**[Cite as *Mahle Behr Dayton, L.L.C. v. Ohio Bur. of Workers' Comp.*, 2025-Ohio-1825.]**

# IN THE COURT OF CLAIMS OF OHIO

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| MAHLE BEHR DAYTON, LLC., et al.<br>Plaintiffs<br><br>v.<br><br>OHIO BUREAU OF WORKERS' COMPENSATION<br>Defendant<br><br>AND<br><br>CPC PARTS DELIVERY, LLC<br>Plaintiff<br><br>v.<br><br>OHIO BUREAU OF WORKERS' COMPENSATION<br>Defendant | Case Nos. 2021-00706JD and 2022-00515JD<br><br>Judge David E. Cain<br><br>DECISION |

**{¶1}** In this remanded matter, before the Court are five motions for summary judgment filed in consolidated Ct. of Cl. No. 2021-00706JD and Ct. of Cl. No. 2022-00515JD that have been fully briefed:

(1) Defendant Ohio Bureau of Workers' Compensation's Motion For Summary Judgment filed on December 31, 2024, in Ct. of Cl. No. 2021-00706JD;

(2) Plaintiff Mahle Behr Dayton, LLC's Motion For Summary Judgment filed on January 21, 2025, in Ct. of Cl. No. 2021-00706JD;

(3) Plaintiff CPC Parts Delivery, LLC's Motion For Summary Judgment filed on January 27, 2025, in Ct. of Cl. No. 2021-00706JD;

(4) Defendant Ohio Bureau of Workers' Compensation's Motion For Summary Judgment filed on December 31, 2024, in Ct. of Cl. No. 2022-00515JD; and

(5) Plaintiff CPC Parts Delivery, LLC's Motion For Summary Judgment filed on January 27, 2025, in Ct. of Cl. No. 2022-00515JD.

**{¶2}** For reasons that follow, the Court holds that Defendant Ohio Bureau of Workers' Compensation (BWC) is entitled to summary judgments in its favor in the consolidated cases because, after the evidence is viewed most strongly in favor of Plaintiffs, no genuine issue as to any material fact remains to be litigated, and because, as a matter of law, BWC is entitled to judgments in its favor on Plaintiffs' constitutional claims of a violation of equal protection guarantees.[1] BWC's motions for summary judgment in the consolidated cases shall therefore be granted and Plaintiffs' motions for summary judgment in Ct. of Cl. No. 2021-00706JD shall be denied and Plaintiff's motion for summary judgment in Ct. of Cl. No. 2022-00515JD shall be denied.

## I. Relevant Background and Procedural History

**{¶3}** In *CPC Parts Delivery, LLC v. Ohio Bur. of Workers' Comp.*, 2024-Ohio-18 (10th Dist.), on appeal from this Court's summary judgments in favor of BWC, the Tenth District Court of Appeals affirmed, in part, and reversed, in part, this Court's judgments and remanded the matter for further proceedings consistent with the court of appeals' decision. *CPC Parts Delivery, LLC* at ¶ 34.

**{¶4}** The Tenth District Court of Appeals in *CPC Parts Delivery, LLC* at ¶ 1-2, 11, summarized the procedural history of the consolidated cases that are now before the Court as follows:

> These consolidated appeals arise from two cases filed in the Court of Claims by appellants against BWC. The first case (No. 2021-00706JD) involves both CPC and Mahle, wherein appellants challenged the

[1] Consolidation of cases does not merge the suits into a single cause, or change the rights of the parties, or make those who are parties in one suit parties in another. *See Transcon Builders v. Lorain*, 49 Ohio App.2d 145, 150 (9th Dist.1976). Finding the reasoning of *Transcon Builders* to be persuasive, the Tenth District Court of Appeals has held that, "although actions may be consolidated, they continue to maintain their separate character and do not make a single multiple party, multiple claim action." *E.C. Redman v. Ohio Dept. of Indus. Relations*, 1994 Ohio App. LEXIS 3953, at *14 (10th Dist. Sep. 6, 1994). *Accord Golden Goose Properties, LLC v. Leizman*, 2014-Ohio-4384, ¶ 32 (8th Dist.); *Hall-Davis v. Honeywell, Inc.*, 2009-Ohio-531, ¶ 27 (2d Dist.).

methodology utilized by BWC to calculate the amounts of premium rebates issued to certain employers participating in the Ohio Bureau of Workers' Compensation Fund (the "State Fund") established to compensate workers injured on the job for the policy years ending June 30, 2012, 2013, and 2016. That case was originally filed in the Montgomery County Court of Common Pleas but was ultimately dismissed for lack of subject-matter jurisdiction. On appeal, the Second District Court of Appeals affirmed the judgment of the trial court. *Mahle Behr Dayton, LLC v. Ohio Bur. of Workers' Comp.*, 2d Dist. No. 28772, 2021-Ohio-145 ("*Mahle I*"). Therein, the appellate court held that appellants' suit against BWC was within the exclusive jurisdiction of the Ohio Court of Claims and not within the subject-matter jurisdiction of the common pleas court. *Id.*

The second case (No. 2022-00515JD) was filed by CPC only. In that case, CPC alleges it is entitled to a larger dividend than it received for the policy year ending June 20, 2020. Both the first and second cases involve essentially the same facts and causes of action and were eventually consolidated in the Court of Claims. (*See* Oct. 14, 2022 Jgmt. Entry.) In both cases, appellants claim BWC was unjustly enriched and violated equal protection by allegedly calculating rebates due to employers participating in the large deductible program differently from rebates due to employers participating in the individually retrospectively rated program.

