

WORKERS' COMPENSATION UPDATE

October 2012

ARE WORKERS' COMPENSATION BENEFITS STILL AN EMPLOYEE'S EXCLUSIVE REMEDY?

- Alicia W. Birach

Traditionally, workers' compensation benefits have been an employee's exclusive remedy available against his or her employer for injuries arising out of and in the course of employment. However, in the recently decided case of *Brown v. Cassens Transport Company*, 675 F.3d 946 (2012), the Sixth Circuit Court of Appeals held that the Workers' Disability Compensation Act (WDCA) does not preempt the Racketeer Influenced and Corrupt Organizations Act (RICO).

In *Brown*, the plaintiffs sued their employer, the claims adjudicator and an independent medical examiner (IME) for violations of RICO, among other allegations. The plaintiffs claimed the employer and claims adjudicator solicited fraudulent medical reports from the IME doctor, who was biased because of the sum of money he was paid. The plaintiffs alleged the conspiracy was carried out by mail or wire.

The court in *Brown* determined "Michigan does not have the authority to declare a state remedy exclusive of federal remedies." Further, the court indicated "[a] federal civil RICO claim and a state claim for workers' compensation are legally distinct, even though they share factual underpinnings." Therefore, an employee may bring a RICO claim in federal court.

RICO makes it illegal for any person employed by or associated with any organization engaged in or affecting interstate or foreign commerce to participate in racketeering activity in the company's name.

The court in *Brown* found "no reason under RICO to distinguish between property entitlements that accrue as a result of a personal injury from those that do not." The court cited the fact that RICO is to be read broadly.

The court held the devaluation of either an expectancy of or claim for workers' compensation benefits amounts to a property interest. An injured employee has an expectancy of benefits because the WDCA indicates an injured employee "shall be paid" compensation and the compensation to be paid is calculated according to a rigid schedule. The court did not find the employer's ability to dispute payment negated the employee's property interest. Additionally, an employee's claim for workers' compensation benefits is a property interest regardless of whether the employee has obtained an interest in the underlying benefits themselves. The court further determined "losing or settling a case due to fraudulent medical reports does not extinguish the plaintiffs' property interest in bringing a claim free of fraud."

Prevailing plaintiffs are entitled to treble damages and costs including reasonable attorney fees under RICO.

In summary, there may be cases where workers' compensation benefits are no longer an employee's exclusive remedy. Based on the decision in *Brown*, an employee may bring a law suit for an alleged RICO violation in federal court. *Brown* was remanded for further proceedings. It is yet to be determined whether the court will find a violation of RICO on the part of the defendants. ■■



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PROPOSED AMENDMENT TO WORKERS' COMPENSATION ACT

On June 14, 2012, House Bill 5748 was referred to the Committee on Commerce with proposed amendments to Section 131 of the Workers' Compensation Act. Section 131 is the exclusive remedy provision. The proposed House Bill states as follows:

Sec. 131. (1) The right to the recovery of benefits as provided in this act as an alternative to filing an action against the employer for a personal injury or occupational disease shall be at the option of the employee. If an employee proceeds against the employer under this act, the recovery of benefits against the employer under this act for a personal injury or occupational disease shall be the employee's exclusive remedy.

The proposed amendment would make the "exclusive remedy" currently provided for under the Workers' Compensation Act optional. This would allow the employee the opportunity to elect whether to file his case in circuit court or before the Workers' Compensation Agency.

No action has been taken on Section 131(1). We will continue to keep you apprised should this particular amendment to the Act actually be referred out of Committee for legislative action. ■■

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