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Gallagher Sharp Shop Talk: Workers' Compensation

Question: Does a claimant have standing to sue the Bureau of Workers' Compensation for the wrongful disclosure of claim information to a third party?

Most employers are aware of the perils of handling an employee's personal information and the unauthorized release of such information to third parties. What happens when the BWC learns that one of its employees has released confidential claim information to a third-party? Are damages available to a claimant whose information was released?

Jones v. Ohio Bur. Of Workers' Comp., 2011-Ohio-1855, involved a claimant (Jones) who filed a claim for workers' compensation benefits in April 2007. In November 2007, the BWC learned that one of its employees had "secretly and improperly" provided a private investigator with information from several claim files, including Jones' claim file, over the course of several years. The BWC sent Jones a letter notifying her that her claim information may have been improperly accessed, and claim information (including claim numbers, providers, and Social Security numbers) may have been disclosed, prompting Jones to retain a credit monitoring company. Jones subsequently brought suit against the BWC in the Court of Claims asserting claims for negligence, negligent infliction of emotional distress, and invasion of privacy arising from the disclosure. The Complaint cited as a basis for damages the likelihood that further invasions could occur in the future. The BWC moved for summary judgment on the basis that the plaintiff lacked standing to sue because she did not suffer an "injury in fact."

The Court of Claims (J. Clark) granted the BWC's motion, finding that in the context of identity theft cases, courts have embraced the general rule that an "increase in risk" of future injury is not an "actual or imminent" injury. To the extent that the claimant alleged an increased risk of future harm, the potential "damages" did not give plaintiff standing to file suit. With regard to the claim for mental distress, the court found claimant's "wrongful intrusion" type of invasion of privacy claim to be without merit because the BWC already possessed claimant's claim information, and thus cannot be said to have intruded upon her private affairs. Further, the alleged public disclosure of "private facts," it would have required disclosure to the public at large, or to so large a segment of the public that it was substantially certain to become public knowledge. In this case, the disclosures were only alleged to have been made to a single person.

Several things about this opinion were unclear, such as the nature of the claim information, and why an employer would need to hire an investigator to obtain "claim information" they presumably already had. However, the holding in *Jones* is purely procedural. Had an identify theft actually occurred, it is likely that at least some of the claims may have survived. If you have any specific questions, or would like to discuss this or any other workers' compensation issues, you can contact me or Adam Sadowski from our Toledo office.

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