. . .

On October 3, 2022, the trial court issued a decision and concurrent judgment entry in which the trial court granted BWC's motion for summary judgment and rendered judgment in favor of BWC on appellants' unjust enrichment claims. The trial court dismissed appellants' equal protection claims, without prejudice, finding that the Court of Claims lacks subject-matter jurisdiction to hear constitutional challenges. (Oct. 3, 2022 Decision; Oct. 3, 2022 Jgmt. Entry.) As noted previously, on October 14, 2022, the trial court consolidated the two cases and granted summary judgment in

> favor of BWC in the second case for the same reasons given in the first case. (Oct. 14, 2022 Jgmt. Entry.)

(Footnote omitted.)

**{¶5}** In *CPC Parts Delivery, LLC* the Tenth District Court of Appeals considered three assignments of error:

> [I.] The Court of Claims erred in holding it did not have subject matter jurisdiction over Plaintiffs' equal protection claims.
>
> [II.] The Court of Claims erred in holding that there was a rational basis for BWC differing treatment of employers.
>
> [III.] The Court of Claims erred in holding that Plaintiffs' allegations do not state a claim for unjust enrichment.

*CPC Parts Delivery, LLC* at ¶ 13. For ease of analysis, the court of appeals addressed the appellants' assignments of error out of order. *CPC Parts Delivery, LLC* at ¶ 17.

**{¶6}** In *CPC Parts Delivery, LLC* the Tenth District Court of Appeals overruled the appellants' second assignment of error (which asserted that this Court erred in holding that there was a rational basis for BWC's differing treatment of employers). *CPC Parts Delivery, LLC* at ¶ 20. Nonetheless, the Tenth District Court of Appeals directed:

> [W]e are cognizant that the trial court has already espoused its "belief" that the evidence submitted in this case evinced "a rational basis for treating the worker's [sic] compensation programs differently." (Oct. 3, 2022 Decision at 6, fn. 2.) On remand, however, we would expect that the trial court would undertake a more rigorous analysis of the relevant law as applied to the admissible evidence in this case and render its decision on the issue accordingly.

*CPC Parts Delivery, LLC* at ¶ 32, fn. 3.

**{¶7}** The Tenth District Court of Appeals also overruled the appellants' third assignment of error challenging this Court's unjust-enrichment determination, because, as stated by the court of appeals, "under the facts and admissible evidence of this case, appellants cannot establish the third element of a claim for unjust enrichment. Therefore, BWC was entitled to summary judgment on this claim and the trial court did not err by finding same." *Id.* at ¶ 26.

**{¶8}** The Tenth District Court of Appeals, however, sustained the appellants' first assignment of error, *CPC Parts Delivery, LLC* at ¶ 33, which asserted that this Court "erred in holding it did not have subject matter jurisdiction over Plaintiffs' equal protection claims." *Id.* at ¶ 13. The court of appeals determined that "where a constitutional claim is brought in the Court of Claims not as a private cause of action that seeks relief for the violation itself, but rather as an alternative basis for the same relief sought under other claims brought in the same suit over which the Court of Claims has jurisdiction, the Court of Claims retains subject-matter jurisdiction over the ancillary constitutional claim." *Id.* at ¶ 30.[2]

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[2] The Tenth District Court of Appeals' determination in *CPC Parts Delivery, LLC* at ¶ 30 that this Court retains subject-matter jurisdiction over an "ancillary constitutional claim" is a marked change from that court's longstanding precedent establishing that the Court of Claims lacks jurisdiction over constitutional claims. *See*, *e.g.*, *Thompson v. Southern State Community College*, 1989 Ohio App. LEXIS 2338 *3-4 (10th Dist. June 15, 1989), *Bleicher v. University of Cincinnati College of Medicine*, 78 Ohio App. 3d 302, 306 (10th Dist. 1992), *Peters v. Ohio Dept. of Natural Resources*, 2003-Ohio-5895, ¶ 13 (10th Dist.), and *Hamilton v. Ohio Dept. of Rehab. & Correction*, 2007-Ohio-1173, ¶ 14 (10th Dist.).

In 1989 in *Thompson*, *supra*, the Tenth District Court of Appeals explained: "The Supreme Court noted in [*McCord v. Ohio Div. of Parks & Recreation*, 54 Ohio St.2d 72(1978)], that a plaintiff in the Court of Claims is limited to causes of action which he could pursue if defendant were a private party. Since the alleged constitutional violations herein require an element of state action, plaintiff's constitutional claims present no viable cause of action to be heard in the Court of Claims." *Thompson* at *3-4.

Three years later, in 1992, in *Bleicher* 78 Ohio App. 3d at 306 (10th Dist. 1992), the Tenth District reiterated its view in *Thompson* about the lack of viability of constitutional claims in the Court of Claims, stating: "This court *has consistently held that constitutiona*l and Section 1983, Title 42, U.S.Code *claims are not actionable in the Court of Claims*." (Emphasis added.)

Eleven years later, in 2003 in *Peters*, 2003-Ohio-5895 at ¶ 13 (10th Dist.), the Tenth District Court of Appeals stated:

> [A]s the trial court found, the Ohio Court of Claims is without jurisdiction to consider claims for relief premised upon alleged violations of either the Ohio or the United States Constitutions. R.C. 2743.02 limits actions brought in the Court of Claims to those which could be brought between private parties. See *Graham v. Ohio Bd. of Bar Examiners* (1994), 98 Ohio App. 3d 620, 649 N.E.2d 282. The constitutional violations alleged by appellant in this case require an element of state action and, therefore, could not be brought against a private individual. See *Bleicher v. Univ. of Cincinnati College of Med.* (1992), 78 Ohio App.3d 302, 604 N.E.2d 783. Because counts I and II sought compensation for violations of her constitutional rights, the Court of Claims properly dismissed those claims for lack of subject-matter jurisdiction.

