

Michigan eye doctor vindicated in federal appellate court anti-kickback statute ruling

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April 4, 2023

The U.S. Court of Appeals for the 6th Circuit recently issued a ruling favorable to an ophthalmologist falsely accused of violating the federal Anti-Kickback Statute (AKS) in his referral business dealings with a hospital in Marshall, Michigan.

The appellate court ruled, in the published decision, *Martin v. Hathaway*, that the AKS does not define “remuneration,” and that the business activities of defendant Dr. Darren Hathaway with Oaklawn Hospital did not entail an act “that may be valuable to another” as defined in the statute. Hathaway was accused by another ophthalmologist and her spouse of causing Oaklawn to rescind an employment offer because of business referral promises allegedly made by Hathaway.

“I am gratified by the opinion,” said Hathaway about the ruling. “Fortunately, my reputation and good name have been restored by the appellate court’s decision, which agreed that I did nothing wrong. I look forward to getting back to doing what I love most – helping improve the lives of my patients.”

Plunkett Cooney appellate attorney Mary Massaron represented Hathaway as lead lawyer during the appeal. She sees the appellate court’s ruling as significant on two technical legal fronts. Aaron Bartell was the lead lawyer representing Dr. Hathaway before the district court.

“The court very methodically and thoughtfully worked through the anti-kickback issues at play in this case,” said Massaron, one of Plunkett Cooney’s most accomplished appellate attorneys. “We now have more clarity about what constitutes ‘remuneration’ in anti-kickback cases, and the court ruled that claims made under the False Claims Act must tie alleged kickbacks to health care billing.”

Central to the case was the interpretation of statutory language in the AKS about the causation standard to be applied. In separate cases dealing with the causation issue, the U.S. courts of appeal for the 3rd and 8th circuits disagreed on the meaning of “resulting from.” This new ruling by the 6th Circuit aligns with the 8th Circuit’s decision, but a showdown in the U.S. Supreme Court may still result.

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“I’m very happy for Dr. Hathaway and his family. He has been waiting patiently for justice in this case, unable to publicly respond to the allegations,” Massaron said. “If this case should make its way up to the U.S. Supreme Court, we will be ready to continue advocating for him for a responsible application of the Anti-Kickback Statute that comports with the language in the statute and Congress’s intent.”

One of Plunkett Cooney’s most accomplished appellate attorneys, Massaron is a member of the prestigious American Academy of Appellate Lawyers and the American Law Institute. She is also a past chair of the American Bar Association’s Standing Committee on Amicus Curiae Briefs, a five-member committee that oversees preparation of ABA briefs for filing in the U.S. Supreme Court.

Plunkett Cooney is one of the oldest and largest law firms in the nation and one of a few Midwest law firms with a dedicated team of appellate attorneys. The members of the firm’s Appellate Law Practice Group are responsible for over 1,500 cases decided by state and federal appellate courts, including all Michigan appellate courts, the Ohio Supreme Court, the Indiana appellate courts, the California Court of Appeals, and numerous federal circuit courts of appeal.

Plunkett Cooney’s appellate attorneys are routinely retained to handle cutting edge appeals involving issues of first impression or to seek reversal of large adverse judgments. They have also prepared numerous *amicus curiae* briefs on behalf of firm clients for filing in state and federal courts.

Established in 1913, Plunkett Cooney is a leading provider of business and litigation services to clients in the private and public sectors. The firm employs approximately 140 attorneys in seven Michigan cities, Chicago, Illinois, Indianapolis, Indiana and Columbus, Ohio. Plunkett Cooney has achieved the highest rating (AV) awarded by Martindale-Hubbell, a leading, international directory of law firms.

For more information about the federal court’s ruling on behalf of Dr. Hathaway, contact the firm’s Director of Marketing and Business Development, John Cornwell, at (248) 901-4008; jcornwell@plunkettcooney.com.

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