



Ohio Supreme Court Finds No Unauthorized Practice of Law

By Elizabeth A. McNellie, Esq., Baker & Hostetler, LLP

Following the Ohio Supreme Court's decision to uphold the traditional role of third party administrators in providing representation to employers in workers' compensation claims in *Cleveland Bar Assoc. v. CompManagement (CompManagement I)*, the Supreme Court has now determined that CompManagement's activities comply with the Industrial Commission's Resolution R04-1-01, and are not the unauthorized practice of law.

In *CompManagement I*, the Supreme Court had agreed that third party administrators have a proper role within the workers' compensation system that does not violate the prohibition of the unauthorized practice of law. The Court, however, remanded the case to determine if any of the specific allegations against CMI were in fact violations of the rules for non-lawyers that were adopted by the Industrial Commission in Resolution 04-1-01. Among these specific allegations claimed to be the unauthorized practice of law were the settlement of claims, the filing of forms with the Commission and the Bureau, the statement of employer concerns during a hearing, the request for a desired outcome at a hearing, recommendations to clients regarding appeals, and advice to clients regarding the need to retain an attorney.

In finding no violation by CMI, the Court found that third party administrators did not commit the unauthorized practice of law, as long as they were not exercising legal skill or judgment. The Court specifically found that third party administrators can fill out and file the forms required by the Bureau and the Commission, can advise clients with regard to the financial implications of settlements, file applications for approval of settlements, and communicate client settlement positions to claimants and claimants' attorneys. Likewise, no violation occurs if third party administrators make recommendations relating to appeals that are financial in nature. Furthermore, third party administrators can engage in the analysis necessary to advise a client that they should retain counsel for a particular claim or issue.

In the hearing room, hearing representatives are free to state the factual issues that are the reasons that an employer has asked them to attend a hearing. (The Court specifically found that if stating these concerns causes the Hearing Officer to ask questions of the claimant, no violation occurs.) In addition, a hearing representative can direct an employer or other witness when it is appropriate for them to speak during a hearing. Moreover, the hearing representative can identify documents in the file that relate to the issue to be determined and state the outcome that the employer desires.

continued on page 3

In this Issue:

New Supreme Court Decision	2
Settlement Update	2
Mabe Resigns as BWC Administrator	3
Governor's Excellence Award	3
Chairperson of Industrial Commission Appointed	3
Public Employer Base Premium Rates for 2007	3
Specifically for Self-Insureds	4
Group Rating Update	4
Sedgwick CMS News	5
Unemployment Update	6

COMPNOTES

Voluntary Abandonment of Employment Precludes Temporary Total Disability

State ex rel. Gross v. Indus. Comm.

By Attorney Kelly Johns, Reminger & Reminger Co., LPA

An employee injured in the course and scope of his/her employment is entitled to temporary total disability benefits during the recovery phase, if the injury prevents a return to the former position of employment. However, the Ohio Supreme Court has repeatedly held that injured workers are not entitled to temporary total disability benefits if they voluntarily abandoned their former position of employment. Such was the issue in the recent decision of *State ex rel. Gross v. Indus. Comm.* (2006), 112 Ohio St.3d 65, 2006-Ohio-6500.

In *State ex rel. Gross*, the Supreme Court determined that termination of an employee for willful misconduct resulting in the industrial injury constituted a voluntary abandonment, in spite of the fact that termination was not immediate, but rather occurred months after the injury, following a subsequent investigation. The Court further held that this voluntary abandonment barred further payment of temporary total disability.

In spite of repeated warnings, specific posted safety instructions to the contrary, and a handbook outlining critical violations that can result in termination, Gross attempted to clean a pressure cooker with water, which resulted in severe burns to himself and two other employees. Following a three-month investigation of the incident, Gross was terminated for his refusal to follow recognized safety procedures. Following the investigation and termination, the employer sought to terminate temporary total disability compensation, arguing that the employee voluntarily abandoned his employment through his willful misconduct.

In reaching a determination, the Court evaluated the most fundamental principle in workers' compensation: the causal relationship between the disability and the allowed conditions. In so doing, the Court determined that when an employee's willful misconduct occurs simultaneous, and not sequential, to the subsequent disability, those actions can result in voluntary abandonment, and thereby preclude an award of temporary total disability. In other words, it is the conduct at the time of the incident that caused the injury that needs to be evaluated. If the employee's actions at the time of injury warrant dismissal, the actions constitute a voluntary abandonment. As the voluntary abandonment is the cause of the employee's loss of work, and not the injury itself, temporary total disability compensation is not warranted.