And four years later, in 2007 in *Hamilton*, 2007-Ohio-1173 at ¶ 14 (10th Dist.), the Tenth District Court of Appeals stated:

> Because due process and equal protection violations require an element of state action, they present no viable cause of action in the Court of Claims. [*Peters v. Ohio Dept. of Natural Resources*, 2003-Ohio-5895, ¶13 (10th Dist.)]. In *Bleicher*, this court held that the Court of Claims did not err in determining that it lacked jurisdiction over the plaintiff-appellant's claims that his dismissal from the University of Cincinnati College of Medicine

**{¶9}** In *CPC Parts Delivery, LLC* at ¶ 32, the Tenth District Court of Appeals concluded: "[W]e have . . . determined that the trial court did not err in granting summary judgment in favor of BWC on appellants' claim for unjust enrichment, and thus appellants

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> was arbitrary and capricious, violating his rights to due process and equal protection; see, also, *Webb v. Grafton Corr. Inst.*, Franklin App. No. 03AP-1014, 2004 Ohio 3729, at ¶ 31 (holding that the Court of Claims lacked jurisdiction over inmate's claims of constitutional violations by a state correctional facility). Accordingly, any claim by appellant that he has been deprived of his constitutional rights to due process and/or equal protection as a result of his criminal proceedings or appellees' subsequent actions, was outside the subject-matter jurisdiction of the Court of Claims.

*See generally Patton v. Diemer*, 35 Ohio St.3d 68 (1988), paragraph three of the syllabus (holding that a judgment rendered by a court lacking subject matter jurisdiction is void *ab initio*).

Additionally, the Tenth District Court of Appeals' conferment of subject-matter jurisdiction upon this Court over an "ancillary constitutional claim" in *CPC Parts Delivery, LLC* at ¶ 30 seemingly conflicts with Ohio law establishing that the Court of Claims of Ohio, as a statutorily created court, *see* R.C. 2743.03, may exercise only such powers as are directly conferred by legislative action. *State ex rel. DeWine v. Court of Claims of Ohio*, 2011-Ohio-5283, ¶ 19. *See Littleton v. Holmes Siding Contr., Ltd.*, 2013-Ohio-5602, ¶ 8 (10th Dist.), citing *Steward v. State*, 8 Ohio App.3d 297, 299 (10th Dist.1983) ("[t]he Court of Claims is a court of limited jurisdiction and may exercise only that jurisdiction specifically conferred upon it by the General Assembly").

Furthermore, the Tenth District Court of Appeals' determination in *CPC Parts Delivery, LLC* at ¶ 30 seemingly is at odds with Ohio's separation-of-powers doctrine and the principle that the General Assembly's prerogative about the Court of Claims' subject-matter jurisdiction may not be encroached upon by another branch of government. *See State ex rel. Jones v. Ohio State House of Representatives*, 2022-Ohio-1909, ¶ 7 (the legislative power of this state is vested in the General Assembly and a legislative prerogative cannot be delegated or encroached upon by the other branches of government); *Stetter v. R.J. Corman Derailment Servs., L.L.C.*, 125 Ohio St.3d 280, 2010-Ohio-1029, ¶ 87-88 (discussing separation of powers doctrine); *Rowitz v. McClain*, 2019-Ohio-5438, ¶ 77 (10th Dist.) ("it is not the role of the court to legislate or create policy. That role lies squarely with the legislative branch. As the judiciary, we are constrained to apply the law, even when we do not agree with the law or the policy decisions that the legislature has made").

Nonethless, in this remanded matter, Tenth District Court of Appeals' determination that this Court "retains subject-matter jurisdiction over the ancillary constitutional claim," *CPC Parts Delivery LLC* at ¶ 30, is the law of this case. In *Nolan v. Nolan*, 11 Ohio St.3d 1, 3 (1984), the Ohio Supreme Court stated, "[T]he [law-of-the-case] doctrine provides that the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both the trial and reviewing levels. . . . [T]he rule is necessary to ensure consistency of results in a case, to avoid endless litigation by settling the issues, and to preserve the structure of superior and inferior courts as designed by the Ohio Constitution." As explained in Bryan A. Garner, et al., *The Law of Judicial Precedent*, § 55 at 459 (2016), quoting *In re Sanford Fork & Tool Co.*, 160 U.S. 247, 255 (1895):

> Appellate courts usually don't implement or execute their own rulings. Instead, whether an appellate court is affirming or reversing the trial-court ruling, it will remand the case trial court to carry out the ruling. At this stage, the trial court's discretion has evaporated. The trial court "is bound by the decree, as the law of the case, and must carry it into execution according to the mandate." The trial court has no authority to vary the ruling or even to examine it by way of executing it. Essentially, it must genuflect.

(Footnotes omitted.) *But see Nolan* at 3. ("[t]he [law-of-the-case doctrine] is considered to be a rule of practice rather than a binding rule of substantive law and will not be applied so as to achieve unjust results").

are not entitled to relief on those grounds. Therefore, based on the foregoing discussion, although appellants are not entitled to relief under their claim for unjust enrichment, the Court of Claims does have subject-matter jurisdiction over appellants' claim for a violation of equal protection, and the Court of Claims erred in finding it lacked subject matter jurisdiction over this claim." (Footnote omitted.)

