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GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

SAN ALLEN, INC., d/b/a)
CORKY AND LENNY'S)
27091 Chagrin Boulevard)
Woodmere Village, Ohio 44122)

CASE NO.: CV 07 644950

And)
)

JUDGE RICHARD J. McMONAGLE

TIMELY ADVERTISING SPECIALTY)
CO., d/b/a S.E. BENNETT COMPANY)
27629 Chagrin Boulevard, No. 204)
Woodmere, Ohio 44122)

And)
)

LINDERME TUBE CO.)
1500 East 219th Street)
Cleveland, OH 44117)

FIRST AMENDED
CLASS ACTION COMPLAINT
FOR EQUITABLE RELIEF

And)
)

CAMBRIDGE MANUFACTURING)
JEWELERS, LTD.)
76 Maple Drive)
Hudson, Ohio 44236-3020)

And)
)

D & J STRUCTURAL)
CONTRACTING, INC.)
33688 Royalton Road)
Columbia Station, Ohio 44028)

And)
)

LIFECENTER PLUS, INC.)
5133 Darrow Road)
Hudson, Ohio 44236)

And)

DAVID W. STEINBACH, INC.)
6824 Wise Avenue, NW)
North Canton, Ohio 44720)

Plaintiffs)

v.)

MARSHA P. RYAN, ADMINISTRATOR)
OHIO BUREAU OF WORKERS')
COMPENSATION)
30 W. Spring Street)
Columbus, Ohio 43215-2256)

Defendant)

Also serve:)

OHIO ATTORNEY GENERAL)
MARC DANN)
30 E. Broad Street, 17th Floor)
Columbus, Ohio 43215-3428)

Plaintiffs SAN ALLEN, INC., d/b/a CORKY AND LENNY'S, TIMELY
ADVERTISING SPECIALTY CO., d/b/a S.E. BENNETT CO., LINDERME TUBE CO.,
CAMBRIDGE MANUFACTURING JEWELERS, LTD., D&J STRUCTURAL
CONTRACTING, INC., LIFECENTER PLUS, INC., and DAVID W. STEINBACH, INC.
("Plaintiffs"), by and through counsel, for their claim against MARSHA P. RYAN,
ADMINISTRATOR, OHIO BUREAU OF WORKERS' COMPENSATION, in her
official capacity ("Defendant"), state as follows:

NATURE OF ACTION

1. Plaintiffs, Ohio corporations with their principle places of business located at the above addresses, are employers that participate in the Ohio Workers' Compensation program by making mandatory premium payments as prescribed by Defendant.

2. Plaintiffs have been categorized by Defendant as non-group rated employers, Plaintiffs received invoices for premiums in Cuyahoga County, Ohio, and Plaintiffs paid premiums imposed by Defendant on non-group rated employers.

3. Plaintiffs assert, on behalf of themselves and all other similarly situated employers who have paid non-group rated premiums since the inception of Defendant's group rating plan (hereinafter the "Plan"), a claim in equity for unjust enrichment, because the Plan violates the Section 2, Article I and Section 35, Article II of the Ohio Constitution. The Plan also violates and exceeds the rule making authority granted to Defendant pursuant to O.R.C. § 4123.29.

4. Plaintiffs, on behalf of themselves and a class of similarly situated Ohio employers, pursuant to Rule 23 of the Ohio Rules of Civil Procedure, claim that they are entitled to the repayment of all excessive premiums wrongfully received and retained by Defendant pursuant to the unconstitutional Plan.

5. Plaintiffs bring this suit in equity for the return of specific funds wrongfully collected and retained by Defendant pursuant to the unconstitutional Plan, and this Court has jurisdiction over this matter pursuant to Ohio Revised Code § 2743.03(A)(2).

6. Venue is proper in this Court by virtue of the fact that many of the acts complained of occurred within the territorial jurisdiction of this Court, including the improper assessment of excessive premiums exacted from the named Plaintiffs and all other similarly situated employers located in Cuyahoga County, Ohio.

CLASS ACTION ALLEGATIONS

7. Plaintiffs bring this action in equity on behalf of all Ohio private employers who have at any time since 1991 paid workers' compensation premiums as a non-group rated employer (the "Class").

