claim being improperly allowed by the Industrial Commission.



In *Thorton*, the workers’ compensation claim was allowed by the Industrial Commission and, as a result, the state fund employer was removed from group rating and incurred a substantial increase in premiums. The employer appealed the allowance of the claim to common pleas court and the claimant, on the eve of trial, dismissed the case. The employer contested the dismissal, arguing that the claimant was prohibited from dismissing the employer’s appeal under Senate Bill 7. The oral argument before the Ohio Supreme Court focused on whether the Senate Bill 7 prohibitions against dismissing employer appeals could be applied to claims that were filed before the effective date of Senate Bill 7 (the “effective date” is still being debated but the earliest possible effective date is June 30, 2006). The claimant argued that it is unconstitutional to apply a change in the law “retroactively” to claims with a date of injury before the effective date. The employer argued that the law is procedural in nature and therefore may be applied to all pending claims regardless of the date of injury in the underlying claim.

The Ohio Supreme Court will soon decide whether claimants with a date of injury before the effective date will be permitted to dismiss an employer’s court appeal. As a practical matter, the decision will impact state fund employer appeals of 2004, 2005 and 2006 claims – which are currently within state fund employers’ experiences. This issue is also important to all self-insured employers so long as claims with dates of injury before the effective date are active. While this issue may seem technical, the Ohio Supreme Court’s decision will cost (or save) employers significant workers’ compensation dollars.

*James B. Yates is a Member and Sarah E. Pawlicki is an Associate of the law firm of Eastman & Smith Ltd. They practice in the Firm’s Labor and Employment Group.*

## It's Group Rating Enrollment Time Again!

The Ohio Bureau of Workers' Compensation has finally released details about their proposed premium capping mechanism and we are now able to start generating group enrollment offers.

As a current client of CompManagement, you are automatically reviewed for group participation every year to determine your eligibility status. Those employers that qualify will receive the results of our analysis and an invitation to join the program. The vast majority of these quotes should be received by the end of November.

If you are reviewing savings quotes from other group administrators, please make sure that you are comparing apples to apples. While CompManagement takes great pride in the accuracy and consistency of our savings forecast, others within our industry tend to promote inflated savings figures in an effort to secure additional business.

It should also be mentioned that not all group administrators offer the same level of service. Examine other quotes thoroughly to ensure that you are comparing similar discounts and service offerings. For the July 1, 2008 rate year, CompManagement was once again the largest group administrator and was able to offer the largest and most stable programs available in the State of Ohio.

Enrollment only occurs once a year, so please make sure to send back the documents needed to ensure your continued participation in our program.

Should you have any questions regarding group rating or the savings quote you received, please contact our staff at (800) 825-6755, option 3.



## Important Dates to Remember

November – February	Group invitations/renewals and rejection letters sent to Private Employers
November 15	2008 deadline for filing claim settlement applications for Private Employers (changes to October 15 in 2009)
November 30	Retrospective Rating Applications due for Public Employers
December 1	Deadline for filing settlement for Public Retro
December 31	Last day for Public Employers to file Handicap Applications (CHP-4) on claims with dates of injury in 2003
December 31	SURVEY DATE FOR PRIVATE EMPLOYERS
December 31	Premium Discount Program (PDP) Plus application deadline for participation beginning 1/1 - Private and Public Employers
December 31	Drug Free Workplace Program (DFWP) application deadline for participation beginning 1/1 - Private and Public Employers
January	BWC releases Public Employer's rates for upcoming year
January	BWC sends payroll reports to Public (for 1/1/08 to 12/31/08 payroll) and Private (for 7/1/08 to 12/31/08 payroll) Employers
February 3	Deadline for notifying Private Employers of group ineligibility (first Monday)
February 27	Group Rating Applications for Private Employers due in to BWC
February 27	Payroll Reports for 7/1/08 to 12/31/08 due for Private Employers

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## Settlement Filing Deadline for Private Employers is Rapidly Approaching



**Reminder:** Settlement applications must be filed by November 15 in order to be included in private employers' 2009 rating calculations.

Please make sure to respond quickly if you receive something from the CMI Settlement Department. Due to the deadline fast approaching, everything you receive regarding settlement of a claim is time sensitive.

As we review our clients' policy activity reports, we determine which claims have reserves and should be reviewed for settlement. We will then contact you regarding any claims that we believe should be considered for settlement. Settling a workers' compensation claim brings the claim to closure and can help reduce your premiums, and in some cases can protect your group rating status!

If you have any questions feel free to contact the CMI Settlement Department at 1-800-825-6755.

*In our Summer 2008 issue, we reported that BWC had moved up the settlement deadline to October 15. BWC later decided to keep November 15, 2008, as the LSS deadline for the 2009 policy year to give private employers more time to evaluate reserves using MIRA II. Please note, though, the deadline for next year will be October 15, 2009.*

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