**{¶10}** Accordingly, on remand, the issues requiring the Court's determination are (1) whether, in consolidated Ct. of Cl. No. 2021-00706JD and Ct. of Cl. No. 2022-00515JD, BWC violated equal protection guarantees by calculating rebates to employers participating in the BWC's large deductible program differently from rebates due to employers participating in the individually retrospectively rated program and (2) whether, based on the parties' summary-judgment motions before the Court, a party in the consolidated cases should be entitled to summary judgment in its favor.

## II. Law and Analysis

### A. Legal Standard

**{¶11}** Rule 56 of the Ohio Rules of Civil Procedure governs motions for summary judgment. *See* Civ.R. 56. Under Civ.R. 56(C) summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule." Any evidence that is not specifically listed in Civ.R. 56(C) "is only proper if it is incorporated into an appropriate affidavit under Civ.R. 56(E)." *Pollard v. Elber*, 2018-Ohio-4538, ¶ 22 (6th Dist.) *Accord Barton v. Cty. of Cuyahoga*, 2020-Ohio-6994, ¶ 21 (8th Dist.). Courts "may consider other evidence if there is no objection on this basis." *State ex rel. Gilmour Realty, Inc. v. City of Mayfield Hts.*, 2009-Ohio-2871, ¶ 17; *Pollard* at ¶ 22.

**{¶12}** However, under Civ.R. 56(C) a summary judgment "shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party

being entitled to have the evidence or stipulation construed most strongly in the party's favor."[3] The Supreme Court of Ohio has explained that, on motion for summary judgment, the moving party "bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record before the trial court which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim." *Dresher v. Burt*, 75 Ohio St.3d 280, 292 (1996). In *Dresher* the Supreme Court of Ohio stated:

> [T]he moving party bears the initial burden of *demonstrating* that there are no genuine issues of material fact concerning an essential element of the opponent's case. To accomplish this, the movant must be able to point to evidentiary materials of the type listed in Civ.R. 56(C) that a court is to consider in rendering summary judgment. The evidentiary materials listed in Civ.R. 56(C) include "the pleading, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any." These evidentiary materials must show that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law.

(Emphasis sic.) *Dresher* at 292-293.

**{¶13}** If a moving party "fails to satisfy its initial burden, the motion for summary judgment must be denied." *Vahila v. Hall*, 77 Ohio St.3d 421, 429 (1997). *See Omega Riggers & Erectors, Inc. v. Koverman*, 2016-Ohio-2961, ¶ 69 (2d Dist.) ("unless the movant satisfies its initial burden on a motion for summary judgment, the non-movant has no burden of proof"). But if a party who moves for summary judgment has satisfied its initial burden, then a nonmoving party "has a reciprocal burden outlined in the last

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[3] Discussing Civ.R. 56(C), the Supreme Court of Ohio has stated:

> Civ.R. 56(C) provides that before summary judgment may be granted, it must be determined that (1) no genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the party against whom the motion for summary judgment is made.

*State ex rel. Grady v. State Emp. Rels. Bd.*, 78 Ohio St.3d 181, 183 (1997), citing *Temple v. Wean United, Inc.*, 50 Ohio St. 2d 317, 327 (1977).

sentence of Civ.R. 56(E)." *Dresher* at 293. *See* Civ.R. 56(E) ("[w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party").

**{¶14}** Under Ohio law a material fact "is an essential element of the claim or defense, as defined by the substantive law." *Morgan v. Beigel*, 2011-Ohio-406, ¶ 8 (3d Dist.), citing *Mount v. Columbus & S. Ohio Elec. Co.*, 39 Ohio App.3d 1, 2 (5th Dist.1987). "A dispute of fact is 'material' if it affects the outcome of the litigation." *Morgan* at ¶ 8, citing *Mount* at 2. The Tenth District Court of Appeals has discussed the concept of "disputed issues of fact" as follows:

> In every lawsuit there are some disputed issues of fact, but Civ.R. 56 focuses on those which are "material." The materiality determination of facts is discussed in *Anderson v. Liberty Lobby, Inc.* (1986), 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202. The mere existence of some factual disputes, if not material, will not defeat a summary judgment otherwise proper. If one's case is supported only by a "scintilla" of evidence, or if his evidence is "merely colorable" or not "significantly probative," summary judgment should be entered.

*Buckeye Union Ins. Co. v. Consol. Stores Corp.*, 68 Ohio App.3d 19, 22 (10th Dist.1990). The Tenth District Court of Appeals, however, has cautioned:

> At summary judgment, it is not the role of the court to resolve a disputed fact or weigh the credibility of the evidence, only to determine whether there exists a genuine dispute of material fact. . . . The trial court is limited to determining whether admissible evidence of the type contemplated by Civ.R. 56(C) gives rise to a genuine dispute of material fact; it is exclusively the role of the fact-finder to determine what weight to give that evidence at trial.

*Kiser v. United Dairy Farmers*, 2023-Ohio-2136, ¶ 16 (10th Dist.).

