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Recent Developments: Victor v. Proctor & Gamble Mfg. Co.: Voluntarily Retired Claimant Entitled to Temporary Total Disability Benefits after Retirement

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Corp. v. Malley-Duff & Assoc., 483 U.S. 143 (1987), where the Court noted that Congress fashioned RICO after § 4 of the Clayton Act, 15 U.S.C. § 15(a). Relying on dicta, Petitioners asserted that because § 4 of the Clayton Act has been interpreted to confer exclusive jurisdiction on the federal courts, it should be inferred that Congress intended, by the use of similar language in RICO, that the Court interpret RICO the same way. The Court rejected this argument and pointed out that "the question is not whether any intent at all may be divined from legislative silence on the issue, but whether Congress in its deliberations may be said to have affirmatively or unmistakably intended jurisdiction to be exclusively federal." *Tafflin*, 110 S. Ct. at 797.

Additionally, the petitioners argued that to permit concurrent state court jurisdiction over civil RICO claims would be incompatible with federal interests. The petitioners first maintained that federal interests in a uniform interpretation of federal criminal law would be frustrated if state courts were permitted to hear civil RICO claims. *Id.* Further, they contended that for a state court to decide a civil RICO claim would require states to determine which federal crimes constitute "racketeering activity" under RICO and would thereby create a diverse body of precedent interpreting those crimes. *Id.* at 798. The Court rejected both of Petitioner's arguments.

The Court explained that there would be no danger of inconsistent interpretation of federal crimes because, pursuant to 18 U.S.C. § 3231, federal courts would retain "full authority and responsibility for the interpretation of federal criminal law." *Id.* The Court also stated that the federal courts would not be bound by state court interpretations of federal law. Because this case involved civil RICO claims, there was no danger of non-uniform imposition of federal criminal sanctions. Finally, the Court indicated that it had "full faith in the ability of state courts to handle the complexities of civil RICO actions, particularly since many RICO cases involve asserted violations of state law, such as state fraud claims, over which state courts presumably have greater expertise. *Id.*

The Court briefly addressed the petitioners' final contention that RICO's procedural mechanisms are applicable only to federal court actions. The petitioners maintained that RICO provides for extended venue and out of state service of process which the state court systems could not properly handle. In response, the Court pointed out that it had "previously found concurrent jurisdiction even where federal law provided for special procedural mechanisms similar to those contained in RICO." *Id.* at

799 (citations omitted). The Court found no merit in the Petitioners' procedural argument. Thus, the Court concluded that state courts have concurrent jurisdiction over civil RICO claims.

In the first of two concurring opinions, Justice White agreed with the majority's holding but wrote separately to express his fear that permitting concurrent jurisdiction over civil RICO actions would inevitably result in diverse state court interpretation of federal criminal law. Justice White, however, did not believe the possibility of non-uniform construction warranted a finding of exclusive federal jurisdiction. *Id.* at 800.

Justice Scalia, joined by Justice Kennedy, also wrote a concurring opinion. Both Justice Scalia and Justice Kennedy agreed with the majority's finding that a civil RICO claim does not meet any of the three *Gulf Offshore* factors, and, therefore, that state court jurisdiction was not preempted. However, neither Justice Scalia nor Justice Kennedy believed that the *Gulf Offshore* factors should be the sole criteria for evaluation to determine whether state court jurisdiction had been preempted.

Despite some minor disagreement among the Justices in *Tafflin*, a unanimous Court agreed that Congress had not intended to preempt state court jurisdiction over civil RICO claims. Not only does the *Tafflin* precedent confer greater power to the states, but it serves as a model for evaluating whether state court jurisdiction had been preempted.

—David B. Applefeld

***Victor v. Proctor & Gamble Mfg. Co.:*
VOLUNTARILY RETIRED CLAIMANT
ENTITLED TO TEMPORARY TOTAL
DISABILITY BENEFITS AFTER RETIREMENT**

In *Victor v. Proctor & Gamble Mfg. Co.*, 318 Md. 624, 569 A.2d 697 (1990), the Court of Appeals of Maryland held that a claimant who voluntarily retires is entitled to the temporary total disability benefits under the Worker's Compensation Act ("the Act"). In so holding, the court reversed the trial court's ruling, and upheld the decision of the Workers' Compensation Commission.

