

Visit us daily for the latest industry news and insight.
www.insurancenewsnet.com

insurancenewsnet.com
 Your industry. One source.

 Click to Print

 Close this Window

Perspectives: RICO Cases Can Be Double-Edge Swords

In fairy tales, finding a magic lamp with a genie isn't always a good thing.

Sure, the genie can grant three wishes, but the wishes often end up bringing unexpected consequences.

A labyrinthine lawsuit working its way through federal court could tap the magic number three by evoking the Racketeer Influenced and Corrupt Organizations Act. RICO can offer both sides in this case certain benefits, such as triple damages, if they win the case.

In this lawsuit, major players in the workers' compensation arena are accusing each other of conspiring and racketeering to downplay their premiums in order to dodge paying their fair share of residual market losses. The companies -- American International Group Inc. on one side and companies including Liberty Mutual Group, Travelers Insurance Group, Hartford Financial Services Group Inc., Ace INA Holdings Inc. on the other -- have accused each other of violating RICO.

A judge has ruled that the case can move forward for both sides.

Congress passed RICO in 1970 to give prosecutors extra muscle in court to fight organized crime.

So how did RICO fall into the hands of corporate lawyers? Did someone make an offer they couldn't refuse?

Since the 1970s, RICO has evolved into a broad statute that civil attorneys can also use to pursue claims of mail, wire fraud and conspiracy. In 1999, the U.S. Supreme Court ruled that lawyers could use RICO to pursue an insurance fraud case in *Humana Inc. v. Forsyth*, said Michael Diaz, a Miami-based attorney.

That opened the door for more insurance lawsuits to use RICO, said Diaz, a former assistant state attorney for Janet Reno.

"There's a lot of tactical, strategic and financial reasons to take a garden-variety fraud case and dress it up as a RICO case," Diaz said.

For starters, companies that win a case under RICO can receive triple damages. They can also recoup their attorney fees from the losers, which can easily run into a multimillion dollar bill.

RICO cases can also give attorneys the "advantage of being able to bring in otherwise inadmissible evidence," Diaz said. Evidence that would traditionally be blocked because it's hearsay is allowed in a RICO case if it shows a conspiracy, he said.

RICO "can be used as a hammer to try to extort settlements and really take on big companies with deep pockets," Diaz said. "That's the beauty of the American justice system. It empowers the little guy -- through the RICO statute and class actions -- to have a legitimate chance of keeping companies honest, and for other companies to keep each other honest."

But, like the genie's three wishes, RICO can also bring unexpected consequences.

"What you try to do in these huge RICO battles is keep upping the ante, up the stakes for the other side," Diaz said. "Many of the cases brought under RICO have criminal overtones and regulatory overtones. Other insurance companies are at risk of not only losing their insurance licenses and being sanctioned by insurance commissioners, but also of being criminally investigated."

That kind of pressure can bring litigation to a faster close, Diaz said. "The worst position you could be in is to have to defend a civil RICO lawsuit, defend a regulatory investigation and defend a criminal investigation all in parallel."

(By Meg Green, senior associate editor, BestWeek: Meg.Green@ambest.com)