8. The persons in the Class identified above are so numerous that joinder of all the members is impractical. Although the precise number of such persons is unknown, and facts from which that number may be determined are within the sole control of Defendant, upon information and belief the number of persons in the Class exceeds 250,000. The Class is composed of persons geographically dispersed throughout Ohio, the joinder of whom in one action is impractical, and the disposition of their claims in a Class action will provide substantial benefits to both the parties and the Court. The Class is easily ascertainable through Defendant's readily available electronic records and maintains a sufficient community of interest since the rights of each member of the Class was violated in similar fashion based upon Defendant's uniform unlawful practice. The victimized Class members can be identified in records maintained by Defendant, and thus

can be located and notified with specificity of the pendency of this action via first class mail using techniques and a form notice customarily used in class action litigation.

9. There are questions of law and fact common to the Class that predominate over any questions affecting only individual members.

10. The claims of the representative parties are typical of the claims of the Class.

11. The representative parties will fairly and adequately protect the interests of the Class, and Plaintiffs have retained counsel competent and experienced in handling claims like those asserted in this case.

12. A class action is superior to all other methods for the just, fair and efficient adjudication of this controversy since joinder of all members is impractical. Furthermore, the damages suffered by individual Class members may not be sufficient to justify the enormous cost associated with prosecuting this type of litigation. The expense and burden posed by such individual litigation make it impractical for the Class members to individually redress the wrongs done to them, nor would such an individual case be adequate to ensure that such practices cease to harm others. Further, there will be no difficulty in the management of this action as a class action.

13. Common questions of law and fact exist as to all members of the Class and these common issues predominate over any questions which go particularly to any individual member of the Class. Among such common questions of law and fact are the following:

a) whether the Plan violates Section 35, Article II of the Ohio Constitution, by imposing premiums on non-group rated employers that exceed, and in fact subsidize, the discounted premiums charged group-rated employers, who fall within the same occupational classification;

b) whether the Plan violates Section 35, Article II of the Ohio Constitution, by requiring non-group rated employers to subsidize discounted premiums afforded group-rated employers in the same occupational classification;

c) whether the Plan violates Section 2, Article I of the Ohio Constitution, by arbitrarily imposing burdens on non-group rated employers without a rational basis, by requiring non-group rated employers to pay inflated workers' compensation premiums in order to subsidize discounted premiums afforded identically situated group-rated employers; and

d) whether the Defendant's implementation of the Plan violated the statutory mandate granted to Defendant under O.R.C. § 4123.29, by requiring similarly situated and occupational classified non-group rated employers to subsidize excessive discounts afforded group-rated employers, and instituting an experience rated group rating system instead of a retrospective rated group rating system.

STATEMENT OF FACTS

14. The Ohio Bureau of Workers' Compensation group rating Plan, introduced in 1991, permits employers to join a group for rating purposes and pool the risk of the employers in the group.

15. The Plan implemented by Defendant provided experience rating plan credits to employers participating in the group rating Plan that substantially exceeded the actual credits justified by the groups' loss experience.

16. The group experience rating credits accorded to group rated employers under the Plan decreased the amount of premium collected from group-rated employers to such a low level that the actual loss ratio of incurred losses to premiums collected for group-rated employers is significantly higher than the private employer overall loss ratio. Premium collected from group-rated employers was at all times material hereto and remains to this day inadequate to cover their claims costs.

17. Defendant commissioned and has received nine actuarial studies demonstrating that the group discounts implemented by Defendant do not generate adequate premiums to cover claims costs for group rated employers.

18. Because the Bureau of Workers' Compensation is revenue neutral, the above-described "under charge" of group rated employers causes other non-group

employers, and in particular the named Plaintiffs and their fellow Class members, to pay the difference.

19. The premium inequity caused by the group-rating Plan implemented by Defendant substantially inflates base rates charged to the named Plaintiffs and their fellow Class members.

20. Defendant BWC and its consultants conducted numerous studies of the Plan, all of which concluded that the group-rating Plan was resulting in premium inequity between group-rated employers and non-group rated employers.

21. Defendant BWC has known since the early 1990s that group rated employers were not paying enough premium to compensate for their losses and conversely, that non-group rated employers were paying too much premium and effectively subsidizing the huge discounts accorded group rated employers.

