Effective:[See Text Amendments]

United States Code Annotated Currentness
Title 18. Crimes and Criminal Procedure (Refs & Annos)
   Part I. Crimes (Refs & Annos)
      Chapter 96. Racketeer Influenced and Corrupt Organizations (Refs & Annos)
         § 1962. Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

CREDIT(S)
HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports


Amendments


CROSS REFERENCES

Civil action for threefold damages, see 18 USCA § 1964.
Court orders to restrain violations of this section, see 18 USCA § 1964.

FEDERAL SENTENCING GUIDELINES

See Federal Sentencing Guidelines §§ 2E1.1, 5E1.4, 18 USCA.

LAW REVIEW COMMENTARIES


A trial lawyer's guide: Everything you always wanted to know about RICO before your case was dismissed. Mark E. DuVal, 1986, 12 Wm.Mitchell L.Rev. 291.


Attorney liability under RICO § 1962(c) after Reeves v. Ernst & Young. 61 U.Chi.L.Rev. 1153 (1994).


Civil RICO--the scope of coverage after Sedima, John E. Grenier and Sally S. Reilly, 47 Ala.Law. 260 (1986).


Frontier of RICO standing: Interpreting RICO’s conspiracy provision to realize congress’ goal of creating a powerful crime-fighting weapon. 21 J.Legis. 147 (1995).

Guide to borrower litigation against the farm credit system and the right of farm credit system borrowers. Christopher R. Kelly and Barbara J. Hoekstra, 66 N.D.L.Rev. 127 (1990).


Holmes v. Securities Investor Protection Corp.: Standing to sue under Section 1464(c) of RICO for the securities fraud plaintiff. Antonella M. Madonia, 18 Del.J.Corp.L. 923 (1993).


In defense of sausage reform: Legislative changes to civil RICO. Geoffrey F. Aronow, 65 Notre Dame L.Rev. 964 (1990).

Legal prevention of equine insurance fraud--How we can stop the killing game. 22 Ohio N.U.L.Rev. 845 (1996).


Liability of professionals under RICO. Edward Brodsky, 211 N.Y.L.J. 3 (Jan. 12, 1994).


Standing to sue under RICO. Edward Brodsky, 212 N.Y.L.J. 3 (Nov. 9, 1994).


The exclusive jurisdiction of the NLRB as a limitation on the application of RICO to labor disputes. Note, 76 Ky.L.J. 201 (1987-88).


The proper application of civil RICO to patent fraud. Steven Fasman, 96 Yale L.J. 1323 (1987).


When the database is wrong ... Do consumers have any effective remedies against credit reporting agencies or information providers? David Rameden, 100 Com.L.J. 390 (1995).

LAW REVIEW COMMENTARIES

Analysis of the myths that bolster efforts to rewrite RICO and the various proposals for reform: “Mother of God--Is This the End of RICO?” G. Robert Blakey and Thomas A. Perry, 43 Vand.L.Rev. 851 (1990).

Behold, the day of judgment: Is the RICO pattern requirement void for vagueness? Robert D. Luskin, 64 St.John's L.Rev. 779 (1990).


Concurrent jurisdiction for civil RICO. Frank M. Loo and Edward Kubo, 7 Cal.Law. 81 (June 1987).


Guide to borrower litigation against the farm credit system and the right of farm credit system borrowers. Christopher R. Kelly and Barbara J. Hoekstra, 66 N.D.L.Rev. 127 (1990).


Judicial “Pruning” of “Garden Variety Fraud” civil RICO cases does not work: It's time for Congress to Act. Susan Getzendanner, 43 Vand.L.Rev. 673 (1990).


Racketeering prosecution: The use and abuse of RICO. John Dombrink and James W. Meeker, 16 Rutgers


LIBRARY REFERENCES

American Digest System

Racketeer influenced and Corrupt organizations \( \rightarrow 4 \).

Key Number System Topic No. 319H.

Corpus Juris Secundum

CJS Criminal Law § 326, Conspiracy and Other Offenses--Splitting Conspiracy; Different Overt Acts.
CJS Criminal Law § 1702, Disclosure of Agreements With Witnesses.
CJS Criminal Law § 2108, Leaders and Organizers.
CJS Federal Civil Procedure § 307, Pleading Particular Matters--Fraud, Mistake, and Condition of Mind.
CJS Federal Courts § 595, Dismissal; Judgment on the Pleadings.
CJS Indictments and Informations § 194, Distinct Offenses.
CJS Limitations of Actions § 139, Diligence and Effect of Knowledge.
CJS Limitations of Actions § 286, Rico Claims.
CJS Postal Service & Offenses Against Postal Laws § 48, Mail Fraud Statute.
CJS Postal Service & Offenses Against Postal Laws § 53, Intent to Defraud.
CJS RICO (Racketeer Influenced & Corrupt Orgs.) § 2, Prohibited Acts.
CJS RICO (Racketeer Influenced & Corrupt Orgs.) § 3, State of Mind.
CJS RICO (Racketeer Influenced & Corrupt Orgs.) § 4, Conspiracy.
CJS RICO (Racketeer Influenced & Corrupt Orgs.) § 8, Vicarious or Respondeat Superior Liability.
CJS RICO (Racketeer Influenced & Corrupt Orgs.) § 16, Number of Acts.
CJS RICO (Racketeer Influenced & Corrupt Orgs.) § 17, Relation and Continuity.
CJS RICO (Racketeer Influenced & Corrupt Orgs.) § 18, Relation and Continuity--Closed- and Open-Ended Continuity.
CJS RICO (Racketeer Influenced & Corrupt Orgs.) § 20, Conduct or Participation.
CJS RICO (Racketeer Influenced & Corrupt Orgs.) § 21, Association.
CJS RICO (Racketeer Influenced & Corrupt Orgs.) § 22, Interest and Control.
CJS RICO (Racketeer Influenced & Corrupt Orgs.) § 24, Distinctness of Enterprise and Person Violating Statute.
CJS RICO (Racketeer Influenced & Corrupt Orgs.) § 29, Standing--Necessity that Injury Involve Business or Property.
CJS RICO (Racketeer Influenced & Corrupt Orgs.) § 32, “But-For” and Proximate Causation; Direct Injury.
CJS RICO (Racketeer Influenced & Corrupt Orgs.) § 33, Under Specific Rico Provisions.
CJS RICO (Racketeer Influenced & Corrupt Orgs.) § 35, Pleading.
CJS RICO (Racketeer Influenced & Corrupt Orgs.) § 46, Sentence and Punishment.

RESEARCH REFERENCES

ALR Library

66 ALR, Fed. 2nd Series 1, Federal Criminal Prosecution Against Medical Practitioner for Fraud in Connection With Claims Under Medicaid, Medicare, or Similar Welfare Program Providing Medical Services.


7 ALR, Fed. 2nd Series 415, Antagonistic Defenses as Ground for Separate Trials of Codefendants in Criminal Case--Federal Homicide Offenses.


10 ALR, Fed. 2nd Series 461, Application of Racketeer Influenced and Corrupt Organizations Act (RICO), 18

13 ALR, Fed. 2nd Series 529, When Has Federal Prosecutor Breached Plea Agreement--Promises Not Related to Downward or Upward Adjustment of Sentence in Fraud and Threat Cases.


25 ALR, Fed. 2nd Series 207, Propriety of Federal Court's Abstention, Under Burford v. Sun Oil Co., 319 U.S. 315, 63 S. Ct. 1098, 87 L. Ed. 1424 (1943), as to Claim that State or Local Statute or Regulation, or Application Thereof, Violates...


1 ALR, Fed. 15, Questions as to Convenience and Justice of Transfer Under Forum Non Conveniens Provision of Judicial Code (28 U.S.C.A. § 1404(a)).


10 ALR, Fed. 724, Consideration Of, or Failure to Raise or Consider, Question on Appeal from Conviction or on Postconviction Remedy, as Precluding Its Consideration on Subsequent Motion to Vacate Sentence Under...

27 ALR, Fed. 407, Construction and Application of Provision of Rule 9(B), Federal Rules of Civil Procedure, that Circumstances Constituting Fraud or Mistake be Stated With Particularity.


76 ALR, Fed. 700, Evidence Offered by Defendant at Federal Criminal Trial as Inadmissible, Under Rule 403 of Federal Rules of Evidence, on Ground that Probative Value is Substantially Outweighed by Danger of Unfair Prejudice, Confusion...


93 ALR, Fed. 135, Propriety Of, and Procedure For, Ordering Names and Identities of Jurors to be Withheld from Accused in Federal Criminal Trial--“Anonymous Juries”.


108 ALR, Fed. 828, Restitutional Sentencing Under Victim and Witness Protection Act § 5 (18 U.S.C.A. §§ 3579, 3580), 79 A.L.R. Fed. 724 (Sec. 8 Superseded by Who is “Victim,” So as to be Entitled to Restitution Under Victim And...


116 ALR, Fed. 163, Exemption or Immunity from Federal Antitrust Liability Under Mccarran-Ferguson Act (15 U.S.C.A. §§ 1011-1013) and State Action and Noerr-Pennington Doctrines for Business of Insurance and Persons Engaged In...


119 ALR, Fed. 433, Award of Attorneys' Fees Under 28 U.S.C.A. § 1447(C), Which Allows District Court to Award Fees Upon Remanding Case to State Court.
121 ALR, Fed. 323, Increase in Base Offense Level Under Sentencing Guidelines § 3B1.3 (U.S.S.G. § 3B1.3) for Abuse of Position of Public or Private Trust Significantly Facilitating Commission or Concealment Of...


128 ALR, Fed. 483, When Are Prior Offenses “Related” Under United States Sentencing Guideline § 4A1.2 So as to be Treated Together for Sentencing.

132 ALR, Fed. 525, Test of “Dual Criminality” Where Extradition to or from Foreign Nation is Sought.

135 ALR, Fed. 619, Consideration of Offenses Committed While a Juvenile in the Computation of Criminal History Under United States Sentencing Guideline (U.S.S.G. § 4a1.2).

137 ALR, Fed. 227, Validity, Construction, and Application of § 274(A)(1)(A)(iv)), Making it Unlawful to Induce or Encourage Alien to Come To, Enter, or Reside in United States.


138 ALR, Fed. 393, What Matters Not Contained in Pleadings May be Considered in Ruling on a Motion to Dismiss Under Rule 12(B)(6) of the Federal Rules of Civil Procedure or Motion for Judgment on the Pleadings Under Rule 12(C) Without...

164 ALR, Fed. 591, When Does Forfeiture of Currency, Bank Account, or Cash Equivalent Violate Excessive Fines Clause of Eighth Amendment.

168 ALR, Fed. 375, When Does Forfeiture of Real Property Violate Excessive Fines Clause of Eighth Amendment--Post-Austin Cases.


172 ALR, Fed. 109, Validity, Construction, and Application of 18 U.S.C.A. § 1346, Providing That, for Purposes of Some Federal Criminal Statutes, Term “Scheme or Artifice to Defraud” Includes Scheme or Artifice to Deprive Another Of...


185 ALR, Fed. 493, Construction and Operation of “Willfulness” Requirement of U.S.S.G., § 3c1.1, Pertaining to Obstructing or Impeding the Administration of Justice.

186 ALR, Fed. 147, Construction and Application of Federal Domestic Terrorism Sentencing Enhancement, U.S.S.G. § 3a1.4.

193 ALR, Fed. 139, “Sham” Exception to Application of Noerr-Pennington Doctrine, Exempting from Federal Antitrust Laws Joint Efforts to Influence Governmental Action Based on Petitioning Administrative or Judicial...


135 ALR, Fed. 533, Construction and Application of § 4(B) of Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C.A. § 1003(B)), Which Provides that Particular Employee Benefit Plans Are Not Covered By...


62 ALR, Fed. 106, What Constitutes “Series of Acts or Transactions” for Purposes of Rule 8(B) of Federal Rules of Criminal Procedure, Providing for Joinder of Defendants Who Are Alleged to Have Participated in Same Series of Acts Or...


51 ALR, Fed. 852, Effect on Federal Criminal Prosecution or Conviction of Prosecutor’s Noncompliance With Petite Policy Requiring Prior Authorization of Attorney General for Federal Trial Where Accused Has Been Previously Prosecuted For...


47 ALR, Fed. 781, Admissibility, Under Rule 404(B) of the Federal Rules of Evidence, of Evidence of Other Crimes, Wrongs, or Acts Similar to Offense Charged to Show Preparation or Plan.

49 ALR, Fed. 511, Admissibility of Evidence Discovered in Warrantless Search of Property or Premises Authorized by One Having Ownership Interest in Property or Premises Other Than Relative.


20 ALR, Fed. 803, Construction and Application of Provision of Organized Crime Control Act of 1970 (18 U.S.C.A. § 1965(A)) that Civil Action or Proceeding Under Act Against Any Person May be Instituted in Federal District Court For...

9 ALR, Fed. 893, What Constitutes “Causing” Mail to be Delivered for Purpose of Executing Scheme Prohibited by Mail Fraud Statute (18 U.S.C.A. § 1341).

1 ALR, Fed. 838, Validity, Construction, and Effect of 18 U.S.C.A. § 1952, Making it a Federal Offense to Use Interstate or Foreign Travel or Transportation in Aid of Racketeering Enterprises.

74 ALR 6th 505, Liability of Seller for Fraud or Misrepresentation as to Health or Breeding of Puppy or Adult Dog.

23 ALR 6th 223, Products Liability: Pacemakers.

39 ALR 6th 391, Validity and Effect of Retrocessional Reinsurance Agreements.

43 ALR 6th 163, Reciprocal Discipline of Attorneys--Criminal Conduct.


60 ALR 6th 295, Propriety of Incentive Awards or Incentive Agreements in Class Actions.

89 ALR 5th 629, Criminal Prosecutions Under State Rico Statutes for Engaging in Organized Criminal Activity.
97 ALR 5th 201, Conviction or Acquittal in Federal Court as Bar to Prosecution in State Court for State Offense Based on Same Facts--Modern View.

54 ALR 5th 575, Disqualification of Judge for Bias Against Counsel for Litigant.

23 ALR 5th 241, Excessiveness or Inadequacy of Attorney's Fees in Matters Involving Commercial and General Business Activities.

15 ALR 4th 582, Adequacy of Defense Counsel's Representation of Criminal Client Regarding Appellate and Post-Conviction Remedies.


24 ALR 4th 1266, Disputation of Truth of Matters Stated in Affidavit in Support of Search Warrant--Modern Cases.

31 ALR 4th 957, Construction and Application of Provision of Liability Insurance Policy Expressly Excluding Injuries Intended or Expected by Insured.

38 ALR 4th 378, Admissibility or Use in Criminal Trial of Testimony Given at Preliminary Proceeding by Witness Not Available at Trial.

39 ALR 4th 775, Admissibility of Evidence of Accused's Membership in Gang.

62 ALR 4th 654, Civil Action for Damages Under State Racketeer Influenced and Corrupt Organizations Acts (RICO) for Losses from Racketeering Activity.

64 ALR 4th 567, Habit or Routine Practice Evidence Under Uniform Evidence Rule 406.

88 ALR 4th 8, Negative Characterization or Description of Defendant, by Prosecutor During Summation of Criminal Trial, as Ground for Reversal, New Trial, or Mistrial--Modern Cases.

75 ALR 4th 199, Residual Hearsay Exception Where Declarant Unavailable: Uniform Evidence Rule 804(B) (5)

55 ALR 4th 394, Commodities Broker's State-Law Duties to Customers.

46 ALR 4th 11, Juror's Reading of Newspaper Account of Trial in State Criminal Case During Its Progress as
Ground for Mistrial, New Trial, or Reversal.

40 ALR 4th 1062, Liability of Religious Association for Damages for Intentionally Tortious Conduct in Recruitment, Indoctrination, or Related Activity.

25 ALR 4th 395, Validity and Application of Statute Authorizing Forfeiture of Use or Closure of Real Property from Which Obscene Materials Have Been Disseminated or Exhibited.

11 ALR 4th 345, Right of Creditor to Recover Damages for Conspiracy to Defraud Him of Claim.


14 ALR 3rd 1297, Power of Court to Make or Permit Amendment of Indictment With Respect to Allegations as to Time.

17 ALR 3rd 1181, Comment Note.--Power of Court to Make or Permit Amendment of Indictment.

24 ALR 3rd 532, Construction and Application of State Statutes or Rules of Court Predicating in Personam Jurisdiction Over Nonresidents or Foreign Corporations on the Commission of a Tort Within the State.

33 ALR 3rd 17, Pretrial Publicity in Criminal Case as Ground for Change of Venue.

33 ALR 3rd 335, Comment Note.--Length of Sentence as Violation of Constitutional Provisions Prohibiting Cruel and Unusual Punishment.

34 ALR 3rd 16, Withholding or Suppression of Evidence by Prosecution in Criminal Case as Vitiating Conviction.

38 ALR 3rd 1384, Attorneys’ Fees in Class Actions.

47 ALR 3rd 1192, Censorship of Convicted Prisoners’ “Nonlegal” Mail.

77 ALR 3rd 182, Right to Credit for Time Spent in Custody Prior to Trial or Sentence.

82 ALR 3rd 366, Right of Defendants in Prosecution for Criminal Conspiracy to Separate Trials.

89 ALR 3rd 864, Validity and Effect of Criminal Defendant’s Express Waiver of Right to Appeal as Part of Ne-
gotiated Plea Agreement.

90 ALR 3rd 17, Propriety and Prejudicial Effect of Gagging, Shackling, or Otherwise Physically Restraining Accused During Course of State Criminal Trial.

92 ALR 3rd 1164, Admissibility, as Against Interest, in Criminal Case of Declaration of Commission of Criminal Act.

98 ALR 3rd 357, Attorney's Conviction in Foreign or Federal Jurisdiction as Ground for Disciplinary Action.

64 ALR 3rd 1251, Civil Liability of Judicial Officer for Malicious Prosecution or Abuse of Process.

22 ALR 3rd 1198, Disqualification of Judge on Ground of Being a Witness in the Case.

5 ALR 2nd 444, Right of Accused to Bill of Particulars.

18 ALR 2nd 1287, Conviction or Acquittal as Evidence of the Facts on Which it was Based in Civil Action.

26 ALR 2nd 892, Expert Evidence to Identify Gun from Which Bullet or Cartridge was Fired.

40 ALR 2nd 908, Coercion, Compulsion, or Duress as Defense to Criminal Prosecution.

91 ALR 2nd 1148, Criminal Conspiracies as to Gambling.

68 ALR 2nd 712, Effect of Invalidation of Sentence Upon Separate Sentence Which Runs Consecutively.

27 ALR 2nd 14, False Representations as to Income, Profits, or Productivity of Property as Fraud.

15 ALR 2nd 500, Effect of Fraud to Toll the Period for Bringing Action Prescribed in Statute Creating the Right of Action.

62 ALR 1466, Communications Between Jurors and Others as Ground for New Trial or Reversal in Criminal Case.

63 ALR 602, Admissibility of Evidence of Other Offenses in Criminal Prosecution to Prove Identity of Defendant.
68 ALR 928, Power of Court to Amend Indictment.

70 ALR 1511, When Sentences Imposed by Same Court Run Concurrently or Consecutively; and Definiteness of Direction With Respect Thereto.

74 ALR 1157, Cross-Examination for Purpose of Showing Bias or Hostility on Part of Witness.

74 ALR 1280, Amendment of Pleading After Limitation Period by Substituting New Defendant, or Changing Allegations as to Capacity in Which Defendant is Sued or the Theory Upon Which Defendant is Sought to be Held Responsible For...

75 ALR 1344, Usurious Loan Agreement as Affecting Collateral Transaction or Instrument Not Otherwise Usurious.

82 ALR 808, Conflict Between Federal and State Statutes of Limitations.

86 ALR 928, Misconduct of Juror Which Will Authorize or Require Withdrawal of Juror.

92 ALR 1137, Right of Prosecution to Review of Decision Quashing or Dismissing Indictment or Information, or Sustaining Demurrer Thereto.

96 ALR 508, Excusing Qualified Juror Drawn in Criminal Case as Ground of Complaint by Defendant.

113 ALR 1179, What Amounts to Conviction or Satisfies Requirement as to Showing of Conviction, Within Statute Making Conviction a Ground for Refusing to Grant or for Canceling License or Special Privilege.

116 ALR 1104, Necessity of Alleging Specific Facts or Means in Indictment or Information Charging One as Accessory Before or After the Fact.

125 ALR 508, Attorney-Client Privilege as Affected by Wrongful or Criminal Character of Contemplated Acts or Course of Conduct.

131 ALR 917, Right to Severance Where Two or More Persons Are Jointly Accused.

132 ALR 738, Assumption of Jurisdiction by Court Before Completion of Administrative Procedure as Ground of Prohibition.

134 ALR 614, Admissibility of Evidence Obtained by Government or Other Public Officer by Intercepting Let-
ter or Telegraph or Telephone Message.

149 ALR 553, Provision that Judgment is “Without Prejudice” or “With Prejudice” as Affecting Its Operation as Res Judicata.

150 ALR 778, When Statute of Limitations Commences to Run Against Action Based on Fraud in Construction, Repair, or Equipment of Building.

152 ALR 1147, Failure to Prove Allegation of Conspiracy in Complaint in Civil Action as Affecting Right to Recover.

155 ALR 10, Duty and Discretion of District or Prosecuting Attorney as Regards Prosecution for Criminal Offenses.

157 ALR 247, Criminal Charge Under Mail Fraud Statute as Affected by Contention that Fraudulent Scheme Had Been Completed Before Use of Mail by Person Privy to the Fraud.

157 ALR 415, Criminal Offense Predicated Upon Mail Fraud Statute as Affected by Fact that Use of Mails was Not by Defendant, But by an Innocent Person.

158 ALR 1413, Seller's Advertisements as Affecting Rights of Parties to Sale of Personal Property.

159 ALR 1240, Use in Criminal Case of Testimony Given on Former Trial, or Preliminary Examination, by Witness Not Available at Present Trial.

163 ALR 1050, What Constitutes Stock, Securities, or Investment Contracts Within Contemplation of State and Federal Statutes Regulating Sale of Securities.

167 ALR 394, Extrajudicial Declaration of Commission of Criminal Act as Admissible in Evidence Where Declarant is a Witness or Available to Testify.

169 ALR 315, Comment Note.--Duty in Instructing Jury in Criminal Prosecution to Explain and Define Offense Charged.

174 ALR 1217, Application of Limitation Statutes to Nonderivative Suits Based Upon Wrongs of Corporate Officers or Directors.

172 ALR 265, Pleading Avoidance of Delay in Discovery of Fraud in Order to Toll Statute of Limitations.
175 ALR 438, Jurisdiction of Equity to Protect Personal Rights; Modern View.

160 ALR 1349, Relief in Federal Courts Against State Court Judgment Obtained by Fraud.

163 ALR 1375, Civil Rights and Liabilities as Affected by Failure to Comply With Regulations as to Registration of Automobile or Motorcycle or Licensing of Operation.

148 ALR 649, What Amounts to Conversion of Former Tenant's Goods by Landlord Not Entitled to Any Lien or Right in Respect Thereto.

152 ALR 1208, Privilege Against Self-Incrimination as Available to Member or Officer of Unincorporated Association as Regards Its Books or Papers.

143 ALR 1453, Provisions of Statutes Against Misbranding or False Labeling of Food, Drug, or Cosmetic Products, as Applicable to Literature Other Than that Attached to Product Itself.

131 ALR 810, Subjection of Party in Action in Federal Court to Physical Examination.

132 ALR 706, Right of Buyer and Seller Inter Se as Affected by Invalidity Of, or Subsequent Changes or Developments With Respect To, Tax.

133 ALR 732, Physician-Patient, Attorney-Client, or Priest-Penitent Privilege as Applicable in Nonjudicial Proceeding or Investigation.

112 ALR 593, Right to Continuance Because Counsel is in Attendance at Another Court.

112 ALR 983, Identity, as Regards Former Jeopardy, of Offenses Charged in Different Indictments or Informations for Conspiracy.

88 ALR 873, Status, Citizenship, Domicil, Residence, or Location of National Corporations.

89 ALR 830, Taking of Usury of Excessive Interest as Subject of Criminal Conspiracy.

90 ALR 377, Constitutionality of Statute Permitting State to Take or Use in Evidence Depositions in Criminal Case.

90 ALR 410, Implied Warranty of Fitness on Sale of Article by Tradename, Trademark, or Other Particular Description.
64 ALR 333, Jurisdiction of State Courts of Actions in Relation to Interstate Shipments.

68 ALR 1171, Exercise of Reserved Right to Cancel Policy of Insurance as Affected by Motive or Reason for Cancelation.

52 ALR 816, Charge of Bribery or Cognate Offense Predicated Upon an Unaccepted Offer by or to an Official.

50 ALR 104, Constitutionality of Statutes in Relation to Treatment or Discipline of Convicts.

24 ALR 1432, Indictment Based on Evidence Illegally Procured.

27 ALR 549, Civil Liability of Member of a Mob.

21 ALR 961, Receivership Proceedings as Suspending Statute of Limitations.

8 ALR 550, Effect of Bill of Particulars on Proof.

8 ALR 694, Prior Action in Which Claim Might Have Been Asserted by Counter-Claim, Set-Off, or Cross Petition, as Barring or Abating Subsequent Independent Action Thereon.

Encyclopedias


13 Am. Jur. Proof of Facts 2d 347, Bank's Failure to Use Ordinary Care in Detecting Forged or Altered Checks.


29 Am. Jur. Proof of Facts 3d 1, Managed Care Organization Professional Malpractice.

29 Am. Jur. Proof of Facts 3d 189, Proof that a Fund Solicitor was Negligent in Promoting, Collecting, and Disbursing Funds for a Charitable Organization.


32 Am. Jur. Proof of Facts 3d 299, Proof that an International Union Ratified Wrongdoing by One of Its Local
Affiliates.


43 Am. Jur. Proof of Facts 3d 407, Fraud or Other Misconduct by Land Sales Broker in Connection With Subdivision and Sale of Real Property.


69 Am. Jur. Trials 119, Bank Liability for Negligence in Lending and Breach of Loan Agreement.

78 Am. Jur. Trials 1, Chiropractic Malpractice Litigation.

82 Am. Jur. Trials 1, Defending Against Claim of Ineffective Assistance of Counsel.

91 Am. Jur. Trials 151, When Clergy Fail Their Flock: Litigating the Clergy Sexual Abuse Case.

123 Am. Jur. Trials 1, Wage and Hour Claims by Employees Against Employers.


Am. Jur. 2d Evidence § 773, Generally; Admissions of Party Opponent.


Am. Jur. 2d Extortion, Blackmail, and Threats § 117, Generally; Relation Between Certain Elements.


Am. Jur. 2d Extortion, Blackmail, and Threats § 131, “Enterprise” as Distinct from “Person”.


