High Court Will Hear Mohawk's Bid to Toss RICO Suit by Employee

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The U.S. Supreme Court's decision last week to hear Mohawk Industries Inc.'s contention that it shouldn't face a civil racketeering suit could resolve disagreements about how courts handle similar suits by workers complaining that their employers drive down wages by hiring illegal immigrants willing to work cheap.

This is the claim made by former and current hourly employees of the Calhoun, Ga.-based carpet giant in their 2004 class action filed in the U.S. District Court for the Northern District of Georgia. The employees' case already has survived Mohawk's challenges in the district court and the 11th U.S. Circuit Court of Appeals.

The case is one of many around the country in which workers say their employers violate federal Racketeer Influenced and Corrupt Organizations, or RICO, statutes by hiring undocumented foreign workers.

The Supreme Court lawyer for the Mohawk employees, Howard W. Foster, has brought cases against chicken processor Tyson Foods Inc. and fruit producer Zirkle Fruit Co. He also is representing an Idaho county bringing what he says is the first case of a local government using RICO statutes to sue employers of illegal workers.

At issue in the Mohawk case is whether its relationship with outside labor recruiters constitutes a racketeering enterprise as defined under RICO -- the question the high court justices on Dec. 12 agreed to hear.

The court's ruling could resolve a split among circuit courts on the question. The 11th Circuit decided that Mohawk and its outside recruiters make up a racketeering enterprise -- but in a similar case last year, *Baker v. IBP*, Inc., 357 F.3d 685, the 7th Circuit ruled the other way.

In that case, workers sued a meat-processing plant for conspiring with recruiters and a Chinese aid group to hire illegal workers and drive down their wages. The 7th Circuit decided that a racketeering enterprise existed, consisting of the meat processor, the recruiters and the aid group. But the 7th Circuit also ruled that the members of the enterprise did not have a "common purpose" -- another requirement for a RICO case -- because the employer wanted to pay lower wages, the recruiter wanted to get paid as much as possible for supplying workers and the aid group wanted to help Chinese immigrants.

In its June 9 opinion, the 11th Circuit noted the conflict with the 7th Circuit but said that "it may often be the case that different members of a RICO enterprise will enjoy different benefits" and that the common purpose of the Mohawk-recruiter enterprise was to provide illegal workers to Mohawk.

Mohawk's Supreme Court lawyer, Carter G. Phillips of Sidley Austin Brown & Wood, argued in his petition for certiorari that a corporation and its nonemployee agents performing corporate functions do not constitute a racketeering "enterprise" as defined by RICO. He bolstered that claim by pointing out that the employees' original suit was solely against Mohawk, not the other members of the supposed illegal-alien-recruiting enterprise.

Phillips urged the high court to consider the case because, he wrote, a RICO "enterprise" definition that encompasses a corporation and agents acting on its behalf could have a chilling effect on U.S. business activities.

If the 11th Circuit's decision is upheld, he warned, corporations could be held liable under RICO for a "broad range of routine corporate conduct."

"[E]very corporation must act through agents to carry out business," Phillips argued. Under the 11th Circuit's rule, he added, "each of these corporations could be held liable under RICO simply because it hired an outside company to perform these tasks rather than using its own employees."

Sidley Austin Brown & Wood also represented Mohawk before the lower courts, along with lawyers from Constangy Brooks & Smith's Atlanta office.

FITS THE RICO BILL, SAY EMPLOYEES

The employees' lawyer, Foster, of the Chicago firm Johnson & Bell, dismissed Phillips' concern in his response brief, writing that Mohawk's argument was based on an incorrect framing of what constitutes a racketeering enterprise. Such an enterprise, Foster wrote, quoting RICO, can be "any union or group of individuals associated in fact though not a legal entity."

The conspiracy between Mohawk and the temp agencies to "violate federal immigration laws, destroy documentation and harbor illegal workers" readily fits the bill, he argued. The question Phillips raises of whether a "defendant corporation and its agents can constitute an 'enterprise' under [RICO]" is irrelevant, he added, since the employees never contended in their original complaint that the recruiters were Mohawk's agents and the 11th Circuit similarly did not address that question in its June opinion.

In the lower courts, the Mohawk employees also were represented by Bobby Lee Cook of Cook & Connelly, John Earl Floyd of Bondurant Mixson & Elmore and Matthew D. Thames of the Dalton firm Goddard Thames Hammontree & Bolding.

Amicus briefs to the Supreme Court in support of Mohawk are due Jan. 26 and those in support of the class of employees are due March 2. An argument date has not been scheduled. The case is *Mohawk Industries, Inc. v. Williams*, No. 05-465.