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Friday, January 19, 2018

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## Appellate Court Affirms Dismissal of State Fund RICO Case

By Greg Jones State: California Topic: Top - 1427 views - Average time spent on item: 53 minutes  
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Broad liability releases in lien settlements prevent California's State Compensation Insurance Fund from suing Accident Help Line and providers that the carrier says overbilled for medical treatment, the U.S. 9th Circuit Court of Appeals ruled.

The appeals court on Wednesday said a federal judge in 2016 correctly dismissed State Fund's civil racketeering case against Dr. Alexander Zaks, the owner of the Central Valley clinics, and two chiropractors who worked there, David M. Holmes and Daniel A. Reyes.

Lien settlements negotiated in 2010 protected Zaks, Holmes and Reyes because State Fund's claims "were premised on acts within the scope of their agency relationships with lien claimants, such that liability was precluded by the releases' plain terms," the appeals court said in its decision.

The 9th COA also affirmed the district court decision granting summary judgment dismissing charges against Dr. Sana Khan, a radiologist in Orange who allegedly supplied equipment and services to the Accident Help Line clinics, and former State Fund attorney Bruce Roth.

Suspicion that Khan overbilled for services as part of the conspiracy alleged in State Fund's 2012 civil Racketeering Influenced and Corrupt Organizations Act complaint were barred by a four-year statute of limitation, the appellate court said. And State Fund had not introduced evidence in support of its claim that its former attorney Roth conspired with the other defendants by drafting a sweetheart lien settlement in 2009 in exchange for a job.

Jennifer Vargen, executive vice president of public affairs for State Fund, said the carrier is still reviewing the decision and considering its options.

The carrier can petition the 9th COA for a rehearing or petition the U.S. Supreme Court for a writ of certiorari to review the case.

Vargen said State Fund "brought the underlying RICO case based on evidence of extrinsic fraud that induced us to enter into the settlements in 2010, and we believe the evidence of fraud should have gone to a jury and not been decided on motions for summary judgment."

Glen Summers, a partner at Bartlit, Beck, Herman, Palenchar & Scott in Denver who represented Zaks, said the appellate court correctly concluded "there was never anything to this case."

"There was never any evidence of underlying fraud," Summers said. "There never was any evidence of collusion between Dr. Zaks and Bruce Roth at State Fund. There just never was any evidence of anything."

Summers said State Fund "relentlessly and vindictively" pursued the case against Zaks over what amounts to a disagreement about whether he used the proper billing code for some services. State Fund had every right to say that it should pay for services at a lower rate than billed, but it wasn't a crime for Zaks to request payment at a higher rate, he said.

State Fund alleged in its complaint that its former in-house attorney Roth in 2009 drafted a settlement agreeing to pay 140% of the claimed value of liens Zaks filed. The carrier said Roth agreed to pay substantially more than the 20% the carrier typically offers in lien negotiations in exchange for a job offer at Global Holdings. Khan was chief medical officer of Global Holdings at the time, and the company hired Roth as its chief counsel in 2010.



State Fund rescinded the original agreement and renegotiated the settlement in 2010, agreeing to pay Zaks \$10 million. But the carrier argued in court filings that the second settlement was fraudulently induced by the first settlement, which it claims Roth was never authorized to approve in the first place.

The appellate court said State Fund was precluded from arguing that it was induced into the second settlement because of a clause stating that no party entered into the agreement under duress.

"Because any assertion that the Zaks defendants connived with respect to the 2010 settlement agreements depends on the notion that Roth's entry into the 2009 agreement, and defendants' attempts to enforce the 2009 agreement, coerced State Fund into entering the 2010 agreement, this provision waives and thus forecloses State Fund's connivance argument," the court wrote.

The court also said there was no evidence of fraud that would allow State Fund to back out of the 2010 settlement agreement to escape the effect of any waivers it contained.

State Fund's allegations of fraud related to the negotiation of the 2009 settlement, making it "almost a logical impossibility that such fraud would be extrinsic to the 2010 settlement," the court said.

State Fund had the opportunity to arbitrate the validity of the 2009 agreement but decided to negotiate a second settlement instead. The carrier also had the opportunity to review Zaks' bills for evidence of fraud before executing the 2010 agreement, and in fact did so, the court said. State Fund also passed on the opportunity to arbitrate the fairness of the 2010 settlement.

"These facts decide the issue," the court wrote.

Additionally, the court said State Fund did not take the proper steps to rescind the 2010 settlement. The carrier did not notify the defendants that it wanted to withdraw from the agreement and did not offer to reset negotiations to the state they were in before the deal was signed, as required under California law.

During oral arguments on Jan. 9, Zaks' attorney Summers said State Fund didn't want to go back to arbitration because it was unable to convince the arbitrator that Zaks engaged in billing fraud.

Arbitrator Steven Siemers in 2008 said the fact that Zaks had treatment protocols for providers at the Accident Help Line clinics was not evidence that he was engaged in fraud or providing services simply to maximize profit. Siemers also said there was no evidence suggesting Accident Help Line providers were ordering an inappropriate or illegal amount of chiropractic care.

"What we have is a hodgepodge of testimony from lay witnesses who either thought that there were too many patients seen at AHL or that they were being asked to perform too much work at AHL, and from professional witnesses that did not care for the constrictions placed upon them by the creation and imposition of AHL's treatment protocols," the arbitrator wrote.

He said State Fund established that some former employees of the clinics didn't like how the operations were run, but did not satisfy the burden of proving that the clinic was engaged in billing or other fraud.

Summers said during oral arguments that State Fund entered into the 2010 settlement with its "eyes wide open" and that the carrier at the time "knew everything about the underlying liens they know now."

Summers on Thursday said he anticipates petitioning the appellate court for additional attorney fees in the case, noting that the trial court previously ordered State Fund to pay nearly \$5 million in 2016 after it dismissed the charges.

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