Am. Jur. 2d Extortion, Blackmail, and Threats § 146, Conspiracy Cases.


Am. Jur. 2d Extortion, Blackmail, and Threats § 178, Generally; Purpose.


Am. Jur. 2d Gambling § 54, Conspiring to Obstruct Justice to Facilitate Gambling Business.

Am. Jur. 2d Indictments and Informations § 196, Defendants Charged in Same Instrument; Generally.

Am. Jur. 2d Involuntary Servitude and Peonage § 19, Trafficking.

Am. Jur. 2d Pensions and Retirement Funds § 798, Prosecution.

Am. Jur. 2d Pleading § 201, Generally; Necessity of Heightened Level of Pleading.

Am. Jur. 2d Trial § 1511, Application of Requirement.

Am. Jur. 2d Workers' Compensation § 70, Fraud, Deceit, and False Representation.

Forms


Federal Procedural Forms § 22:31, Motion--By Defendant--To Dismiss--Failure to Allege Demand on Board of Corporation or Sufficient Facts to Excuse Demand, and Failure to State a Claim on Which Relief Can be Granted...

Federal Procedural Forms § 42:47, Preservation of Property Subject to Forfeiture.


1963(D)(2)].


3 West's Federal Forms § 2844, Civil Rico Case Statement Order.

3 West's Federal Forms § 3056.40, Complaint in Class Action--Rico.


5 West's Federal Forms § 7277, Forfeiture Allegations.

2B West's Federal Forms § 1774, Introduction.

2B West's Federal Forms § 1775, Scheme to Defraud and to Steal Jewels.

2B West's Federal Forms § 1776, Extortion, Assault, and Other Illegal Activities.
2B West's Federal Forms § 1777, Scheme to Defraud and Procure Secret Profits.

2C West's Federal Forms § 2234, Complaint for Fraud--Rico Allegations.

3B West's Federal Forms § 4053, Special Verdict--Rico.

5A West's Federal Forms § 8405, Indictment.

5A West's Federal Forms § 8408, Motion for Preliminary Order of Forfeiture.

5A West's Federal Forms § 8416, Motion for Restraining Order.

5A West's Federal Forms § 8417, Restraining Order.

Am. Jur. Pl. & Pr. Forms Abortion § 8, Complaint, Petition, or Declaration--To Enjoin Illegal Blockade of Abortion Clinics--Class Action.

Am. Jur. Pl. & Pr. Forms Banks § 22, Complaint, Petition, or Declaration--By Bank Against Lending and Bank Officers--Wrongful Conduct in Origination of Mortgage Loans and Falsifying Data on Loan Applications.

Am. Jur. Pl. & Pr. Forms Conversion § 105, Complaint in Federal Court--Diversity of Citizenship--By Receiver of Subsidiary Corporation Against Controlling Shareholder and Director of Parent Corporation--Conversion of Check...

Am. Jur. Pl & Pr Forms Fidelity Bonds & Insurance § 8.50, Complaint in Federal Court--Diversity of Citizenship--By Surety--For Recovery of Amounts Paid on Bond Due to Employee Misconduct Including Theft, Fraud, and Rico...


Am. Jur. Pl. & Pr. Forms Hospitals § 153, Complaint in Federal Court--Failure to Provide Medical Care--Suspicious Marketing, Billing, Accounting and Tax Practices--Rico--Pendent State Claims of Statutory Consumer Fraud, Common...

Am. Jur. Pl. & Pr. Forms Physicians Surgeons & Healers § 201, Complaint in Federal Court--Diversity of Citizenship--Negligent Spinal Surgeries and Post-Operation Physical Therapy--Conspiracy to Defraud---Unnecessary Surgery and Care--Treble...

Am. Jur. Pl. & Pr. Forms Products Liability § 314, Complaint in Federal Court--Diversity of Citizenship--By Counties--Against Manufacturers of Cigarettes and Trade Associations--Fraud and Misrepresentation--Breach of Express...

Am. Jur. Pl. & Pr. Forms Securities Regulation § 60, Complaint in Federal District Court--Action by Investor Against Broker-Dealer Firm and Employee of Firm for Churning Customer's Account--Allegations--Violations of Racketeer...

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Bankruptcy Service Lawyers Edition § 57:216, Other Particular Applications.


Bankruptcy Service Lawyers Edition § 57:433, Miscellaneous Entities as Needed Party.

Bankruptcy Service Lawyers Edition § 59:701, Matters Which Could Have Previously Been Raised; Re-
Argument or Relitigation--Illustrative Particular Applications.


Callmann on Unfair Compet., TMs, & Monopolies § 12:1, Introduction.

Eckstrom's Licensing in Foreign & Domestic Ops. App. 8E-Z, An Antitrust Primer for Federal Law Enforce-


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Restatement (Third) of Agency § 7.01, Agent's Liability to Third Party.


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I. GENERALLY

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1. Constitutionality—Generally

In a prosecution for conspiracy under Racketeer Influenced and Corrupt Organizations Act (RICO), trial court's submission of a redacted indictment removing allegations against defendant's former co-defendants, who were no longer on trial, did not amount to a constructive amendment in violation of Fifth Amendment's grand jury clause; redacted indictment did not remove any allegations necessary to offense with which defendant was charged, and bases for defendant's conviction were not broadened. U.S. v. Perez, C.A.7 (Ill.) 2012, 673 F.3d 667. Indictment and Information

Disqualification of defense counsel during pretrial proceedings did not violate defendant's Sixth Amendment right to choice of counsel, in Racketeer Influenced and Corrupt Organizations Act (RICO) prosecution; disqualification was based on prosecutor's purported intention to call counsel as a witness in connection with potential witness tampering charges, and trial court reasonably believed that counsel could be required to testify and that the crime-fraud exception to the attorney-client privilege would create unwaivable conflict of interest. U.S. v. Cain, C.A.2 (N.Y.) 2012, 671 F.3d 271, certiorari denied 132 S.Ct. 1872, 182 L.Ed.2d 655, petition for certiorari filed 2013 WL 867471. Attorney and Client

Prosecution for Racketeer Influenced and Corrupt Organizations Act (RICO) violations, alleging conspiracy to conduct illegal enterprise's affairs through a pattern of racketeering activity, in which the predicate acts alleged
included some of the same criminal acts charged in prior RICO indictments, pursuant to which defendants were previously convicted, did not violate double jeopardy; the later indictment also charged predicate acts that were not charged in the prior indictments, including many murders, usurious loans, incidents of witness tampering, and other obstructions of justice, and the prior RICO prosecutions concerned other illegal organizations and different conspiracies. U.S. v. Calabrese, C.A.7 (Ill.) 2007, 490 F.3d 575. Double Jeopardy 151(4)

Since those allegedly involved in public contract kickback scheme failed to demonstrate that RICO as applied to them implicated values protected by First Amendment, they were confined to vagueness challenge that RICO was unconstitutional in its application to their conduct rather than facial challenge. U.S. v. Woods, C.A.3 (Pa.) 1990, 915 F.2d 854, certiorari denied 111 S.Ct. 1413, 499 U.S. 947, 113 L.Ed.2d 466. Constitutional Law 739

This section, pursuant to which defendant may be convicted as a member of enterprise conspiracy if he objectively manifests an agreement to participate in affairs of enterprise through commission of two or more predicate crimes, does not offend fundamental demand of due process that guilt remain individual and personal. U. S. v. Elliott, C.A.5 (Ga.) 1978, 571 F.2d 880, rehearing denied 575 F.2d 300, certiorari denied 99 S.Ct. 349, 439 U.S. 953, 58 L.Ed.2d 344. Conspiracy 40; Constitutional Law 4509(6)

Where count of indictment charging conspiracy to violate this section alleged that conspiracy was formed at time prior to Oct. 15, 1970, effective date of this chapter under which defendants were charged, and that conspiracy continued until return of indictment, and where jury was not advised of effective date in connection with conspiracy charge nor was jury cautioned that verdict of guilty could not be returned unless government demonstrated existence of conspiracy of which the accused was a member after effective date, conspiracy convictions were obtained in violation of ex post facto principle embodied in due process clause. U. S. v. Brown, C.A.5 (Ga.) 1977, 555 F.2d 407, rehearing denied 559 F.2d 29, certiorari denied 98 S.Ct. 1448, 435 U.S. 904, 55 L.Ed.2d 494. Conspiracy 23.5; Constitutional Law 2802


Issue of whether defendant, who was a member of a union local, engaged solely in constitutionally protected speech and conduct and never crossed the line into attempted extortion and conspiracy in attempting to obtain jobs for local members from construction contractors by, inter alia, making various statements and picketing, could not be resolved on his motion to dismiss the indictment charging him with racketeering conspiracy, Hobbs Act conspiracy, and Hobbs Act extortion; no evidence had been introduced to establish precisely what conduct, protected or unprotected, was at issue. U.S. v. Larson, W.D.N.Y.2011, 807 F.Supp.2d 142. Indictment and Information 144.2

Noerr-Pennington doctrine barred pharmacy management firm's claim that workers' compensation insurers and claims administrators violated Racketeer Influenced and Corrupt Organizations Act (RICO) by consolidating
proceedings before state workers' compensation board in order to further delay resolution of firm's bills and liens, and by filing state court action against firm in effort to avoid paying valid claims. **California Pharmacy Management, LLC v. Zenith Ins. Co., C.D.Cal.2009, 669 F.Supp.2d 1152. Racketeer Influenced And Corrupt Organizations** 64

Counts charging defendant with conspiracy in violation of the Racketeer Influenced and Corrupt Organizations Act (RICO) and conspiracy to commit murder in aid of racketeering activity were multiplicitous, in violation of the Double Jeopardy Clause, despite claim that there were different criminal offenses enumerated in each count, and that the RICO conspiracy required that the conspiracy extend to only two of 12 acts of racketeering; murdering and conspiring to commit murder were the very modes of operation, and in some sense the heart and soul, of how the organization at issue allegedly conducted its affairs through a pattern of racketeering activities, and defendant could not be charged and punished more than once with joining the same conspiracy. **U.S. v. Gardner, D.Md.2006, 417 F.Supp.2d 703. Double Jeopardy** 151(2)

Jeopardy did not attach when racketeering conspiracy charge against defendant was dismissed with prejudice from indictment pursuant to defendant's plea agreement, and thus subsequent indictment charging defendant with racketeering conspiracy based on same conduct did not violate double jeopardy. **U.S. v. Dionisio, E.D.N.Y.2006, 415 F.Supp.2d 191. affirmed 503 F.3d 78, certiorari denied 129 S.Ct. 158, 555 U.S. 825, 172 L.Ed.2d 41. Double Jeopardy** 55

Inclusion of prior racketeering acts in Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy charge against defendant, reputed member of organized crime family, did not implicate double jeopardy; although alleged crimes were charged against defendant as predicate acts in prior RICO prosecution, enterprise and pattern of activity therein differed from those of instant action. **U.S. v. Urso, E.D.N.Y.2005, 369 F.Supp.2d 254. Double Jeopardy** 151(4)

Government was not barred under doctrine of collateral estoppel, as incorporated into double jeopardy guarantee, from prosecuting defendant under Racketeer Influenced and Corrupt Organizations Act (RICO) based on alleged predicate acts committed during certain period, by jury's verdict acquitting defendant in his prior RICO trial, inasmuch as conspiracy charged in prior indictment was distinct criminal scheme from conspiracy charged in present indictment. **U.S. v. Massino, E.D.N.Y.2004, 311 F.Supp.2d 316. Double Jeopardy** 151(2)

Government, bringing Racketeer Influenced and Corrupt Organizations Act (RICO) action against cigarette manufacturers, did not violate First Amendment by characterizing advertising allegedly directed at youth as “fraud” in government's pursuit of injunctive relief related to cigarette marketing; if government prevailed on RICO claims, advertising in question would be beyond protection of First Amendment, as speech that was false, deceptive, misleading or proposed illegal transaction. **U.S. v. Philip Morris Inc., D.D.C.2004, 304 F.Supp.2d 60. Constitutional Law** 1645; **Racketeer Influenced And Corrupt Organizations** 10

Interests of justice would require district court to stay civil action brought by profit sharing plans and banks against professional leasing service and owners, alleging common-law fraud and RICO claims, pending resolution of parallel criminal action, where civil and criminal cases arose from same underlying events, defendants
had been indicted in criminal case, and denying stay may have undermined defendants’ Fifth Amendment privilege against self-incrimination, exposed basis of defendants’ criminal defense in advance of trial, or otherwise prejudiced criminal or civil case. Crawford & Sons, Ltd. v. Besser, E.D.N.Y.2004, 298 F.Supp.2d 317. Action ☞ 69(5)

Racketeer Influenced and Corrupt Organizations Act (RICO) statutes penalizing participation in pattern of racketeering activity and committing violent crimes in aid of racketeering activity are constitutional under Commerce Clause; language of RICO statutes specifically contain jurisdictional element that person be associated with enterprise engaged in, or the activities of which affect, interstate commerce. U.S. v. Muyet, S.D.N.Y.1998, 994 F.Supp. 501. Commerce ☞ 82.60; Racketeer Influenced And Corrupt Organizations ☞ 2

Racketeer Influenced and Corrupt Organizations Act (RICO) was not unconstitutionally overbroad with respect to abortion opponents who alleged that freedom to associate with groups “engaged in variety of First Amendment activity” would be “chilled” by threat of RICO prosecution; RICO, standing alone, did not criminalize or chill speech, and if individual defendant engaged in illegal activity in furtherance of purpose of organization, that activity would in no way be immunized by either fact that defendant also spoke out in support of his cause, nor by fact that defendant was member of organization that supported, encouraged, or advocated illegal activity. National Organization for Women, Inc. v. Scheidler, N.D.Ill.1995, 897 F.Supp. 1047. Constitutional Law ☞ 1440; Constitutional Law ☞ 1807; Racketeer Influenced And Corrupt Organizations ☞ 2

Where Congress had power under commerce clause, U.S.C.A. Const. art. 1, § 8, cl. 3, to regulate particular racketeering activities, power to do so was not one which was reserved to the states, or to the people, and thus exercise of power was not violative of U.S.C.A. Const.Amends. 9 and 10. U.S. v. Vignola, E.D.Pa.1979, 464 F.Supp. 1091, affirmed 605 F.2d 1199, certiorari denied 100 S.Ct. 1015, 444 U.S. 1072, 62 L.Ed.2d 753. Commerce ☞ 82.6; States ☞ 4.4(3)

2. ---- Vagueness, constitutionality

“Pattern” component of Racketeer Influenced and Corrupt Organizations Act (RICO) was not unconstitutionally vague as applied to defendant shown to be member of Mexican Mafia, an organization officially devoted to criminal activities, which dealt and distributed narcotics, sanctioned murder and organized extortionate collection scheme of “street tax.” U.S. v. Krout, C.A.5 (Tex.) 1995, 66 F.3d 1420, certiorari denied 116 S.Ct. 963, 516 U.S. 1136, 133 L.Ed.2d 884. Racketeer Influenced And Corrupt Organizations ☞ 2


Term “pattern” in RICO statute is not so enigmatic and ambiguous as to render the statute void for vagueness as applied to alleged murder conspiracies and gambling and loan sharking operations of an organized crime family. U.S. v. Angiulo, C.A.1 (Mass.) 1990, 897 F.2d 1169, certiorari denied 111 S.Ct. 130, 498 U.S. 845, 112 L.Ed.2d 98, post-conviction relief denied 852 F.Supp. 54, as modified 57 F.3d 38. Racketeer Influenced And Corrupt Organizations 25

This section was not unconstitutionally vague as applied to defendant's conduct which included development of continuing schemes to obtain money from unwitting victims. U. S. v. Morelli, C.A.6 (Mich.) 1981, 643 F.2d 402, certiorari denied 101 S.Ct. 3143, 453 U.S. 912, 69 L.Ed.2d 994. Racketeer Influenced And Corrupt Organizations 2

Conspiracy count under this section against defendants, who allegedly formed an association for purpose of establishing a pattern of racketeering activity in the New York and New Jersey waterfront industry, was not unconstitutionally vague. U.S. v. Clemente, C.A.2 (N.Y.) 1981, 640 F.2d 1069, certiorari denied 102 S.Ct. 102, 454 U.S. 820, 70 L.Ed.2d 91. Indictment And Information 71.4(1)

This section was not unconstitutionally vague on theory that definition in terms of acts “indictable under” rather than acts which violate the incorporated criminal statutes set out in section 1961 of this title left defendant uncertain of whether he was violating this section because at the time of his acts he could not know whether he could be indicted for the predicate offenses. U.S. v. Parness, C.A.2 (N.Y.) 1974, 503 F.2d 430, certiorari denied 95 S.Ct. 775, 419 U.S. 1105, 42 L.Ed.2d 801, on remand 408 F.Supp. 440. Racketeer Influenced And Corrupt Organizations 2

Racketeer Influenced and Corrupt Organizations Act's (RICO) pattern requirement was not unconstitutionally vague in violation of the procedural due process guarantees of the Fifth Amendment, as applied to defendants who were involved in bribery scheme, since a person of ordinary intelligence in defendants' positions as city council members would have had adequate notice of the criminality of his actions in using his position to extract bribes from persons with business before the city and in violation of the state's public bribery law. U.S. v. Stevens, W.D.La.2011, 778 F.Supp.2d 683, reconsideration denied. Constitutional Law 4509(6); Racketeer Influenced And Corrupt Organizations 2; Racketeer Influenced And Corrupt Organizations 9

RICO pattern requirement was not unconstitutionally vague as applied to members of corporate management who, allegedly embezzled large sums of money from corporation, where criminal activity alleged was the submission, processing, and payment of fraudulent insurance claims, the systemic destruction of records relating to said claims, and the illegal transportation, receipt, and laundering of proceeds; person of ordinary intelligence in corporate managers' situations would have had adequate notice that such conduct was prohibited. Corporacion Insular de Seguros v. Reyes Munoz, D.Puerto Rico 1993, 826 F.Supp. 599. Racketeer Influenced And Corrupt Organizations 72

Pattern element of Racketeer Influenced and Corrupt Organizations Act was not void for vagueness as applied to alleged securities fraud, wire fraud, and mail fraud schemes that occurred over period of at least six years, even though alleged enterprise was brokerage firm, not organized crime entity; there was no doubt that the substantial
number of alleged predicate acts perpetrated by one or more of defendants over period of at least six years amounted to continuous stream of acts of racketeering. U.S. v. Eisenberg, D.N.J.1991, 773 F.Supp. 662. Racketeer Influenced And Corrupt Organizations  

Racketeer Influenced and Corrupt Organizations Act's (RICO) requirement that there be “pattern of racketeering activity” was not unconstitutionally vague as applied to commodities traders who allegedly participated in scheme to defraud customers and avoid liability for trading errors; indictment charged same 11 defendants with more than 200 mail and wire fraud predicate acts for purpose of defrauding customers and avoiding liability for trading errors over closed time period of more than two and one-half years. U.S. v. Dempsey, N.D.Ill.1990, 768 F.Supp. 1256. Racketeer Influenced And Corrupt Organizations  

Racketeer Influenced and Corrupt Organizations Act (RICO) pattern requirement was not unconstitutionally vague as applied to alleged acts of bribery and extortion by public officials; alleged acts of bribery and extortion were so clearly part of officials' scheme to profit illegally from their positions that predicate acts could not possibly be unrelated. U.S. v. Lobue, N.D.Ill.1990, 751 F.Supp. 748. Racketeer Influenced And Corrupt Organizations  

Racketeer Influenced and Corrupt Organizations Act (RICO) was not unconstitutionally vague as applied to defendants charged with predicate acts of murder, extortion, and illegal gambling; under “relationship plus continuity” test for pattern of racketeering activity, persons of ordinary intelligence would know that repeated commission of those offenses in furtherance of organized crime enterprise constituted such a pattern. U.S. v. Gatto, D.N.J.1990, 746 F.Supp. 432, reversed on other grounds 924 F.2d 491, rehearing denied. Racketeer Influenced And Corrupt Organizations  

This section was not unconstitutionally vague as applied in indictment alleging that the three defendants were members of an enterprise which had as its purpose the operation of a pornography business and which purpose was advanced by means of a pattern of racketeering activity in which the defendants participated. U. S. v. Thevis, N.D.Ga.1979, 474 F.Supp. 134, affirmed 665 F.2d 616, rehearing denied 671 F.2d 1379, certiorari denied 102 S.Ct. 2300, 456 U.S. 1008, 73 L.Ed.2d 1303, certiorari denied 102 S.Ct. 3489, 458 U.S. 1109, 73 L.Ed.2d 1370, certiorari denied 103 S.Ct. 57, 459 U.S. 825, 74 L.Ed.2d 61. Constitutional Law  1134; Racketeer Influenced And Corrupt Organizations  2; Racketeer Influenced And Corrupt Organizations  39  

This section is not unconstitutionally vague. U. S. v. Chovanec, S.D.N.Y.1979, 467 F.Supp. 41.  

This section, as construed to extend to illegitimate as well as legitimate enterprises, is not unconstitutionally vague. U. S. v. Castellano, E.D.N.Y.1975, 416 F.Supp. 125. Racketeer Influenced And Corrupt Organizations  

Subsec. (c) of this section was not unconstitutionally vague despite contention that it did not define phrase “conduct or participate in the conduct of such enterprise's affairs through a pattern of racketeering activity,” thus failing to set forth degree and intensity of relationship required between racketeering activity in usual operation

This section prohibiting conducting affairs of enterprise affecting interstate or foreign commerce through pattern of racketeering activity of collection of unlawful debt was not unconstitutionally vague. U. S. v. Scalzitti, W.D.Pa.1975, 408 F.Supp. 1014, mandamus granted 556 F.2d 569, appeal dismissed 556 F.2d 569. Racketeer Influenced And Corrupt Organizations

This section proscribing operation of an enterprise through a pattern of racketeering was not unconstitutional for vagueness on theory this section failed to give a defendant definite and proper notice as to what activity was proscribed. U. S. v. White, E.D.Wis.1974, 386 F.Supp. 882. Racketeer Influenced And Corrupt Organizations

This section proscribing certain conduct incident to racketeering activity was not ambiguous, as applied to certain prosecution, in that target crimes of alleged conspiracy were specifically enumerated. U. S. v. Amato, S.D.N.Y.1973, 367 F.Supp. 547. Racketeer Influenced And Corrupt Organizations

2a. ---- Double jeopardy, constitutionality, generally

Double jeopardy barred successive prosecution for substantive racketeering, where review of the totality of predicates pleaded in both indictments demonstrated that the same broad pattern of racketeering was involved; indictments employed identical language to describe the criminal methods and means by which the racketeering enterprise was conducted, and factors of the timing, participants, offenses involved, and nature and scope of those offenses militated in favor of finding of a single pattern of racketeering. U.S. v. Basciano, C.A.2 (N.Y.) 2010, 599 F.3d 184. Double Jeopardy

Defendant's subsequent prosecution in Ohio for substantive Racketeer Influenced and Corrupt Organizations Act (RICO) offenses and RICO conspiracy offenses violated Double Jeopardy Clause, where defendant previously had been indicted for racketeering activity in Florida, each prosecution had been directed at conduct of strikingly similar nature and scope, there was very little difference between criminal schemes alleged in each indictment, and indictments involved overlap in time period, participants, and statutory offenses charged. U.S. v. Wheeler, C.A.6 (Ohio) 2008, 535 F.3d 446, rehearing and rehearing en banc denied , certiorari denied 129 S.Ct. 2030, 173 L.Ed.2d 1117, post-conviction relief denied 2010 WL 2927182. Double Jeopardy

Offenses that formed basis for prosecution for conspiracy under Racketeer Influenced and Corrupt Organizations Act (RICO) in Eastern District of New York were not same in fact and in law as charged offenses that formed basis for RICO conspiracy prosecution in Southern District of New York, and thus, prosecution for latter RICO conspiracy after convictions were obtained in Eastern District did not violate prohibition against double jeopardy; enterprise charged in instant case involved major crime family whose existence dated back several decades and was involved in wide ranges of crimes, whereas prior conviction was based on informal association with other individuals associated with various organized crime families whose enterprise was to rob banks, and narrow pattern of criminal activity proved at defendant's prior trial, specifically, bank crimes, was not contained
within pattern of activity that formed basis of instant RICO charges, which included obstruction of justice, extor-

3. Construction

While few of the legislative statements about novel remedies and attacking crime on all fronts were made with
direct reference to private damages provision of Racketeer Influenced and Corrupt Organizations Act, it is in
such spirit that all of the Act's provisions should be read. Sedima, S.P.R.L. v. Imrex Co., Inc., U.S.N.Y.1985,
105 S.Ct. 3275, 473 U.S. 479, 87 L.Ed.2d 346, dissenting opinion 105 S.Ct. 3292, 473 U.S. 479, 87 L.Ed.2d 346
. Racketeer Influenced And Corrupt Organizations 55

This section prohibiting interstate racketeering should be liberally construed to effectuate its remedial purpose.
U.S. v. Kaye, C.A.7 (Ill.) 1977, 556 F.2d 855, certiorari denied 98 S.Ct. 395, 54 L.Ed.2d 277. See,
Influenced And Corrupt Organizations 1


Requirement that complaint must plead at least two predicate acts of racketeering activities by defendant which
amount to pattern of racketeering activity applies only to Racketeer Influenced and Corrupt Organizations Act
(RICO) claims brought under RICO subsections pertaining to injury resulting from investment of income de-
red from pattern of racketeering activity, injury resulting from acquisition or maintenance of enterprise
through pattern of racketeering activity and liability for conducting enterprise's affairs through pattern of racket-
eering activity; however, pleading requirement does not apply to RICO conspiracy claims. Standard Chlorine of
Delaware, Inc. v. Sinibaldi, D.Del.1992, 821 F.Supp. 232. Conspiracy 18; Racketeer Influenced And Cor-
rupt Organizations 70

Statutory prohibition against using or investing any income derived from pattern of racketeering activity in
which person participated as principal to establish, operate, or acquire any interest in any enterprise is violated
only if victim's injuries are proximately caused by use or investment of racketeering income in enterprise, rather
1223. Racketeer Influenced And Corrupt Organizations 62

4. Construction with other laws

By interfering with, disrupting, and in some instances "shutting down" clinics that performed abortions, indi-

cidual and corporate organizers of antiabortion protest network did not “obtain” or attempt to obtain property
from women's rights organization or abortion clinics, and so did not commit or attempt to commit extortion in
violation of the Travel Act, as required for organization and clinics to establish Racketeer Influenced and Cor-
In accordance with suggestion of immunity requested by Rwandan government and submitted by United States, current President of Rwanda was immune from suit in action in which widows of former Presidents of Rwanda and Burundi, who were killed during their presidencies when surface-to-air missiles brought down aircraft carrying them, sought to hold current President liable pursuant to Alien Tort Claims Act, Torture Act, Racketeer Influenced and Corrupt Organizations Act (RICO), and state and international laws. Habyarimana v. Kagame, C.A.10 (Okla.) 2012, 696 F.3d 1029, certiorari denied 133 S.Ct. 1607, 185 L.Ed.2d 583. International Law 10.40

