

Risky Business

Important Dates



August 30

DFSP - Action Plan due

August 31

Self-insured assessment
payment due
(second half)

September 2

Payroll reports and
premium due

September 30

Snapshot date for
experience calculation

DFSP – Annual Report
Deadline for Jan 1 start
date employers

EM cap opt out deadline



V&A RISK SERVICES

Workers' Compensation Services

Tradition Square
2730 Centennial Rd.
Toledo, OH 43617
419.867.1044

Governor Kasich proposes “Another Billion Back” for Ohio Employers

Governor John Kasich and Ohio BWC Administrator, Steve Buehrer, have announced a proposal to return \$1 billion to Ohio workers' compensation customers through rebates and new investments in worker safety research and training. If approved, “Another Billion Back” would be the second time in one year that 184,000 private and 3,800 public employers would receive a rebate.

“Sound Fiscal management and a well executed investment strategy continue to put BWC in a position where it can return money to its customers - Ohio's employers – but also to workers in the form of initiatives that help them stay safe on the job,” said Kasich. “Ohio continues its effort to transform the workers' comp system to be a better partner with employers and workers to help them succeed and stay safe, and the ability to make these types of significant rebates is part of that effort.”

If approved by the BWC Board of Directors, eligible private and public employers would receive a rebate equal to 60 percent of premiums paid during the July 1, 2012 through June 30, 2013 policy year (calendar year 2012 for public employers). To qualify, employers must pay their premium by August 31, 2014 and be in an active status on September 5, 2014.

Another Billion Back will also continue to build on last year's \$15 million investment in safety intervention grants. The proposal calls for several initiatives that will enhance the safety, health and wellness of Ohio's workforce. In addition, safety training that will reduce injuries among firefighters will be available.

As a result of last year's “Billion Dollar Back” campaign, the BWC has introduced “Better Business Starts with Safety, Safety Starts at the BWC” campaign. The campaign will encourage Ohio employers to call the department's safety consultants before an injury occurs. The department provides safety consultants who can survey an employer's worksite and advise the employer on preventing occupational injuries and illness. A [microsite](#) allows employers to compare injury rates and costs across industry sectors and provides a direct link to the BWC safety consultants. For more information, please visit the [Ohio BWC website](#).

Attention: Group Rating Participants

Group Enrollment packets have been mailed. Please return the completed forms or go online and follow the prompts on our website. Please complete your renewal by October 15. Thank you!

New business resources on the BWC website

Employers can now find their BWC regional business development manager contact information, request a speaker for an event or meeting and learn about the latest BWC program offerings by visiting the BWC website.

The BWC has also included press materials, social media sites and integrated useful tools for businesses, as well.

The new information is located under the "[Quick Links](#)" heading on the BWC website.



V&A RISK SERVICES

Workers' Compensation Services

Tradition Square
2730 Centennial Rd.
Toledo, OH 43617
419.867.1044

Details on the BWC Settlement of the San Allen Case

At the end of July, the Ohio BWC announced that the agency had reached an agreement to settle the Group Rating Class Action Law Suit for \$420 million.

The San Allen case was brought by six Cleveland area employers in 2007 and alleged that the BWC charged excessive workers' compensation premium rates to non group rated employers during the policy years of 2001 through 2008. The Plaintiffs argued that the rates for non group employers were inflated due to the excessive discounts granted under the group rating program.

In agreeing to settle the case, a \$420 million fund will be created to pay for claims by employers participating in the lawsuit, the attorney fees, court costs and the costs of administering the fund. Class members will receive instructions for submitting claims.

The Timeline for Affected Employers

August 22, 2014: Employers will begin receiving claim notification forms from the Settlement Claims Administrator, Garden City Group.

October 22, 2014: Employers must complete the forms and return them to the Claims Administrator by this date.

Cure period: The Claims Administrator will review the submitted forms for errors and omissions, allowing for employers to correct the information through December 10, 2014.

January 7, 2015: The Claims Administrator will complete the claim process and compile a report that provides claim amounts for the class members who completed the notification forms.

Late January 2015: The Judge will issue a final discharge and checks will be dispersed thereafter.

If you have questions about the settlement, please contact Garden City Group at 844-322-8230.

Psych Claims: Not the Dead Bang Loser You May Think

By Steven P. Dlott

Having worked with several different TPA's regarding psych. claims, there seems to be a general doomsday mindset about the inevitability of such claims. As I have been accustomed to hearing, "What's the point in fighting them? They always get allowed." Certainly, based on the IC's history when it came to such claims, this reaction was entirely understandable. However, based on my own recent experience of taking a string of psych. claims to hearing, these claims are winnable. In fact, I have won the last 5 psych. claims that went to hearing. And, to reinforce this point, several of those claims were state funded claims where the BWC psychologist supported the C-86. That is not to say, of course, that every psych. claim is winnable, or that this streak will indefinitely continue. Certainly, it will not. The point is simply to dispel the commonly held notion, upon getting a C-86 for depression or PTSD, that success is hopeless-or dismal at best.

Two factors account for this new outlook-one, clarification of existing law, the other, good old fashioned detective work. First, in *Armstrong v. Jurgensen*, the Ohio Supreme Court reiterated the legal requirement for establishing a psych. condition. As the court noted, the psych. condition must result from the physical injuries in the claim and not simply relate to the injured worker's involvement in the accident. In *Armstrong*, the injured worker (Armstrong) was slightly injured in an accident in which the other driver was killed. After Armstrong's claim was allowed for soft tissue injuries, he sought to additionally allow his claim for PTSD. The IC allowed the PTSD and the employer appealed the disallowance to court. The employer ended up taking the case to trial. The judge overturned the IC's decision, finding the claim not compensable because it did not arise from the allowed conditions. The case was ultimately appealed to the Ohio Supreme Court, which affirmed the trial court's decision. While employers have always argued this was the law, as apparent from the IC's decision, hearing officers did not always buy this argument. Now, with the Supreme Court's decision, they must.

Without question, *Armstrong* has changed the landscape in terms of giving employers a significant advantage in getting psych. claims denied, provided it can be shown-which happened in 3 of the 5 cases I won-that the psych. condition did not arise from the physical injuries.

The second step in successfully fighting psych. claims is simply good old fashioned detective work. In one claim, I discovered claimant had a previous history of psychological treatment. Claimant had denied this to both her psychologist and to the BWC psychologist. While this certainly is not unusual, through discovering a record buried in other documents in the injured worker's file which led to my discovering claimant's previous history of depression, I was able to discredit claimant at the hearing. Not surprisingly, hearing officers do not like liars, and, not just in this case, but in all of the cases I've won to date, the claimant's credibility has been a major focus of the hearing. Because credibility is such a key component in psych. claims-more so than in any other claim because the condition is based almost entirely on the claimant's subjective symptoms ("I'm depressed", "I can't sleep", "I can't concentrate", etc.), a thorough investigative background is absolutely critical (and often overlooked) in making the difference between success and failure at the IC.

So, the takeaway is not to assume that psych. claims are losing propositions. With *Armstrong* at our side and good detective work of the injured worker's background aggressively pursued, a new mindset, one that views psych. claims as winnable claims, is in order.

Steven P. Dlott is a Certified Specialist in Workers' Compensation Law and heads the Workers' Compensation Department at Meyers, Roman, Friedberg & Lewis. Steve can be contacted at (216) 831-0042, or sdlott@meyersroman.com.

**Reprinted with permission.*