**B. The Ohio Bureau of Workers' Compensation (BWC) is entitled to summary judgment in the consolidated cases.**

**1. Overview of applicable aspects of the Ohio Workers' Compensation System.**

**{¶15}** In *CPC Parts Delivery, LLC* the Tenth District Court of Appeals provided an overview of aspects of the Ohio Workers' Compensation System that are applicable in this remanded matter. *CPC Delivery, LLC* at ¶ 4-10. The court of appeals stated:

> In *Cleveland v. Ohio Bur. Of Workers' Comp.*, 159 Ohio St.3d 459, 2020-Ohio-337, 152 N.E.3d 172, the Supreme Court of Ohio explained:
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> > Ohio requires public employers that are not self-insured employers to contribute to the public insurance fund "the amount of money determined by the administrator of workers' compensation." R.C. 4123.38. Employers can choose from a range of plans. The BWC offers both individual- and group-rated plans.
> >
> > Pursuant to R.C. 4123.29(A), the administrator of the BWC, with the approval of the board of directors, classifies occupations or industries with respect to degree of hazard and risks and sets the premiums that employers must pay into the state insurance fund for workers' compensation coverage each year. The BWC deposits these premiums into a single state insurance fund (it does not maintain a separate account for each employer), and it pays compensation benefits associated with work-related accidents from that fund. With the exception of a required surplus to maintain solvency, R.C. 4123.321 requires the BWC to establish a procedure for returning excess premiums to participating employers in order to maintain a revenue-neutral fund.
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> *Id.* at ¶ 3-4. The procedures for issuing rebates are set forth in the Ohio Administrative Code.

The State Fund is intended to be revenue neutral—i.e., the BWC charges Ohio employers only those premium amounts that the BWC actuarially determines are necessary to pay for projected claims costs and other related expenses. (May 2, 2022 Michael Sendelbach Aff. at ¶ 3.) Nevertheless, because of the timing of premium payments and claims made, revenue neutrality does not equate to cash flow neutrality. *Id.* Any excess cash flowing in is invested for the benefit of the State Fund. *Id.* Thus, a surplus may be generated in excess of what is required to maintain the solvency of the State Fund. *Id.* When such an excess surplus exists, BWC's Board of Directors (the "BWC Board") is authorized to issue rebates to participating Ohio private employers. (*Id.* at ¶ 5; R.C. 4123.321.)

In recent history, the BWC Board has approved and issued three separate rebates, each individually totaling approximately $1 billion. (Sendelbach Aff. at ¶ 7.) The most recent such rebate, and the one at issue in this appeal, was issued for the policy year beginning July 1, 2015 and ending June 30, 2016 (the "2015 Policy Year"). *Id.* The BWC Board determined the total dollar amount of rebates to be distributed based on actuarial recommendations, then calculated the rebate amounts. *Id.* at ¶ 6.

The Ohio Administrative Code sets forth several programs in which private employers can participate, depending on eligibility requirements. *See* Ohio Adm.Code 4122-17, et seq. Two such programs are relevant to this case: the Individual Retrospective Rating Program ("Individual Retro Program") under Ohio Adm.Code 4123-17-41 and the Large Deductible Program ("Large Deductible Program") under Ohio Adm.Code 4123-17-72. Both CPC and Mahle participated in the Large Deductible Program during the 2015-2016 policy year. (James Tompkins Aff. at ¶ 2; Terri Case Aff. at ¶ 2.)

The Individual Retro Program applies a retrospective premium whereby an employer pays an initial policy premium to BWC, which is recalculated at the end of each policy year based on claims incurred during that policy year. (Sendelbach Aff. at ¶ 13.) In this program, "[t]he employer

assumes a portion of the risk in exchange for a reduction in premium. The exact cost of a retrospective premium for any policy year cannot be determined until the end of the policy's term when claims experience can be tallied." *Id.*

Under the Large Deductible Program, employers pay a guaranteed premium. (Sendelbach Aff. at ¶ 10.) "A guaranteed premium policy is prospective, calculated prior to the policy taking effect . . . [and] is unaffected by claims experience during the coverage period." *Id.* Claims experience during the coverage year may, however, affect the premium charge in subsequent policy years. *Id.* The Large Deductible Program "offers an up-front premium discount since program participants agree to take on a per claim deductible." *Id.* The maximum amount of the per claim deductible is $200,000. (Tomkins Aff. at ¶ 3; Case Aff. at ¶ 3.)

When the BWC Board approved the rebate for the 2015 Policy Year, individual rebates were calculated based on a defined percentage of the actual premiums paid by eligible employers. (Sendelbach Aff. at ¶ 6, 8.) Employers participating in the Large Deductible Program—including appellants—did not receive a rebate for claim payments made up to the deductible amount they agreed to pay under that program "[b]ecause deductibles are not defined as premiums." *Id.* In comparison, under the Individual Retro Program, claim costs are specifically defined as premiums; thus, these claim costs were included in the rebate calculation for employers participating in this program. *Id.* at ¶ 13; Ohio Adm.Code 4123-17-52 and 4123-17-41. Thus, the crux of appellants' claims is that it was both unfair and unlawful for BWC to use different formulas to calculate the individual rebates for employers participating in the two different programs, and that appellants are entitled to larger rebates than those that were issued to them. *CPC Parts Delivery, LLC* at ¶ 4-10.

**2. BWC did not violate equal protection guarantees in the consolidated cases by calculating rebates to employers participating in the BWC's**

**large deductible program differently from rebates due to employers participating in the individually retrospectively rated program.**

**{¶16}** The Ohio Supreme Court has explained that "workers' compensation statutes represent 'a social bargain in which employers and employees exchange their respective common-law rights and duties for a more certain and uniform set of statutory benefits and obligations.'" *Am. Interstate Ins. Co. v. G & H Serv. Ctr.*, 2007-Ohio-608, ¶ 10, quoting *Holeton v. Crouse Cartage Co.*, 92 Ohio St.3d 115, 119 (2001). In view of this statutory codification of this "social bargain" between employers and employees, it follows that all persons or entities similarly situated should be treated alike, as required by state and federal equal protection guarantees.