Healthcare providers' claims against insurance company and its officers under Racketeer Influenced and Corrupt Organizations Act (RICO), which alleged that company acted to delay, diminish, and deny payment of lawful claims of patient-insureds, as submitted by out-of-network providers, through scheme or artifice to defraud using United States mails, related to actual performance of insurance contract between company and its insureds, and thus satisfied “business of insurance” requirement for reverse preemption under McCarran-Ferguson Act. Riverview Health Institute LLC v. Medical Mutual of Ohio, C.A.6 (Ohio) 2010, 601 F.3d 505, certiorari denied 131 S.Ct. 220, 178 L.Ed.2d 47. Postal Service 35(1); Racketeer Influenced And Corrupt Organizations 55; States 18.15

Purchasers of insurance policies had standing to bring class action alleging that insurance carrier violated Sherman Act, Racketeer Influenced and Corrupt Organizations Act (RICO), and state law by entering into conspiracy with other carriers and insurance brokers to defeat competition in insurance market by bid rigging and allocating or steering customers in exchange for high brokerage commissions, where purchasers alleged that they paid supra-competitive prices for policies purchased from broker as result of contingent commission arrangements and other anticompetitive conduct. In re Ins. Brokerage Antitrust Litigation, C.A.3 (N.J.) 2009, 579 F.3d 241. Antitrust And Trade Regulation 960; Conspiracy 17

For purposes of determining whether concurrent sentences of defendant, the former mayor of large Southern city, to 30 months imprisonment on each of three counts of tax fraud were procedurally reasonable, district court's reliance on conduct forming basis of Racketeer Influenced and Corrupt Organizations Act (RICO) and bribery charges on which he had been acquitted was not unconstitutionally excessive; to the contrary, court's decision to allow defendant's sentences to run concurrently and to impose fine of only $6,000 demonstrated considerable leniency and restraint. U.S. v. Campbell, C.A.11 (Ga.) 2007, 491 F.3d 1306. Sentencing And Punishment 1505

Federal district court did not abuse its discretion by admitting evidence of 16 uncharged robberies in prosecution for racketeering, conspiracy and murder in aid of racketeering; evidence was relevant to central issues of trial, namely existence of criminal enterprise and conspiracy, uncharged conduct was less inflammatory than charged conduct, and court delivered appropriate limiting instructions. U.S. v. Baez, C.A.2 (N.Y.) 2003, 349 F.3d 90, post-conviction relief denied 533 F.Supp.2d 359. Criminal Law 368.77; Criminal Law 368.85
Hospitals which had legal duty to provide unreimbursed medical care to nonpaying patients suffering from tobacco-related disease lacked standing, as quasi-governmental entities, to assert antitrust and Racketeer Influenced and Corrupt Organizations Act (RICO) claims against tobacco companies; hospitals did not act under statutory provision allowing them to sue, nor were they state government entities, possessing political power or threat of legislative action sufficient to invoke parens patriae authority. *Allegheny General Hosp. v. Philip Morris, Inc., C.A.3 (Pa.) 2000, 228 F.3d 429.* Antitrust And Trade Regulation \(\supseteq 963(3)\); Racketeer Influenced And Corrupt Organizations \(\supseteq 57\)

Reference to interstate transportation of stolen property in parenthetical following citation of section 2314 of this title in statutory definition of racketeering activity was intended merely to aid the identification of section 2314 of this title rather than to limit the proscription of this section, and thus interstate transportation of securities converted or taken by fraud could properly be basis for charge of violation of this section. *U. S. v. Herring, C.A.5 (Ga.) 1979, 602 F.2d 1220,* rehearing denied 606 F.2d 321, certiorari denied 100 S.Ct. 734, 444 U.S. 1046, 62 L.Ed.2d 732. Receiving Stolen Goods \(\supseteq 1\)

Proof that the criminal conduct was in furtherance of a scheme to defraud and not a necessary element of charges under section 2314 of this title of causing interstate transportation of stolen property, and thus use of such section 2314 of this title in applying this section did not render this section unconstitutionally vague on theory that defendant could not have known whether two indictable transportation offenses required to establish a “pattern” as defined in section 1961(5) of this title referred to two fraudulent schemes or two acts of interstate transportation pursuant to a single scheme. *U. S. v. Parness, C.A.2 (N.Y.) 1974, 503 F.2d 430,* certiorari denied 95 S.Ct. 775, 419 U.S. 1105, 42 L.Ed.2d 801, on remand 408 F.Supp. 440. Racketeer Influenced And Corrupt Organizations \(\supseteq 2\)

Dismissal of claims against Norwegian oil company, in action, under the Racketeer Influenced and Corrupt Organizations Act (RICO), alleging that defendants breached terms of agreement to take part in a joint venture to develop and produce resources in Kazakhstan, was required, where either company was entitled to immunity under the Foreign Sovereign Immunities Act (FSIA) as an instrumentality of the government of Norway, arbitration was required pursuant to prior settlement agreement, or dismissal pursuant to doctrine of res judicata was required. *Grynberg v. BP P.L.C., S.D.Tex.2012, 855 F.Supp.2d 625,* affirmed 2013 WL 2450716. Federal Civil Procedure \(\supseteq 1755\); Federal Civil Procedure \(\supseteq 1781\)

Subcontractor's claim against developer for failure to pay money owed upon completion of electrical project was a garden variety breach of contract claim under Pennsylvania law, rather than one supporting violation of Racketeer Influenced and Corrupt Organizations Act (RICO), since developer's actions did not involve deceit crucial to civil RICO claim; although subcontractor alleged that developer had used the mails and wire to communicate with other entities to advance scheme to avoid payment to subcontractor, it was clear that developer was the controlling principal of all of the related no-asset, single-purpose entities involved, and, given the parties' past contracts, it was not reasonable for subcontractor to believe that the entities were separate and funded and controlled by sources other than developer. *Sunlight Elec. Contracting Co., Inc. v. Turchi, E.D.Pa.2013, 918 F.Supp.2d 392.* Contracts \(\supseteq 326\); Racketeer Influenced and Corrupt Organizations \(\supseteq 10\); Racketeer Influenced and Corrupt Organizations \(\supseteq 50\)

Rooker-Feldman doctrine did not bar claims brought by plaintiffs on behalf of all homeowners who were subject to New Jersey or Pennsylvania foreclosure actions prosecuted by defendant law firms and who were damaged by abusive foreclosure practices, under the Racketeer Influenced and Corrupt Organizations Act (RICO), the New Jersey Consumer Fraud Act (NJCFA), and the Pennsylvania Unfair Trade Practices and Consumer Protection Law (UTPCPL); plaintiffs were not challenging the state-court foreclosure judgments, but rather were alleging the defendants were liable for fraudulent practices they systematically employed in prosecuting wrongful foreclosure actions. *Giles v. Phelan, Hallinan & Schmieg, L.L.P.*, D.N.J.2012, 901 F.Supp.2d 509. Courts ☞ 509


Family Smoking Prevention and Tobacco Control Act did not remove district court's jurisdiction over a Racketeer Influenced and Corrupt Organizations Act (RICO) suit brought by the United States against cigarette manufacturers and tobacco-related trade organizations, despite claim the Act and subsequent regulation of the tobacco industry by the Food and Drug Administration (FDA) left no realistic threat or reasonable likelihood that the RICO violations on which the court had premised forward-looking injunctive relief would recur; FDA rulemaking was not designed to prevent future racketeering activity covered by RICO, and the defendants were challenging many of the Act's provisions which they claimed rendered them unlikely to commit future RICO violations. *U.S. v. Philip Morris USA, Inc.*, D.D.C.2011, 787 F.Supp.2d 68, affirmed 686 F.3d 832, 402 U.S.App.D.C. 34. *Antitrust and Trade Regulation ☞ 283*

Investor's civil Racketeer Influenced and Corrupt Organizations Act (RICO) claim against law firm, that it fraudulently induced him to purchase investments, alleged conduct actionable as securities fraud, and thus, could only be brought pursuant to Private Securities Litigation Reform Act (PSLRA); investments in partnership option portfolio securities (POPS) and hedge option monetization of economic remainders (HOMER) had potential for losses and were made with expectation of profits, so met definition of securities. *Aversano v. Greenberg Traurig, LLP*, C.D.Cal.2010, 753 F.Supp.2d 1063. *Racketeer Influenced And Corrupt Organizations ☞ 11; Securities Regulation ☞ 60.34*

The Fair Labor Standards Act (FLSA) did not provide the exclusive remedy for violations of its provisions, and therefore did not preempt agricultural workers' claims against nursery alleging violations of state law, the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), and the Racketeer Influenced and Corrupt Organizations Act (RICO). *Montize v. Pittman Properties Ltd. Partnership No. 1*, W.D.Ark.2010, 719 F.Supp.2d 1052. *Labor And Employment ☞ 2362*

Neither violations of section 1983 nor section 1985 are “racketeering activities” which could be basis for a plaintiff's claim under Racketeer Influenced and Corrupt Organizations Act (RICO). *Taitz v. Obama*, D.D.C.2010, 707 F.Supp.2d 1, reconsideration denied 754 F.Supp.2d 57. *Racketeer Influenced And Corrupt Organizations ☞ 7*
Even if New York's cigarette tax statute prohibited on-reservation sale of unstamped cigarettes to non-Native Americans, statute did not adequately convey that obligation to those subject to it, such that statute did not provide sufficient notice required by the Due Process Clause, and thus defendant's conviction for Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy based on predicate violations of the Contraband Cigarettes Trafficking Act (CCTA) provision barring the sale of cigarettes lacking tax stamp required by state law violated due process; following defendant's conviction, Court of Appeals for the Second Circuit found a sufficient lack of clarity in New York's statutory scheme to call for certification, in a civil context, to the New York Court of Appeals as to whether New York cigarette tax statute applied to cigarettes sold on Native American reservations. U.S. v. Morrison, E.D.N.Y.2010, 706 F.Supp.2d 304, reversed and remanded 686 F.3d 94, certiorari denied 133 S.Ct. 955, 184 L.Ed.2d 729. Constitutional Law 4509(24); Taxation 3629; Taxation 3712

Homeowners' civil Racketeer Influenced and Corrupt Organizations Act (RICO) claim presented no conflict with state insurance law that was preempted by the McCarran-Ferguson Act; state law created no exclusive administrative remedy which precluded homeowners from bringing RICO claim alleging that company engaged in fraudulent scheme to charge default basic insurance rate rather than special discounted reissue or refinance rate applicable to homeowners' mortgage transactions. Coleman v. Commonwealth Land Title Ins. Co., E.D.Pa.2010, 684 F.Supp.2d 595. Insurance 1103; Racketeer Influenced And Corrupt Organizations 55; States 18.41

Investors' claims for violations of the Racketeer Influenced and Corrupt Organizations Act (RICO) against corporation and others, arising from alleged Ponzi scheme orchestrated around selling of corporation's publicly traded securities, relied on conduct actionable as fraud in purchase or sales of securities, and thus were barred by Private Securities Litigation Reform Act (PSLRA), although investors alleged mail and wire fraud as predicate acts, where all of defendants' alleged conduct occurred in connection with the purchase or sales of corporation's stock. Armstrong v. American Pallet Leasing Inc., N.D.Iowa 2009, 678 F.Supp.2d 827. Securities Regulation 60.15

Noerr-Pennington doctrine did not bar pharmacy management firm's claim that workers' compensation insurers and claims administrators violated Racketeer Influenced and Corrupt Organizations Act (RICO) by lulling firm into believing that they had investigated its claims for payments and intended to resolve their objections with haste and in good faith, when in fact they were conspiring with other carriers to put firm out of service and had implemented scheme to deny all payments to firm and fabricate pretextual objections to its claims, even if insurers used tactic of delaying resolution of claims before state workers' compensation board to effectuate scheme. California Pharmacy Management, LLC v. Zenith Ins. Co., C.D.Cal.2009, 669 F.Supp.2d 1152. Constitutional Law 1437(1); Racketeer Influenced And Corrupt Organizations 64

Taxpayers' claims against banks and investment advisory firm for violation of Racketeer Influenced and Corrupt Organizations Act (RICO), based on their alleged participation in scheme to defraud taxpayers by facilitating the marketing and selling of tax shelters that were subsequently found to be unlawful tax-avoidance schemes, were not barred by Private Securities Litigation Reform Act (PSLRA), though alleged fraud could not have occurred without sale of securities at an inflated basis; alleged fraud involved a tax scheme with securities transactions only incidental to any underlying fraud, and there was nothing per se fraudulent from a securities standpoint.

Since Public Utilities Commission of Ohio (PUCO) had the authority to determine whether electric utility's rates were discriminatory or involved unlawful discounting of charges, filed rate doctrine precluded district court's consideration of customers' claims under Robinson-Patman Act, Racketeer Influenced and Corrupt Organizations Act (RICO) based on allegations that utility and subsidiaries paid unlawful rebates to certain large customers. *Williams v. Duke Energy Intern., Inc.*, S.D.Ohio 2009, 606 F.Supp.2d 783, reversed and remanded 681 F.3d 788, rehearing and rehearing en banc denied, certiorari denied 133 S.Ct. 933, 184 L.Ed.2d 724. Electricity ☞ 11.5(2)


Insurer did not engage in scheme to extort subscriber medical service providers and pharmacies in violation of Hobbs Act, as alleged predicate act to claim under Racketeer Influenced and Corrupt Organizations Act (RICO), where providers and pharmacists testified that they were not threatened with audits or payment withholdings based on audit results or otherwise were not harmed by audit threats. *Sanchez v. Triple-S Management Corp.*, D.Puerto Rico 2006, 446 F.Supp.2d 48, affirmed 492 F.3d 1, certiorari denied 128 S.Ct. 806, 552 U.S. 1076, 169 L.Ed.2d 606. Extortion ☞ 19; Racketeer Influenced And Corrupt Organizations ☞ 8


Medicare Act did not preempt Racketeer Influenced and Corrupt Organizations Act (RICO) claims or state law cause of action for conspiracy, unfair trade practices, and unjust enrichment based on allegations that hospital owner purposefully inflated amount that it charged for hospital services in order to increase Medicare reimbursements that its hospitals received. *State of Fla., Office of Atty. Gen., Dept. of Legal Affairs v. Tenet Healthcare Corp.*, S.D.Fla. 2005, 420 F.Supp.2d 1288. Antitrust And Trade Regulation ☞ 132; Conspiracy ☞ 1.1; Implied And Constructive Contracts ☞ 3; Racketeer Influenced And Corrupt Organizations ☞ 55; States ☞ 18.79

Magazine publisher established prima facie case that District Court had personal jurisdiction, under the Kansas long-arm statute, over limited liability company, and its president and vice president, engaged in business of billing and collecting Retail Display Allowances (RDAs) owed to magazine retailers for displaying publishers' magazines more prominently, where defendants purposefully directed their activities in Kansas by submitting RDA claims in Kansas and receiving payment from publisher in Kansas, defendants' affirmative conduct promoted transaction of business within Kansas, and quality and nature of defendants' contacts showed that they...

In action brought by United States under Racketeer Influenced and Corrupt Organizations Act (RICO) against cigarette manufacturers, alleging conspiracy to deceive American public, claims relating to nicotine manipulation and addiction were to be decided in context of entire alleged scheme to defraud, as required to meet proof requirements for underlying mail or wire fraud claims, since purported activities collectively served goal of sustaining and expanding market for cigarettes and maximizing profits. U.S. v. Philip Morris USA, Inc., D.D.C.2004, 337 F.Supp.2d 15, amended 2004 WL 5370172. Postal Service ☞ 35(10); Telecommunications ☞ 1014(8)

Investor's claim that investment firm violated Racketeer Influenced and Corrupt Organizations Act (RICO) by inducing him to attempt to reduce his tax liability by use of basis shifting tax shelters was barred by Private Securities Litigation Reform Act (PSLRA), despite investor's contention that firm's predicate acts of mail and wire fraud were for purpose of inducing him to pay substantial fees to firm, where predicate acts alleged breaches of duty coincident with securities transactions that were part of tax strategy offered by firm. Jacoboni v. KPMG LLP, M.D.Fla.2004, 314 F.Supp.2d 1172. Racketeer Influenced And Corrupt Organizations ☞ 11

Rule 11 sanctions would not be imposed on insurer on basis that its pleadings with respect to its substantive Racketeer Influenced and Corrupt Organizations Act (RICO) claims were deficient, as it was not apparent that claims were destined to fail in light of existing precedent. United States Fire Ins. Co. v. United Limousine Service, Inc., S.D.N.Y.2004, 303 F.Supp.2d 432. Federal Civil Procedure ☞ 2771(11)

General damages for injury to reputation under New York libel law were not independently recoverable under related Racketeer Influenced and Corrupt Organizations Act (RICO) claims were deficient, as it was not apparent that claims were destined to fail in light of existing precedent. United States Fire Ins. Co. v. United Limousine Service, Inc., S.D.N.Y.2004, 303 F.Supp.2d 432. Federal Civil Procedure ☞ 2771(11)

Obstruction of justice by purported boss of organized crime family was sufficiently related to purpose of enterprise to sustain charge alleging violation of Racketeer Influenced and Corrupt Organizations Act (RICO), despite contention that purpose of enterprise was alleged to be to make money for its leaders, members and associates; boss would not have been able to continue in his role as family's leader if he was convicted of serious crimes with which he was charged. U.S. v. Bellomo, E.D.N.Y.2003, 263 F.Supp.2d 561. Racketeer Influenced And Corrupt Organizations ☞ 28

Whether shareholder's claim that company official fraudulently solicited additional funding from him and other current shareholders was actionable as securities fraud claim, and thus precluded under Private Securities Litigation Reform Act (PSLRA) from qualifying as predicate act under Racketeer Influenced and Corrupt Organizations Act (RICO), could not be determined on motion to dismiss for failure to state claim. Gintowt v. TL Ventures, E.D.Pa.2002, 239 F.Supp.2d 580. Federal Civil Procedure ☞ 1831
Employees could not claim that employers violated Racketeer Influenced and Corrupt Organizations Act (RICO), by paying them less than prevailing wages on public contracts, as that offense was covered by Davis-Bacon Act, for which there was no private right of action. Livingston v. Shore Slurry Seal, Inc., D.N.J.2000, 98 F.Supp.2d 594. Racketeer Influenced And Corrupt Organizations

Federal Cigarette Labeling and Advertising Act did not preempt civil Racketeer Influenced and Corrupt Organizations Act (RICO) and common-law fraud claims against tobacco product manufacturers alleging suppression and concealment of material information, and dissemination of misinformation, about the unique health risks posed to those who both smoked and were occupationally exposed to asbestos. Falise v. American Tobacco Co., E.D.N.Y.2000, 94 F.Supp.2d 316. Products Liability


Allegations that defendants participated in the affairs of the enterprise through Extortionate Credit Transactions provided a sufficient nexus between RICO enterprise and the predicate acts involving extortionate credit. U.S. v. Gambale, D.C.Mass.1985, 610 F.Supp. 1515. Racketeer Influenced And Corrupt Organizations

This section, which utilizes and sometimes expands upon offenses designated as racketeering activities, was not meant to preempt or supplement remedies already provided by those statutes which define predicate offenses under section 1961 of this title. Harper v. New Japan Securities Intern., Inc., C.D.Cal.1982, 545 F.Supp. 1002. Racketeer Influenced And Corrupt Organizations

Fact that government might have prosecuted defendants under section 892 of this title relating to extortionate credit transactions did not preclude application to their conduct of this section. U. S. v. Castellano, E.D.N.Y.1975, 416 F.Supp. 125. Criminal Law

Issue of whether mortgage lender and related businesses violated Racketeer Influenced and Corrupt Organizations Act (RICO) by providing pay option adjustable (POA) rate and subprime loans to borrowers involved significant individualized inquiries that predominated over common issues, and thus class certification was not warranted, even though employees in one of lender's divisions used standard sales script and computerized underwriting program, and lender allegedly relaxed its underwriting standards and uniformly incentivized loan officers and brokers to make loans, where many loans were made through independent brokers, only one of lender's four divisions used standard scripts to sell loans, and there was more than one logical explanation for individual borrowers' participation in transactions. In re Countrywide Financial Corp. Mortg. Marketing and Sales Practices Litigation, S.D.Cal.2011, 277 F.R.D. 586. Federal Civil Procedure
Questions of law or fact common to members of class predominated in class action alleging that New York village and several of its present and former officials and employees created scheme whereby, under color of law, they purported to enforce traffic and other laws and collect purported fines for alleged violations of those laws through a distinct enterprise in violation of, inter alia, Racketeer Influenced and Corrupt Organizations Act (RICO) and §§ 1983. Coco v. Incorporated Village of Belle Terre, E.D.N.Y.2005, 233 F.R.D. 109, leave to appeal denied 448 F.3d 490. Federal Civil Procedure ☞ 181

Allegations in complaint asserting claims against former counsel for real estate investment entities for violation of Racketeer Influenced and Corrupt Organizations Act (RICO) and Idaho RICO statute established that alleged RICO enterprises were created to carry out fraud in connection with sale of securities, and therefore securities fraud exception applied to bar RICO claims; complaint alleged that enterprises were created to carry out fraudulent Ponzi scheme and to cheat investors, that members of enterprises used private placement memoranda containing false information that were drafted by former counsel to defraud investors into buying tenant-in-common (TIC) syndications, and that TIC syndications were sold by “securities” corporation. Zazzali v. Hirschler Fleischer, P.C., D.Del.2012, 482 B.R. 495. Racketeer Influenced and Corrupt Organizations ☞ 11

5. Law governing

Rule of lenity did not apply in determining whether Racketeer Influenced and Corrupt Organizations Act (RICO) required economic motive for racketeering enterprise or racketeering predicate acts where RICO was unambiguous. National Organization for Women, Inc. v. Scheidler, U.S.III.1994, 114 S.Ct. 798, 510 U.S. 249, 127 L.Ed.2d 99, rehearing denied 114 S.Ct. 1340, 510 U.S. 1215, 127 L.Ed.2d 688, on remand 25 F.3d 1053, rehearing and suggestion for rehearing en banc denied. Racketeer Influenced And Corrupt Organizations ☞ 5; Racketeer Influenced And Corrupt Organizations ☞ 34

Although limitations period for RICO suit derives from state law, Court of Appeals determines time at which period begins to run under federal law: period of limitations does not commence until injured party discovers, or, in exercise of reasonable diligence, should have discovered, alleged fraud. La Porte Const. Co., Inc. v. Bayshore Nat. Bank of La Porte, Texas, C.A.5 (Tex.) 1986, 805 F.2d 1254. Federal Courts ☞ 427; Limitation Of Actions ☞ 100(1)

In prosecution for violations of this chapter, applicable period of limitations was governed by federal, rather than state law. U.S. v. Forsythe, C.A.3 (Pa.) 1977, 560 F.2d 1127. Federal Courts ☞ 422.1

Health insurer, which alleged that Article 28 medical facility's fraudulent conduct caused insurer to pay claims of its insureds for services for which provider was not properly licensed and thus ineligible to receive no-fault law reimbursement, could proceed with its Racketeer Influenced and Corrupt Organizations Act (RICO) and fraud claims, despite the fact that facility and related defendants were approved and licensed by a state authority; insurer's claims were not essentially preempted by New York's no-fault regime. Government Employees Ins. Co. v. Uptown Health Care Management, Inc., E.D.N.Y.2013, 2013 WL 2138909. Insurance ☞ 3415; Insurance ☞ 3541; Racketeer Influenced and Corrupt Organizations ☞ 55
Automobile insurer's claim against medical center for civil Racketeer Influenced and Corrupt Organizations Act (RICO) violation based on mail fraud by alleged fraudulent noncompliance with licensing requirements, under Article 28 of New York Public Health Law, that rendered center ineligible to receive no-fault payments, was not required to be brought in Article 78 proceeding in New York state courts rather than federal court, since insurer was not challenging New York State Department of Health's (DOH) administrative decision to issue licenses to center as Article 28 facility, but rather was challenging center's alleged fraudulent conduct. Allstate Ins. Co. v. Elzanaty, E.D.N.Y.2013, 916 F.Supp.2d 273, subsequent determination 2013 WL 937876, motion to certify appeal granted 2013 WL 2154759. Insurance 3415; Racketeer Influenced and Corrupt Organizations 55

Dismissal of federal court action alleging that Canadian residents created and participated in enterprise designed to defraud American borrowers through advance fee lending scheme in favor of pending Canadian proceeding was not warranted, even though Canadian proceeding sought to freeze assets in aid of monetary relief sought in American litigation, and was filed before American action, where plaintiffs in Canadian proceeding were not parties in American case, and claim under Racketeer Influenced and Corrupt Organizations Act (RICO) could not be brought in Canadian court. CGC Holding Co., LLC v. Hutchens, D.Colo.2011, 824 F.Supp.2d 1193, motion to certify appeal denied 896 F.Supp.2d 970. Federal Courts 65

District court did not have jurisdiction in action on behalf of individuals who suffered damages as result of apartheid South Africa, alleging that multinational corporations doing business with apartheid South Africa violated several provisions of Racketeer Influenced and Corrupt Organizations Act (RICO); there was no conduct which occurred in the United States which directly caused the injuries complained of in South Africa, nor did the heinous acts committed in South Africa have direct and substantial effect within the United States. In re South African Apartheid Litigation, S.D.N.Y.2004, 346 F.Supp.2d 538, affirmed in part, vacated in part and remanded 504 F.3d 254, motion to stay mandate denied 509 F.3d 148, affirmed 128 S.Ct. 2424, 553 U.S. 1028, 171 L.Ed.2d 225, on remand 617 F.Supp.2d 228, reconsideration denied. Racketeer Influenced And Corrupt Organizations 55


Investors' cause of action arising out of cattle feeding agency agreement accrued when investors received and reviewed their attorney's memorandum, and federal securities and Racketeer Influenced and Corrupt Organizations Act claims brought more than two years thereafter were barred by Louisiana blue sky law's limitations period. Jensen v. Snellings, E.D.La.1986, 636 F.Supp. 1305, reconsideration denied, affirmed in part, reversed in part 841 F.2d 600, on remand. Limitation Of Actions 95(3); Limitation Of Actions 100(12)


fluenced And Corrupt Organizations 65

Fact that subscription agreements involved in securities fraud and RICO action arising out of sales of units of coal mining limited partnerships provided that they were governed by New York law was not determinative as to statute of limitations to be applied to the civil RICO [18 U.S.C.A. §§ 1962(c), 1964] claim; in fact, the provisions did not subject all actions arising out of the agreements to New York law and, furthermore, the RICO claim did not even arise from the subscription agreements themselves; hence, law of forum state, Maryland, would be applied. Morley v. Cohen, D.CMd.1985, 610 F.Supp. 798. Racketeer Influenced And Corrupt Organizations 65

Bermuda law did not govern in action involving land purchase option, even though trust recited that it would be governed by Bermuda law, since lawsuit actually involved alleged fraud and violations of this chapter in which principle actors were defendants and plaintiff and sufficient contacts with United States, and with Mississippi in particular, had been alleged to justify federal question jurisdiction. Lopez v. Richards, S.D.Miss.1984, 594 F.Supp. 488. Contracts 206

Where all the alleged events occurred in Illinois, court would look to the law of Illinois and determine adequacy of civil claims under this chapter. Serig v. South Cook County Service Corp., N.D.Ill.1984, 581 F.Supp. 575. Commerce 80

Action against bank and bank officials for violating this section against using in interstate business income derived through collection of unlawful debt was governed by New York's one-year statute of limitations for actions to recover overcharge of interest or to enforce penalty for such overcharge and not by either six-year statute for fraud actions or three-year statute for actions to recover upon liability imposed by statute. Durante Bros. and Sons, Inc. v. Flushing Nat. Bank, E.D.N.Y.1983, 571 F.Supp. 489, affirmed in part, vacated in part 755 F.2d 239, certiorari denied 105 S.Ct. 3530, 457 U.S. 1134, 73 L.Ed.2d 1351. Racketeer Influenced And Corrupt Organizations 65

In prosecution under this chapter, refusal to charge jury on defendant's handwritten points submitted after the government closed and based upon state law was proper, in that state law does not control a case under this chapter and, furthermore, points were untimely submitted. U.S. v. Joseph, E.D.Pa.1981, 526 F.Supp. 504. Criminal Law 826; Racketeer Influenced And Corrupt Organizations 96


Federal court located in Pennsylvania lacked specific personal jurisdiction over arrestee's claims against county department of social services and other defendants for alleged deprivation of his federal civil rights, violations of the Racketeering Influenced and Corrupt Organizations Act (RICO), and aiding and abetting alleged conspiracy among various state, federal and private actors and agencies to fabricate evidence against him and to unlaw-
fully arrest and detain him; none of the events which led to arrestee's cause of action had any connection to Pennsylvania forum, Pennsylvania law was not invoked in any of arrestee's claims, cause of action arose solely from events in New Jersey, and arrestee had no contact with Pennsylvania other than his incarceration there. 