In arriving at the decision, the Supreme Court considered and rejected the lower court's determination that the employee was discharged because he was injured in the workplace, noting that the fact that the discharge occurred after the investigation, and after temporary total compensation payments had already started, was not of consequence. The Supreme Court further considered and rejected the notion that the Worker's Compensation system was designed to remove the components of negligence and fault from the workplace-injury equation. While the Court termed the second argument "thought-provoking," the Court relied heavily on the facts in this matter, finding that the employee's repeated and willful violation of the rules of conduct was not simple negligence or inadvertence. Instead, the employee's simultaneous willful misconduct was the cause of his work loss.

This decision emphasizes the need for employers to maintain well-written handbooks that outline serious violations that may result in termination. When such instances arise, even if the determination is made after an investigation, the employer should examine the situation to determine if the violation causing injury would warrant termination in the absence of an injury. In those circumstances, in spite of an injury, termination of the employee for willful misconduct results in voluntary abandonment and the employer may be spared the expense associated with temporary total disability payments.

Settlement Update

Historically, the Bureau of Workers' Compensation (BWC) has required the employer's signature to process a settlement application. The passage of Senate Bill 7 (SB 7) has now changed this requirement for those claims that are "out of experience," which means that they no longer have any impact on an employer's premium rates. Therefore, settlement of these claims has no effect on the employer's premium.

SB 7 allows an injured worker, directly or through his / her attorney, to file a settlement application with the BWC *without* the employer's signature if the claim is "out of experience" *and* the injured worker is no longer employed with the employer.

To take advantage of this new procedure, along with the settlement application, the injured worker must submit a signed BWC form that states that the claim is out of experience and that the injured worker is no longer employed by the employer of injury. After the BWC receives both the settlement application and the form, it will send a letter to the employer and its TPA notifying them of the receipt of a settlement application. The employer then has 30 days to inform the BWC if it does not want the settlement to go forward. If the employer does not object by responding to the letter from the BWC, the settlement will then go forward.

continued on page 6

Unauthorized practice of law *continued from page 1*

In short, the decision recognizes the important, non-legal role that third party administrators can and do provide both in and out of the hearing room – without exercising legal skill or judgment. The decision allows CMI to continue to offer a comprehensive approach in managing workers’ compensation costs and maintains the ability of employers to choose the appropriate level of representation in workers’ compensation matters.

Governor’s Excellence Awards

The Bureau of Workers’ Compensation has announced the 2006 winners of awards for Governor’s Excellence in Workers’ Compensation, and CMI clients **The Cleveland Plumbing Supply Company** of Chagrin Falls and **Interstate Cold Storage, Inc.** of Columbus and Napoleon were among the employers selected for demonstrating exemplary commitment to creating a safe workplace. According to BWC, characteristics shared by the winning employers include achieving measurable results, encouraging employee involvement, exhibiting active senior leadership, and administering an outstanding cost-containment program.

The Cleveland Plumbing Supply Company has no lost time claims since 2001, and had no claims at all in 2004. Interstate Cold Storage has also not incurred a lost time claim since 2001. Both companies attribute these achievements to their dedication to workplace safety from the top down. Written safety policies, return-to-work programs in the event of a claim, regular training and updates for all employees, and prompt reporting of injuries are all included in these employers’ successful performance.

Patrick Gannon Appointed as Chairperson of the Ohio Industrial Commission

Source: BWC News Release

Patrick Gannon, a current member of the Industrial Commission of Ohio, has been appointed by Governor Strickland as the new Chairperson.

Mr. Gannon is an experienced workers’ compensation attorney who has represented both injured workers and employers during his career. He was first appointed to the Industrial Commission by Governor George Voinovich in 1994 to an unexpired term and reappointed in 1995, serving as chairman from 1995-1996. He was reappointed by Governor Bob Taft in 2001. While on the commission, Gannon assisted in the development of the commission’s first permanent total disability rules and overhauled the permanent total disability determination process, reducing processing time from several years to less than one year.

Gannon began his workers’ compensation career at the Bureau of Workers’ Compensation in 1974 where he served as a claims examiner, investigator, public inquiry officer, and hearing officer for both the IC and BWC.

Additionally, Gannon represented the Ford Motor Company in workers’ compensation matters. In private practice, he represented both state fund and self-insured employers and union and non-union injured workers. He has served as special counsel for a number of groups, including the President of the International Association of Firefighters, Local 4301 of the Communications Workers of America, Local 93 of the International Association of Firefighters, and the Cleveland Chapter of the American Red Cross.

Public Employer Base Premium Rates for 2007

NCCI Classification Code	Type of Jurisdiction	Base Rate per \$100 Payroll
9430	Counties	\$ 2.43
9431	Cities	\$ 4.56
9432	Villages	\$ 6.10
9433	Townships	\$ 6.02
9434	Schools	\$ 1.18
9435	Public Libraries	
9436	Special public universities	
9437	JVS	
9438	PWRE	\$ 0.39
9439	Contract Coverage	\$48.23
9440	Hospitals	\$ 2.01
9441	Special public institutions	\$ 2.01
9442	Transit Authorities	\$ 5.28
9443	Special public authorities	\$ 4.15

Mabe Resigns as BWC Administrator

William Mabe, appointed by former Governor Bob Taft to head the Ohio Bureau of Workers’ Compensation following the departure of James Conrad in 2005, resigned as BWC Administrator effective January 5, 2007, apparently in response to the desire of Governor Strickland to develop a new team at the Bureau.