**{¶17}** The Tenth District Court of Appeals has described equal protection guarantees under the Ohio Constitution and the federal constitution as follows:

> The Fourteenth Amendment to the United States Constitution provides that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Similarly, Article I, Section 2 Ohio Constitution states that "[a]ll political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the General Assembly." "Simply stated, the Equal Protection Clauses require that individuals be treated in a manner similar to others in like circumstances." *McCrone v. Bank One Corp.*, 107 Ohio St.3d 272, 2005-Ohio-6505, ¶ 6, 839 N.E.2d 1. "The limitations placed upon governmental action by the federal and state Equal Protection Clauses are essentially the same." *Id.* at ¶ 7.

*Rowitz v. McClain*, 2019-Ohio-5438, ¶ 14 (10th Dist.). *See Ferguson v. State*, 2017-Ohio-7844, ¶ 29, quoting *State v. Aalim*, 2017-Ohio-2956, ¶ 29 (considering equal protection guarantees under Article 1, Section 2 of the Ohio Constitution and the Fourteenth

Amendment to the United States Constitution "to be 'functionally equivalent' and employ the same analysis under both provisions").

**{¶18}** In *Ferguson*, *supra*, the Ohio Supreme Court stated:

> Although citizens are entitled to equal protection under the law, governments are "free to draw distinctions in how they treat certain citizens. 'The Equal Protection Clause does not forbid classifications. It simply keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike.'" *Park Corp. v. Brook Park*, 102 Ohio St.3d 166, 2004-Ohio-2237, 807 N.E.2d 913, ¶ 19, quoting *Nordlinger v. Hahn*, 505 U.S. 1, 10, 112 S.Ct. 2326, 120 L.Ed.2d 1 (1992).
>
> The first step in analyzing a statute on equal-protection grounds is determining the appropriate standard of review. *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 2007-Ohio-6948, 880 N.E.2d 420, ¶ 64. Where . . . the classification does not involve a fundamental right or a suspect class, we will uphold the classification if it is rationally related to a legitimate government interest. *Conley v. Shearer*, 64 Ohio St.3d 284, 289, 1992-Ohio-133, 595 N.E.2d 862 (1992). Under rational-basis review, we grant "substantial deference" to the General Assembly's predictive judgment. *State v. Williams*, 88 Ohio St.3d 513, 531, 2000-Ohio-428, 728 N.E.2d 342 (2000).

*Ferguson* at ¶ 30-31. *Compare Eppley v. Tri-Valley Local School Dist. Bd. of Edn.*, 2009-Ohio-1970, ¶ 14 ("[i]n an equal protection claim, government actions that affect suspect classifications or fundamental interests are subject to strict scrutiny by the courts"). *See Zillow, Inc. v. Miller*, 126 F.4th 445, 463 (6th Cir.2025).[4]

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[4] In *Zillow*, 126 F.4th at 463, the United States Court of Appeals for the Sixth Circuit explained:

> "The Equal Protection Clause of the Fourteenth Amendment commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985). To prevail on an equal-protection claim, a petitioner must show that a similarly situated person has been treated disparately. *Northville Downs v. Granholm*, 622 F.3d 579, 586 (6th Cir. 2010). "Once disparate treatment is shown, the legal standard for analyzing any equal protection claim depends upon the classification used by the

**{¶19}** The United States Court of Appeals for the Sixth Circuit has remarked: "Summary judgment is an apt vehicle for resolving rational-basis claims. That's because the question is not whether a law in fact is rational. It's whether a legislator could plausibly think so." *Tiwari v. Friedlander*, 26 F.4th 355, 369 (6th Cir.2022). Notably, the Ohio Supreme Court has previously employed rational-basis review when considering an equal-protection challenge to certain aspects of the Ohio Workers' Compensation system. *See Ferguson*, *supra*, ¶ 32; *Stolz v. J & B Steel Erectors*, 2018-Ohio-5088, ¶ 26.

**{¶20}** In *Rowitz*, 2019-Ohio-5438, ¶ 35-37 (10th Dist.) the Tenth District Court of Appeals discussed rational-basis review, stating:

> "Under [rational basis] review, a statute will not be invalidated if it is grounded on a reasonable justification, even if its classifications are not precise." [*Arbino v. Johnson & Johnson*, 2007-Ohio-6948, ¶ 66], citing [*McCrone v. Bank One Corp.*, 2005-Ohio-6505, ¶ 8]; *see also* [*Groch v. GMC*, 2008-Ohio-546, ¶ 82] ("[A] challenged statute will be upheld if the classifications it creates bear a rational relationship to a legitimate government interest or are grounded on a reasonable justification, even if the classifications are not precise.").
>
> The Supreme Court of Ohio has laid out the "two-step analysis" required for the rational basis test:
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> We must first identify a valid state interest. Second, we must determine whether the method or means by which the state has chosen to advance that interest is rational. *See Buchman v. Wayne Trace Local School Dist. Bd. of Educ*. (1995), 73 Ohio St. 3d 260, 267, 1995-Ohio-136, 652 N.E.2d 952. A statute will not be held to violate the Equal Protection Clause, and this court will not invalidate a plan of classification adopted by the General Assembly, unless it is clearly arbitrary and unreasonable. *State ex rel. Lourin v. Industrial Comm'n*. (1941), 138 Ohio St. 618, 620, 21 Ohio

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government." *Id.* "The general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." *City of Cleburne*, 473 U.S. at 440. However, when fundamental rights are at issue, legislation is reviewed according to the applicable standard, i.e., if a statute imposes a content-based restriction on speech, it will generally be reviewed under strict scrutiny. *Chambers v. Stengel*, 256 F.3d 397, 401 (6th Cir. 2001).