6. Remedial nature of section

Subsec. (c) of this section prohibiting any person associated with an enterprise which affects interstate commerce to conduct or participate in the enterprise's affairs through a pattern of racketeering activities is remedial in nature and should be read broadly in order to effectuate the purpose of eliminating racketeering activity. U. S. v. Pray, M.D.Pa.1978, 452 F.Supp. 788. Commerce \(\implies 82.6\)

7. Substantive nature of offense

Scheme to defraud, necessary to support claim under Racketeer Influenced and Corrupt Organizations Act (RICO) based on mail or wire fraud, need not be fraudulent on its face but must involve some sort of fraudulent misrepresentations or omissions reasonably calculated to deceive persons of ordinary prudence and comprehension. Walter v. Palisades Collection, LLC, E.D.Pa.2007, 480 F.Supp.2d 797. Postal Service \(\implies 35(10)\); Postal Service \(\implies 35(11.1)\); Telecommunications \(\implies 1014(9)\)

This section actually creates substantive federal crime offenses, making it unlawful, among other things, to participate in affairs of enterprise, whose activities affect interstate commerce, through pattern of racketeering activity and to conspire to violate any of provisions of this chapter. Waterman S. S. Corp. v. Avondale Shipyards, Inc., E.D.La.1981, 527 F.Supp. 256. Conspiracy \(\implies 28(3)\); Criminal Law \(\implies 1220\)

8. Persons entitled to sue

Third-party payor (TPP) of certain drugs prescribed for off-label purposes failed to allege injury fairly traceable to pharmaceutical company's alleged wrongful conduct in using illegal marketing campaigns to persuade physicians to prescribe drugs for off-label uses that were ineffective or unsafe, and thus TPP lacked Article III standing to bring federal and New Jersey Racketeer Influenced and Corrupt Organizations Act (RICO) claims; TPP's allegations of company's wrongful conduct pertaining to drugs other than those for which TPP allegedly paid, even when paired with fact that company marketed drugs for which TPP did pay, did not reasonably support inference that company also made false statements about drugs for which TPP paid. In re Schering Plough Corp. Intron/Temodar Consumer Class Action, C.A.3 (N.J.) 2012, 678 F.3d 235. Racketeer Influenced and Corrupt Organizations \(\implies 62\)

Members of homeowners association did not have standing to bring racketeering claims against those in control of association's board for allegedly diverting member assessments for their own benefit and depleting funds from association's treasury while necessary maintenance to common areas went unperformed; alleged racketeering activity was directed against association, and specifically against its treasury, did not result in injury to members that was distinct from injury to association as whole, and gave rise to cause of action which, under Louisiana law, accrued to association. Joffroin v. Tufaro, C.A.5 (La.) 2010, 606 F.3d 235. Common Interest
Insured lacked standing to pursue claim that insurer, in its sale of credit life insurance, violated Racketeer Influenced and Corrupt Organizations Act (RICO) through interstate transportation of money exceeding $5,000 taken by fraud, since she could not allege injury beyond $1,876.70, the amount of her premium; whether, and by how much, premiums and proceeds from insurer's credit life insurance plans harmed other, unnamed individuals was irrelevant. Brown v. Protective Life Ins. Co., C.A.5 (La.) 2003, 353 F.3d 405, rehearing and rehearing en banc denied 91 Fed.Appx. 975, 2004 WL 287114. Racketeer Influenced And Corrupt Organizations

Injuries allegedly sustained by business owner as result of competitor's principals' mail and wire fraud could properly be characterized as injuries to his business and property, and thus owner had standing to bring claims against competitors under Racketeer Influenced and Corrupt Organizations Act (RICO), where mail fraud allegedly caused owner to enter into settlement to which he would not otherwise have agreed, causing him to relinquish claims he had against competitor and to agree not to compete with competitor in certain ways, and purported wire fraud induced him not to sue to enforce settlement at time when competitor still had assets. Deck v. Engineered Laminates, C.A.10 (Kan.) 2003, 349 F.3d 1253. Racketeer Influenced And Corrupt Organizations

Alleged individual acts of mail fraud underlying alleged racketeering activity of insurance broker and agent for contractors that defaulted on loans made by lender under factoring agreement were proximate cause of lender's injury, as required to establish lender's standing to assert violations of Racketeer Influenced and Corrupt Organizations Act (RICO); even if mail frauds against lender through factoring agreement directly promoted contractors' fraud against county, frauds against lender and county were intertwined, and lender was a target and intended victim of the alleged racketeering enterprise. Baisch v. Gallina, C.A.2 (N.Y.) 2003, 346 F.3d 366. Racketeer Influenced And Corrupt Organizations

Racketeer Influenced and Corrupt Organizations Act (RICO) claims arising out of third parties' failure to pay loans and actions to dilute value of stock securing such loans were not ripe, and lenders had no standing to pursue them, until they had first foreclosed on loans and thus determined extent to which stock was insufficient to make them whole. Motorola Credit Corp. v. Uzan, C.A.2 (N.Y.) 2003, 322 F.3d 130. Racketeer Influenced And Corrupt Organizations

To demonstrate standing with regard to the Racketeer Influenced and Corrupt Organizations Act (RICO), a plaintiff must plead, at a minimum: (1) participation in a prohibited activity under RICO, (2) an injury to the plaintiff's business or property, and (3) causation of the injury by the defendant's violation, which is satisfied if the defendant's injurious conduct is both the factual and the proximate cause of the injury alleged. Lerner v. Fleet Bank, N.A., C.A.2 (N.Y.) 2003, 318 F.3d 113, as amended , certiorari denied 124 S.Ct. 532, 540 U.S. 1012, 157 L.Ed.2d 424, on remand 2005 WL 2064088. Racketeer Influenced And Corrupt Organizations

Investors in real estate venture had Racketeer Influenced and Corrupt Organizations Act (RICO) standing to recover for harm arising from defendants' alleged misconduct that occurred after date on which investors trans-
ferred their partnership interests to six offshore corporations created to consolidate their interests in the properties; investors' injuries, before and after formation of the corporations, did not arise “solely” out of a scheme targeting the corporations, original and ongoing purpose of defendants' scheme was to inflict harm on investors, pattern of racketeering did not shift its focus to the corporations, most of the alleged wrongdoing occurred, and lion’s share of damages were incurred, well before chartering of the corporations, and there was no risk of a “double recovery” by investors. Maiz v. Virani. C.A.11 (Ga.) 2001, 253 F.3d 641. Racketeer Influenced And Corrupt Organizations 61; Racketeer Influenced And Corrupt Organizations 62

Investors in complex investment scheme, which purportedly allowed high income individuals to initially lease thoroughbred mares, breed those mares for a season and then keep the resulting foal, and also later provided alternative mineral investment opportunities, were not as “culpable” as those individuals or corporate entities which operated scheme, thereby precluding application of defense of in pari delicto to investors' Racketeering Influenced and Corrupt Organizations (RICO) Act claim arising from scheme; there was no indication the investors knew of underlying problems with program when they invested or even well into their participation in programs, and they were not aware of illusory nature of alternative investments that they were offered when they sought to transfer their equine interest for those alternatives in order to obtain something of value for the investment. In re ClassicStar Mare Lease Litigation, E.D.Ky.2011, 823 F.Supp.2d 599, opinion supplemented on reconsideration, amended in part 2012 WL 1080569, affirmed 2013 WL 3746220. Racketeer Influenced and Corrupt Organizations 57

Brazilian ferrosilicon producers suffered injury in fact from lost profits due to exclusion from market allegedly caused by domestic producers' fraudulent antidumping petition that resulted in International Trade Commission (ITC) imposing antidumping duties on Brazilian producers, as required for Brazilian producers' standing to pursue claim that domestic producers conspired to file fraudulent antidumping petition in violation of Racketeer Influenced and Corrupt Organizations Act (RICO), where ITC determined that antidumping duties would not have been assessed absent domestic producers' misrepresentations and omissions in filing antidumping petition. Companhia Brasileira Carbureto de Calcio-CBCC v. Applied Indus. Materials Corp., D.D.C.2012, 887 F.Supp.2d 9. Racketeer Influenced and Corrupt Organizations 60

Losing party in prior litigation lacked standing to assert Racketeer Influenced and Corrupt Organizations Act (RICO) and RICO conspiracy claims against prevailing party in prior litigation, prevailing party's charitable organization, and prevailing party's attorneys, absent direct connection between the alleged predicate acts and the losing party's injuries. Robertson v. Cartinhour, D.D.C.2012, 867 F.Supp.2d 37. Racketeer Influenced and Corrupt Organizations 62

Wine buyer's allegations that seller was source of all bottles at issue, that seller knew wine was counterfeit but nevertheless adopted the representations on their labels that they were of stated vintage, and that buyer would not have purchased the wine had labels not suggested they were genuine established Article III standing to bring action against seller for fraud, conspiracy to defraud, aiding and abetting fraud, violation of civil Racketeer Influenced and Corrupt Organizations Act (RICO), and violation of the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). Koch v. Royal Wine Merchants, Ltd., S.D.Fla.2012, 847 F.Supp.2d 1370. Antitrust and Trade Regulation 355; Racketeer Influenced and Corrupt Organizations 62

Juvenile lacked standing to assert Racketeer Influenced and Corrupt Organizations Act (RICO) action against juvenile court judges, juvenile probation staff, owner of construction company, and others, in connection with scheme to divert juvenile offenders to the newly constructed privately-owned juvenile detention facilities in return for kickbacks, which allegedly resulted in juvenile’s wrongful adjudication of delinquency and incarceration; juvenile asserted that he suffered great emotional distress and loss of earning capacity based on the education that he missed while in custodial detention, which did not demonstrate any concrete monetary loss. Clark v. Conahan, M.D.Pa. 2010, 737 F.Supp.2d 239. Racketeer Influenced And Corrupt Organizations

Racketeer Influenced and Corrupt Organizations Act (RICO) claims of residential mortgage loan purchaser against 24 defendants, alleging it was defrauded of more than $50 million by a wide-ranging phony mortgage and money laundering scheme, were not yet ripe, where loan purchaser was still pursuing other contractual and legal remedies to recover damages arising out of 95 fraudulent transactions, and it could not be determined whether purchaser’s other remedies would mitigate or even fully satisfy its damages. DLJ Mortg. Capital, Inc. v. Kontogiannis, E.D.N.Y. 2010, 726 F.Supp.2d 225. Federal Courts

Pharmacy management firm had standing to bring action alleging that workers’ compensation insurers and claims administrators violated Racketeer Influenced and Corrupt Organizations Act (RICO) by conspiring to interfere with its contractual relationships with contracting physicians and cut off its cash flow generated from those relationships through collusive and systematic campaign of sham litigation, fraudulent objections, and dilatory conduct carried out by mail fraud and wire fraud, to avoid payment of valid bills and liens relating to its physicians in-office medication dispensing program, even though firm did not itself recover any monies ultimately paid to contracting physicians, where firm alleged that it had acquired legal title to contracting physicians’ claims. California Pharmacy Management, LLC v. Zenith Ins. Co., C.D.Cal. 2009, 669 F.Supp.2d 1152. Conspiracy

Not-for-profit tenants’ advocate lacked standing to bring Racketeer Influenced and Corrupt Organizations Act (RICO) claims on its own behalf against lessors, who allegedly demanded and collected rents in amounts beyond those permitted under state law, since advocate did not allege a RICO injury; advocate alleged only that lessors’ scheme had frustrated its efforts to advocate for and organize tenants who occupied rent-regulated apartments. Buyers and Renters United to Save Harlem v. Pinnacle Group N.Y. LLC, S.D.N.Y. 2008, 575 F.Supp.2d 499. Racketeer Influenced And Corrupt Organizations

To demonstrate standing to file action under the Racketeer Influenced and Corrupt Organizations Act (RICO), plaintiffs must plead: (1) a violation of RICO, (2) an injury to business or property; and (3) causation of the injury by the violation of RICO. Moore v. Guesno, W.D.N.Y. 2007, 485 F.Supp.2d 300, affirmed 301 Fed.Appx. 17, 2008 WL 5082982. Racketeer Influenced And Corrupt Organizations

Health spa manager failed to allege any facts that demonstrated that she suffered an injury to her business or property and that the injury was caused by employee, who had brought action against spa and manager under Fair Labor Standards Act (FLSA), as required for manager to establish standing to assert violations of Racketeer Influenced and Corrupt Organizations Act (RICO) against employee; manager alleged only that telephone calls
made by employee to other employees to solicit participation in her FLSA action and settlement solicitation letter sent by employee's attorney constituted extortion in violation of the Hobbs Act, and that these were the predicate acts that supported her RICO claim. *Flores v. Osaka Health Spa, Inc.*, S.D.N.Y.2007, 474 F.Supp.2d 523. Racketeer Influenced And Corrupt Organizations

Joint venturer's alleged loss of its share of limited liability company's (LLC) revenue was insufficient to establish proximate cause necessary to maintain cause of action against other venturers for violations of Racketeer Influenced and Corrupt Organizations Act (RICO), even though availability of derivative action to member of LLC was not settled under state law, where venturer's injury was derived from devaluation of its investment in LLC, venturer did not seek to bring suit derivatively, venturer was not fraudulently induced to participate in venture, and venturer did not allege any injury distinct from injury to LLC's other member. *At The Airport v. ISATA, LLC*, E.D.N.Y.2006, 438 F.Supp.2d 55. Racketeer Influenced And Corrupt Organizations

Immigrant workers claiming that payroll checks did not include overtime pay adequately alleged facts to satisfy the standing requirement necessary to state a violation of the Racketeer Influenced and Corrupt Organizations Act (RICO); workers allegedly were lulled into accepting paychecks mailed to them without any overtime compensation, allegedly relied to detriment on alleged mail and wire fraud, and allegedly sustained injury to business or property by reason of the RICO violation. *Choimbol v. Fairfield Resorts, Inc.*, E.D.Va.2006, 428 F.Supp.2d 437. Racketeer Influenced And Corrupt Organizations

In order to state cause of action for violation of Racketeer Influenced and Corrupt Organizations Act (RICO) provision prohibiting investment of racketeering income, plaintiff must allege that: (1) defendant received income from pattern of racketeering activity; (2) defendant invested that income in acquisition of stake in, or establishment of, enterprise distinct from that from which income was derived; and (3) plaintiff suffered injury flowing from this reinvestment of racketeering income distinct from any injury suffered because of commission of original predicate acts of racketeering activity. *Leung v. Law*, E.D.N.Y.2005, 387 F.Supp.2d 105. Racketeer Influenced And Corrupt Organizations

Automobile insurer was directly injured by physician's fraudulent billing practices with regard to victims injured by insured tortfeasors, and thus had standing to assert claims against physician under Racketeer Influenced and Corrupt Organizations Act (RICO), even though insurer made payments to victims' attorneys, who then paid physician for his services from settlements or judgments on behalf tort victims, where physician acted with intent to defraud insurer through submission of fraudulent medical invoices, amounts paid by insurer were based on phony medical bills, tests that were never performed, and/or medical reports that purportedly documented injuries that had never been sustained by tort victims, and victims did not receive any funds paid by insurer for physician's services. *Allstate Ins. Co. v. Seigel*, D.Conn.2004, 312 F.Supp.2d 260. Racketeer Influenced And Corrupt Organizations

Patient lacked standing to assert claim under Racketeer Influenced and Corrupt Organizations Act (RICO) that physicians and hospital perpetrated extrinsic fraud on her to prevent her from presenting medical malpractice case against them to state court, since alleged fraud was not cause of her injury; patient's attorney failed to file affidavit of merit required under New Jersey law. *Balthazar v. Atlantic City Medical Center*, D.N.J.2003, 279
Auctioneer who was also stamp dealer had standing to assert Racketeer Influenced and Corrupt Organizations Act (RICO) claim that competing dealers, auction houses, and trade organizations engaged in pattern of racketeering activity of mail and wire fraud; auctioneer alleged injury to his business caused by defendants' alleged actions, and auctioneer alleged that the stamp bid-rigging enterprise was distinct from each defendant. Stolow v. Greg Manning Auctions Inc., S.D.N.Y.2003, 258 F.Supp.2d 236, affirmed 80 Fed.Appx. 722, 2003 WL 22717684. Racketeer Influenced And Corrupt Organizations

Health maintenance organizations (HMOs) could not bring RICO claims against tobacco companies alleging that companies conspired to mislead public and health care industry regarding deleterious and addictive effects of tobacco use; injuries to HMOs arose solely out of the personal injuries of their members. Group Health Plan, Inc. v. Philip Morris, Inc., D.Minn.2000, 86 F.Supp.2d 912, certified question answered 621 N.W.2d 2, answer to certified question conformed to 188 F.Supp.2d 1122, affirmed in part and remanded 344 F.3d 753. Conspiracy

Under provision of Racketeer Influenced and Corrupt Organizations Act (RICO) prohibiting conduct or participation in racketeering activity, purchasers of sports and entertainment cards, who sought to acquire limited edition cards that had been randomly placed into card packages, had standing to bring action against producer of cards for alleged gambling losses under New York and New Jersey law. Schwartz v. Upper Deck Co., S.D.Cal.1997, 956 F.Supp. 1552, vacated 104 F.Supp.2d 1228, affirmed 300 F.3d 1083. Racketeer Influenced And Corrupt Organizations

Plaintiff who failed to offer proof that he was the intended target of defendants' alleged fraudulent acts failed to establish the threshold requirement of standing to bring claims under Racketeer Influenced and Corrupt Organizations Act (RICO) section proscribing conduct of affairs of enterprise through pattern of racketeering activity; even if plaintiff was terminated for refusing to cooperate with the joint ventures, or so that the joint ventures could proceed, his termination was not proximately caused by the predicate acts, but was merely incidental result of circumstances surrounding those acts and no actions taken by defendants caused plaintiff to completely cease practicing his profession following his termination. Baglio v. Baska, W.D.Pa.1996, 940 F.Supp. 819, affirmed 116 F.3d 467. Racketeer Influenced And Corrupt Organizations

Borrower lacked standing to assert claim under Racketeer Influenced and Corrupt Organization Act (RICO) against lender, absent showing how borrower was injured by lender's investment of alleged racketeering income. Pemberton Sales & Service, Inc. v. Banco Popular de Puerto Rico, D.Virgin Islands 1994, 877 F.Supp. 961. Racketeer Influenced And Corrupt Organizations

Discharged employee did not have standing to bring action against former employer under Racketeer Influenced and Corrupt Organizations Act (RICO) subsection making it unlawful for any person, through a pattern of racketeering activity, to acquire or maintain any interest in or control of enterprise engaged in interstate commerce.
where he did not allege any injury that resulted from the acquisition or maintenance of an interest in an enterprise by former employer and other defendants. Dugan v. Bell Telephone of Pennsylvania, W.D.Pa.1994, 876 F.Supp. 713. Racketeer Influenced And Corrupt Organizations 58

Civil Racketeer Influenced and Corrupt Organizations Act (RICO) claim could not be maintained against city because its mandatory award of treble damages was primarily punitive in nature. Tengood v. City of Philadelphia, C.A.3 (Pa.) 2013, 2013 WL 2933747. Racketeer Influenced and Corrupt Organizations 64; Racketeer Influenced and Corrupt Organizations 85

Former local union president lacked standing to assert civil RICO claim in personal capacity against international union; he did not allege any injury that was separate and distinct from that allegedly sustained by every other similarly situated member of local union or district council. Commer v. American Federation of State, County and Mun. Employees, S.D.N.Y.2003, 2003 WL 21697873, Unreported, reconsideration denied 2003 WL 22671546. Racketeer Influenced And Corrupt Organizations 62

Musicians did not have standing under Racketeer Influenced and Corrupt Organizations Act (RICO) to bring claim against trustees of charitable trust fund for alleged diversion of money from trust fund, which was established to pay musicians to perform free musical concerts, since injury to musicians, if any, was not directly and proximately caused by trustees' alleged acts; it was the funds that suffered injury, not the musicians. Greenwald v. Hall, S.D.N.Y.2003, 2003 WL 164279, Unreported. Racketeer Influenced And Corrupt Organizations 62

Union member did not lack standing to enforce job referral rules in consent decree in government's civil Racketeer Influenced and Corrupt Organizations (RICO) suit against union district council and union executive solely by reason of fact that he was not party to action, as decree was made for benefit of union members such as movant. U.S. v. District Council of New York City and Vicinity of United Broth. of Carpenters and Joiners of America, S.D.N.Y.2002, 2002 WL 31873460, Unreported. Federal Civil Procedure 2397.6

9. Persons liable--Generally

Salesman of joint venture interests, and who did not play any part in directing venture's affairs, did not sufficiently “participate” in operation or management of RICO enterprise that he could be held liable under the Racketeer Influenced and Corrupt Organizations Act (RICO) for repeatedly violating antifraud provisions of federal securities laws in connection with his sale of interests. Stone v. Kirk, C.A.6 (Ky.) 1993, 8 F.3d 1079. Racketeer Influenced And Corrupt Organizations 50

Allegation that each respective corporate defendant, as a servicing entity, was the “enterprise,” or that partnership, as the servicing entity, was the “enterprise” failed to state a claim under the Racketeer Influenced and Corrupt Organizations Act (RICO) in action in which plaintiff charged that it was defrauded when it was shorted on materials used in oil well stipulation procedures; corporate partners in servicing entity, or alternatively, partnership, committed the predicate acts, if such acts could be attributed to them, in the course of their regular business; moreover, if corporations or partnership were to be held liable as RICO “persons,” they had to be responsible for committing the predicate acts, but plaintiff did not allege that partners did so. Parker & Parsley Petro-

Absent allegation that airline constituted a continuing threat, airline was not a RICO “person.” Landry v. Air Line Pilots Ass’n Intern. AFL-CIO, C.A.5 (La.) 1990, 901 F.2d 404, modified on denial of rehearing , certiorari denied 111 S.Ct. 244, 498 U.S. 895, 112 L.Ed.2d 203, on remand. Racketeer Influenced And Corrupt Organizations 28

Evidence established that nightclub doorman was active and knowing member of racketeering conspiracy that arose out of owner's acceptance of credit card payment for prostitution; doorman helped to convince management to begin accepting credit cards, participated in discussions regarding use of credit cards, regularly collected credit cards from waitresses and took them to office where they were used to charge fees for prostitution, often made calls to obtain authorization to accept charge, and repeatedly boasted about prowess in convincing patrons to use their credit cards. U.S. v. Marren, C.A.7 (Ill.) 1989, 890 F.2d 924. Conspiracy 13

Policemen could properly be convicted under this chapter for using their positions to extort sums for protection of illegal narcotics activity. U.S. v. Ambrose, C.A.7 (Ill.) 1984, 740 F.2d 505, certiorari denied 105 S.Ct. 3479, 472 U.S. 1017, 87 L.Ed.2d 614. Racketeer Influenced And Corrupt Organizations 8

Use of word “person” in this section is confined to identification of whoever is charged with “prohibited activities.” U. S. v. Computer Sciences Corp., C.A.4 (Va.) 1982, 689 F.2d 1181, certiorari denied 103 S.Ct. 729, 459 U.S. 1105, 74 L.Ed.2d 953. Racketeer Influenced And Corrupt Organizations 38

School district, as governmental entity, could not be held liable under Racketeer Influenced and Corrupt Organizations Act (RICO) on insurance adjuster's claims alleging district engaged in racketeering activities of mail and wire fraud in connection with parties' contract for public adjusting services to help district with its property damage claim related to hurricane and its claim for federal disaster-relief funds. Nationwide Public Ins. Adjusters Inc. v. Edcouch-Elsa I.S.D., S.D.Tex.2012, 913 F.Supp.2d 305. Racketeer Influenced and Corrupt Organizations 64

A defendant must have had some part in directing the operation or management of the enterprise itself to be liable under the Racketeer Influenced and Corrupt Organizations Act (RICO) provision prohibiting participation in the conduct of an enterprise's affairs through a pattern of racketeering activity. In re Terrorist Attacks on September 11, 2001, S.D.N.Y.2005, 349 F.Supp.2d 765, on reconsideration in part 392 F.Supp.2d 539, affirmed 538 F.3d 71. certiorari denied 129 S.Ct. 2859, 174 L.Ed.2d 576, affirmed 714 F.3d 118. Racketeer Influenced And Corrupt Organizations 50

Lower-rung participants in enterprise who are under direction of upper management are liable under Racketeer Influenced and Corrupt Organizations Act (RICO) section making it unlawful for any person employed by or associated with enterprise to conduct or participate, directly or indirectly, in conduct of enterprise's affairs through pattern of racketeering activity. Gio v. U.S., N.D.Ill.1997, 969 F.Supp. 512. Racketeer Influenced And Corrupt
Organizations

