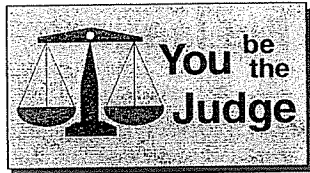


*Predicate acts***Can a surgeon recover RICO damages for denied medical claims?***S.D.N.Y. evaluates whether automobile insurers' actions constitute mail, wire fraud*

Dr. Allen Chamberlin provided orthopedic care, surgery and other services to individuals who suffered injuries in automobile accidents. He sought payment for the treatment under the patients' no-fault automobile insurance policies, but the insurers refused to reimburse Chamberlin for his medical services.



Chamberlin filed a Section 1962(c) claim against the insurers, claiming they committed "indictable violations" of the federal mail and wire fraud statutes. The doctor alleged that the insurers

wrongfully denied claims based on cost rather than medical necessity, changed the coding on claims forms, engaged in a practice of "calculated understaffing," misrepresented or concealed the manner in which claims were being processed, and wrongfully refused to pre-authorize surgeries.

The state medical board subsequently revoked Chamberlin's license to practice medicine in New York, finding that he deliberately concealed information in his records so that he could bill insurance companies for treatments he did not perform. The insurers moved to dismiss Chamberlin's RICO case for failure to state a claim.

Can Chamberlin sue the insurers under RICO?

a. Yes. While most of the insurers' purported actions did not amount to mail or wire fraud, their alleged misrepresentation of how they processed claims was grounds for a RICO action.

b. No. Chamberlin allegations amounted to nothing more than a breach of contract claim.

c. No. The board's revocation of Chamberlin's medical license showed that the insurers' alleged "rack-teering activities" were legitimate.

How the court ruled: b

The insurers' alleged misconduct was actionable as a breach of contract claim under New York law (*Chamberlin, et al. v. Hartford Financial Services Inc., et al.*, No. 05 Civ. 2650 (AKH) (S.D.N.Y. 08/19/05).)

Plaintiffs cannot rely on defendants' use of mail and wire communications to transform ordinary contract actions into RICO fraud claims. **U.S. District Judge Alvin K. Hellerstein** noted that four of the actions Chamberlin identified in his complaint were ordinary breach of contract actions.

Although the insurers' alleged misrepresentation of their claims-processing methods approached a fraud claim, the judge observed that misrepresentations do not rise to the level of fraud unless they are extraneous to a contract. The insurers' representations were contained in the contracts. Concluding the insurers' purported conduct did not constitute fraud, the judge dismissed the doctor's suit.

A is incorrect. The alleged misrepresentations were contained within the policies, so they could not be extraneous to the contract.

C is incorrect. The board's decision had no bearing on whether Chamberlin could proceed with his civil suit against the insurers. ■

CIVIL RICO REPORT

President: Kenneth F. Kahn, Esq.
V.P. Editorial: Claude J. Werder
Editorial Director: Daniel Gephart
Managing Editor: Leslie W. Lake, Esq.
Legal Editor: Amy E. Slater, Esq.

Washington Correspondent: Patrick Harden
V.P. Marketing: Jana Shellington
Product Group Manager: Kimberly Schonberger
Production Director: Joseph Ciocca
Publications Director: Roberta J. Crusemire



Copyright © 2005 LRP PUBLICATIONS. All rights reserved.

This publication is designed to provide accurate and authoritative information regarding the subject matter covered. It is provided with the understanding that the publisher and editor are not engaged in rendering legal counsel. If legal advice is required, the service of a competent professional should be sought.

CIVIL RICO REPORT, (ISSN 0884-0032), is published monthly, except two issues published in March, June, September and December for \$795, by LRP Publications, 747 Dresher Road, P.O. Box 980, Horsham, PA 19044-0980, (215) 784-0860. Application to mail Periodicals postage pending at Horsham, PA. Editorial offices at 360 Hiatt Drive, Palm Beach Gardens, FL 33418, (561) 622-6520 ext. 8704, FAX: (561) 622-9060. POSTMASTER: Send address changes to *CIVIL RICO REPORT*, 747 Dresher Road, P.O. Box 980, Horsham, PA 19044-0980. Permission to copy for internal use is granted through the Copyright Clearance Center (CCC) for a \$2-per-document fee and \$1.50-per-page fee to be paid directly to CCC, 222 Rosewood Drive, Danvers, MA 01923. Fee Code: 0884-0032/05/\$2 plus \$1.50.