Workers' Compensation Alert

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Sixth Circuit Affirms Lower Court's Judgment: RICO Complaint Involving Workers' Compensation Claim Processing Dismissed

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In December 2012, we published an article entitled "Denying a Claim Based on an IME Report? Could Your Organization Now be Subject to a RICO Claim?" The article discussed two recent decisions from the Sixth Circuit Court of Appeals: (1) *Brown v. Cassens Transport Company (Cassens)*; and (2) *Jackson v. Coca-Cola (Jackson)*. Both cases involved allegations that the employers, third party administrators and physicians violated the Racketeer Influenced and Corrupt Organizations Act (RICO) by conspiring to deny the claimants their pending claims to receive workers' compensation benefits. In both cases, the Sixth Circuit denied the employers' motions to dismiss and remanded to the district court to allow the plaintiffs the opportunity to present evidence to prove their RICO claims.

The Sixth Circuit's decision in *Cassens* and *Jackson* meant an employer could be subject to a RICO lawsuit simply because it denied a claim based upon the results of an independent medical examination report, which was obtained through coordination with the third party administrator and the physician. This was troubling for employers because the exclusive remedy design of the workers' compensation system (i.e., the employer's promise to pay certain benefits in exchange for the employee's promise to give up other remedies) was now called into question. As a result, a claimant unsatisfied with the result of his or her workers' compensation claim could now turn to RICO and allege that his or her employer engaged in a fraudulent scheme to deny his or her workers' compensation benefits.

The employer in *Jackson* filed a petition to rehear the case *en banc* (i.e., before all judges of the court), which was granted by the Sixth Circuit. The Sixth Circuit also addressed the Court's holding in *Cassens* because the Court in *Jackson* relied upon *Cassens*.

The Sixth Circuit turned to the issue of whether or not the claimants' workers' compensation benefits constitute an injury to "business or property" under RICO. In order to present a valid RICO claim, a plaintiff must prove certain elements, one of which is that he or she suffered an injury to business or property. Prior case law has established that personal injuries and pecuniary losses flowing from such injuries do not amount to injury to business or property under RICO. In *Cassens*, the Court ruled the plaintiffs' right to workers' compensation benefits was a legal entitlement under the workers' compensation statute, which is distinct from pecuniary losses that flow from a personal injury.

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Therefore, the Court in *Cassens* found the plaintiffs were able to establish a RICO claim. On rehearing in *Jackson*, the Court criticized the *Cassens* ruling, finding the majority "ignored the underlying reality that an award of benefits under a workers' compensation system and any dispute over those benefits are inextricably intertwined with a personal injury giving rise to the benefits." Therefore, the Court overruled *Cassens* and affirmed the district court's decision to dismiss the plaintiffs' RICO claims.

The Sixth Circuit also pointed out the plaintiffs' RICO theory would have disrupted the balance of power between the state and federal governments with regard to the state's workers' compensation system. Just like what happened in *Cassens* and *Jackson*, an employee who believes his or her employer engaged in a fraudulent scheme to deny his or her workers' compensation benefits could circumvent the exclusive remedy under the state workers' compensation system by re-labeling the dispute as a RICO claim. The Court also made note that the theory could be turned against the employees, too; an employer could bring forth a RICO claim if it believes the employee engaged in a pattern of mail or wire fraud to support his or her claim for workers' compensation benefits. The Court refused to interpret the applicability of RICO so broadly in the absence of express intent by Congress.

The decision by the *en banc* panel in *Jackson* provides a sigh of relief for employers. The decision can be used as a strong argument to dismiss a RICO claim arising from a workers' compensation claim. Nevertheless, employers still should implement safeguards to avoid the appearance of collusion with independent medical examination providers. Periodic reviews of the providers utilized for the management of workers' compensation claims will help ensure that a pattern of usage does not appear.

Please do not hesitate to contact Mark A. Shaw or Garrett M. Cravener at Eastman & Smith Ltd.'s Columbus office if you have any questions about how to minimize the odds of being subject to a RICO claim or visit our web site www.eastmansmith.com.