Even assuming that former partner in real estate partnerships and his corporations were separate enterprise from partnerships’ accounting firm, accounting firm did not manage or operate alleged Racketeer Influenced and Corrupt Organizations Act (RICO) enterprise, as required to impose RICO liability; accounting firm did not participate in conduct of enterprise's affairs by preparing monthly statements, even if fraudulent, by mailing to them to plaintiff partners, or by mailing fraudulent tax returns. Feirstein v. Nanbar Realty Corp., S.D.N.Y.1997, 963 F.Supp. 254. Racketeer Influenced And Corrupt Organizations

To be liable for Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy, defendant must be aware of existence of conspiracy, and understand that RICO enterprise extends beyond his individual role. Burke v. Dowling, E.D.N.Y.1995, 944 F.Supp. 1036. Conspiracy

Once RICO cause of action has been stated against particular defendant, that defendant may be liable for all actions of enterprise. Dooley v. United Technologies Corp., D.D.C.1992, 803 F.Supp. 428. Racketeer Influenced And Corrupt Organizations

Banks and individual officer/directors were not liable under Racketeer Influenced and Corrupt Organizations Act in connection with purchase of bank stock without disclosure of proposed bank merger, absent threat of continued criminal activity necessary to prove pattern of racketeering activity; alleged scheme involved single objective of bank merger, and once that goal was accomplished the scheme ended. Johnston v. Wilbourn, S.D.Miss.1991, 760 F.Supp. 578. Racketeer Influenced And Corrupt Organizations

Shareholders, who had personally guaranteed corporation's line of credit with bank, had no RICO claim against bank for misrepresenting that bank would immediately credit loan with deposits made to corporation's lock box account; even if bank expected to profit from one-day float from lock box deposits, shareholders knew of delays in crediting almost from beginning, bank made no attempt to hide delays and, furthermore, bank's alleged profits were only $4,677 over more than one-year period when line of credit was $2 million and payments amounted to $11 million. Mid-State Fertilizer Co. v. Exchange Nat. Bank of Chicago, N.D.Ill.1988, 693 F.Supp. 666, affirmed 877 F.2d 1333. Racketeer Influenced And Corrupt Organizations

To be convicted under criminal conspiracy provision of RICO, an individual, by his words or actions, must have objectively manifested an agreement to participate, directly or indirectly, in the affairs of an enterprise through the commission of two or more predicate crimes; that requirement is also imposed in a civil RICO case in which a conspiracy is alleged. Ahern v. Gaussoin, D.C.Or.1985, 611 F.Supp. 1465. Conspiracy

Government was entitled to charge individuals with a RICO violation if it had evidence that they performed specific and limited function for the enterprise while aware of existence of the enterprise. U.S. v. Castellano, S.D.N.Y.1985, 610 F.Supp. 1359. Racketeer Influenced And Corrupt Organizations

10. ---- Separate from enterprise, persons liable
President and sole shareholder of corporation that promoted boxing matches, who allegedly conducted boxing-related affairs in violation of Racketeer Influenced and Corrupt Organizations Act (RICO), was a “person” distinct from the enterprise which allegedly improperly conducted the enterprise's affairs subject to liability under RICO. Cedric Kushner Promotions, Ltd. v. King, U.S.2001, 121 S.Ct. 2087, 533 U.S. 158, 150 L.Ed.2d 198. Racketeer Influenced And Corrupt Organizations \(\Rightarrow\) 47

Mine owner failed to state Racketeer Influenced and Corrupt Organizations Act (RICO) claim against striking union, where persons allegedly involved were not distinct from alleged enterprise. New Beckley Min. Corp. v. International Union, United Mine Workers of America, C.A.4 (W.Va.) 1994, 18 F.3d 1161. Racketeer Influenced And Corrupt Organizations \(\Rightarrow\) 45


The “person” and “enterprise” combination liability under RICO can only occur when the corporation actually is the direct beneficiary of the pattern of racketeering or where purpose of suit is to require it disgorge illegally obtained proceeds or to reach the proceeds of illegal activities. Garbade v. Great Divide Min. and Mill. Corp., C.A.10 (Colo.) 1987, 831 F.2d 212. Racketeer Influenced And Corrupt Organizations \(\Rightarrow\) 64

Section of Racketeer Influenced and Corrupt Organizations Act providing that “It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt” does not extend liability directly to the enterprise. Schofield v. First Commodity Corp. of Boston, C.A.1 (Mass.) 1986, 793 F.2d 28; Luthi v. Tonka Corp., C.A.8 (Minn.) 1987, 815 F.2d 1229. Racketeer Influenced And Corrupt Organizations \(\Rightarrow\) 64

Depositor who alleged that bank wrongfully converted funds in his IRA to pay off balance of defaulted loan guaranteed by depositor could proceed against bank, under section of Racketeer Influenced and Corrupt Organizations Act, as both the “person” and the “enterprise” allegedly using income derived from racketeering activity. Masi v. Ford City Bank and Trust Co., C.A.7 (Ill.) 1985, 779 F.2d 397, on remand. Racketeer Influenced And Corrupt Organizations \(\Rightarrow\) 43
Owner of horse riding business adequately alleged that president of consulting firm, who agreed to finance owner's purchase of real estate and equipment, was “person” distinct from firm and limited liability company (LLC) president employed to purchase property and equipment, as required to state claim against president under Racketeer Influenced and Corrupt Organizations Act (RICO), even if president, firm, and LLC had appearance of being mere alter egos, since president was natural person distinct from firm and LLC which were legally different entities with different rights and responsibilities. CVLR Performance Horses, Inc. v. Wynne, W.D.Va.2012, 852 F.Supp.2d 705, motion for relief from judgment denied 2012 WL 5465024, appeal dismissed as moot 2013 WL 2322180. Racketeer Influenced and Corrupt Organizations 47

Lenders failed to state claim for violation of Racketeer Influenced and Corrupt Organizations Act (RICO) against franchisor where lenders did not allege existence of two distinct entities or separate enterprise and pattern of racketeering activity, and did not sufficiently plead racketeering element of claim, and instead simply defined enterprise as franchisor or its servant, agent, employee, and/or licensees and suggested that failure to re-pay lenders’ loans were part of fraudulent tactics used by franchisor with lenders. Ammirato v. Duraclean Intern., Inc., E.D.N.Y.2010, 687 F.Supp.2d 210, reconsideration denied 2010 WL 1186325. Racketeer Influenced And Corrupt Organizations 69

Investors who sued ambulance services, affiliates and officers, alleging that they were induced to invest through series of misrepresentations, failed to aver separate and district enterprises, as required to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO); complaint averred that RICO enterprise and persons engaging in pattern of racketeering activity were same. DeFazio v. Wallis, E.D.N.Y.2007, 500 F.Supp.2d 197. Racketeer Influenced And Corrupt Organizations 73

Bank, which closed plaintiff’s checking account upon her request and then refused to give account information directly to a local check-clearing company, participated in the conduct of its own affairs, and did not participate in the operation or management of the alleged Racketeer Influenced and Corrupt Organizations (RICO) “enterprise” whose purpose was to acquire hotel which plaintiff purchased. Pennino v. Selig, W.D.Ark.2003, 258 F.Supp.2d 914. Racketeer Influenced And Corrupt Organizations 50


Where plaintiffs in civil Racketeer Influenced and Corrupt Organizations Act (RICO) action have suffered harm at hands of enterprise that consists only of single corporation and its employees, subsidiaries or agents, plaintiffs must choose between corporation and its constituents as persons liable; if plaintiff chooses to identify corporation as enterprise through which its employees, as persons, conducted RICO activity, corporation is insulated


Defendant who allegedly received proceeds from racketeering activity and then invested them in his own enterprise could be liable for RICO violation; person who received proceeds and enterprise in which proceeds were invested did not have to be distinct entities. U.S. v. Freshie Co., E.D.Pa.1986, 639 F.Supp. 441. Racketeer Influenced And Corrupt Organizations 38

Long-distance telephone provider, which allegedly defrauded customers by overcharging, could not be held liable under statute making it unlawful for any person associated with enterprise engaged in interstate or foreign commerce to conduct or participate in conduct of enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt because of failure to allege enterprise separate and distinct from the “person” liable. Bruss Co. v. Allnet Communication Services, Inc., N.D.Ill.1985, 606 F.Supp. 401. Racketeer Influenced And Corrupt Organizations 39


Plaintiffs who had commodities trading account were not entitled to recover under this chapter from defendant, a commodities brokerage firm, on basis that two of defendant's brokers had defrauded plaintiffs and, in furtherance of scheme to defraud them, had caused mail to be delivered by United States Postal Service two or more times, since any suit for violation of this chapter should have been asserted against the violators, the persons who engaged in the unlawful conduct, and not the defendant firm that had itself been infiltrated by the unlawful conduct. Parnes v. Heinold Commodities, Inc., N.D.Ill.1982, 548 F.Supp. 20. Commerce 82.6; Racketeer Influenced And Corrupt Organizations 64

11. ---- Corporations, persons liable

A parent and its wholly owned subsidiaries no more have sufficient distinctness to trigger liability under the Racketeer Influenced and Corrupt Organizations Act (RICO) than to trigger liability for conspiring in violation of the Sherman Act, unless the enterprise's decision to operate through subsidiaries rather than divisions somehow facilitated its unlawful activity. Bucklew v. Hawkins, Ash, Baptie & Co., LLP., C.A.7 (Wis.) 2003, 329 F.3d 923, 66 U.S.P.Q.2d 1820. Racketeer Influenced And Corrupt Organizations 47

Investors failed to show that banks' violation of state escrow fund reporting requirements proximately caused investors' loss of money through lawyer's Ponzi scheme, in lawsuit under Racketeer Influenced and Corrupt Organizations Act (RICO); racketeering activities alleged were not substantial factor in chain of causation that led
to investors’ losses, losses were not reasonably foreseeable consequence of banks’ conduct, and, at worst, banks’ conduct qualified as breach of banks’ agreements with lawyer’s fund, not as RICO predicate act. Lerner v. Fleet Bank, N.A., C.A.2 (N.Y.) 2003, 318 F.3d 113, as amended , certiorari denied 124 S.Ct. 532, 540 U.S. 1012, 157 L.Ed.2d 424, on remand 2005 WL 2064088. Racketeer Influenced And Corrupt Organizations 

Affiliated corporations were not “persons” distinct from alleged “enterprise” consisting of the affiliated corporations, as required to state claim under section of Racketeer Influenced and Corrupt Organizations Act (RICO) prohibiting “any person employed by or associated with any enterprise ... to conduct ... such enterprise’s affairs through a pattern of racketeering activity....”; reference to unnamed “attorneys, accountants and other agents” as part of the enterprise did not alter this analysis. Discon, Inc. v. NYNEX Corp., C.A.2 (N.Y.) 1996, 93 F.3d 1055 , certiorari denied 118 S.Ct. 49, 522 U.S. 809, 139 L.Ed.2d 14, certiorari granted 118 S.Ct. 1298, 523 U.S. 1019, 140 L.Ed.2d 465, vacated 119 S.Ct. 493, 525 U.S. 128, 142 L.Ed.2d 510, on remand 184 F.3d 111. Racketeer Influenced And Corrupt Organizations 

While it is theoretically possible for parent corporation to be defendant and its subsidiary to be “enterprise” under Racketeer Influenced and Corrupt Organizations Act (RICO) section prohibiting persons associated with enterprise from conducting enterprise’s affairs through pattern of racketeering activity, plaintiff must plead facts which, if assumed to be true, would clearly show that parent corporation played role in racketeering activity which is distinct from activities of subsidiary; RICO claim under that section is not stated where subsidiary merely acts on behalf of, or to benefit of, its parent. Lorenz v. CSX Corp., C.A.3 (Pa.) 1993, 1 F.3d 1406. Racketeer Influenced And Corrupt Organizations 

Where corporate “person” is also the “enterprise” through which alleged racketeering activity occurred, Racketeer Influenced and Corrupt Organizations (RICO) Act liability can arise only under section prohibiting receipt of income from racketeering income or section prohibiting ownership of any interest in racketeering enterprise. Genty v. Resolution Trust Corp., C.A.3 (N.J.) 1991, 937 F.2d 899. Racketeer Influenced And Corrupt Organizations 

Investment corporation, which could not be RICO defendant under section prohibiting any person employed by or associated with enterprise affecting interstate commerce from conducting enterprise’s affairs through pattern of racketeering activity, could not be held liable, under respondeat superior theory, for RICO violations of its employees; corporation was “enterprise” under RICO and not a defendant. Kehr Packages, Inc. v. Fidelcor, Inc., C.A.3 (Pa.) 1991, 926 F.2d 1406, rehearing denied, certiorari denied 111 S.Ct. 2839, 501 U.S. 1222, 115 L.Ed.2d 1007. Racketeer Influenced And Corrupt Organizations 

RICO subsection prohibiting a person from acquiring an interest in an enterprise through a pattern of racketeering activity does not require existence of an enterprise separate and distinct from the person sought to be held liable, and thus respondeat superior is appropriate under that subsection to impose civil liability on a corporation so long as it derived benefit from the violations. Liquid Air Corp. v. Rogers, C.A.7 (Ill.) 1987, 834 F.2d 1297, certiorari denied 109 S.Ct. 3241, 492 U.S. 917, 106 L.Ed.2d 588. Racketeer Influenced And Corrupt Organizations 

Foreclosed mortgagor could not maintain Racketeer Influenced and Corrupt Organizations Act (RICO) claim against mortgage corporation, since corporation was the only “person” against which any colorable allegations of RICO violation were made and was also the “enterprise” involved in the alleged violations. Miller v. Countrywide Home Loans, S.D.Ohio 2010, 747 F.Supp.2d 947. Racketeer Influenced And Corrupt Organizations 47

Social Security claimants who sued mental health care providers, alleging misappropriation of benefits payments while acting as representative payees, failed to allege that parent provider's activities were distinct from those of its subsidiaries, as required to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO); averments were impermissibly vague as to alleged RICO enterprises, role played by each provider in predicate acts, and actual relationship among providers when conduct at issue occurred. Bates v. Northwestern Human Services, Inc., D.D.C.2006, 466 F.Supp.2d 69. Racketeer Influenced And Corrupt Organizations 73

Subsidiary and parent corporations could not be both “persons” and the “enterprise” under Racketeer Influenced and Corrupt Organizations Act (RICO) section prohibiting any person employed by or associated with enterprise affecting interstate commerce from conducting enterprise's affairs through pattern of racketeering activity. Nordberg v. Trilegiant Corp., N.D.Cal.2006, 445 F.Supp.2d 1082. Racketeer Influenced And Corrupt Organizations 47

Corporation engaged in debt collection did not violate Racketeer Influenced and Corrupt Organizations Act (RICO) by conducting enterprise through pattern of racketeering activity, involving collection of illegal violation fees from motorists failing to timely pay parking lot charges; necessary showing of separate structure committing illegal acts, apart from corporation, was not made. Hansen v. Ticket Track, Inc., W.D.Wash.2003, 280 F.Supp.2d 1196. Racketeer Influenced And Corrupt Organizations 47

Company engaged in wholesale close-out business failed to show, in support of claim under Racketeer Influenced and Corrupt Organizations Act (RICO), that hosiery manufacturer's employee participated in, or made misrepresentations respecting, alleged fraudulent scheme to defraud company through company president's use of company's resources, without compensation, to sell manufacturer's products, precluding liability of employee and manufacturer; there was no evidence that employee knew of or was involved in company president's alleged failure to compensate company with respect to sales of manufacturer's products or his alleged efforts to hide his relationship with manufacturer, or that employee had any responsibility with respect to company president's relationship with company. USA Certified Merchants, LLC v. Koebel, S.D.N.Y.2003, 262 F.Supp.2d 319, reconsideration denied 273 F.Supp.2d 501. Racketeer Influenced And Corrupt Organizations 50

Racketeer Influenced and Corrupt Organizations Act (RICO) did not provide basis for liability on part of survivors of soft drink bottling company employee, killed by paramilitary unit, that soft drink beverage licensor, its Colombian subsidiary, Colombian bottling licensee and its owners were liable for death, accomplished with assistance of plant manager; necessary showing of substantial preparatory activities in United States, or of effects of murder within United States, was not made. Sinaltrainal v. Coca-Cola Co., S.D.Fla.2003, 256 F.Supp.2d 1345. Racketeer Influenced And Corrupt Organizations 79
Under Racketeer Influenced and Corrupt Organizations Act (RICO) section proscribing conduct of affairs of enterprise through pattern of racketeering activity, liability is limited to those who participate in the operation or management of the enterprise itself and this includes upper management as well as lower level employees acting under their direction; enterprise also may be operated or managed by outsiders where they exert control over the enterprise through, for example, bribery, but business may not be held liable under a theory of respondeat superior. Baglio v. Baska, W.D.Pa.1996, 940 F.Supp. 819, affirmed 116 F.3d 467. Racketeer Influenced And Corrupt Organizations

Accounting firm that provided accounting services for financial management company did not direct affairs of financial management company, as required for accounting firm to be liable in action brought pursuant to Racketeer Influenced and Corrupt Organizations (RICO) Act brought by client of financial management company. Terrell v. Childers, N.D.Ill.1996, 920 F.Supp. 854. Racketeer Influenced And Corrupt Organizations


Motor oil company was not liable to automobile lubricating service center franchisee under Racketeer Influenced and Corrupt Organizations Act (RICO) provision prohibiting acquisition of interest in enterprise affecting interstate or foreign commerce through pattern of racketeering activity, despite allegations that company and franchisor conspired to injure franchisee and that company's eventual control of franchisor compounded franchisee's injuries, absent evidence that company's alleged racketeering activity resulted in its control of franchisor. Jiffy Lube Intern., Inc. v. Jiffy Lube of Pennsylvania, Inc., E.D.Pa.1994, 848 F.Supp. 569. Racketeer Influenced And Corrupt Organizations


Respondeat superior was an appropriate basis to hold corporation vicariously liable for Racketeer Influenced and Corrupt Organizations Act (RICO) violations of its employees. Mylan Laboratories, Inc. v. Akzo, N.V., D.Md.1991, 770 F.Supp. 1053. Racketeer Influenced And Corrupt Organizations

Bank could not be held liable under Racketeer Influenced and Corrupt Organizations Act (RICO) for independent acts of one of its employees in allegedly conspiring to defraud customer, either on theory of respondeat superior or under agency doctrine of apparent authority. Metro Furniture Rental, Inc. v. Alessi, S.D.N.Y.1991, 770 F.Supp. 198. Racketeer Influenced And Corrupt Organizations

Conspiracy cannot lie against corporate entity for the concerted action of its employees who violate Racketeer Influenced Corrupt Organizations Act (RICO) on its behalf. Northeast Jet Center, Ltd. v. Lehigh-Northampton


Claim under the Racketeer Influenced and Corrupt Organizations Act (RICO) that individual defendant used or invested income derived from a pattern of racketeering in establishment of an enterprise engaged in interstate commerce could be brought against corporation created by individual defendant on theory of vicarious liability, where plaintiffs alleged that corporation received bulk of inventory, equipment and customers taken wrongfully from plaintiffs. Dynabest Inc. v. Yao, N.D.Ill.1991, 760 F.Supp. 704. Racketeer Influenced And Corrupt Organizations


Railroad which was wholly owned subsidiary of metropolitan transit authority, a public benefit corporation under state law, was not capable of violating RICO in that it could not perform the criminal acts necessary for the

Corporation which was target of successful takeover bid could be held liable under RICO as beneficiary of pre-takeover pattern of racketeering activity. Pandick, Inc. v. Rooney, N.D.Ill.1988, 688 F.Supp. 1288. Racketeer Influenced And Corrupt Organizations

Although RICO provision required that corporation associate with an enterprise which was different from itself, complaint alleging that individual employees and officers of corporation violated provision, while corporation itself violated another section which allowed liable person to be a corporation using the proceeds of a pattern of racketeering activity in its operations, stated actionable RICO violation. A Pocono Country Place, Inc. v. Peterson, M.D.Pa.1987, 675 F.Supp. 968. Racketeer Influenced And Corrupt Organizations

Corporation cannot be liable as “person” under RICO statute, where enterprise alleged is composed exclusively of association in fact between corporation and its officers and employees. Radionic Industries, Inc. v. GTE Products Corp., N.D.Ill.1987, 665 F.Supp. 622. Racketeer Influenced And Corrupt Organizations

Corporation can be held liable under Racketeer Influenced and Corrupt Organizations Act when it is actually perpetrator or beneficiary, direct or indirect, of pattern of racketeering activity, but not when it is merely victim, prize or passive instrument of racketeering. Roche v. E.F. Hutton & Co., Inc., M.D.Pa.1986, 658 F.Supp. 315, affirmed 862 F.2d 307, affirmed 862 F.2d 310. Racketeer Influenced And Corrupt Organizations


Evidence supported conclusion that metal refiner was a “person,” that it received income from a “pattern of racketeering activity,” and that it used or invested ill-gotten income in operation of an “enterprise” engaged in interstate commerce, namely, itself, and thus refiner could be held liable under section of Racketeer Influenced and Corrupt Organizations Act [18 U.S.C.A. § 1962(a)] making it unlawful for any person who has received any income derived from a pattern of racketeering activity to use or invest such income in the operation of an enterprise engaged in interstate commerce. B.F. Hirsch, Inc. v. Enright Refining Co., D.C.N.J.1985, 617 F.Supp. 49. Racketeer Influenced And Corrupt Organizations
Under subsection of statute stating it shall be unlawful for any person who has received any income from a pattern of racketeering or through collection of unlawful debt to use or invest income in acquisition of any interest in, or establishment or operation of, any enterprise engaged in interstate or foreign commerce, corporation can be held liable if it is a perpetrator or direct or indirect beneficiary of pattern of racketeering but under subsection of statute providing it shall be unlawful for any person employed by or associated with any enterprise engaged in interstate or foreign commerce to conduct or participate in conduct of enterprise's affairs through pattern of racketeering or collection of unlawful debt, where corporation is merely victim, corporation cannot be held liable. *Bruss Co. v. Allnet Communication Services, Inc.*, N.D.Ill. 1985, 606 F.Supp. 401. Racketeer Influenced And Corrupt Organizations

11a. ---- Officer, persons liable, generally

Fact that defendant committed allegedly wrongful actions in her capacity as an officer of corporation did not prevent the exercise of jurisdiction over her under Ohio's long-arm statute on Ohio corporation's federal Racketeer Influenced and Corrupt Organizations Act (RICO) claim; defendant was not protected by corporate shield doctrine because personal jurisdiction was not based simply upon jurisdiction over corporation, but rather, it was based on all of defendant's actions that allegedly took place in Ohio or caused injury in Ohio. *In re National Century Financial Enterprises, Inc.*, Inv. Litigation, S.D.Ohio 2009, 617 F.Supp.2d 700. Federal Courts

12. ---- Attorneys and law firms, persons liable

Allegations in judgment creditor's complaint, that bankruptcy attorneys had cooperated with judgment debtor and debtor's parents to minimize creditor's recovery on his judgment by filing Chapter 13 petition on debtor's behalf, in which debtor, at direction of his attorneys, fraudulently inflated his expenses after executing false promissory note in favor of parents and otherwise creating sham debts, were sufficient to state civil RICO claim against attorneys for “participating” in conduct of affairs of RICO enterprise, i.e., the Chapter 13 estate, through pattern of fraudulent activity; attorneys' activity, if judgment creditor was able to prove allegations in his complaint, went beyond merely providing professional advice to actually participating in conduct of affairs of alleged RICO enterprise. *Handeen v. Lemaire*, C.A.8 (Minn.) 1997, 112 F.3d 1339. Racketeer Influenced And Corrupt Organizations

Absent evidence that law firm or its members participated in operation or management of master music recording leasing program, investors in which were defrauded, they could not be held liable under Racketeer Influenced and Corrupt Organizations Act (RICO). *Nolte v. Pearson*, C.A.8 (Neb.) 1993, 994 F.2d 1311, rehearing denied. Racketeer Influenced And Corrupt Organizations

Trust beneficiary failed to state Racketeer Influenced and Corrupt Organizations Act (RICO) claim against trust's attorneys since he failed to properly allege that the trust's attorneys operated or managed alleged RICO enterprise; notwithstanding beneficiary's assertions to the contrary, complaint itself indicated that the attorneys were not acting other than as counsel. *Walter v. Drayson*, D.Hawai'i 2007, 496 F.Supp.2d 1162, affirmed 538 F.3d 1244. Attorney And Client 26; Racketeer Influenced And Corrupt Organizations

Allegation that law firm and attorneys for fruit packer and related entities accepted payment for legal services rendered did not establish that firm and attorneys committed predicate act of engaging in monetary transactions in property derived from specified unlawful activity, for purposes of apple growers' claim against firm and attorneys under Racketeer Influenced and Corrupt Organizations Act (RICO), given absence of allegation that payments received were illegal or represented proceeds of unlawful activity, or that firm and attorneys knew that money received was derived from unlawful activity. Flores v. Emerich & Fike, E.D.Cal. 2006, 416 F.Supp.2d 885, reconsideration denied in part 2006 WL 2536615. United States 34

Attorneys' representation of credit card company in debt collection against consumer did not rise to requisite level of participation in conduct of enterprise's affairs to impose liability under Racketeer Influenced and Corrupt Organizations Act (RICO), absent allegation that attorneys took some part in directing company's affairs. Rolfes v. MBNA America Bank N.A., D.S.D. 2005, 416 F.Supp.2d 745, affirmed 219 Fed.Appx. 613, 2007 WL 911831. Attorney And Client 24; Racketeer Influenced And Corrupt Organizations 50

Law firm which had provided only services of type normally provided by attorneys for clients in securities sales transactions did not have liability for failure of savings and loan association under federal or state RICO statutes. Bailey v. Trenam Simmons, Kemker, Scharf, Barkin, Frye & O'Neill, P.A., S.D.Fla. 1996, 938 F.Supp. 825. Racketeer Influenced And Corrupt Organizations 50; Racketeer Influenced And Corrupt Organizations 107

Law partners, who were partners with attorney alleged to have violated Racketeer Influenced and Corrupt Organizations Act (RICO) at time that he performed his allegedly wrongful acts, could be held vicariously liable under RICO sections proscribing use of racketeering income in establishment or operation of enterprise, and proscribing person from acquiring or maintaining interest in enterprise through pattern of racketeering activity, if it was proven that partners derived benefit from allegedly wrongful acts. Crowe v. Smith, W.D.La. 1994, 848 F.Supp. 1258. Racketeer Influenced And Corrupt Organizations 64

