

## Judge Rules RICO Charges Directed Against Central DuPage Hospital in Chinnici Suit May Apply

Editorial Staff

In October of 1989, a doctor of chiropractic, Dr. Leonard J. Chinnici, filed suit against Central DuPage Hospital (CDH), the Mona Kea South Professional Condominium Association, and 21 medical physicians, practicing in the Western suburbs of Chicago, alleging that they had collectively engaged in racketeering activity in an effort to punish a neurosurgeon for conducting a professional relationship and practice with a doctor of chiropractic. This followed the finding of a United States District Court in 1987, in another suit, that the American Medical Association had engaged in a "lengthy, systematic, successful, and unlawful" nationwide boycott of doctors of chiropractic with the AMA's members and other medical physician-dominated professional societies, such as the American Academy of Orthopedic Surgery, the American College of Radiology, and the American College of Surgeons. This finding of guilty against the AMA was affirmed by the United States Court of Appeals for the Seventh Circuit on February 8, 1990.

In the Chinnici suit (See "Medical Physician's Boycott of Chiropractors Induces Racketeering Charges," Dynamic Chiropractic, January 3, 1990) Central DuPage Hospital and numerous other medical physician defendants challenged the applicability of the (RICO) to their alleged conduct.

On January 2, 1990, in an 11-page opinion, United States District Judge Marvin E. Aspen concluded that, on the pleaded facts, the RICO Act could apply. Judge Aspen stated:

The plaintiff, Leonard Chinnici, has brought this amended five-count action seeking damages and injunctive relief under the "RICO) antitrust laws, and state law.

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We now turn to the questions as to whether Chinnici has sufficiently plead predicate acts of extortion. Chinnici specifically relies on the federal law of extortion contained in the Hobbs Act, which states in relevant part:

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than \$10,000 or imprisoned not more than 20 years, or both.

(b) As used in this section --

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(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

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(a) a person commits intimidation when, with intent to cause another to perform or to omit the performance of any act, he communicates to another, whether in person, by telephone or by mail, a threat to perform without lawful authority any of the following acts:

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(7) Bring about or continue a strike, boycott or other collective action.

Chapter 38 12-6. Chinnici alleges that the following acts by the defendants amounted to violations of these statutes and, therefore, constitutes predicate acts for the purposes of RICO.:

1. Dr. Lim (the neurosurgeon) was asked to terminate his agreement with Chinnici (the chiropractor) because he was associating with a chiropractor.
2. The Mona Kea Condominium Association sent letters stating that Dr. Lim was acting in violation of the association's bylaw and must discontinue his agreement with Chinnici.
3. The Mona Kea Condominium Association altered its bylaws to specifically exclude chiropractors and naprapaths from practicing there.
4. Rumors were spread as to Dr. Lim's competency and ethics in order to cause Dr. Lim to end his agreement with Chinnici.
5. An advertisement of Dr. Lim's practice was posted in a derogatory fashion.
6. Patient referrals were cut off to Dr. Lim.
7. A surgical audit was conducted of Dr. Lim and his staff privileges were later suspended.

As a result of these actions, Dr. Lim terminated his agreement with Chinnici.

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Chinnici supports his assertion that the doctors' conduct was without lawful authority, and therefore criminally extortionate under the Hobbs Act, by placing their actions in the context of the recent ruling of the Seventh Circuit in *Wilk v. American Medical Association*, 895 F.2d 352 (7th Cir. 1990). In *Wilk*, the court determined that chiropractors had suffered civil antitrust injury from a boycott against them, organized by a national medical association. At least for the purposes of surviving a motion to dismiss, Chinnici's reliance on *Wilk* is sound.

Although the CDH defendants may generally have had the authority to place and enforce restrictions upon their members and to condition continued membership upon faithful obedience to those policies, in essence, it has been alleged that the CDH defendants ultimately conditioned Lim's right to continue to practice at Mona Kea and to use the facilities at CDH on Lim's agreement to join with the CDH defendants in an illegal boycott of chiropractors. We believe that such a threat to deprive a person of his right to use his condominium property and to use hospital facilities based on collectively imposed policies that are clearly violative of the anti-trust laws, may be regarded as having been made "without lawful authority."

*Editor's note:* The Chinnici case is expected to go to trial in early 1991. If you have been the victim of medical/hospital boycott activity in your community, please see the legal challenge response letter designed by Mr. George McAndrews and reprinted in this issue of *DC* with permission of the Chiropractic Legal Update.

