



Workers' Compensation eALERT

Current Law Developments and Legal Issues

That May Affect You Or Your Business

Lafayette Shreveport

November 4, 2008

Compensation Claimants Using RICO to Punish Employers

Brown v Cassens Transport Co., ___ F. 3d ___, 05-2089 (6th Cir. 2008)

In an extremely troubling decision the US Court of Appeals for the Sixth Circuit has found that a plaintiff states a cause of action under the Racketeer Influenced and Corrupt Organizations Act (RICO) 18 USC Section 1961 et seq. for an employers' alleged wrongful handling of his compensation claim. In this case the employer, a Michigan self insured employer is alleged to have conspired with its TPA to select and pay unqualified doctors to give fraudulent medical opinions in order to deny the employee benefits and that they ignored other medical evidence.

The federal appellate court does not find the employee is entitled to win, but does find that these allegations support a claim under RICO. The court notes that since the Michigan Compensation Act would itself punish this behavior if proven, RICO does not supersede the Act, but rather is compatible with it.

This of course completely bypasses any exclusive remedy provision and grants the plaintiff a chance at treble damages and federal court attorney fees. Not to mention the joy of being referred to as a "racketeer" and/or a "corrupt organization".

While the Sixth Circuit does not sit in Louisiana (we are the Fifth Circuit) this ruling if upheld could be used by the Fifth Circuit as authority to allow such claims in Louisiana. This decision bears watching as a Supreme Court denial of writs of review or even worse affirmation could have serious and long reaching consequences.

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MARK L. RILEY

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