Recent Court Decisions

Contributed by
Patrick F. Maroney
The Florida State University

Racketeer Influenced and Corrupt Organizations Act—Liability of Outside Professionals
Reves v. Ernst & Young, 7 FLW Fed. s41 Supreme Court Case No. 91-886 March 3, 1993

A farming cooperative filed for bankruptcy, and the bankruptcy trustee brought a civil suit against its accounting firm under the RICO Act. The plaintiff alleged that the accounting firm performed activities relating to valuation of a gasohol plant on the financial statements and audits of the farming cooperative. Section 1962(c) of 18 United States Code (RICO) provides that it is unlawful for "any person employed by or associated with an interstate enterprise ... to conduct or participate, directly or indirectly, in the conduct of enterprise's affairs through a pattern of racketeering activity." The District (trial) Court found that for the accounting firm to be liable "some participation in the operation or management of the enterprise itself" was required. The District Court found that the defendant's activities did not meet this test, and, thus, a summary judgment was granted in the accounting firm's favor. The appellate court (Circuit Court of Appeals 8th Circuit) affirmed the District Court, and an appeal to the United States Supreme Court followed.

The Court affirmed, finding that one must participate in the operation or management of the enterprise itself in order to be subject to liability under Section 1962(c). The Court wrote, "once it is understood that the word 'conduct' requires some degree of direction, and that the word 'participate' requires some part in that direction, it is clear that one must have some part in directing an enterprise's affairs in order to participate, directly or indirectly, in the conduct of such ... affairs." The Court wrote that Congress, in enacting the RICO statute, provided that it is to be liberally construed; however, the provision does not require rejection of the "operation or management" test. The liberally construed language was intended to not frustrate Congress' intent by reading the statute in an overly narrow fashion, but it was not intended to apply RICO to purposes that Congress did not intend.

The Court found that "Congress did not intend to extend Section 1962(c) liability beyond those who participate in the operation or management of an enterprise through a pattern of racketeering activity."

The dissent, written by Justice Souter and joined by Justice White, opined, "The evidence petitioners presented in opposing the motion for summary judgment demonstrated Arthur Young's participation ... by assuming the authority to make key decisions in stating the Co-op's own valuation of its major fixed asset, and by creating financial statements that were the responsibility of the Co-op's management, Arthur Young crossed the line separating 'outside' auditors from 'inside' financial managers." The dissent indicated that the majority misapplied the operation or management test.

This case is significant because it demonstrates the Court will read the statute in a narrow fashion where it deems appropriate. The Court did not hold that outsiders are immune from liability, however, their liability is contingent upon participating in the operation or management of the enterprise itself.

Employee Retirement Income Security Act—Benefits/Cap on AIDS-Related Claims *Owens v. Storehouse, Inc.*, et al., 11 Circuit Case No. 91-8696, February 25, 1993

The defendant Storehouse, Inc. modified its employee health benefit plan to include a lifetime benefit cap of $25,000 for AIDS-related claims. Owens, a former employee, sued, alleging that the cap for AIDS-related claims violated Section 510 of the Employee Retirement Income Security Act of 1974 (ERISA). The District Court granted a summary judgment in favor of the defendant Storehouse, and Owens appealed.

Storehouse owned a chain of furniture stores and sponsored an ERISA plan which provided group hospital and medical benefits up to a lifetime maximum of $1,000,000 per employee. Storehouse's insurer notified Storehouse that it was going to cancel the policy because of the high incidence of AIDS in the industry and among Storehouse's employees in particular. The insurer subsequently renewed the policy with less coverage. While seeking another insurance carrier, Storehouse was advised that it could insure its plan "only by placing the maximum life-time limit on the coverage of AIDS and AIDS-related illnesses." Storehouse subsequently modified its plan to include a $25,000 cap on all AIDS-related medical claims.

Owens filed suit claiming that the modification violated Section 510 of ERISA, which provides that "it shall be unlawful for any person to discharge, fine, suspend, expel, discipline or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan." The District Court granted summary judgment in favor of Storehouse. In the appeal, the United States Court of Appeals for the eleventh Circuit affirmed. The eleventh Circuit found that in order to prevail under Section 510 the plaintiff must show that the alleged discrimina-