Tina Keilmeyer, BWC’s chief operating officer, is serving as Interim Administrator until Governor Strickland selects Mabe’s successor. Ms. Keilmeyer also served as Interim Administrator for several months following Conrad’s resignation in 2005.

Specifically for Self-Insureds

New Supervision in the Ohio Self-Insured Multi-Client Unit

The Self-Insured unit welcomed Dave Sievert to the Dublin Claims Operations team this past autumn as Manager of Self-Insured Operations. Dave has been managing the operations of the Sedgwick CMS Columbus office since 2001. In that time it has grown from a claims operations team of thirteen to a unit of seventy-one colleagues in Columbus, Cincinnati and Indianapolis. Dave has now taken on the additional responsibility of managing the Dublin and Cleveland claims offices.

Supporting him in this role are Leslie Yates, Assistant Manager of the Self-Insured Multi-Client Unit, and Claims Supervisors Danica Hand, Diane McClellan, Kelli Clark, and Michelle Strickler. Another important addition to the department is Patricia Scalf, Claims Assistant Supervisor.

The expanded supervisory staff is making some internal workflow improvements which will allow the claims supervisors to become even more involved in the day-to-day claims processing. Many clients have a close relationship with their claims examiner and the department goal is to expand that relationship to include the claims supervisor, so that if the examiner is out of the office, our clients are comfortable asking the supervisor for further assistance.

One of the advantages of joining with Sedgwick CMS is that claims handling will be evaluated by Sedgwick CMS' Total Performance Managers (TPMs) to ensure compliance with the service that the claims department has agreed to deliver. Each client's individual service instructions will be part of a claims evaluation done quarterly for every claims examiner. The TPMs will identify any trends and provide training targeted to audit findings.

The Multi-Client Unit has been infused with fresh ideas and enthusiasm from the leadership of Sedgwick CMS, and is looking forward to continuing to deliver even better claims service to its clients.

Group Rating Update

The Ohio Bureau of Workers' Compensation has received a report from Pinnacle Resources, an actuarial firm commissioned to review Ohio's group rating programs. In that report, Pinnacle suggested several possible changes to the group rating program. The alternative recommendations include:



- Decreasing the maximum credibility (as was started in 2005) from 90% to less than 60%
- Increasing the required size of groups necessary to reach higher credits
- Initiating an incremental credit to groups that exist with the same members over an extended time

CMI, as the largest group administrator, and in conjunction with our sponsoring organizations and other stakeholders, is evaluating these recommendations and the impact they may have on clients. A substantial reduction in group credits would certainly have a major cost ramification to approximately 100,000 employers enrolled statewide in all group plans.

Group Eligibility Process

Under BWC rules, employers not eligible for renewal of their group rating enrollment due to claim losses must be notified by the group by the first Friday in February. Clients are reminded of the following options available that can provide substantial reductions in premium:

- Drug Free Workplace – Participants receive a 10%, 15% or 20% discount for implementing a drug free workplace program. Employers with 25 or fewer employees can participate in the DFWP-EZ program and become eligible for the PDP+ rebates of up to 20%.
- Premium Discount Program – Participants receive a 10% discount for implementing the BWC's 10-step safety plan. Additional rebates of up to 20% are available for reducing claim frequency and severity.
- One Claim Program (one claim/loss group) - Eligible employers receive a 40% discount off the BWC's base rates for attending the BWC's Workers' Compensation University and one additional BWC-approved training course.
- Safety Council Enrollment – Participants receive a 4% discount for joining a local safety council and regularly attending meetings.

Contact your account manager for assistance to enroll in one of these programs. Credits for several programs can be stacked to maximize savings and benefits.

NEW EXECUTIVE APPOINTMENTS

We are pleased to announce that the following individuals have been appointed to executive positions within our growing organization.

Kevin Lowry, MBA, CPA - Senior Vice President, Specialty Operations and Administration

We are pleased to announce that Kevin Lowry will move from Vice President of Finance of CMI into a new role in overall administration within the rapidly growing Specialty Operations division that includes Ohio. Kevin received his Bachelor of Science Degree in Accounting from Franciscan University in Steubenville, Ohio and his MBA from Franklin University, Columbus, Ohio. His background includes roles in finance, client service and marketing. In his new position, Kevin will be involved in strategic planning, implementation and administration of operational units within Specialty Operations.