22. The “overcompensation” of group-rated employers directly impacts the base premium rate levels, and in particular has directly caused the wrongful and inequitable overcharging of Plaintiffs and their fellow Class members.

23. Defendant BWC itself has estimated that the bias in favor of group-rated employers has caused an approximate 20 percent overstatement of base premium rates compared to base premium rates in the absence of the bias group-rating Plan.

24. Defendant has assessed and wrongfully charged Plaintiffs and their fellow Class members workers’ compensation premiums far in excess of premiums charged to identically situated and occupational classified group-rated employers.

25. Defendant has been unjustly enriched by the wrongfully collected and retained excess premiums charged to Plaintiffs and their fellow Class members.

CLAIM FOR RELIEF

26. Plaintiffs incorporate and restate all the allegations contained in Paragraphs 1 through 25 above, as if fully rewritten herein.

27. The Plan violates Section 2, Article I of the Ohio Constitution by denying Plaintiffs and their fellow Class members equal protection of the law, in that the Plan imposes burdens on Plaintiffs and their fellow Class members that are not borne by identically situated group-rated employers.

28. Pursuant to its group rating Plan, Defendant wrongfully required Plaintiffs and their fellow Class members to subsidize the excessive premium discounts accorded group-rated employers, in violation of Section 2, Article I of the Ohio Constitution.

29. The group rating Plan violates Section 35, Article II of the Ohio Constitution, by apportioning workers' compensation premiums differently to identically situated and occupationally classified employers, based upon their group membership or non-group membership, instead of their occupational classification.

30. The group rating Plan is an invalid exercise of administrative authority, in contravention of O.R.C. §4123.29, because it accords group discounts of such an excessive magnitude that it requires non-group rated employers in the same occupational

classification as group-rated employers to pay a premium subsidy to cover the cost of the excessive discounts.

31. To the extent that Defendant BWC has assessed and collected excessive premiums from Plaintiffs and their fellow Class members, pursuant to the unconstitutional group rating Plan, Defendant has been unjustly enriched.

32. Because the group rating Plan under which Defendant has collected excessive premiums from Plaintiffs and their fellow Class members is unconstitutional, Defendant's collection and retention of those excessive premiums was and is wrongful.

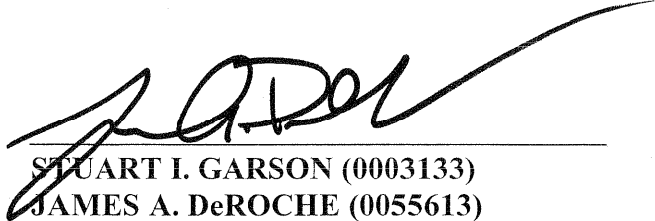
33. Plaintiffs and their fellow Class members are entitled to restitution from Defendant and this Court is empowered in equity to order repayment of said amounts.

WHEREFORE, Plaintiffs Class representatives demand, on behalf of themselves and the Class members, that this Court grant the following relief:

- 1) certify this action as a Class Action pursuant to Rule 23 of the Ohio Rules of Civil Procedure;
- 2) declare that the Ohio Group Rating Plan, as implemented by Defendant, is unconstitutional as violating Section 2, Article I and Section 35, Article II of the Ohio Constitution, and also violates Ohio Revised Code § 4123.29;
- 3) issue an Order in equity requiring Defendant to repay to the Class members all excessive premiums collected by Defendant pursuant to the unconstitutional group rating Plan;

4) award Plaintiffs and the Class members pre-judgment and post-judgment interest;

5) award Plaintiffs and the Class members the costs of this action together with reasonable attorneys fees, and such other and further relief as this Court may deem just and necessary.



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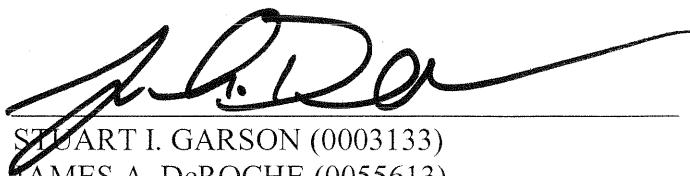
Fax (216) 696-8558

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

A copy of the foregoing Amended Complaint has been sent by ordinary U.S. Mail this 31ST day of January, 2008 to the following:

MARK E. MASTRANGELO, ESQ.
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