> Op. 490, 37 N.E.2d 595, overruled on other grounds, *Caruso v. Alum. Co. of Am*. (1984), 15 Ohio St.3d 306, 15 OBR 436, 473 N.E.2d 818.
>
> *McCrone* at ¶ 9.
>
> This deferential standard is "'especially deferential'" for "'classifications arising out of complex taxation law.'" *Columbia Gas Transm. Corp. v. Levin*, 117 Ohio St.3d 122, 2008-Ohio-511, ¶ 92, 882 N.E.2d 400, quoting *Park Corp. v. Brook Park*, 102 Ohio St.3d 166, 2004-Ohio-2237, ¶ 23, 807 N.E.2d 913. "States have great leeway in making classifications and drawing lines that in their judgment produce reasonable systems of taxation." *Id.*, citing *Nordlinger v. Hahn*, 505 U.S. 1, 11, 112 S. Ct. 2326, 120 L. Ed. 2d 1 (1992). As such, "[l]aws such as economic or tax legislation that are scrutinized under rational basis review normally pass constitutional muster." *Lawrence* at 579. "[T]he assessment of taxes is fundamentally a legislative responsibility and a taxpayer challenging the constitutionality of a taxation statute bears the burden to negate every conceivable basis that might support the legislation." *Columbia Gas Transm. Corp.* at ¶ 91, citing *Lyons v. Limbach*, 40 Ohio St.3d 92, 94, 532 N.E.2d 106 (1988).

*Rowitz v. McClain*, 2019-Ohio-5438, ¶ 35-37 (10th Dist.)[5]

**{¶21}** Here, BWC has a valid interest in maintaining the revenue neutral status of the State Fund. *See CPC Parts Delivery, LLC* at ¶ 5 ("[t]he State Fund is intended to be revenue neutral—i.e., the BWC charges Ohio employers only those premium amounts that the BWC actuarially determines are necessary to pay for projected claims costs and other related expenses").[6] As discussed in *CPC Parts Delivery, LLC* there are two

[5] *Rowitz*'s application of a deferential standard of review for classifications arising out of "complex taxation law," *see Rowitz* at ¶ 37 seemingly should apply in these consolidated cases involving what a reasonable person may view as "complex" workers' compensation law. And *Rowitz*'s determination that a challenger to the constitutionality of a statute bears the burden of negating every conceivable basis that might support the legislation, *see Rowitz* at 37, also should seemingly apply in this instance.

[6] Christopher S. Carlson, formerly the Ohio Bureau of Workers' Compensation's Chief Actuarial Officer, testified in a deposition: "The net position proposal was designed to achieve a lowering of the amount that the state insurance fund had in assets to cover the cost of claims that had already occurred such that there was still a significant margin for safety, if you will, but was not excessive of what some of our modeling indicated." (Carlson Deposition, 37.)

classifications of employers are at issue in these consolidated cases—(1) employers participating in BWC's large deductible program and (2) employers participating in the individually retrospectively rated program. The evidence in the consolidated cases establishes that the employers are not in all relevant respects alike or similarly situated since BWC's large deductible program and BWC's individually retrospectively rated program are not the same program. Plaintiffs in the consolidated cases are therefore unable to state an equal protection claim based on disparate treatment of similarly situated entities. *See Northville Downs v. Granholm*, 622 F.3d 579, 586 (6th Cir.2010), quoting *Braun v. Ann Arbor Charter Twp*., 519 F.3d 564, 574 (6th Cir. 2008) ("'[t]o state an equal protection claim, a party must claim that the government treated similarly situated persons differently.'(citation omitted)").

**{¶22}** However, even assuming for the sake of argument that employers participating in BWC's large deductible program and employers participating in the individually retrospectively rated program were in all relevant respects alike or similarly situated, the evidence identifies a rational reason for BWC's rebate program's different treatment of employers participating in BWC's large deductible program and employers participating in the individually retrospectively rated program. In deposition testimony, Barbara Ingram, who formerly was BWC's Chief Fiscal and Planning Officer, testified: "To me, the biggest distinction between the two programs is that the deductible program, the employer is agreeing to take on those claim costs for the life of the claim, the retro program, there were evaluations that were done on an annual basis with a ten-year calculation at the end of that ten-year period as to what the final premium would be." (Ingram Deposition, 24.) Ms. Ingram explained: "The retro program is entirely different with a completely different set of rules. An employer belonging to the retro program does not accept full responsibility for ongoing claim payments for the life of that claim." (Ingram Deposition, 25.) Ms. Ingram further testified, "A deductible employer retains a lot more of the risk than an employer participating in the retrospective-rating program." (Ingram

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Mr. Carlson further testified: "The third billion dollar back was intended to reduce the net position, or surplus depending on which context you're talking about, such that it would fall within the guidelines established or move in a direction to fall within the simple funding ratio guidelines established by the BWC Board." (Carlson Deposition, 39.)

