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twenty percent.⁵³

In the absence of federal regulations or legitimate industry self-regulation, corporate and individual consumers alike need to be aware that insurance brokers may be operating with a hidden agenda. Although consumers may avoid the specter of “contingent commissions” by simply electing to deal with insurance agents who sell policies for a single company,⁵⁴ this approach limits consumers’ choices and requires them to become experts in a complex, and historically secretive, industry. Perhaps one day consumers will be able to trust their independent insurance brokers to help them make an informed choice between competing insurers.⁵⁵ In the meantime, let the buyer beware.

Consumer Brings First-Ever RICO Suit Against National Mover

What started out as a routine residential move from Atlanta to Chicago erupted into a first-ever lawsuit against a national mover, Mayflower Transit, Inc. (“Mayflower”), under the Racketeer Influenced and Corrupt Organizations Act (“RICO”).⁵⁶ Although a federal jury ultimately found that the plaintiff failed to prove the RICO portion of her case,⁵⁷ the Federal District Court’s denial of Mayflower’s summary judgment motion put the moving industry on notice that fraudulent movers may be within the reach of consumer RICO actions.⁵⁸

⁵³ Coolidge, *supra* note 45.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Andrew Harris, *National Mover Faces RICO Suit*, 26 NAT’L L.J. 33, April 19, 2004, at Col. 1. Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C §§ 1961-1968 (2000).

⁵⁷ Ameet Sachdev, *Racketeering Verdict Rejected; Mayflower Guilty on Contract*, CHI. TRIB., Oct. 29, 2004, at 2.

⁵⁸ “Industry officials can’t recall a racketeering claim being brought to trial against a reputable national moving company. They are closely watching Chen’s case because a judgment in her favor could result in a flurry of copycat suits—sending their liability costs skyward.” Ameet Sachdev, *Client Won’t Budge in Fight Over Move*, CHI. TRIB., Oct. 4, 2004, at 1.

Attorneys for Mayflower called the Federal District Court's ruling on the summary judgment motion "a radical departure from previous RICO law. Following this court's ruling any consumer claim against any company can be turned into a RICO claim."⁵⁹ RICO was enacted in conjunction with the Organized Crime Control Act of 1970,⁶⁰ but Robert Blackey, a law professor who helped draft the original legislation, observes that RICO has potential to be a powerful consumer protection statute because of its provision for treble damages and attorney's fees.⁶¹

Angie Chen accuses Mayflower of racketeering, extortion, mail fraud and wire fraud.⁶² Mayflower's agent, Atlanta's Admiral Moving and Storage, provided Chen with a written estimate of moving costs "guaranteed not to exceed \$1,749.89."⁶³ Some of the documentation that Admiral provided to Chen stated that she must pay for the move with cash, a guaranteed check, or a *pre-approved* credit card.⁶⁴ Admiral picked up Chen's household goods in Atlanta, but another Mayflower agent, Century Moving and Storage of Lombard, Illinois, hauled the load to Chicago.⁶⁵ At Chen's new residence in Chicago, Century's truck driver informed Chen that she would need to pay an additional \$800 because the streets around her building were too narrow and unloading would require the use of a shuttle truck.⁶⁶ The driver demanded the full payment in cash or certified check, and refused Chen's offer to pay with her credit card because it had not been pre-approved.⁶⁷

Chen, an attorney, called Mayflower's customer service number and recorded the call.⁶⁸ Mayflower's customer service agent

⁵⁹ Harris, *supra* note 56.

⁶⁰ *Id.*

⁶¹ *See id.* (predicting that Mayflower would be forced to settle because the company "cannot afford to be held responsible" under RICO); Under RICO, a prevailing plaintiff "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c) (2000).

⁶² Harris, *supra* note 56.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Harris, *supra* note 56.

⁶⁸ *Id.*

also refused to allow Chen to pay by credit card, a MasterCard, because the card had not been pre-approved.⁶⁹ Mayflower informed Chen that if she did not pay the full amount, her possessions would be put in storage where she would incur additional charges.⁷⁰ To make matters worse, Chen was told that her belongs would be sold at auction after thirty days if she had not paid by then.⁷¹ When Chen was unable to round up the additional cash, Century dove off with her belongs, which she would not see for another three months.⁷² Her fees climbed to over \$5,000.⁷³

Chen's attorney classifies Mayflower's practices as "extortion" and explains that "[t]hey didn't [charge Chen's credit card] because the difference between cash in your hand and credit card is that the consumer can always challenge the propriety of the charge. [A consumer who pays cash] literally has to file a federal lawsuit to get it back."⁷⁴

Professor Blakely adds, "[t]his case is a paradigm for what a lot of movers do . . . What she's done here is identify what is probably a nationwide pattern. Mayflower sits above it all, but really knows what's going on. It's bait and switch . . . It's consumer fraud and extortion and its probably extremely widespread."⁷⁵

Complaints about movers have soared since Congress deregulated the moving industry in 1995. The Better Business Bureau reports that the number of complaints against movers has increased from 3,736 in 1997 to 9,116 in 2002.⁷⁶ "Crooks posing as movers have determined there are easy pickin's because there are no federal cops out there," says Joe Harrison, president of the American Moving and Storage Association.⁷⁷ "We have more horror stories than we've had in a long time."⁷⁸

Mayflower Transit was acquired by UniGroup of Fenton,

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Alex Tresniowski et al., *Trouble*, PEOPLE, Jun. 21, 2004, at 135.

⁷³ *Id.*

⁷⁴ Harris, *supra* note 56.

⁷⁵ *Id.*

⁷⁶ Tresniowski, *supra* note 72.

