

# WORKERS' COMPENSATION

## **RICO SUIT AFFIRMED IN MICHIGAN WORKERS' COMPENSATION CASE**

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The Sixth Circuit Court of Appeals recently held that six current and former employees of Cassens Transport Company could proceed with a Racketeer Influenced and Corrupt Organizations Act suit alleging the company engaged in an illegal scheme to deny benefits for workplace injuries.

The employer is a transporter of cars, trucks, and SUVs for manufacturers. Six employees submitted workers' compensation claims based on their alleged job injuries. They were denied benefits in Michigan. The employer was self-insured for purposes of paying workers' compensation benefits and, as part of their program, they contracted with Crawford to serve as their third party claims administrator.

The employees were denied benefits under the provisions of the Michigan Workers' Compensation Act. They then filed suit in Federal Court in June 2004. They alleged that Cassens and Crawford deliberately selected and paid unqualified doctors to give fraudulent medical opinions that the employees' conditions were not caused by workplace injuries. They also alleged the employer and Crawford ignored other medical evidence in denying benefits for the employees.

In addition, they singled out Dr. Saul Margules as an unqualified doctor, who gave fraudulent medical opinions.

The District Court in Michigan dismissed the Complaint and found that RICO claims were pre-empted by the State Workers' Compensation law. The Court also held that the employees failed to allege a sufficient pattern of racketeering activity (409 F.Supp. 2d 793 (E.D. Mich. 2005)). The Plaintiffs appealed the case to the Sixth Circuit Court of Appeals. The Court affirmed the District Court's Decision in 2007. The matter was then appealed to the United States Supreme Court. The United States Supreme Court vacated the judgment and

remanded the case back to the Appeal Court for reconsideration. The Supreme Court held that in a RICO suit, the Plaintiffs do not have to show detrimental reliance on the Defendant's alleged misrepresentations.

The RICO Act makes it a crime for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity, or collection of unlawful debt.

The RICO Act defines racketeering activity to include any act which is indictable under the provisions of Title 18 of the United States Code. This includes mail fraud and wire fraud. The Act also requires at least two acts of racketeering activity, one of which occurred after October 15, 1970, and the last of which occurred within ten years after the commission of a prior act of racketeering activity.

With these facts as background, the Sixth Circuit Court of Appeals reviewed the facts of the case. The Court noted that the Plaintiffs, in their pleadings, indicated that Dr. Margules, as well as other "cutoff" doctors, engaged in a pattern of activity that denied Plaintiffs workers' compensation claims. They specifically alleged in their Complaint that Cassens and Crawford deliberately selected and paid unqualified doctors, including Dr. Margules, to give fraudulent medical opinions that would support the denial of workers' compensation benefits.

On these facts, the Sixth Circuit indicated that Plaintiffs did have RICO jurisdiction.

The Defendant argued that certain Claimants did not have more than one alleged racketeering activity with

regard to their individual case. However, the Appeals Court ruled that all of the actions of the employer could be taken collectively with regard to all of the Plaintiffs collectively and, therefore, enough racketeering activity was alleged. The racketeering activity was use of the mail to communicate about claims. The other alleged racketeering activity was communication with doctors to influence the outcome of the claim through the mail and phone.

In all, the Court held that Plaintiffs pleaded with sufficient particularity 13 different acts, which were comprised of fraudulent communications by mail and wiring. The Court held that this activity was sufficient for the claim to proceed.

The Court also held that Claimants' injuries were "by reason" of the Defendant's alleged fraud. In a RICO case, proximate cause is shown when wrongful conduct is a substantial and foreseeable cause of the injury, and the relationship between the wrongful conduct and the injury is logical and not speculative. In this case, the alleged activities of the employer by fraudulently denying claims are considered the proximate cause of Claimants' injuries.

The employer also argued that the McCarran-Ferguson Act should preclude Claimants' Complaint. This Act provided that no Federal law shall be construed to invalidate, impair, or supersede any law enacted by any state for the purpose of regulating the business of insurance, unless the Federal law specifically related to the business of insurance. This argument was not upheld by the Court. They found that Michigan's Workers' Compensation law was not enacted for the purpose of regulating the business of insurance. Rather, the Workers' Compensation law was enacted for the purpose

of requiring the employer to compensate an employee for any workplace injury, regardless of who was at fault. In addition, applying RICO would not invalidate, impair, or supersede the Workers' Compensation law. The Workers' Compensation law has penalties for not making payments at the correct time and the Court noted that parties could comply with both those penalties and the RICO law simultaneously, although the RICO law held additional penalties and the risk of imprisonment.

Thus, although the two statutes provide materially different remedies, there was no risk in this case of any impairment of the state policy relating to the regulation of insurance. The Workers' Compensation law did not address the fraudulent denial of benefits and, therefore, a RICO suit would not contravene Michigan's administrative regime.

The effect of this Federal Appeal Court Decision is potentially devastating for the defense of workers' compensation claims. If a claim is legitimately denied, there is now the potential of a RICO suit concerning the denial. This could even occur in litigated workers' compensation claims. Further, any communication by the carrier, self-insured, or TPA could be considered potentially racketeering activity. Innocent communications regarding the defense of claims will now have to be considered in light of a statute, which was passed in order to regulate organized crime. This will put a chilling effect on defense of workers' compensation claims.

The underlying case has now been remanded back to the District Court for a final Decision. However, the fact that this Complaint was not dismissed opens the door for Federal litigation and criminal penalties in workers' compensation cases.

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