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WORKERS' COMPENSATION ALERT

TO: Our Clients and Friends

FROM: Bleakley, Cypher, Parent, Warren & Quinn, P.C.

RE: Court of Appeals allows claimants to sue under RICO Act for fraudulent denial of workers' compensation benefits

DATE: April 18, 2012

We at Bleakley, Cypher, Parent, Warren & Quinn would like to update you on a recent decision from the Sixth Circuit Court of Appeals that may reverse former case law and allow workers' compensation claimants to sue their employers, workers' compensation insurance carriers, and evaluating physicians in Federal district court under the RICO Act.

Brown v. Cassens Transport Co.

Claim

In Brown, a group of five employees alleged work-related injuries while working for their self-insured employer. The employer used the same doctor to evaluate four of the five employees, and ultimately denied benefits on the basis of the doctor's opinions. As a result, the plaintiffs brought suit in federal district court under the Racketeer Influenced and Corrupt Organizations Act (RICO Act), which was initially intended to target organized crime. Nonetheless, it gives individuals a private cause of action in Federal civil court against a criminal enterprise that deprives it of a business or property interest.

Specifically, the plaintiffs alleged that the employer, administrator, and doctor colluded to fraudulently deny them workers' compensation benefits, in violation of the RICO Act, and that the collusion was completed through mail fraud. The plaintiffs relied on the fact that the doctor was biased due to the amount of money he was paid over the years by the employer, and that the doctor lacked expertise in orthopedic conditions.

The trial court, consistent with its prior position regarding RICO claims related to denial of workers' compensation benefits, dismissed the suit on the grounds that the Michigan Workers' Disability Compensation Act (WDCA) is the "exclusive remedy" for employees seeking recovery of benefits for work injuries. As a result, RICO claims were barred. In addition, the trial court noted that even if the cases were allowed, they did not deal with a "business or property interest" as is required under RICO, but instead dealt with personal injuries, which are not covered under RICO.

What the Court of Appeals decided

The Sixth Circuit Court of Appeals reversed the lower court's dismissal of the claim, and reinstated it for further proceedings. In doing so, the Court of Appeals held that the U.S. Constitution prevents the Michigan state legislature, through the WDCA, from declaring that its state remedy supersedes or excludes any available federal remedies, such as the RICO Act.

Even more, the Court of Appeals held that the RICO suits did involve property, so as to invoke a potential RICO violation. The Court found that while workers' compensation benefits may arise out of a personal injury, the entitlement to the benefits qualifies as property, such that the deprivation or devaluation of those benefits is a sufficient injury to property under the RICO Act. The Court even went further to say that the claim for benefits itself is a property interest.

More unsettling was the Court's statement that a plaintiff who resolves his workers' compensation case either by settlement or final adjudication does not automatically give up his right to a RICO claim.

What does it mean?

The Brown decision from the Sixth Circuit Court of Appeals creates the opportunity for an employee who is denied benefits to bring suit under the RICO Act against his/her employer, carrier, and evaluating doctor alleging fraudulent denial of benefits. It should be noted that the case was decided by a three-judge panel, and was a 2-to-1 decision. The defendant will now likely request a re-hearing before a full panel of Sixth Circuit judges, which may be granted at the Circuit's discretion.

Until then, this decision helps employees overcome the initial hurdle of having standing to bring a RICO claim for denial of benefits. Because Brown dealt

with the procedural issue of whether the claim was even allowed under law, it is difficult to tell how these types of cases will actually be decided on the merits. An employee would have to show fraud and collusion on behalf of the employer, carrier, and doctor to make a successful claim, although it is unknown what would constitute fraud in this scenario. In addition, an employee, as a threshold matter, cannot win this type of RICO claim without showing that he was rightfully entitled to workers' compensation benefits, although the Court made clear that a redemption or loss at trial does not necessarily defeat this aspect of a RICO claim in civil court. If an employee were able to win a RICO case, the RICO laws allow that employee to seek treble, or triple, damages, meaning that a court can award triple the amount of actual damages. Of course, it remains to be seen how a court would calculate actual damages in such a case.

Simply put, Brown is a significant and adverse case for employers, carriers, and administrators because it opens the door for employees who are denied workers' compensation benefits to at least allege in Federal district court that the denial was fraudulent, although it is unknown whether these cases would be dismissed on other grounds, and if not, whether these cases have any merit. But given the decision, it would be advisable to review your policies and practices regarding initial claim handling and medical evaluations to ensure that there is no intentional or unintentional fraud being conducted that could create unnecessary exposure in a RICO suit. Generally, we would recommend against consistently using the same evaluating doctor, and ensuring that the doctor chosen is qualified for that specific evaluation. It will also be important to secure a full release of all claims during redemption hearings when possible, so that such a release can be utilized and enforced against any future RICO suit against the employer.

Of course, these are simply general tips for taking precaution against potential RICO suits created by this decision. If you would like to discuss in more detail these complicated cases, the impact of this decision, or how it may affect your practices, please do not hesitate to contact any of the attorneys at Bleakley, Cypher, Parent, Warren & Quinn, P.C., directly.