13. ---- Franchisors and franchisees, persons liable

Franchisor of fast food restaurants and its officers who allegedly fraudulently induced franchisee into purchasing unprofitable franchises were not liable to franchisee under provision of Racketeer Influenced and Corrupt Organizations Act (RICO) prohibiting person employed by enterprise to participate in enterprise's affairs through pattern of racketeering activity, where franchisee alleged that franchisor was enterprise but did not allege that its officers were acting outside scope of their authority when they allegedly fraudulently induced franchisee to purchase franchises; franchisee failed to establish any person distinct from alleged enterprise. Protter v. Nathan's Famous Systems, Inc., E.D.N.Y. 1996, 925 F.Supp. 947. Racketeer Influenced And Corrupt Organizations 47

14. ---- Accountants, persons liable

Accounting firm which had provided services for limited partnerships selling securities claimed to be tax shel-
ters did not have liability under Racketeer Influenced and Corrupt Organizations Act (RICO); firm's activities had not involved any type of control over partnerships, as required for RICO liability. Hayden v. Paul, Weiss, Rifkind, Wharton & Garrison, S.D.N.Y.1997, 955 F.Supp. 248. Racketeer Influenced And Corrupt Organizations 64

15. ---- Customers, persons liable


Causal link between clients' allegedly fraudulent omission of information regarding consultant's entitlement to 3% of client's outstanding equity in various communications between clients and their shareholders and potential investors and clients' allegedly wrongful refusal to pay consultant were too attenuated to sustain liability under Racketeer Influenced and Corrupt Organizations Act (RICO), even if allegations were sufficient to state claim against clients for violation of mail fraud statute, where there was no evidence that consultant himself had relied on, or was harmed by, alleged fraudulent omissions. Nolan v. Galaxy Scientific Corp., E.D.Pa.2003, 269 F.Supp.2d 635. Racketeer Influenced And Corrupt Organizations 62

Even if customer could not be named as both enterprise and a defendant, RICO count would survive as to customer because company used as conduit for kickback payments was also identified as an enterprise, and customer was alleged to have used this enterprise in its scheme to defraud. Georgia Gulf Corp. v. Ward, N.D.Ga.1987, 701 F.Supp. 1556. Racketeer Influenced And Corrupt Organizations 50

16. ---- Power of attorney holders, persons liable

Power of attorney granted to attorneys of seller of interests in gas wells/leases which gave attorneys power to perform acts on behalf of seller's company only to qualify company to do business in Pennsylvania or any other state did not rise to level necessary to bring attorneys within purview of Racketeer Influenced and Corrupt Organizations Act (RICO) section prohibiting person through pattern of racketeering activity to acquire control of any enterprise which engages in or affects interstate or foreign commerce. Martin v. Brown, W.D.Pa.1990, 758 F.Supp. 313. Racketeer Influenced And Corrupt Organizations 25

17. ---- Municipalities, persons liable

Municipal entities could be part of associated-in-fact enterprise charged under Racketeer Influenced and Corrupt Organizations Act (RICO); city itself was not alleged to have formed an unlawful intent, and instead common purpose was imputed to the city by way of the individual defendants' control, influence, and manipulation of city for their illicit ends. U.S. v. Cianci, C.A.1 (R.I.) 2004, 378 F.3d 71. Racketeer Influenced And Corrupt Organizations
School board could not be sued under Racketeer Influenced and Corrupt Organizations Act (RICO) based on alleged conspiracy with other defendants to rig bidding process for school board’s public contracts for their own private enrichment; school board, as a municipal entity, was incapable of forming criminal intent necessary to support alleged predicate offenses, and RICO’s mandatory treble damages could not properly be applied against municipal corporation as such damages are primarily and essentially punitive in nature and awarding punitive damages against taxpayers of municipal corporation whom RICO was designed to protect would be counterintuitive to very purpose of statute. Dammon v. Folse, E.D.La.1994, 846 F.Supp. 36. Racketeer Influenced And Corrupt Organizations

Municipal corporation is not subject to civil liability under the Racketeer Influenced and Corrupt Organizations Act (RICO) based on alleged pattern of racketeering activity and underlying predicate acts allegedly committed by its agents or employees; though municipal corporation is a “person” within meaning of RICO, it is incapable of forming the criminal intent necessary to support the alleged predicate offenses. Nu-Life Const. Corp. v. Board of Educ. of City of New York, E.D.N.Y.1991, 779 F.Supp. 248. Racketeer Influenced And Corrupt Organizations

Although municipality can be “person” under Racketeering Influenced Corrupt Organizations Act (RICO), it is incapable of criminal intent necessary to support alleged predicate offenses. Biondolillo v. City of Sunrise, S.D.Fla.1990, 736 F.Supp. 258. Racketeer Influenced And Corrupt Organizations

Township, as a municipality, was incapable of criminal intent necessary to commit an act of racketeering activity and therefore could not be held liable under RICO’s civil liability provision for its alleged fraudulent inducement of homeowners to purchase property near municipally owned landfill. Albanese v. City Federal Sav. and Loan Ass’n, D.N.J.1989, 710 F.Supp. 563. Racketeer Influenced And Corrupt Organizations

Municipal corporation is incapable of criminal intent necessary to support alleged predicate offenses, for purpose of imposing either direct or vicarious RICO liability. In re CitiSource, Inc. Securities Litigation, S.D.N.Y.1988, 694 F.Supp. 1069. Racketeer Influenced And Corrupt Organizations


18. ---- Partnerships, persons liable

Partnership may be held liable under Racketeer Influenced and Corrupt Organizations Act (RICO) for actions of its partner in conducting or participating in pattern of racketeering activity, so long as partnership and “enterprise” in question are not identical, so that non-identity rule is not implicated. Thomas v. Ross & Hardies, D.Md.1998, 9 F.Supp.2d 547. Racketeer Influenced And Corrupt Organizations
19. ---- Public officials, persons liable

It was reasonably foreseeable to city prosecutor that mayor would use the mails to file required annual statements of economic interest that failed to report funds which mayor had received from kickback scheme in which city prosecutor kicked back to mayor portion of payments received from city by his law firm, supporting city prosecutor's convictions for mail fraud and violation of Racketeer Influenced and Corrupt Organizations Act (RICO) based upon his participation in scheme. U.S. v. Genova, C.A.7 (Ill.) 2003, 333 F.3d 750, rehearing denied. Postal Service ☏ 35(20); Racketeer Influenced And Corrupt Organizations ☏ 7

A state or local government office or organization may properly be charged as a RICO “enterprise.” U.S. v. Qaoud, C.A.6 (Mich.) 1985, 777 F.2d 1105, certiorari denied 106 S.Ct. 1499, 475 U.S. 1098, 89 L.Ed.2d 899. Racketeer Influenced And Corrupt Organizations ☏ 46

Indictments alleging that various magistrates and constables had participated in bail bond agency's bribery scheme charged offenses under this chapter, and prosecution was not precluded by allegedly independent status of magistrates and constables. U.S. v. Forsythe, C.A.3 (Pa.) 1977, 560 F.2d 1127. Bribery ☏ 3; Bribery ☏ 6(1)

Village clerks were not liable under Racketeer Influenced and Corrupt Organizations Act (RICO), for conducting affairs of village court alleged to be RICO enterprise through pattern of racketeering activity or collection of unlawful debt, when their only role in alleged scheme to illegally ticket and fine motorists was to generate and process routine paperwork. Wood v. Incorporated Village of Patchogue of New York, E.D.N.Y.2004, 311 F.Supp.2d 344. Racketeer Influenced And Corrupt Organizations ☏ 64

Federal employees of Bureau of Land Management (BLM) were not entitled to dismissal of claim that they violated Racketeer Influenced and Corrupt Organizations Act (RICO) by engaging in a pattern of racketeering activity, i.e., extortion, under the color of official right in an attempt to force rancher to grant BLM an easement, on basis of qualified immunity, as illegality of alleged extortion was clearly established, in that unlawfulness of such acts was apparent under pre-existing law. Robbins v. Bureau of Land Management, D.Wyo.2003, 252 F.Supp.2d 1286. Racketeer Influenced And Corrupt Organizations ☏ 64

Allegations that mayor of city had assisted country club, which sought to develop golf course and relocate tenants at will, in seeking conditional use permit and had accepted bribes were insufficient to establish that mayor participated in operation or management of country club, as would allow mayor to be held liable under federal Racketeer Influenced and Corrupt Organizations Act (RICO) in action brought by tenants; participating in granting permit did not establish management role, and there were no allegations that mayor sought to control country club or direct its operations. Pedrina v. Chun, D.Hawai'i 1995, 906 F.Supp. 1377, affirmed 97 F.3d 1296, certiorari denied 117 S.Ct. 2441, 520 U.S. 1268, 138 L.Ed.2d 201. Racketeer Influenced And Corrupt Organizations ☏ 50

Chief deputy sheriff could not prevail on civil RICO claim against county, county political party, county commission chairman, and county party chairman based solely on allegation that those defendants received income


City officials were immune from civil claims under the Racketeer Influenced and Corrupt Organizations Act (RICO), insofar as claims were asserted against them in their official capacities. Lathrop v. Juneau & Associates, Inc. P.C., S.D.Ill.2004, 220 F.R.D. 330. Racketeer Influenced And Corrupt Organizations

Former husband who brought Racketeer Influenced and Corrupt Organizations Act (RICO) action against state court judges involved in his divorce proceeding could not circumvent the judicial immunity doctrine by enforcing RICO’s criminal provisions through its civil enforcement provision. Davit v. Davit, C.A.7 (Ill.) 2006, 173 Fed.Appx. 515, 2006 WL 786723, Unreported, rehearing en banc denied. Racketeer Influenced And Corrupt Organizations

20. ---- Derivative liability, persons liable

Investment banker could not be held derivatively criminally liable for violation of this chapter under theory of aiding and abetting in connection with alleged criminal conspiracy of employee and others to utilize privileged and confidential information regarding tender offeror’s plan to acquire target corporation's stock to defraud target corporation's shareholders who sold stock at prices below tender offer price subsequently announced where there had been no allegation and no fact asserted to suggest that investment banker associated itself with activities of alleged conspirators, and all of investment banker's acts operated to deter conspirators and made accomplishment of their goal more difficult. Moss v. Morgan Stanley Inc., S.D.N.Y.1983, 553 F.Supp. 1347, affirmed 719 F.2d 5, certiorari denied 104 S.Ct. 1280, 465 U.S. 1025, 79 L.Ed.2d 684. Commerce

21. ---- Respondeat superior, persons liable

Employer could not be held vicariously liable under doctrine of respondeat superior for its employees' alleged Racketeer Influenced and Corrupt Organizations Act (RICO) violations, where employer was named as the RICO enterprise. Miller v. Yokohama Tire Corp., C.A.9 (Cal.) 2004, 358 F.3d 616. Racketeer Influenced And Corrupt Organizations

There was no reason to disregard ordinary principles of respondeat superior in finding that insurance company was liable under RICO for participation in agent’s fraudulent scheme, where liability was imposed on insurance

company as a corporate “person” and there was abundant evidence that company actively promoted and sponsored the scheme and plainly benefited from it through increase in corporate income. Davis v. Mutual Life Ins. Co. of New York, C.A.6 (Ohio) 1993, 6 F.3d 367, rehearing denied, certiorari denied 114 S.Ct. 1298, 510 U.S. 1193, 127 L.Ed.2d 650. Racketeer Influenced And Corrupt Organizations 64

Alleged culpable involvement of corporation's vice president and marketing firm in fraudulent scheme did not reasonably lead to conclusion that it was corporate policy to promote or engage in illegal conduct, and thus that corporation and related entities should be held directly liable under Racketeer Influenced and Corrupt Organizations Act (RICO). Brady v. Dairy Fresh Products Co., C.A.9 (Cal.) 1992, 974 F.2d 1149. Racketeer Influenced And Corrupt Organizations 32

Wholesale automotive supply corporation, through which its employee defrauded retailer of automotive parts was not vicariously liable for employee's acts under civil RICO statute pursuant to doctrine of respondeat superior; actions by employee were not undertaken to benefit corporation, but rather corporation was also victimized by scheme. D & S Auto Parts, Inc. v. Schwartz, C.A.7 (Ill.) 1988, 838 F.2d 964, certiorari denied 108 S.Ct. 2833, 486 U.S. 1061, 100 L.Ed.2d 933. Racketeer Influenced And Corrupt Organizations 64

Bank could not be held liable, under theory of respondeat superior or vicarious liability, for any actions of its loan officers which violated Racketeer Influenced and Corrupt Organizations Act (RICO). Laro, Inc. v. Chase Manhattan Bank (Nat. Ass'n), S.D.N.Y.1994, 866 F.Supp. 132, affirmed 60 F.3d 810. Racketeer Influenced And Corrupt Organizations 64


Doctrine of respondeat superior does not apply to statute which makes it unlawful for “any person employed by or associated with any enterprise engaged in” interstate commerce to conduct “enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.” Collective Federal Sav. v. Creel, M.D.La.1990, 746 F.Supp. 1307. Racketeer Influenced And Corrupt Organizations 64

In RICO case in which horse breeding operation involved in sale of limited partnership interest was alleged to be an enterprise, allegations of RICO liability against employer under respondeat superior adequately alleged RICO violation to survive motion for summary judgment. Bloch v. Prudential-Bache Securities, W.D.Pa.1989, 707 F.Supp. 189. Federal Civil Procedure 2515

Lending bank, the “enterprise,” could not be held liable under doctrine of respondeat superior for employee’s violation of Racketeer Influenced and Corrupt Organizations Act section holding a person liable for conducting affairs of enterprise through a pattern of racketeering. Haroco, Inc. v. American Nat. Bank and Trust Co. of Chicago, N.D.Ill.1986, 647 F.Supp. 1026. Labor And Employment 3059
22. ---- Vicarious liability, persons liable

Georgia corporation was potentially liable to its legal hourly workers under state's Racketeer Influenced and Corrupt Organizations Act (RICO) based on its supervisors' and managers' alleged encouragement of illegal-immigrant employees to return to United States and reapply for work at corporation in violation of federal law, and those individuals' alleged knowing and reckless acceptance, as proof of eligibility for employment, of documents reflecting successive different names for single person. *Williams v. Mohawk Industries, Inc.*, C.A.11 (Ga.) 2005, 411 F.3d 1252, certiorari granted in part 126 S.Ct. 830, 546 U.S. 1075, 163 L.Ed.2d 705, certiorari dismissed as improvidently granted 126 S.Ct. 2016, 547 U.S. 516, 164 L.Ed.2d 776, on remand 465 F.3d 1277. *Corporations And Business Organizations* 2369; *Racketeer Influenced And Corrupt Organizations* 112

Even if bank employee conspired to violate Racketeer Influenced and Corrupt Organizations Act (RICO), her conduct in entering conspiracy was outside course and scope of her employment, in that such conduct was not type of function that bank hired employee to perform and was well beyond employee's job description as bank teller; therefore, bank could not be held vicariously liable under RICO for employee's conduct, and thus for acts of employee's alleged coconspirators that were the proximate cause of the alleged RICO injury, pursuant to doctrine of respondeat superior. *Oki Semiconductor Co. v. Wells Fargo Bank, Nat. Ass'n*, C.A.9 (Or.) 2002, 298 F.3d 768. *Conspiracy* 13

Where plaintiff alleged that corporation conducted subsidiary as “enterprise,” in violation of Racketeer Influenced and Corrupt Organizations (RICO) Act section proscribing conduct of affairs of enterprise through pattern of racketeering activity, subsidiary could not be held vicariously liable for any violation of that section committed by subsidiary's vice president. *Gasoline Sales, Inc. v. Aero Oil Co.*, C.A.3 (Pa.) 1994, 39 F.3d 70. *Racketeer Influenced And Corrupt Organizations* 64

Union could not be held vicariously liable under respondeat superior for conduct of union chairpersons in handling accounts which sales representatives alleged reflected favoritism, as required for Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy claim against union; union did not have knowledge of or participate in any alleged predicate offenses, and union did not benefit from alleged conspiracy. *Marceau v. International Broth. of Elec. Workers*, D.Ariz.2009, 618 F.Supp.2d 1127. *Conspiracy* 13; *Racketeer Influenced And Corrupt Organizations* 64

Hosiery manufacturer could not be held vicariously liable, under Racketeer Influenced and Corrupt Organizations Act (RICO), for employee's alleged participation in purported scheme to defraud company engaged in wholesale close-out business, given that employee was not officer or director of manufacturer, there were no allegations of substantial participation in alleged scheme by manufacturer's employees or that anyone else there was informed about alleged scheme, and although manufacturer likely was benefitted by employee's actions, there was no evidence that it was aware such benefits were related to fraudulent scheme. *USA Certified Merchants, LLC v. Koebel*, S.D.N.Y.2003, 262 F.Supp.2d 319, reconsideration denied 273 F.Supp.2d 501. *Racketeer Influenced And Corrupt Organizations* 64

Parent company can be held vicariously liable under Racketeer Influenced and Corrupt Organizations Act

Local union was not vicariously liable for its officers’ alleged activity in violation of section of Racketeer Influenced and Corrupt Organizations Act (RICO) prohibiting person employed by or associated with enterprise engaged in interstate commerce from conducting enterprise’s affairs through pattern of racketeering activity, to extent that complaint alleged that local union was “enterprise”; holding local union vicariously liable for its officers’ alleged activity would violate requirement that “person” and “enterprise” be distinct. National Elec. Ben. Fund v. Heary Bros. Lightning Protection Co., Inc., W.D.N.Y.1995, 931 F.Supp. 169. Racketeer Influenced And Corrupt Organizations

Organization which is not alleged Racketeer Influenced and Corrupt Organizations Act (RICO) enterprise, and that derives benefit from its representative's wrongful acts, may be held vicariously liable for such acts, under RICO section proscribing person associated with enterprise from participating in enterprise's affairs though pattern of racketeering activity. Crowe v. Smith, W.D.La.1994, 848 F.Supp. 1258. Racketeer Influenced And Corrupt Organizations

Racketeer Influenced and Corrupt Organizations Act (RICO) distinctiveness rule, whereby “person” charged with conducting or participating in affairs of “enterprise” through pattern of racketeering activity must be distinct from “enterprise” which associated with or employed defendant “person,” arises from notion that RICO sanctions should be directed at persons who conduct racketeering activity, rather than enterprise through which activity is conducted and this rule ensures that corporate defendant also named as enterprise will not be held vicariously liable for actions of its employees. Standard Chlorine of Delaware, Inc. v. Sinibaldi, D.Del.1992, 821 F.Supp. 232. Racketeer Influenced And Corrupt Organizations

Enterprise cannot be held vicariously liable under doctrine of respondeat superior for violations of section of Racketeer Influenced and Corrupt Organizations Act (RICO) committed by its employee where employee is named in complaint as having conducted affairs of the enterprise through pattern of racketeering activity; holding enterprise vicariously liable would effectively circumvent statute's requirement that defendant “person” be separate and distinct from the “enterprise.” Arioli v. Prudential-Bache Securities, Inc., E.D.Mich.1993, 811 F.Supp. 303. Racketeer Influenced And Corrupt Organizations

School district and its division of school buildings could not be held civilly liable pursuant to the Racketeer Influenced and Corrupt Organizations Act (RICO) for alleged conduct of their employees in demanding “kick-backs” from contractors and allegedly retaliating for failure to pay kick-backs; the board and its division were not capable of forming criminal intent necessary for the commission of predicate violations of Hobbs Act. Nu-Life Const. Corp. v. Board of Educ. of City of New York, E.D.N.Y.1991, 779 F.Supp. 248. Racketeer Influenced And Corrupt Organizations

Law firm was not vicariously liable under § 1962(c) of Racketeer Influenced and Corrupt Organizations Act (RICO) for conduct of one of its general partners, as firm was alleged to be “enterprise” and was distinct from partner as RICO “person.” Collective Federal Sav. v. Creel, M.D.La.1990, 746 F.Supp. 1307. Racketeer Influenced And Corrupt Organizations
enced And Corrupt Organizations 38; Racketeer Influenced And Corrupt Organizations 64

Where futures commission merchant and its parent corporation were not the “enterprise” for purposes of § 1962(c) RICO claim, but were alleged to be persons whose combination with particular office of the merchant formed the enterprise, vicarious liability of merchant and parent was not precluded, and to the extent either of them was alleged to be the enterprise for purposes of a § 1962(a) or (b) claim, those claims could proceed on respondeat superior theory where there was evidence that at least some of the allegedly improper employee acts were intended to benefit the corporations and not just the employee. In re ContiCommodity Services, Inc., Securities Litigation, N.D.Ill.1990, 733 F.Supp. 1555, reversed in part 976 F.2d 1104, affirmed in part 63 F.3d 438, rehearing denied, certiorari denied 116 S.Ct. 1318, 134 L.Ed.2d 471. Racketeer Influenced And Corrupt Organizations 64

23. ---- Successor liability, persons liable

Even if bank was aider and abettor of real estate developer's predicate securities fraud violation, bank's purchaser could not be held liable in civil Racketeer Influenced and Corrupt Organizations Act (RICO) action on successor liability theory, where contract for sale of bank did not obligate purchaser for unknown contingent liabilities, and purchaser made major changes at highest levels which did not make second bank mere continuation of first. Rodriguez v. Banco Cent., D.Puerto Rico 1991, 777 F.Supp. 1043, affirmed 990 F.2d 7. Racketeer Influenced And Corrupt Organizations 64

Even if bank was aider and abettor of real estate developer's predicate securities fraud violation, bank's purchaser could not be held liable in civil Racketeer Influenced and Corrupt Organizations Act (RICO) action on successor liability theory, where contract for sale of bank did not obligate purchaser for unknown contingent liabilities, and purchaser made major changes at highest levels which did not make second bank mere continuation of first. Rodriguez v. Banco Cent., D.Puerto Rico 1991, 777 F.Supp. 1043, affirmed 990 F.2d 7. Racketeer Influenced And Corrupt Organizations 64

24. Separate and distinct offenses


Evidence supported finding that the Racketeer Influenced and Corrupt Organizations (RICO) Act enterprise was separate and distinct from what was necessary to commit the predicate RICO offense, where the defendant placed ads listing his name and his law office's phone number in order to entice potential borrowers into calling, and utilized his office staff to insure phones were answered, which caused loan applicants to perceive defendant as person in charge, even though defendant deferred to an accomplice's judgment as to how far to proceed with each individual loan applicant, and for their joint efforts, the defendant and accomplice split the profits. Diamonds Plus, Inc. v. Kolber, C.A.8 (Ark.) 1992, 960 F.2d 765. Racketeer Influenced And Corrupt Organizations 42


Substantive and conspiracy violations of *Racketeer Influenced and Corrupt Organizations Act* charged in Florida indictment were distinct from those for which defendants previously were prosecuted in New York, inasmuch as New York indictment involved efforts of Mafia family to establish and maintain criminal empire in New York/New Jersey area, while Florida indictment involved a “joint venture” by members of several Mafia families to conduct various criminal activities on west coast of Florida, and thus defendants were not entitled to a dismissal of Florida indictment on grounds of double jeopardy. *U.S. v. Ruggiero*, C.A.11 (Fla.) 1985, 754 F.2d 927, certiorari denied 105 S.Ct. 2661, 471 U.S. 1127, 86 L.Ed.2d 277, certiorari denied 105 S.Ct. 2679, 471 U.S. 1137, 86 L.Ed.2d 697. *Double Jeopardy* 186

Substantive count of extortion was not included within conspiracy count under this chapter charging agreement to commit the extortion, as well as other acts, where conspiracy count required proof of the conspiracy but did not require proof of extortion, and extortion charge required proof of actual commission of, or attempt to commit, the extortion but did not require proof of conspiracy. *U.S. v. DeVincent*, C.A.1 (Mass.) 1980, 632 F.2d 155, certiorari denied 101 S.Ct. 1522, 450 U.S. 984, 67 L.Ed.2d 820. *Indictment And Information* 191(.5)

Motorists' alleged injuries arising from village officials' illegal scheme to enforce traffic laws without authorization were not separate and independent from officials' alleged predicate acts, and thus were insufficient to state motorists' claim under *Racketeer Influenced and Corrupt Organizations Act* (RICO) for “acquisition or maintenance” of enterprise through pattern of racketeering activity, despite motorists' contention that traffic tickets issued by officials resulted in their absence from work and school. *Brewer v. Village of Old Field*, E.D.N.Y.2004, 311 F.Supp.2d 390. *Racketeer Influenced And Corrupt Organizations* 63

If distinct statutory violations are found, predicate acts will be considered to be distinct, irrespective of circumstances under which they arose, for purpose of finding pattern of racketeering activity under Racketeer Influenced and Corrupt Organizations Act (RICO). Colonial Penn Ins. Co. v. Value Rent-A-Car Inc., S.D.Fla.1992, 814 F.Supp. 1084. Racketeer Influenced And Corrupt Organizations 26

Alleged improprieties in scheme to defraud insurance company spanned five-year period in which claims adjuster participated in more than 180 fraudulent automobile accident claims, and, thus, acts of fraud were clearly separated both in time and space as necessary to plead required pattern of racketeering activity. Federal Ins. Co. v. Parello, N.D.Ill.1991, 767 F.Supp. 157. Racketeer Influenced And Corrupt Organizations 27; Racketeer Influenced And Corrupt Organizations 29

Acts that are part of same scheme or transaction can qualify as distinct predicate acts for purposes of federal racketeering statute. Dah Chong Hong, Ltd. v. Silk Greenhouse, Inc., M.D.Fla.1989, 719 F.Supp. 1072. Racketeer Influenced And Corrupt Organizations 25

Manufacturer of farm grain and manure storage systems did not engage in conduct prohibited by RICO on theory that it “conducted” affairs of dealer and others when each of the “enterprises” were separate and distinct. Agristor Leasing v. Meuli, D.Kan.1986, 634 F.Supp. 1208. Racketeer Influenced And Corrupt Organizations 49

Effect of this chapter is to create separate offense for commission of certain crimes, which are themselves separately indictable, where crimes are committed by an employee or associate of an enterprise in the conduct of its affairs. Baines v. Superior Court In and For Pima County, Ariz.App.1984, 688 P.2d 1037, 142 Ariz. 145. Racketeer Influenced And Corrupt Organizations 1

25. Lesser included offenses


26. Prior conviction for predicate offense

Congress intended to permit conduct which had resulted in a prior conviction to be used as a predicate act of racketeering activity to support subsequent convictions under RICO [18 U.S.C.A. § 1962(c, d)]. U.S. v. Persico, C.A.2 (N.Y.) 1985, 774 F.2d 30. Criminal Law 29(5.5)

Even if offenses which led to prior convictions were within the pattern of racketeering activity described in the indictment charging defendant with a violation of this chapter, the facts underlying those prior convictions could be used as overt acts in the charge under this chapter. U. S. v. Phillips, C.A.5 (Fla.) 1981, 664 F.2d 971, certiorari denied 102 S.Ct. 2965, 457 U.S. 1136, 73 L.Ed.2d 1354, certiorari denied 103 S.Ct. 208, 459 U.S. 906, 74 L.Ed.2d 166. Racketeer Influenced And Corrupt Organizations 6
Conviction under this chapter may be based in part upon predicate offense for which defendant has already been convicted and served sentence. U. S. v. Hawkins, C.A.5 (Tex.) 1981, 658 F.2d 279. Racketeer Influenced And Corrupt Organizations

Issuer and stockholder in issuer could not bring action against investor for violation of this chapter where there was no allegation that investor had been criminally convicted for its conduct. Atlantic Federal Sav. and Loan Ass’n of Fort Lauderdale v. Dade Sav. and Loan Ass’n, S.D.Fla.1984, 592 F.Supp. 1089. Racketeer Influenced And Corrupt Organizations

27. Practice and procedure in criminal actions

See Notes of Decisions under section 1963 of this title.