Edward Victor, a Proctor and Gamble employee, sustained a disability resulting from an accidental personal injury arising out of and in the course of his employment. He was first awarded total disability, and later, granted a supplemental award for permanent partial disability. Although Victor was physically able to work at the time, he voluntarily retired from Proctor & Gamble. Subsequently, his work-related condition worsened, causing temporary total disability.

Because of his worsening condition, the Workers' Compensation Commission reopened Victor's case and awarded him a continuation of his temporary total disability benefits. The Commission, however, ordered that the payment of the award be suspended pending any appeal because it questioned whether such benefits, which are ordinarily awarded until maximum medical improvement is achieved, are available to a retired claimant. On Proctor & Gamble's appeal to the Circuit Court for Baltimore City, the trial court reversed the Commission's ruling, stating that the Act's purpose is not to provide additional retirement benefits to a claimant who voluntarily removes himself from the work force. The court of appeals certified the case before a ruling by the court of special appeals.

In this case of first impression, the court began its analysis by looking to the Act's purpose. As it had recognized in previous cases concerning the Act, the court reiterated that "[t]he general purpose of the Workmen's Compensation Act [is] to provide compensation for loss of earning capacity resulting from accidental injuries sustained in industrial employment." *Id.* at 630, 569 A.2d at 700 (quoting *Bethlehem Shipyard v. Damasiewicz*, 187 Md. 474, 480, 50 A.2d 799, 802 (1947) (emphasis added by the *Victor* court). Furthermore, the Act must be interpreted and construed to effectuate this purpose. *Id.* at 628, 569 A.2d at 699. The court also noted that there exists a legislatively required presumption in favor of injured employees that their claims fall within the Act's provisions. *Id.* at 628-29, 569 A.2d at 700.

The Act itself, the court noted, establishes the duties that employers owe to their employees, providing, in part, that the employer shall pay or provide compensation "[f]or the disability or death of his employee resulting from an accidental personal injury sustained by the employee arising out of and in the course of his employment . . ." *Id.* at 626 n.1, 569 A.2d at 698 n.1 (quoting Md. Ann. Code art. 101 § 15 (1985 & Supp. 1989) (emphasis added)). Such compensation and benefits are referenced to disability throughout the statute. Thus, the court reasoned, it is the "disability" arising from the injury that calls for the compensation and benefits, yet "disability" is not explicitly defined in the Act with respect to an injury arising from an industrial accident. *Id.* at 629, 569 A.2d at 700.

Thus, relying again on the Act's general purpose and the mandate of a liberal construction in favor of injured employees, the court set forth to define the legislative intent of an industrial accident

disability. In terms of occupational diseases, the legislature had defined "disability" as the state of being incapacitated. The court had previously held that a claimant suffering from occupational disease need not show actual wage loss, but rather must show a permanent or temporary incapacity from employment. *Id.* at 630-31, 569 A.2d at 700-01 (citing *Miller v. Western Electric Co.*, 310 Md. 173, 528 A.2d 486 (1987)). In *Miller*, the court had warned that a strict adherence to a wage-loss requirement for compensation would likely produce absurd results inconsistent with the Act's purpose. *Id.* at 631, 569 A.2d at 701. For instance, a physically disabled worker making efforts to keep working would be deprived

of an award based solely on lost wages. Thus, consistent with the Act's purpose, the court held that "disability," with respect to industrial accidents, relates to diminished "earning capacity," and not to actual loss of wages per se. *Id.* at 632, 569 A.2d at 701.

In light of this definition, the court reasoned that Victor's voluntary retirement was, therefore, of no consequence on his entitlement to compensation for temporary total disability. *Id.* at 632, 569 A.2d at 702. Rather, his entitlement to compensation continued until his maximum earning capacity was fully restored. *Id.* at 633, 569 A.2d at 702. Victor was not barred from rejoining the labor force. If Victor had not been totally disabled, he could have sought and obtained employ-

ment elsewhere. Thus it was not Victor's retirement that impeded his earning capacity, but the disability resulting from his accidental injury. *Id.* Therefore, the court ruled that Victor was entitled to compensation.

In holding that voluntary retirement does not bar a claimant from compensation for temporary total disability, the court of appeals expanded the employer's insurance liability by expanding the scope of eligible claimants. Consequently, employers and their insurance companies will have an even greater obligation to ensure the safety of employees.

—Scot Morrell

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