

## **MOHAWK INDUSTRIES, INC. v. WILLIAMS: THE ELEVENTH CIRCUIT REVISITS RICO'S APPLICATION TO THE EMPLOYMENT OF ILLEGAL ALIENS**

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On June 5, 2006, the Supreme Court not only reversed the Second Circuit's decision in *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451 (2006) but also remanded *Mohawk Industries, Inc. v. Williams*, 547 U.S. 516 (2006) to the Eleventh Circuit for further consideration in light of the Supreme Court's proximate cause analysis set forth in *Anza*.

In *Mohawk*, the plaintiffs were Georgia workers who complained that their wages were depressed by their employer's alleged practice of hiring illegal aliens. The Supreme Court granted certiorari on the issue of whether the members of an association in fact enterprise needed to share an exclusive purpose or merely a common purpose, not whether the plaintiff had alleged proximate cause.

*Mohawk* requires a more exhaustive proximate cause analysis than that presented by *Anza*. In *Anza*, the Tax Authority was directly denied revenue by the defendants' fraudulent evasion of sales tax. In *Mohawk*, the defendants' alleged employment of illegal aliens in Georgia does not cost anyone any money - other than Georgia workers who compete for wages with the illegal aliens. One can argue that the illegal aliens are more directly injured (than the Georgia workers) because the illegal aliens are receiving less pay than their Georgia co-workers for presumably the same work. Unlike the Tax Authority in *Anza*, however, the illegal workers are not innocent victims - the only reason they are earning in any wage in the United States is because both the illegal aliens and their employer are alleged breaking the law. In the eyes of the law, the illegal aliens should not be earning any wages in the U.S., so it is difficult argue that the illegal aliens have sustained any injury.

The United States Government is also an arguably more directly injured victim, but unlike the evasion of taxes in *Anza*, there is no out-of-pocket loss to the government when an employer hires an illegal alien. The United States Government would sue the employer only to protect U.S. jobs / workers, not to recover revenue owed to the government. If the government can sue to protect U.S. workers, logically, U.S. workers should be allowed to sue to protect themselves.

If the chain of causation is broken in *Mohawk*, it is not likely broken by intervening third-party victims. Rather, the presence of several independent intervening factors may call into question whether the Georgia workers would have earned higher wages "but for" the alleged employment of illegal aliens. For example, the law of supply and demand dictates that if better paying jobs with other employers were available to the Georgia workers, they would have already left the defendants' employ. Presumably, the Georgia workers continue to work at their depressed rate because they have no better option. In addition, if the illegal aliens were removed from their employment, the employer would not necessarily increase the wages of the Georgia workers. The employer could, instead, decide that it makes better business sense to simply close its Georgia factory, terminating all the wages of the Georgia workers, and to relocate the factory to a foreign country or to simply shift the factory's production to another facility.

These factors may indicate that the Georgia workers are not being injured "by reason of" the presence of the illegal workers but by economic factors that are completely unrelated to the alleged RICO violation. In other words, the Georgia workers may not be able to prove that they would receive higher wages "but for" the defendant's alleged employment of illegal aliens. See *First Nationwide Bank v. Gelt Funding Corp.*, 27 F.3d 763, 770-72 (2d Cir. 1994) (plaintiff could not that "but for" defendant's false property appraisals, plaintiff would not have lost money when loans secured by the property went into default).

Following the Supreme Court's remand, the Eleventh Circuit issued its second opinion in the *Mohawk* case on September 27, 2006. With regard to proximate cause, the Eleventh Circuit held that the plaintiffs, whose wages were depressed by the defendant's alleged hiring of illegal aliens, were the most directly injured parties.

With regard to the other independent market factors (such as the lack of better paying jobs in the Georgia market), the Court held:

. . . plaintiffs persuasively reply that Mohawk's argument ignores that Mohawk's conduct has grossly distorted those normal market forces by employing literally *thousands* of illegal, undocumented aliens at its manufacturing facilities in north Georgia, thus depriving plaintiffs of "business relations unhampered by schemes prohibited by the RICO predicate statutes." . . . We agree with plaintiffs that their complaint alleges a sufficiently direct injury. . . , especially given the recognition of a direct correlation between illegal hiring and lower wages.

*Williams v. Mohawk Industries, Inc.*, 465 F.3d 1277, 1289 (11<sup>th</sup> Cir. 2007) (court's emphasis).

The Eleventh Circuit did not address whether the defendant's ability to close the Georgia plant - rather than pay fair wages to Georgia workers - broke the chain of causation. This argument probably does not bear much weight in any event. The question is not what defendants could have done in the alternative to allegedly employing illegal aliens. The question is whether plaintiffs were directly injured by defendants' alleged employment of illegal aliens. No plaintiff could ever have standing to bring a civil RICO claim if a defendant could destroy proximate cause by the circular argument that plaintiffs would not have been damaged if the defendant had not engaged in the acts of racketeering. Given the defendant's alleged decision to employ illegal aliens in Georgia, the question becomes whether the defendant's Georgia work force was directly injured by that decision.

There is little doubt that the defendant in the *Mohawk* case will again petition for Supreme Court review of the Eleventh Circuit's decision dated September 27, 2006. Whether the Supreme Court will grant the petition is anybody's guess. If the petition is granted, a Supreme Court opinion - one way or the other -- would provide employees and employers with substantial assistance in determining whether RICO can be used as a means to curb the employment of illegal aliens.