Government presenting statements defendant made over telephone to immigration agent in prosecution for Racketeer Influenced and Corrupt Organizations Act (RICO) and weapons offenses did not breach proffer agreement indicating government would not offer statements made by defendant at meetings; agreement provided it was limited to statements made at meetings and not to any oral, written, or recorded statements made at other times. U.S. v. Gomez, C.A.2 (N.Y.) 2013, 705 F.3d 68, petition for certiorari filed 2013 WL 1419285. Criminal Law

Defendant's proposed jury instruction on withdrawal from a conspiracy was not warranted, in prosecution for conspiracy to commit a Racketeer Influenced and Corrupt Organizations Act (RICO) violation, based on his conduct in telling a state corrections department official that he was no longer part of a gang; defendant's statement was not sufficiently particular to enable authorities to end the conspiracy, and he never informed gang members that he wanted to withdraw. U.S. v. Randall, C.A.10 (Kan.) 2011, 661 F.3d 1291. Conspiracy

Venue was proper in the District Court for the Eastern District of New York with respect to securities fraud conspiracy and Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy counts against defendants, where defendants transmitted confidential information to residents of the Eastern District of New York, which caused those residents to take action that materially furthered the ends of the conspiracy. U.S. v. Royer, C.A.2 (N.Y.) 2008, 549 F.3d 886, certiorari denied 130 S.Ct. 83, 558 U.S. 934, 175 L.Ed.2d 237, certiorari denied 130 S.Ct. 85, 558 U.S. 935, 175 L.Ed.2d 237. Criminal Law

Defendant could not rely on Sixth Amendment right to confront the United States' witnesses o vacate his sentence for narcotics conspiracy, Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy, and various gun charges, where in pleading guilty he expressly waived the right. U.S. v. Dodd, D.D.C.2011, 828 F.Supp.2d 39. Criminal Law

Corporation's state law claims against unions were not subject to dismissal pursuant to doctrine of insubstantiality, where corporation stated legally sufficient claims for relief under Racketeer Influenced and Corrupt Organizations Act (RICO), and it did not appear that corporation had brought RICO claims as pretext to allow for lit-

Scope of former grocery store employee's discovery regarding alleged illegal payments to union, supportive of his Racketeer Influenced and Corrupt Organizations Act (RICO) claims against employer, would be limited to alleged violations from date store opened to date employee stopped pursuing his grievance internally, and limited to store he where he worked, unless employee established any merit to his assertions of RICO violations during the time frame and could show that RICO predicate acts could be prevalent chain-wide. Paul v. Winco Holdings, Inc., D.Idaho 2008, 249 F.R.D. 643. Federal Civil Procedure

Testimony suggesting defendant had role in disappearance of codefendant's girlfriend did not unfairly surprise defendant and deprive him of his right to identify nature of charges against him, in prosecution under the Racketeer Influenced and Corrupt Organizations Act (RICO), insofar as girlfriend's murder was alleged as racketeering act in indictment, testimony about defendant's role in disappearance was integral part of testimony about that act, and testimony tended to show existence of RICO enterprise. U.S. v. Garland, C.A.6 (Ohio) 2008, 320 Fed.Appx. 295, 2008 WL 2939507, Unreported. Criminal Law

28. Practice and procedure in civil actions

See Notes of Decisions under section 1964 of this title.

Property owners' complaint, asserting state law contract and fraud claims against bank, with one-sentence reference to Racketeer Influenced and Corrupt Organizations Act (RICO) indicating that owners claimed bank violated RICO, “which claim, if made in a proper court, would call for triple damages and attorney fees,” did not raise issue of federal law capable of creating federal question jurisdiction, as required for removal, where complaint did not address substance of any RICO claim but rather, reference to RICO was mere aberrational insert from prior draft complaint prepared by third party for owners' counsel. Nansemond Wharf-Suffolk Properties, LLC v. Bank of Southside Virginia, E.D.Va.2011, 780 F.Supp.2d 453. Removal Of Cases


Corporation alleging civil violations of Racketeer Influenced and Corrupt Organizations Act (RICO) would not be allowed to conduct discovery in order to particularize their allegations of defendant's predicate acts prior to dismissal of complaint for failure to state a claim, where there were no allegations that defendants purposely retained information through illegal means, plaintiff had ongoing state court action for breach of contract against defendant which involved extensive discovery, it was unlikely, given allegations, that defendant actually used interstate mail or telecommunications facilities to perpetuate fraud, and case involved partnership dispute rather than racketeering activities. Trinidad v. IDI Holdings PR, Inc., D.Puerto Rico 2005, 708 F.Supp.2d 137. Federal Civil Procedure
Colorado River abstention was not warranted in pharmacy management firm's action alleging that workers' compensation insurers and claims administrators violated Racketeer Influenced and Corrupt Organizations Act (RICO) by conspiring to drive it out of business through collusive and systematic campaign of sham litigation, fraudulent objections, and dilatory conduct, even though insurer had filed state court action against firm alleging causes of action for unlicensed and illegal operation and management of pharmacies and for unlawful referral and fee-splitting arrangements with physicians, where claims asserted in state court were not particularly relevant to firm's civil RICO claims. California Pharmacy Management, LLC v. Zenith Ins. Co., C.D.Cal.2009, 669 F.Supp.2d 1152. Federal Courts ☞ 47.1

Facts underlying plaintiff's Racketeer Influenced and Corrupt Organizations Act (RICO) claims were so inextricably tied up with the facts giving rise to her state-law claims as to preclude remand of state law claims; complaint incorporated state-law allegations by reference in two RICO counts, and counts were all part of the same case or controversy. Doe v. Norwich Roman Catholic Corp., D.Conn.2009, 606 F.Supp.2d 244. Federal Courts ☞ 15; Removal Of Cases ☞ 102

29. Tribal sovereign immunity

Doctrine of sovereign immunity barred claims against Indian tribe's business council for alleged violations of Racketeer Influenced and Corrupt Organizations Act (RICO); business council was arm of tribal government, RICO contains no language that suggests Congress “unequivocally” waived Indian tribes' sovereign immunity, and there was no evidence of tribal waiver. Smith v. Babbitt, D.Minn.1995, 875 F.Supp. 1353, affirmed , appeal dismissed in part 100 F.3d 556, rehearing and suggestion for rehearing en banc denied, certiorari denied 118 S.Ct. 46, 522 U.S. 807, 139 L.Ed.2d 12. Indians ☞ 235

30. Private right of action

Extortion is federal crime, and there is no federal statute creating private civil cause of action for extortion. Matthon v. Feldstein, E.D.N.Y.2004, 303 F.Supp.2d 317. Torts ☞ 436


31. Settlements

District court's award of $29,950,000 in attorney fees was not abuse of discretion following insurer's settlement of class action alleging that insurance carriers and insurance brokers violated Sherman Act, Racketeer Influenced and Corrupt Organizations Act (RICO), and state law by conspiring to defeat competition in insurance
market by bid rigging and allocating or steering customers in exchange for high brokerage commissions, where settlement fund was $100 million, settlement agreement would not be reduced by awarding attorney fees and expenses, attorneys billed 200,000 hours prior to settlement, and lodestar multiplier was less than one. In re Ins. Brokerage Antitrust Litigation, C.A.3 (N.J.) 2009, 579 F.3d 241. Antitrust And Trade Regulation 990; Racketeer Influenced And Corrupt Organizations 82

Proposed settlement of consumers' class action against website owner alleging violations of state and federal consumer protection laws was fundamentally fair, adequate, and reasonable, and thus would be approved by court; estimated total value of benefits to the class exceeded $2.65 million, with each class member receiving either a 20% off code or a combination of a $15 credit and a settlement fund disbursement, benefits were fair given the uncertainties of trial, costs, risks, and delays associated with continued litigation as well as potential weaknesses in plaintiffs' case, only 62 of over one million class members had filed timely requests to opt-out, and the settlement's cy pres award was tethered to the nature of the consumers' lawsuit. Cox v. Clarus Marketing Group, LLC, S.D.Cal.2013, 2013 WL 1797028. Compromise and Settlement 64; Deposits in Court 11

Proposed settlement of tenants' Racketeer Influenced and Corrupt Organizations Act (RICO) and New York Consumer Protection Act (NYCPA) class action against landlord of rent-regulated apartments in New York was fair, adequate, and reasonable to the class as a whole, despite fact that it did not cover cost of named plaintiff objectors' counsel, and did not provide for incentive compensation to class representatives; these individual items were the product of extended negotiations involving hundreds of issues, so alone did not render the agreement unfair. Charron v. Pinnacle Group N.Y. LLC, S.D.N.Y.2012, 874 F.Supp.2d 179. Compromise and Settlement 61; Compromise and Settlement 64

Proposed settlement of RICO suit by Chapter 7 debtors and trustee against bank and officers, under which bank would pay estate $56,500 and would withdraw all claims against estate, was approved; bank had filed unsecured claim of over $265,000, suit faced substantial legal problems, suit, which was based on allegation that bank and officers made false representations to induce debtors to purchase farm property in which bank had interests, relied upon credibility of debtors, who could be impeached, and debtors, who had not yet paid attorney in bankruptcy case, had no money to finance continuation of litigation. In re Langley, Bkrtcy.E.D.Wis.1988, 86 B.R. 977. Bankruptcy 3033

32. Territorial application

Pattern of alleged racketeering activity against United States businessmen operating media companies in the Republic of Kazakhstan was insufficient to support extraterritorial application of Racketeer Influenced and Corrupt Organizations Act (RICO) against Kazakh officials and their United States associate; even if defendants had laundered extortion money through accounts in the United States, their alleged campaign of harassment and intimidation against plaintiffs took place entirely in Kazakhstan, as did any alleged extortion of plaintiffs' Kazakh assets. Hourani v. Mirtchev, D.D.C.2013, 2013 WL 1901013. Racketeer Influenced and Corrupt Organizations 23

United States petroleum corporation's action alleging that New York attorney who represented indigenous peoples of Amazonian rain forest in environmental litigation against corporation in the Republic of Ecuador
(ROE) and others based in the United States, conceived, substantially executed, largely funded, and significantly
directed scheme to extort and defraud corporation, did not assert claims that were essentially extraterritorial in
focus, and thus dismissal of claims against attorney and law firm under Racketeer Influenced and Corrupt Or-
ganizations Act (RICO) was not warranted on that ground; scheme allegedly was conceived and orchestrated in
and from the United States in order wrongfully to obtain money from company organized under laws of and
headquartered in United States, and to cover up unlawful and improper activities, and acts in its furtherance
were committed in United States by Americans and in Ecuador by both Americans and Ecuadorians. Chevron

While aspects of racketeering activity by a permanent resident of Peru, specifically wire fraud, allegedly took
place in the United States, plaintiff's Racketeer Influenced and Corrupt Organizations Act (RICO) allegations
exceeded the territorial reach of the statute, which did not apply extraterritorially, where the alleged enterprise
consisted of the resident and three companies located and incorporated in Peru. Sorota v. Sosa, S.D.Fla.2012,
842 F.Supp.2d 1345. Racketeer Influenced and Corrupt Organizations 23

Colorado borrowers' action alleging that Canadian attorney and his law firm participated in enterprise designed
to defraud borrowers through advance fee lending scheme did not assert claims that were essentially extraterrit-
orial in focus, and thus dismissal of claims against attorney and law firm under Racketeer Influenced and Cor-
rupt Organizations Act (RICO) was not warranted on that ground, where alleged racketeering activity was direc-
ted at and largely occurred within United States, enterprise's goal was to extract money from American borrow-
ers through phony loan scheme, attorney allegedly used telephone, mail, and email communications directed to
potential borrowers in United States, and enterprise sent agent to Colorado to inspect property and hired attorney
in Colorado to assist with loan process. CGC Holding Co., LLC v. Hutchens, D.Colo.2011, 824 F.Supp.2d 1193,
motion to certify appeal denied 896 F.Supp.2d 970. Racketeer Influenced and Corrupt Organizations 23

Racketeer Influenced and Corrupt Organizations Act (RICO) did not have extraterritorial application to claim
based on English cigarette manufacturer's foreign racketeering activities, despite communications between man-
ufacturer and United States companies and organizations, visits made to United States by its scientists and offi-
cials, and its involvement with experimental farm in North Carolina, where United States never argued that man-
ufacturer's domestic activity provided adequate basis for RICO liability. U.S. v. Philip Morris USA, Inc.,

Racketeer Influenced and Corrupt Organizations Act (RICO) did not apply extraterritorially in an action brought
by a citizen of Venezuela against persons and entities associated with the government of Venezuela, who al-
legedly arranged to have the citizen unjustifiably imprisoned for almost three years in Venezuela; nowhere did
the statute evidence any concern with foreign enterprises, let alone a concern sufficiently clear to overcome a
presumption against extraterritoriality. Cedeno v. Intech Group, Inc., S.D.N.Y.2010, 733 F.Supp.2d 471, af-

Racketeer Influenced and Corrupt Organizations Act (RICO) did not apply extraterritorially to conduct of ex-
porters of Australian-grown wheat to Iraq, who allegedly participated in a bribery and money laundering con-
spiracy to achieve, maintain, and exploit a monopoly on wheat sold in Iraq, and to foreclose the market to
U.S.-grown wheat; although exporter's use of a United States bank facility to facilitate kickbacks to Iraqi govern-
ment may have directly furthered the alleged RICO conspiracy, the consummation of that conspiracy, and the
alleged market foreclosure that resulted, was, at most, only a “but for” cause of the drop in domestic wheat
prices complained of by domestic wheat farmers, who thus could not establish that exporter's conduct was the
And Corrupt Organizations ☞ 62

33. Limitations

Buyer of allegedly counterfeit rare wine was on inquiry notice of alleged injury, giving rise to civil claim under
Racketeer Influenced and Corrupt Organizations Act (RICO) such that claim against auction house that sold
wine accrued, and four-year limitations period thus began to run, no later than when buyer submitted wine for
testing, where at time of testing buyer feared that wine was not authentic bottle from collection of early-19th
century President, auction house's role in controversy over whether wine was counterfeit was well publicized in
press reports, and buyer became aware of lawsuit in German court accusing man who supposedly found the wine
and from whom buyer purchased wine of forging the bottle, based on testing that dated wine to 1960. Koch v.
Christie's Intern. PLC, C.A.2 (N.Y.) 2012, 699 F.3d 141. Limitation of Actions ☞ 95(3); Limitation of Ac-
tions ☞ 100(11)

Four-year statute of limitations on Racketeer Influenced and Corrupt Organizations Act (RICO) claims against
bank, law firms and persons connected with bank and firms, arising out of executor's looting of estate, began to
run no later than when estate knew that executor had looted estate and that bank's employees were trying to pre-
vent further investigation of executor, on implausible, suspicion-arousing grounds that everything would be ex-
plained in due course and that further exposure of skullduggery would injure county's good name. Jay E. Hayden
Foundation v. First Neighbor Bank, N.A., C.A.7 (Ill.) 2010, 610 F.3d 382. Limitation Of Actions ☞ 95(3)

Although a substantive Racketeer Influenced and Corrupt Organizations Act (RICO) charge is barred by limita-
tions as to any defendant unless that defendant committed a predicate act within the five-year limitations period,
a RICO conspiracy is complete, thus commencing the running of the five-year statute of limitations, only when
the purposes of the conspiracy have either been accomplished or abandoned. U.S. v. Yannotti, C.A.2 (N.Y.)
2008, 541 F.3d 112, certiorari denied 129 S.Ct. 1648, 173 L.Ed.2d 999, post-conviction relief denied 2011 WL

Complaint stated claim for equitable tolling of Racketeer Influenced and Corrupt Organizations Act (RICO) lim-
itations period for union pension fund's civil conspiracy claim against former trustee and shop steward; com-
plaint alleged that due to the wrongful concealment of defendants' unlawful conduct, fund could not have dis-
covered the injury that underlied the RICO claims until publicly disclosed when criminal proceedings involving
defendants and others were unsealed. New York Dist. Council of Carpenters Pension Fund v. Forde,
S.D.N.Y.2013, 2013 WL 1454954. Limitation of Actions ☞ 104(2); Limitation of Actions ☞ 104.5

Under separate accrual rule, electrical subcontractor's cause of action against developer for Racketeer Influenced
and Corrupt Organizations Act (RICO) violations accrued, and four-year limitations period began to run, upon
completion of subcontractor's work on building project, since it was at that point that subcontractor suffered in-
jury of nonpayment for work it had performed; even though subcontractor had performed a series of contracts with developer, and although some of the projects had been completed outside of limitations period, separate accrual rule allowed for claims to be segregated by project completion date, for purposes of statute of limitations. Sunlight Elec. Contracting Co., Inc. v. Turchi, E.D.Pa.2013, 918 F.Supp.2d 392. Limitation of Actions (58(1)

Insurer adequately alleged that it discovered, and should have discovered, injury from diagnostic-service providers' scheme to submit fraudulent payment claims for services rendered to insureds within four years of bringing action against providers under Racketeer Influenced and Corrupt Organizations Act (RICO), as required to state timely RICO claims. Cambridge Medical, P.C. v. Allstate Ins. Co., E.D.N.Y.2012, 899 F.Supp.2d 227. Limitation of Actions (100(12)

Sales representatives' Racketeer Influenced and Corrupt Organizations Act (RICO) claims against employers, union and union agents accrued, and four year statute of limitations began to run, when sales representatives first had actual or constructive knowledge of preferential treatment provided to union agents by employers and union. Marceau v. International Broth. of Elec. Workers, D.Ariz.2009, 618 F.Supp.2d 1127. Limitation Of Actions (95(3)

Insured's civil Racketeer Influenced and Corrupt Organizations Act (RICO) claim against health insurance broker and marketer alleging scheme to sell "junk" health insurance policies accrued, under discovery rule, and four-year statute of limitations began to run, when insured's claim was denied, rather than at point when insured originally signed up for health insurance coverage, since it was only when claim was denied that insured became aware of her injury. Croteau v. National Better Living Ass'n, Inc., D.Mont.2013, 290 F.R.D. 521. Limitation of Actions (95(3)

Commercial bribery activities of former employee, former licensing agent, and business partners had not been fraudulently concealed during limitations period for professional wrestling promoter's claim under Racketeer Influenced and Corrupt Organizations Act (RICO), and promoter had sufficient storm warnings for limitations period to run, where, among other things, promoter had received complaint from incumbent licensee that its bid on license renewal was not being seriously considered and another licensee had complained that promoter had granted license to defendant that had conflicted with promoter's prior agreement with that licensee. World Wrestling Entertainment, Inc. v. Jakks Pacific, Inc., C.A.2 (N.Y.) 2009, 328 Fed.Appx. 695, 2009 WL 1391807, Unreported. Limitation Of Actions (104(2); Limitation Of Actions (104(3)

34. Detrimental reliance, generally

Former clients of lawyer and two law firms with which he was associated were not required to demonstrate detrimental reliance when alleging injuries that resulted from wire and mail fraud under the Racketeer Influenced and Corrupt Organizations Act (RICO); overruling Summit Props. Inc. v. Hoechst Celanese Corp., 214 F.3d 556. St. Germain v. Howard, C.A.5 (La.) 2009, 556 F.3d 261, certiorari denied 129 S.Ct. 2835, 174 L.Ed.2d 554. Racketeer Influenced And Corrupt Organizations (62

35. Affirmative defenses

Statutory exemption for on-reservation sales of unstamped cigarettes to Native Americans for personal consumption, as permitted by New York law, was affirmative defense in Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy prosecution based on alleged predicate violations of the Contraband Cigarettes Trafficking Act (CCTA) provision barring the sale of cigarettes lacking tax stamp required by state law; sales to exempt individuals was not an element of the charged crime that government was required to disprove. U.S. v. Morrison, E.D.N.Y. 2009, 596 F.Supp.2d 661, as amended, on reconsideration in part 706 F.Supp.2d 304, reversed and remanded 686 F.3d 94, certiorari denied 133 S.Ct. 955, 184 L.Ed.2d 729. Conspiracy ☞ 38

II. OFFENSES GENERALLY

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Predominant elements in substantive Racketeer Influenced and Corrupt Organizations Act (RICO) violation are: (1) conduct (2) of enterprise (3) through pattern of racketeering activity. Salinas v. U.S., U.S.Tex.1997, 118 S.Ct. 469, 522 U.S. 52, 139 L.Ed.2d 352. Racketeer Influenced And Corrupt Organizations

Insurance purchasers who sued insurers and brokers in connection with purported scheme to allocate purchasers among particular groups of insurers failed to allege actionable “enterprise” as to broker-centered activities, as required to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO); allegations as to steering of potential clients to preferred insurer-partners did not plausibly imply concerted “hub and spoke” activity by defendants, as opposed to merely parallel conduct. In re Insurance Brokerage Antitrust Litigation, C.A.3 (N.J.) 2010, 618 F.3d 300. Racketeer Influenced And Corrupt Organizations

To make out violation of Racketeer Influenced and Corrupt Organizations Act (RICO), it is necessary to demonstrate (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. McDonald v. Schencker, C.A.7 (Ill.) 1994, 18 F.3d 491. Racketeer Influenced And Corrupt Organizations

In order to establish Racketeer Influenced and Corrupt Organization Act violation, it is necessary to allege that defendant being employed by or associated with enterprise engaged in or affecting interstate commerce conduc-
ted or participated in conduct of affairs of enterprise through pattern of racketeering activity. Matter of Lewis-

Essential element of violation of this section is commission of two or more predicate acts, all of which are
crimes under state or federal law, and defendant may be punished separately for violations of this chapter and
910, 71 L.Ed.2d 449, rehearing denied 102 S.Ct. 2024, 456 U.S. 951, 72 L.Ed.2d 476, certiorari denied 102
S.Ct. 1442, 455 U.S. 945, 71 L.Ed.2d 657, rehearing denied 102 S.Ct. 1998, 456 U.S. 939, 72 L.Ed.2d 460, re-
hearing denied 102 S.Ct. 1999, 456 U.S. 939, 72 L.Ed.2d 460. Commerce ☞ 82.6; Racketeer Influenced And
Corrupt Organizations ☞ 6

In prosecution on substantive charge under this section, government must prove: existence of enterprise; that en-
terprise affected interstate commerce, that defendant was employed by or associated with enterprise; that he par-
ticipated in conduct of affairs of enterprise; and that he participated through pattern of racketeering activity. U. S. v. Martino, C.A.5 (Fla.) 1981, 648 F.2d 367, on reconsideration in part 650 F.2d 651, certiorari denied 102
S.Ct. 2006, 456 U.S. 16, 78 L.Ed.2d 474, certiorari denied 102 S.Ct. 2020, 456 U.S. 939, 72 L.Ed.2d 460, re-
enced And Corrupt Organizations ☞ 3

This chapter seeks to bar the investment of racketeering moneys, the acquisition of property through a pattern of
racketeering activity or unlawful debt collection, the conduct of an enterprise through a pattern of racketeering
or unlawful debt collection, and any conspiracy to commit those acts. U. S. v. Rone, C.A.9 (Cal.) 1979, 598 F.2d
564, certiorari denied 100 S.Ct. 1345, 445 U.S. 946, 63 L.Ed.2d 780. Racketeer Influenced And Corrupt Organiza-
tions ☞ 2

Crucial elements which government must prove to sustain conviction under this section are the defendant's asso-
1976, 532 F.2d 436. Racketeer Influenced And Corrupt Organizations ☞ 25; Racketeer Influenced And Cor-
rupt Organizations ☞ 50

Owner of online real estate database failed to allege Racketeer Influenced and Corrupt organizations Act (RICO)
enterprise based on licensee's alleged criminal copyright infringement in sublicensing its passcode and user ID,
through unauthorized user's sale of passcode for the database to others; owner failed to allege organizational
framework of the enterprise, or that all defendants committed criminal copyright infringement. CoStar Realty In-

Allegation in Racketeer Influenced and Corrupt Organizations Act (RICO) indictment that defendant extorted
victim for benefit of another defendant, who was not charged with that racketeering act, would not be stricken as
surplusage, despite any prejudice to defendant; proof of defendant's motive would be probative of vertical re-
Claim alleging pattern of racketeering under Racketeer Influenced and Corrupt Organizations Act (RICO) requires proof of four elements: existence of enterprise affecting interstate commerce; defendant was employed by or associated with enterprise; defendant participated, directly or indirectly, in the conduct or affairs of the enterprise; and defendant participated through pattern of racketeering activity that must include allegation of at least two racketeering acts. Baglio v. Baska, W.D.Pa.1996, 940 F.Supp. 819, affirmed 116 F.3d 467. Racketeer Influenced And Corrupt Organizations 3

Two essential elements of claims brought under Racketeer Influenced and Corrupt Organizations Act (RICO) are: pattern; of racketeering activity. Resolution Trust Corp. v. S & K Chevrolet, C.D.Ill.1994, 868 F.Supp. 1047. Racketeer Influenced And Corrupt Organizations 4.1; Racketeer Influenced And Corrupt Organizations 25

Under Racketeer Influenced and Corrupt Organizations Act (RICO) provision prohibiting using proceeds from racketeering activity to acquire interest in enterprise affecting interstate or foreign commerce, plaintiff must demonstrate that defendant received money from pattern of racketeering activity, invested that money in enterprise, and that enterprise affected interstate commerce. Jiffy Lube Intern., Inc. v. Jiffy Lube of Pennsylvania, Inc., E.D.Pa.1994, 848 F.Supp. 569. Racketeer Influenced And Corrupt Organizations 16


Racketeer Influenced and Corrupt Organizations Act complainant must establish existence of enterprise, that enterprise affected interstate commerce, that defendant was employed by or associated with enterprise, that defendant participated, even indirectly, in affairs of enterprise, that defendant participated through pattern of racketeering activity, and that plaintiff suffered injury to his business or property. Bergen v. Rothschild, D.D.C.1986, 648 F.Supp. 582. Racketeer Influenced And Corrupt Organizations 3

Elements that comprise violation of Racketeer Influence and Corrupt Organizations Act are existence of enterprise; that enterprise affected interstate commerce; that defendant was employed by or associated with enterprise; that he participated in affairs of enterprise and that he participated through pattern of racketeering activity. Cole v. Circle R. Convenience Stores, Inc., M.D.La.1985, 602 F.Supp. 1108. Racketeer Influenced And Corrupt Organizations 3