⁷⁷ *Id.*

⁷⁸ *Id.*

Missouri in 1995, and at that time divested itself of its trucks, vans, and drivers.⁷⁹ Under the company's current business model, Mayflower does not haul household goods, but instead puts consumers in touch with one of its 430 agents across the country, and provides these agents with back-office services such as bill collection and customer service.⁸⁰ These "agents" are licensed to use the Mayflower logo and its federal license to carry household goods interstate.⁸¹

Chen's claim relied on Section 1962(c) of RICO, which provides that:

It shall be unlawful 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.⁸²

In response to Chen's RICO claim, Mayflower moved for summary judgment on two primary grounds: (1) Mayflower argued that Chen failed to establish the existence of an "enterprise"; and (2) Mayflower argued that Chen failed to establish "a pattern" of racketeering activity.⁸³

Under RICO, Chen must show that at least two distinct entities are involved in the alleged "pattern of racketeering" in order to establish the existence of a RICO "enterprise."⁸⁴ The Seventh Circuit has defined a RICO enterprise as "an ongoing 'structure' of persons associated through time, joined in purpose, and organized in a manner amenable to hierarchical or consensual decision-making."⁸⁵ Mayflower argued that it was "insufficiently distinct" from its 430 agents to constitute an "enterprise" because the structure identified by Chen "does not bear a 'family resemblance' to the prototypical RICO

⁷⁹ Harris, *supra* note 56.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² 18 U.S.C. § 1962(c) (2000) (emphasis added).

⁸³ Chen v. Mayflower Transit Inc., 315 F. Supp. 2d 886, 900 (N.D. Ill. 2004).

⁸⁴ *Id.* at 901.

⁸⁵ Jennings v. Emry, 910 F.2d 1434, 1440 (7th Cir. 1990).

case.”⁸⁶

In other words, Mayflower argued that its dealings with its agents have no resemblance to the organized crime activity that RICO was designed to address because its operations are so tightly integrated with its agents that they operate as if a single entity. The prototypical RICO case involves a criminal who “seizes control of a previously legitimate firm and uses the firm’s resources, contacts, facilities, and appearance of legitimacy to perpetrate more, and less easily discovered, criminal acts than he could do in his own person . . .”⁸⁷ The court however found that Mayflower was sufficiently distinct from its independently-owned agents, noting that the relationship between them was not one of employer-employee or parent-subsidiary.⁸⁸ Furthermore, there was evidence that only fifty to sixty percent of the revenue generated by these agents is derived from their affiliation with Mayflower.⁸⁹

In fact, the court reasoned that the success of the alleged racketeering enterprise may be dependant on the “distinctness” between agents, and between Mayflower and its agents.⁹⁰ Specifically, the use of independent agents in Chen’s move provided the basis for the Chicago agent’s rejection of the terms agreed to between Chen and her agent in Atlanta.⁹¹ This distinctness also provided Mayflower’s customer service department with a basis for refusing to accept Chen’s credit card.⁹² Mayflower’s customer service representative simply blamed Chen’s Atlanta agent, Admiral, for the refusal.⁹³ Based on the independent nature of the actors, and the fact that the alleged racketeering scheme was dependant upon, or at least facilitated by, the distinct character of the entities, the court found that the evidence of the existence of an enterprise was sufficient to survive summary judgment.⁹⁴

In addition to showing the existence of an “enterprise,” RICO

⁸⁶ *Chen*, 315 F. Supp. at 901.

⁸⁷ *Fitzgerald v. Chrysler Corp.*, 116 F.3d 225, 227 (7th Cir. 1997).

⁸⁸ *Chen*, 315 F. Supp. at 903.

⁸⁹ *Id.*

⁹⁰ *Id.* at 905.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Chen*, 315 F. Supp. at 905.

⁹⁴ *Id.*

requires the plaintiff to show that the defendant engaged in “a pattern of racketeering activity.”⁹⁵ In order to prove a pattern under RICO, plaintiffs must demonstrate that the alleged acts of racketeering are related and “amount to or pose a threat of continued criminal activity.”⁹⁶ In other words, the “pattern” of activity required under RICO must involve related and repeated (or repeatable) acts.

Mayflower argued that each of the allegedly fraudulent moving transactions that Chen identified were “highly individualized” and therefore were not related under RICO. The court, however, reasoned that the allegedly fraudulent transactions all involved a “bait and switch” scheme that pressured consumers for more money than was originally quoted.⁹⁷ The court also noted that the acts involved similar participants, similar victims, and similar results.⁹⁸

Mayflower next argued that even if the acts were related, Chen’s identification of less than twenty transactions out of the 40,000 the company conducts each year amounts to only “sporadic criminality” insufficient to establish the continuity required to establish a pattern under RICO.⁹⁹ The court refused to adopt Mayflower’s percentage-of-transactions test and pointed out that such a test would enable large companies to conduct small-scale racketeering.¹⁰⁰ “RICO . . . applies even when criminal activity makes up only a small portion of the activities of an otherwise legitimate business.”¹⁰¹

Although a federal jury cleared Mayflower on the RICO count of Chen’s suit,¹⁰² the District Court’s recognition of the cause of action is at least a partial victory for consumers. Time will tell if RICO actions are to become a potent arrow in the quiver of consumers victimized by fraudulent industries. Meanwhile, the moving industry is on notice that next time, consumers may find relief under RICO.

⁹⁵ *Chen*, 315 F. Supp. at 908.

⁹⁶ *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239 (1989).

⁹⁷ *Chen*, 315 F. Supp. at 909.

⁹⁸ *Id.*

⁹⁹ *Id.* at 910.

¹⁰⁰ *Id.* at 911.

¹⁰¹ *Id.*

¹⁰² Ameet Sachdev, *Racketeering Verdict Rejected; Mayflower Guilty on Contract*, CHI. TRIB., Oct. 29 2004, at 2.