Emrani cites New York RICO loss in challenge to Uber suit

By Skyler Romero
Daily Journal Staff Writer

Jacob Emrani is urging a Los Angeles federal judge to reconsider allowing Uber Technologies Inc.'s racketeering claims against him to proceed, pointing to a new decision dismissing a similar Uber lawsuit against personal injury lawyers and medical providers in New York.

Emrani and the Law Offices of Jacob Emrani filed a notice of supplemental authority Tuesday citing U.S. District Judge Orelia E. Merchant's Aug. 14 ruling in *Uber Technologies Inc. v. Wingate,* Russotti, Shapiro, Moses & Halperin LLP in the Eastern District of New York.

Merchant dismissed Uber's RICO claims without leave to amend, finding, among other things, that the company failed to plausibly allege that the lawyers and medical providers shared a common fraudulent purpose.

"Uber's allegations do not permit an inference that the [defendants] acted with a common purpose to bribe each other or defraud Uber," Merchant wrote.

She also found that allegations of "ordinary business relationships" — including fee-sharing arrangements, client referrals and medical testimony — were insufficient to show that the law firms operated or managed the alleged RICO enterprises.

The ruling could bolster Emrani's effort to persuade U.S. District Judge Sherilyn Peace Garnett to reconsider her July 23 ruling on motions to dismiss Uber's Los Angeles case.

That lawsuit accuses Emrani, Downtown LA Law Group and orthopedic surgeon Dr. Greg Khounganian of working together to inflate personal injury claims arising from Uber-related accidents. Uber's amended complaint alleges lawyers directed claimants to medical providers for unnecessary or unrelated treatment, generating inflated medical bills used to increase the value of claims.

The allegations resemble those in the New York case, where Uber claimed law firms recruited passengers involved in minor collisions and referred them to doctors who provided unnecessary treatment and false statements to "manufacture evidence" supporting serious-injury claims.

In the Los Angeles litigation, Uber argued in a March opposition brief that the defendants could not accomplish their alleged "common purpose of fraudulently extracting inflated settlements and verdicts" without lawyers prosecuting the cases and doctors generating allegedly fraudulent medical records and bills.

Merchant also concluded that Uber failed to "assert a clear and definite injury" and ordered judgment entered for the defendants. Emrani told Garnett that the New York ruling "supports the Emrani Defendants' pending motion for reconsideration."

Stephen G. Larson of Larson LLP, counsel for Khounganian, said the New York ruling strengthened his client's position.

"The recent dismissal of similar claims asserted by Uber in the Eastern District of New York reinforces that Uber's RICO claims against Dr. Khounganian lack legal merit," Larson said. He said Khounganian has joined Emrani's request for reconsideration on Noerr-Pennington immunity, which protects certain activity connected to petitioning the government, including litigation.

Khounganian's joinder argues that reconsideration of the court's findings on the Noerr-Pennington doctrine's sham-litigation exception and a settlement-agreement defense raises "threshold issues that would dispose of this action as to all Defendants."

Jeff Grell, a longtime RICO attorney and law professor at Southern Methodist University's Dedman School of Law, said the New York decision could carry weight in Los Angeles but emphasized that it does not bind Garnett.

"I'm sure it's persuasive," Grell said. "It's not binding." He said the impact would depend on how closely the allegations and relationships among the lawyers and doctors in the two cases resemble one another. "If it's similar, that would, I think, have a lot of persuasive impact on a court."

Grell said he views the increasing use of RICO claims arising from underlying personal injury litigation as troubling because of the potential chilling effect on access to the courts. He said relationships between plaintiffs' lawyers and doctors are commonplace and do not themselves demonstrate racketeering.

"As long as you're not bribing a doctor for a particular opinion, there's nothing illegal or fraudulent," Grell said. "There's certainly no racketeering activity behind it." He cautioned that corrupt lawyer-doctor arrangements do exist, but said the New York allegations appeared to him to involve "lawyers being lawyers."

More broadly, Grell said RICO should not become a mechanism for relitigating disputes over evidence or damages from earlier personal injury cases.

"RICO is not a way to get around normal appellate process, normal judicial review," he said. "You can't use RICO just to repackage a claim you lost and try to get another bite at the apple in federal court."

Uber had already pointed Merchant to Garnett's ruling. Emrani's filing says Uber submitted a July 28 letter in the New York case publicly stating that Garnett had "denied the defendants' motion to dismiss with respect to the 18 U.S.C. § 1962(c) claims," even though Garnett's July 23 order remains under seal. Merchant acknowledged the submission but nevertheless dismissed Uber's New York case.

Emrani is asking Garnett to reconsider her ruling or, alternatively, certify it for interlocutory appeal. Downtown LA Law Group and Khounganian have joined the request.

Counsel for the Emrani defendants and Uber declined to comment by phone Wednesday. Counsel for Downtown LA Law Group and Igor Fradkin did not respond to phone or email inquiries by press time Thursday.

skyler_romero@dailyjournal.com