Deposition, 47.) Ms. Ingram explained that, with the retrospective program, "you've got a ten-year look-back period. With the deductible programs, there is no ten-year look-back period, they're responsible for ever and ever and ever for those claim payments . . . until they meet their chosen deductible level." (Ingram Deposition, 47-48.)

**{¶23}** "Under rational-basis review, a law will survive constitutional scrutiny so long as the existence of a rational connection to its aim 'is at least debatable.' *W. & S. Life Ins.*, 451 U.S. at 674 (quotation omitted). Courts cannot subject legislative choices 'to courtroom fact-finding,' *Beach Commc'ns*, 508 U.S. at 315, and any factual dispute as to a law's rationality indeed 'immunizes from constitutional attack the [legislative] judgment,' [*Vance v. Bradley*, 440 U.S. 93, 112 (1979)]." *Tiwari v. Friedlander*, 26 F.4th at 369 (6th Cir.2022). Here, a rational connection for BWC's rebate program's different treatment of employers participating in BWC's large deductible program and employers participating in the individually retrospectively rated program is at least debatable, given the differences in the structure of the two programs and different levels of risk assumed by employers participating in BWC's large deductible program and employers participating in the individually retrospectively rated program.

**{¶24}** Accordingly, and in summary, in the consolidated cases before the Court, Plaintiffs have failed to establish disparate treatment of similarly situated entities. And, *even if* Plaintiffs had established disparate treatment of similarly situated entities, BWC did not violate equal protection guarantees by calculating rebates to employers participating in the BWC's large deductible program differently from rebates due to employers participating in the individually retrospectively rated program because there are plausible reasons for BWC's actions. As the United States Supreme Court has remarked:

> Where, as here, there are plausible reasons for Congress' action, our inquiry is at an end. It is, of course, "constitutionally irrelevant whether this reasoning in fact underlay the legislative decision," *Flemming* v. *Nestor*, 363 U.S., at 612, because this Court has never insisted that a legislative body articulate its reasons for enacting a statute. This is particularly true where the legislature must necessarily engage in a process of line-drawing. The "task of classifying persons for . . . benefits . . . inevitably requires that

> some persons who have an almost equally strong claim to favored treatment be placed on different sides of the line," *Mathews v. Diaz*, 426 U.S. 67, 83-84 (1976), and the fact the line might have been drawn differently at some points is a matter for legislative, rather than judicial, consideration.

*United States RR. Retirement Bd. v. Fritz*, 449 U.S. 166, 179 (1980). *See Tiwari v. Friedlander*, 26 F.4th 355, 365 (6th Cir.2022).[7] After the evidence is viewed most strongly in favor of Plaintiffs in these consolidated cases, no genuine issue as to any material fact remains to be litigated, and, as a matter of law, BWC is entitled to judgments in its favor on Plaintiffs' constitutional claims of a violation of equal protection guarantees.

## III. Conclusion

**{¶25}** For reasons set forth above, the Court holds that Defendant Ohio Bureau of Workers' Compensation (BWC) is entitled to summary judgments in its favor in consolidated Ct. of Cl. No. 2021-00706JD and Ct. of Cl. No. 2022-00515JD. Judgment shall be rendered in favor of BWC in the consolidated cases.

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[7] In *Tiwari v. Friedlander*, 26 F.4th 355, 365 (6th Cir.2022), the United States Court of Appeals for the Sixth Circuit remarked:

> "The Constitution does not prohibit legislatures from enacting stupid laws." *N.Y. State Bd. of Elections v. López Torres*, 552 U.S. 196, 209, 128 S. Ct. 791, 169 L. Ed. 2d 665 (2008) (Stevens, J., concurring). A claimant does not prevail in a rational-basis case simply by severing the stated links between a law and its rationales with on-the-ground evidence that undermines the law—or showing that the lived experiences of the law have not delivered on its promises. The courts would be busy indeed if a law could be invalidated whenever evidence proves that it did not work as planned. Our custom instead is to assume that democracy eventually will fix the problem. That is because our Federal "Constitution presumes that, absent some reason to infer antipathy," flawed laws will "eventually be rectified by the democratic process." *Vance*, 440 U.S. at 97.

DAVID E. CAIN
Judge

**IN THE COURT OF CLAIMS OF OHIO**

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| MAHLE BEHR DAYTON, LLC., et al.<br>Plaintiffs<br><br>v.<br><br>OHIO BUREAU OF WORKERS' COMPENSATION<br>Defendant<br><br>AND<br><br>CPC PARTS DELIVERY, LLC<br>Plaintiff<br><br>v.<br><br>OHIO BUREAU OF WORKERS' COMPENSATION<br>Defendant | Case Nos. 2021-00706JD and 2022-00515JD<br><br>Judge David E. Cain<br><br>JUDGMENT ENTRY |

**{¶26}** For reasons stated in the Decision filed concurrently herewith in consolidated Ct. of Cl. No. 2021-00706JD and Ct. of Cl. No. 2022-00515JD, Defendant Ohio Bureau of Workers' Compensation's Motions For Summary Judgment filed on December 31, 2024, are GRANTED. Plaintiffs' motions for summary judgment filed in the consolidated cases are DENIED. Judgments in the consolidated cases are rendered in favor of Defendant Ohio Bureau of Workers' Compensation. Court costs in the consolidated cases are assessed against Plaintiffs. All previously scheduled future events in the consolidated cases are VACATED. The Clerk shall serve upon all parties notice of the judgments and date of entry upon the journal.

DAVID E. CAIN
Judge

**Filed April 11, 2025**
**Sent to S.C. Reporter 5/22/25**