Stephen M. Bennett - Vice President, RHS Solutions

In addition, Stephen Bennett has joined our organization as the operational leader of RHS (Risk, Health & Safety) Solutions, the specialty division responsible for risk management, employee health, safety and human resources consulting. Stephen has 25 years of experience in human and system performance consulting with an emphasis in workers' compensation cost control, safety management, and diagnostics. He is a leader in the development of workers' compensation cost containment solutions for major clients throughout the United States, and comes to RHS from Marsh USA where he served as workforce strategies global practice leader. Stephen graduated from Vanderbilt University with a Bachelor's Degree in Engineering.

SEDGWICK CMS THREE-TIME EMPLOYER OF CHOICE® DESIGNEE

Sedgwick Claims Management Services, Inc. (Sedgwick CMS) announces that it has been certified an Employer of Choice® for the third consecutive year. Designation as an Employer of Choice is awarded to public, private or not-for-profit employers that demonstrate effective implementation of best practices in attracting, developing and retaining outstanding people.

“Our congratulations to Sedgwick CMS upon the renewal of its Employer of Choice Certification, a designation it has maintained without interruption since becoming the first EOC-credentialed employer in the insurance and risk services sector in 2004,” said Joyce L. Gioia-Herman, chief executive officer of Employer of Choice, Inc. and co-author of *How to Become an Employer of Choice*. “The assessment arm of Employer of Choice, Inc. evaluates renewal applications to confirm that organizations remain on track with their commitments to employee development and leadership in workplace best practices. Earning this designation three years in a row is indeed commendable. This recertification is based on the results of a survey of Sedgwick CMS employees and on Employer of Choice’s independent assessment of the company’s culture, leadership, care for its people, compensation and benefits practices, success in providing opportunities for growth and meaningful work, employee loyalty and performance results.”



“Participation in the Employer of Choice process is part of our strategy for attracting, developing and retaining the best team in the claims industry,” said Sedgwick CMS President and Chief Executive Officer David A. North. “Every year the insights our colleagues provide through the confidential, independently administered Employer of Choice Survey have resulted in positive changes. Teams of colleagues working with survey findings have produced many of those recommendations. As we enter our third year of Employer of Choice certification, we continue to see advantages for our colleagues and, through their outstanding work, advantages for our clients.”

Coming Soon.....

CMI's Ohio State Fund Employer Spring Seminars!

Visit our website at www.compmgt.com and click on "Click Here to register for State Fund Spring Seminars"



Settlement Update*continued from page 2*

As with all settlement applications it receives, the BWC will review the settlement amount requested and, if necessary, negotiate an agreed-upon amount. Once the BWC and the injured worker agree to the settlement amount, the BWC will issue an order. That order carries a 30-day appeal period. So, even under this new provision of SB 7, the employer still has the opportunity to object to the settlement if it is not in agreement with either the settlement or the amount reached. After the 30-day appeal period has expired, the settlement will become final and the injured worker will receive payment for the settlement.

Unemployment Update**Delays Possible in Unemployment Rule Changes**

The Unemployment Advisory Council has been working with legislators and other organizations to suggest several changes to the Ohio unemployment benefits system, the biggest of which is a change to the Social Security offset.

Due to the change in administration in the State of Ohio in November 2006, none of the proposed changes have been made, and the current anticipation is that although the changes will make Ohio more consistent with other states' statutes, the changes may not be as all-encompassing as originally discussed and will not take place until much later in 2007.

Currently, Ohio deducts 100% of Social Security benefits from the weekly benefit amount. The current proposal is to deduct 50%, with the possibility of no offset if the unemployment trust fund rebuilds to the Minimum Safe Level. The state is also considering changes that will allow more part-time employees to collect, and eliminating the dependency classes.

Since dependency classes do remain in effect, the weekly benefit amounts have increased for 2007. The maximum benefit for a claimant with no dependents is \$355; with one or two dependents, \$431; and with three or more dependents, \$479.

In addition, the taxable wage base could be expanded so that employers who pay taxes would be paying on the first \$9,500 dollars of earnings each year, an increase from the \$9,000 base that has been in place for over 5 years.

CompManagement will continue watching this proposed legislation and will keep our clients informed of actual changes. Any questions or concerns should be sent to Mary Lloyd-Marucco at Mary.Lloyd-Marucco@sedgwickcms.com.

CompMANAGEMENT, Inc.**A Sedgwick CMS Company**

P.O. Box 884, Dublin, Ohio 43017

CompManagement, Inc.**A Sedgwick CMS Company****P.O. Box 884, Dublin, OH 43017****Phone: (614) 766-5223****Toll-Free: (800) 825-6755***CompNotes is a quarterly newsletter of CompManagement, Inc., a Sedgwick CMS company.**CompNotes is provided to clients and friends for general information purposes only and should not be construed as legal advice. You should consult with an attorney or other appropriate professional if you have questions about any of the topics included in this publication.*