This chapter does not forbid engaging in racketeering activity or even in pattern of such activity, but, rather, to come within section 1962 of this title it is necessary that person receive income from pattern of racketeering activity and use the income to establish, operate or acquire an interest in an interstate enterprise, or that person employ pattern of racketeering activity to acquire or maintain interest in interstate enterprise or that person conduct or participate in conduct of affairs of an enterprise through pattern of racketeering activity. Guerrero v.
Both associating as an enterprise and engaging in a pattern of racketeering activity are essential to commission and conviction of a substantive or conspiracy offense under this section. U.S. v. Marcello, E.D.La.1982, 537 F.Supp. 1364, affirmed 703 F.2d 805, rehearing denied 707 F.2d 515, rehearing denied 708 F.2d 720, certiorari denied 104 S.Ct. 341, 464 U.S. 935, 78 L.Ed.2d 309, post-conviction relief granted 876 F.2d 1147. Racketeer Influenced and Corrupt Organizations 3

Retailer's allegations, as supported by record evidence, were sufficient to show its lost sales were proximately caused by competitor's establishment of retail outlet with investment of income from alleged pattern of mail and wire frauds, as required for claim under Racketeer Influenced and Corrupt Organizations Act (RICO) to withstand motion for judgment on the pleadings after close of discovery; competitor allegedly filed false tax returns by mail and fax, and used the proceeds to open outlet near retailer that caused substantial decrease in retailer's sales, profits, and market share, and any gaps in allegations regarding specific dollar amounts of racketeering proceeds and lost sales were filled by evidence produced in discovery. Ideal Steel Supply Corp. v. Anza, C.A.2 (N.Y.) 2011, 652 F.3d 310, certiorari denied 132 S.Ct. 1636, 182 L.Ed.2d 246. Racketeer Influenced and Corrupt Organizations 62

Termination of two union members, allegedly as result of telephone calls to international union's ethical practices investigator accusing members of being convicted felons and alleging that principal officer was involved in assault, was insufficient to establish nexus under Racketeer Influenced and Corrupt Organizations Act (RICO) which required that RICO violation be the proximate cause of their terminations, as required to have standing to maintain civil action against international union and local union activists whom they alleged had conducted or conspired to conduct union affairs through a pattern of racketeering activity to place union local under emergency trusteeship to effectuate ouster of its principal officer. Anderson v. Ayling, C.A.3 (Pa.) 2005, 396 F.3d 265. Racketeer Influenced And Corrupt Organizations 62

To recover on civil RICO claim, plaintiffs must prove that RICO was violated and that they were injured in their business or property, and that the violation caused the injury. Cox v. Administrator U.S. Steel & Carnegie, C.A.11 (Ala.) 1994, 17 F.3d 1386, modified on rehearing 30 F.3d 1347, certiorari denied 115 S.Ct. 900, 513 U.S. 1110, 130 L.Ed.2d 784. Racketeer Influenced And Corrupt Organizations 3

To recover under subsec. (b) of this section making it unlawful for any person through a pattern of racketeering activity to acquire or maintain interest in enterprise engaged in interstate commerce, plaintiff must show injury from defendant's acquisition or control of interest in RICO enterprise in addition to injury from predicate acts, and that interest or control of RICO enterprise is a result of racketeering. Lightning Lube, Inc. v. Witco Corp., C.A.3 (N.J.) 1993, 4 F.3d 1153. Racketeer Influenced And Corrupt Organizations 63

In order to make out claim that defendants conducted enterprise through pattern of racketeering in violation of RICO statute, plaintiff must allege existence of enterprise affecting interstate commerce; that defendant was em-
ployed by or associated with enterprise; that defendant participated, either directly or indirectly, in conduct or affairs of enterprise; and that he or she participated through pattern of racketeering activity that must include allegation of at least two racketeering acts. Shearin v. E.F. Hutton Group, Inc., C.A.3 (Del.) 1989, 885 F.2d 1162. Racketeer Influenced And Corrupt Organizations

Allegations necessary to support Racketeer Influenced and Corrupt Organizations Act claim are conducting of enterprise through a pattern of racketeering activity, and for a private plaintiff, additional element of injury to plaintiff's business or property is necessary to confer standing. Keystone Ins. Co. v. Houghton, C.A.3 (Pa.) 1988, 863 F.2d 1125. Racketeer Influenced And Corrupt Organizations

To establish right to recover under RICO, plaintiff need not show that his constitutional or statutory rights were violated or that defendant was acting under color of law but, rather, must show conduct of an enterprise through a pattern of racketeering activity. Cullen v. Margiotta, C.A.2 (N.Y.) 1987, 811 F.2d 698, certiorari denied 107 S.Ct. 3266, 97 L.Ed.2d 764. Racketeer Influenced And Corrupt Organizations

To prove a violation of § 1962(c) of the Racketeer Influenced and Corrupt Organizations Act [18 U.S.C.A. § 1962(c)], plaintiff must show that an enterprise existed which affected interstate commerce, that defendant was associated with the enterprise, that defendant participated in the conduct of enterprise's affairs, and that the participation was through a pattern of racketeering activity. R.A.G.S. Couture, Inc. v. Hyatt, C.A.5 (La.) 1985, 774 F.2d 1350. Racketeer Influenced And Corrupt Organizations

There was no evidence that consignee of goods shipped from China to the United States had some part in directing trucking arrangement that allegedly misrepresented to vessel-operating common carrier the points of origin and/or delivery for thousands of such shipments, thereby causing carrier to overpay for trucking moves in China that either never occurred or were shorter than represented, as required to establish that the consignee engaged in the conduct of an enterprise, as element of carrier's civil Racketeer Influenced and Corrupt Organizations Act (RICO) claim against consignee, even if carrier participated in the asserted RICO enterprise. Mitsui O.S.K. Lines, Ltd. v. SeaMaster Logistics, Inc., N.D.Cal.2012, 913 F.Supp.2d 780. Racketeer Influenced and Corrupt Organizations

Mortgagor failed to allege civil Racketeer Influenced and Corrupt Organizations Act (RICO) claim with sufficient particularity, where he merely alleged that mortgagees and others were aware that notice of default was invalid and that they either participated in or rendered substantial assistance in issuing invalid notice. Clark v. Countrywide Home Loans, Inc., E.D.Cal.2010, 732 F.Supp.2d 1038. Federal Civil Procedure

In bringing Racketeer Influenced and Corrupt Organizations Act (RICO) action against title insurer for allegedly misrepresenting, through its title agents, the amount of money due and owing for title insurance, Pennsylvania homeowners who purchased title insurance sufficiently pleaded a scheme to defraud as an element necessary to establish a claim for mail or wire fraud under RICO, by alleging the dollar amount on the settlement statement representing the premium for the title insurance was not true and correct and was a misrepresentation which played a role in furthering the overall scheme to defraud. 18 U.S.C.A. §§§ 1962(c), Levine v. First American Title Ins. Co., E.D.Pa.2010, 682 F.Supp.2d 442. Fraud; Insurance; Telecommunications

Issues of whether criminal defense attorney attempted to garner unearned payments from client by unjustifiably threatening to withdraw from case, and whether attorney engaged in interstate commerce involved fact questions that could not be resolved on motion to dismiss client's claim that attorney violated Hobbs Act as predicate act in his action against attorney under Racketeer Influenced and Corrupt Organizations Act (RICO). Wade v. Gaither, D.Utah 2009, 623 F.Supp.2d 1277. Federal Civil Procedure 1831

Allegations by patients and health plans that they were induced by cancer drug marketing scheme that was implemented by pharmaceutical company, drug manufacturer, and distributor, to make millions of dollars in overpayments for drug sufficiently asserted that defendants' conduct was proximate cause of their injuries, to state civil claim under Racketeer Influenced and Corrupt Organizations Act (RICO). In re Lupron Marketing and Sales Practices Litigation, D.Mass.2003, 295 F.Supp.2d 148. Racketeer Influenced And Corrupt Organizations 62

Casino owner's alleged conversion for private use of six checks designated solely for government use was insufficient to satisfy open-ended continuity requirement for imposition of civil liability under Racketeer Influenced and Corrupt Organizations Act (RICO), absent allegation that owner's acts posed threat of continuing criminal activity, or were regular way of operating business or standard operating procedure. Soto Negron v. Taber Partners I, Ltd. Partnership, D.Puerto Rico 2002, 235 F.Supp.2d 105, affirmed 339 F.3d 35. Racketeer Influenced And Corrupt Organizations 28

Investors in limited partnership involved in video rental business satisfied requirements for stating RICO cause of action under § 1962(c); investors had alleged that promoters carried out an enterprise and engaged in pattern of racketeering activity by making series of fraudulent solicitations, and they also established that fraudulently induced investments harmed their business or property. Pahmer v. Greenberg, E.D.N.Y.1996, 926 F.Supp. 287, affirmed 123 F.3d 717. Racketeer Influenced And Corrupt Organizations 69

To state cause of action under section of Racketeer Influenced and Corrupt Organizations Act (RICO) which prohibits acquisition or maintenance of interest in enterprise engaged in interstate or foreign commerce through pattern of racketeering activity or collection of unlawful debt, plaintiff must allege that defendant, through pattern of racketeering activity or collection of unlawful debt, acquired interest in or control of enterprise, and must also allege specific nexus between control of named enterprise and alleged racketeering activity. Davis v. Hudgins, E.D.Va.1995, 896 F.Supp. 561, affirmed 87 F.3d 1308, certiorari denied 117 S.Ct. 1440, 520 U.S. 1172, 137 L.Ed.2d 546. Racketeer Influenced And Corrupt Organizations 74

Critical elements in pleading claim under Racketeer Influenced and Corrupt Organizations Act (RICO), each of which must be pled with particularity under fraud rule, include that defendant, through commission of two or more of enumerated predicate acts which constitute “pattern” of “racketeering activity,” directly or indirectly participates in conduct of enterprise, activities of which affect interstate commerce, and that plaintiff was injured in his or her business or property by reason of such conduct. Brooks v. Bank of Boulder, D.Colo.1995, 891 F.Supp. 1469. Federal Civil Procedure 636; Racketeer Influenced And Corrupt Organizations 69
In order to plead claim under Racketeer Influenced and Corrupt Organizations Act (RICO), plaintiff must allege with particularity: (1) that defendant; (2) through commission of two or more predicate acts; (3) constituting a pattern; (4) of racketeering activity; (5) directly or indirectly invested in, or maintained interest in or participated in; (6) an enterprise; (7) activities of which affected interstate or foreign commerce. Butte Min. PLC v. Smith, D.Mont.1995, 876 F.Supp. 1153, affirmed 76 F.3d 287. Racketeer Influenced And Corrupt Organizations

In order to assert a RICO violation, plaintiff must allege that defendant, through commission of two or more acts constituting “pattern” of “racketeering activity,” directly or indirectly invested in, maintained an interest in, or participated in an “enterprise” activities of which affected interstate or foreign commerce. Barsam v. Pure Tech Intern., Inc., S.D.N.Y.1994, 864 F.Supp. 1440, vacated pursuant to settlement 907 F.Supp. 79. Racketeer Influenced And Corrupt Organizations

Elements necessary to make out RICO claim are existence of enterprise affecting interstate commerce, that defendant was employed by or associated with enterprise, that defendant participated, either directly or indirectly, in conduct or affairs of enterprise, and that defendant participated through pattern of racketeering activity including allegation of at least two racketeering acts. Grand Cent. Sanitation, Inc. v. First Nat. Bank of Palmerton, M.D.Pa.1992, 816 F.Supp. 299. Racketeer Influenced And Corrupt Organizations

To state a claim for violation of statute which prohibits conducting affairs of RICO enterprise, plaintiff must allege that defendant, through commission of two or more acts constituting pattern of racketeering activity, participated in enterprise, activities of which affect interstate or foreign commerce. Landy v. Heller, White & Co., S.D.N.Y.1991, 783 F.Supp. 125. Racketeer Influenced And Corrupt Organizations

To successfully plead elements of cause of action for Racketeer Influenced and Corrupt Organizations Act (RICO) violation, plaintiff must allege (1) the conduct; (2) of an enterprise; (3) through a pattern; (4) of racketeering activity. Cadle Co. v. Schultz, N.D.Tex.1991, 779 F.Supp. 392. Racketeer Influenced And Corrupt Organizations

To establish a RICO claim, plaintiff must plead conduct of an enterprise through a pattern of racketeering activity that has caused injury to plaintiff’s business or property. Kuczynski v. Ragen Corp., S.D.N.Y.1989, 732 F.Supp. 378. Racketeer Influenced And Corrupt Organizations


In order to recover under Racketeer Influenced and Corrupt Organizations Act, plaintiff must prove by a preponderance of the evidence that defendant through the commission of two or more acts constituting a pattern of racketeering activity, directly or indirectly invested in, maintained an interest in, or participated in an enterprise, the activities of which affect interstate commerce. Platsis v. E.F. Hutton & Co. Inc., W.D.Mich.1986, 642

There are several discrete prerequisites for an individual to maintain a claim under this section: the affiliation of a defendant with an enterprise engaged in or affecting interstate commerce, and the involvement in or conduct of the enterprise through a pattern of racketeering activity.

Dismissal with prejudice was warranted, of wife's claim against husband under Racketeer Influenced and Corrupt Organizations Act (RICO), since attorney's amendment of initial complaint filed pro se by wife failed to allege specific facts stating essential elements under RICO.

Lender's allegations that assignee of camera distributor and others developed a scheme to defraud retailers by stealing or fraudulently obtaining used cameras and reselling them as new, by allegedly obtaining returned cameras, destined for lender, by fraud, were sufficient to plead requisite factual causal connection between lender's injury, the lost cameras, and the scheme, as required to state a civil Racketeer Influenced and Corrupt Organizations Act (RICO) claim.

To prove substantive RICO violation, government must establish existence of enterprise affecting interstate or foreign commerce, defendant's association with the enterprise, defendant's participation in the conduct of the enterprise, and defendant's participation through a pattern of racketeering activity; to prove a RICO conspiracy, there must be proof of the additional element of an agreement.

Conviction under Racketeer Influenced and Corrupt Organizations Act (RICO) section prohibiting person employed by enterprise from participating in conduct of enterprise's affairs through pattern of racketeering activity requires proof of four essential elements: (1) that there be enterprise affecting interstate commerce; (2) that defendant was employed by or associated with enterprise; (3) that defendant participated, either directly or indirectly, in conduct or affairs of enterprise; and (4) that he participated through pattern of racketeering activity.
To establish violation of Racketeer Influenced and Corrupt Organizations Act (RICO) pursuant to 18 U.S.C.A. § 1962(c), Government must establish: that enterprise which affects interstate or foreign commerce existed; that defendant associated with enterprise; that defendant participated in conduct of enterprise's affairs; and that defendant's participation was through pattern of racketeering activity through commission of at least two acts of racketeering activity as set forth in indictment. U.S. v. Young, C.A.11 (Fla.) 1990, 906 F.2d 615. Racketeer Influenced And Corrupt Organizations 34; Racketeer Influenced And Corrupt Organizations 36

Conviction under RICO requires proof that defendant was associated with an enterprise which affected interstate commerce and conducted enterprise affairs through pattern of racketeering activity in violation of state law. U.S. v. Jenkins, C.A.6 (Mich.) 1990, 902 F.2d 459, rehearing denied. Racketeer Influenced And Corrupt Organizations 25; Racketeer Influenced And Corrupt Organizations 34

In order to convict a defendant for a RICO conspiracy, the Government must prove: the existence of an “enterprise”; that defendant knowingly joined the enterprise; and that defendant agreed to commit, or in fact committed, two or more specified predicate crimes as part of his participation in the affairs of the enterprise. U.S. v. Boylan, C.A.1 (Mass.) 1990, 898 F.2d 230, certiorari denied 111 S.Ct. 139, 498 U.S. 849, 112 L.Ed.2d 106. Conspiracy 28(3)

Government, in order to prove violation of this section, must establish existence of enterprise which affects interstate or foreign commerce, that defendant associated with the enterprise, that defendant participated in conduct of the enterprise's affairs, and that participation was through pattern of racketeering activity. U.S. v. Sinito, C.A.6 (Ohio) 1983, 723 F.2d 1250, certiorari denied 105 S.Ct. 86, 469 U.S. 817, 83 L.Ed.2d 33. Commerce 82.6

Essential elements of a substantive offense under this section which government must prove beyond a reasonable doubt are: (1) existence of an enterprise; (2) that the enterprise affected interstate commerce; (3) that defendant was employed by or associated with the enterprise; (4) that he participated, either directly or indirectly, in the conduct of the affairs of the enterprise; and (5) that he participated through a pattern of racketeering activity, i.e., through commission of at least two racketeering acts. U. S. v. Kopituk, C.A.11 (Fla.) 1982, 690 F.2d 1289, certiorari denied 103 S.Ct. 2089, 461 U.S. 928, 77 L.Ed.2d 300, certiorari denied 103 S.Ct. 2090, 461 U.S. 928, 77 L.Ed.2d 300, certiorari denied 103 S.Ct. 3542, 463 U.S. 1209, 77 L.Ed.2d 1391. Racketeer Influenced And Corrupt Organizations 3

In order to prove a substantive violation of this section, government must prove the existence of an enterprise which affects interstate or foreign commerce, the defendant's association with the enterprise, defendant's participation in the conduct of the enterprise's affairs, and participation through a pattern of racketeering activity, i.e., by committing at least two acts of racketeering activity. U. S. v. Phillips, C.A.5 (Fla.) 1981, 664 F.2d 971, certi-
orari denied 102 S.Ct. 2965, 457 U.S. 1136, 73 L.Ed.2d 1354, certiorari denied 103 S.Ct. 208, 459 U.S. 906, 74 L.Ed.2d 166. Racketeer Influenced And Corrupt Organizations

Complaint failed to allege that individual, who allegedly owned and operated one of eleven business entities that provided security services for United States government in Iraq, engaged in pattern of racketeering activity, as required for claim brought by Iraqi nationals and estates of deceased Iraqi nationals under Racketeer Influenced and Corrupt Organizations Act (RICO) alleging that nationals were killed or seriously injured by entities while they provided security services for United States government, absent allegations that individual committed predicate acts in violation of federal statutes proscribing destruction of evidence, money laundering, sexual exploitation of minors and racketeering, that individual acquired interest in, or control of, enterprise as result of his pattern of racketeering activity, or that plaintiffs were injured as result of individual's acquisition of an interest in, or control of, enterprise. In re XE Services Alien Tort Litigation, E.D.Va.2009, 665 F.Supp.2d 569. Racketeer Influenced And Corrupt Organizations; Racketeer Influenced And Corrupt Organizations

Arbitration judgment creditor's allegations were insufficient to state Racketeer Influenced and Corrupt Organizations Act (RICO) claim, in action to enforce arbitration award of $314,925.59, based on open-ended continuing criminal activity by debtor and its affiliated companies; defendants conducted an inherently legitimate business enterprise and allegations did not suggest threat of criminal activity beginning with alleged mail and wire fraud and continuing into future. Plainville Elec. Products Co., Inc. v. Vulcan Advanced Mobile Power Systems, LLC, D.Conn.2009, 638 F.Supp.2d 245. Racketeer Influenced And Corrupt Organizations; Racketeer Influenced And Corrupt Organizations

Intangible right of corporation to recognize or to refrain from recognizing unions as bargaining representatives of its employees was property that was susceptible of extortion, and thus activity prohibited by Racketeer Influenced and Corrupt Organizations Act (RICO), even though right could not be bought and sold by third-party. Smithfield Foods, Inc. v. United Food and Commercial Workers Intern. Union, E.D.Va.2008, 633 F.Supp.2d 214. Racketeer Influenced And Corrupt Organizations

Agricultural worker's complaint sufficiently alleged a violation of Racketeer Influenced and Corrupt Organizations Act (RICO) predicate act of knowingly hiring unauthorized aliens; complaint's allegations, that defendants hired persons whose documents were invalid on their face, that defendants hired persons personally known to them to be in the United States illegally, and that defendants hired persons who had previously been employed under different identities, gave rise to inference that defendants had constructive knowledge that the persons being hired were illegal aliens. Hernandez v. Balakian, E.D.Cal.2007, 480 F.Supp.2d 1198. Aliens, Immigration, And Citizenship


Indictment did not adequately allege extortion, as racketeering activity, for purposes of claim that defendants violated Racketeer Influenced and Corrupt Organizations Act (RICO) by financing and supporting terrorists group
having as its purpose the forced withdrawal of Israel from areas claimed by Palestinians; surrender of sovereignty, as intangible property right, was not object of value, required to be surrendered in order for traditional crime of extortion to apply. U.S. v. Al-Arian, M.D.Fla.2004, 308 F.Supp.2d 1322, modification denied 329 F.Supp.2d 1294. Extortion

To secure a conviction under this section government must prove existence of an “enterprise” by evidence of an ongoing organization and by evidence that the various associates function as a continuing unit. U.S. v. Napolitano, S.D.N.Y.1982, 564 F.Supp. 951. Racketeer Influenced And Corrupt Organizations

64. Aiding and abetting, offenses generally

Pattern aiding and abetting instruction was not inappropriate in prosecution in which the conspiracy charged was a Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy. U.S. v. Benabe, C.A.7 (Ill.) 2011, 654 F.3d 753, rehearing and rehearing en banc denied , certiorari denied 132 S.Ct. 1051, 181 L.Ed.2d 772, certiorari denied 132 S.Ct. 1054, 181 L.Ed.2d 774, certiorari denied 132 S.Ct. 1612, 182 L.Ed.2d 217, certiorari denied 132 S.Ct. 1986, 182 L.Ed.2d 831. Conspiracy

Evidence was sufficient to support conviction for aiding and abetting malicious destruction of property affecting interstate commerce resulting in death of any other person; evidence including proof that defendant had begun converting portions of property, which had previously been used as store, into rental units, that before fire defendant had discussed burning of residence, that after fire defendant told another person that “one of his boys” set fire, that defendant’s son removed flexible gas line from stove prior to fire, and that defendant collected insurance proceeds after fire. U.S. v. Bennett, C.A.4 (W.Va.) 1993, 984 F.2d 597, certiorari denied 113 S.Ct. 2428, 508 U.S. 945, 124 L.Ed.2d 649, dismissal of habeas corpus affirmed 27 Fed.Appx. 294, 2001 WL 1299257, denial of habeas corpus affirmed 21 Fed.Appx. 440, 2001 WL 1355832. Arson


Under section of Racketeering Influenced and Corrupt Organizations Act proscribing use of income derived from pattern of racketeering in acquisition of interest in enterprise, vicarious or aiding and abetting liability for employer of RICO persons may be appropriate, even if employer is also the RICO enterprise. Petro-Tech, Inc. v. Western Co. of North America, C.A.3 (Pa.) 1987, 824 F.2d 1349. Racketeer Influenced And Corrupt Organizations
Government did not have to prove two predicate acts of racketeering by defendant in order to establish aiding and abetting in pattern of racketeering activity. U.S. v. Wyatt, C.A.9 (Ariz.) 1987, 807 F.2d 1480, certiorari denied 108 S.Ct. 170, 484 U.S. 858, 98 L.Ed.2d 124. Racketeer Influenced And Corrupt Organizations

Third-party employee whose duty it was to certify inventory to lender, which held security interest in inventory and accounts receivable, was not aider and abettor of mail fraud committed by borrower when it mailed false statements of accounts receivable to lender, for purpose of finding civil RICO liability based on mail fraud as predicate act, where inventory certification was correct, notwithstanding that the employee segregated bogus invoices and omitted them from inventory certification and documentations; employee could not be found guilty of predicate offense as an aider and abettor absent showing that he shared the criminal intent of the borrower, and proof of mere negative acquiescence by failing to expose existence of the bogus invoices did not constitute an overt act aiding in success of the fraud. Armco Indus. Credit Corp. v. SLT Warehouse Co., C.A.5 (Tex.) 1986, 782 F.2d 475. Racketeer Influenced And Corrupt Organizations


Evidence was sufficient to support finding that defendant knew about smuggling in which assets of defendant's business were used, thereby supporting conclusion that defendant aided and abetted acts of travel and smuggling, predicate offenses in prosecution of defendant under this chapter. U.S. v. Cauble, C.A.5 (Tex.) 1983, 706 F.2d 1322, rehearing denied 714 F.2d 137, certiorari denied 104 S.Ct. 996, 465 U.S. 1005, 79 L.Ed.2d 229. Racketeer Influenced And Corrupt Organizations

In prosecution for alleged violations of this section, evidence was sufficient to support inference that defendant knew dynamite supplied by him was to be used in a destructive device transferred in violation of law so as to support conviction for aiding and abetting possession of destructive device. U. S. v. Diecidue, C.A.5 (Fla.) 1979, 603 F.2d 535, certiorari denied 100 S.Ct. 1345, 445 U.S. 946, 63 L.Ed.2d 781, certiorari denied 100 S.Ct. 1842, 64 L.Ed.2d 266. Explosives

Law firm's alleged participation as aider and abettor in seller corporation's use of fraudulent loan scheme to create false appearance about its revenues could not serve as predicate act to establish buyers' claim against firm under Racketeer Influenced and Corrupt Organizations Act (RICO), even though firm's conduct merely constituted unactionable aiding and abetting under federal securities laws. Thomas H. Lee Equity Fund V, L.P. v. Mayer Brown, Rowe & Maw LLP, S.D.N.Y.2009, 612 F.Supp.2d 267. Racketeer Influenced And Corrupt Organizations
ganizations 11

There was no evidence that health maintenance organizations (HMOs) and purported coconspirators agreed to defraud physicians through manipulation of their claims processing systems to underpay physicians for their services, and therefore HMOs were not liable under Racketeer Influenced and Corrupt Organizations Act (RICO), under aiding and abetting theory, on grounds that they substantially assisted one another by agreeing to engage in same fraudulent scheme and conduct. In re Managed Care Litigation, S.D.Fla.2006, 430 F.Supp.2d 1336, affirmed 228 Fed.Appx. 927, 2007 WL 1695735. Racketeer Influenced And Corrupt Organizations 64


There is no civil aiding and abetting liability under Racketeer Influenced and Corrupt Organizations Act (RICO). Department of Economic Development v. Arthur Andersen & Co. (U.S.A.), S.D.N.Y.1996, 924 F.Supp. 449. Racketeer Influenced And Corrupt Organizations 64

In order to properly allege that RICO defendants were engaged in pattern of racketeering activities, plaintiff must prove that each defendant committed or aided and abetted commission of at least two RICO predicate acts, and that alleged predicate acts related to each other and amounted to or otherwise constituted threat of continuing racketeering activity. DeFalco v. Dirie, S.D.N.Y.1996, 923 F.Supp. 473. Racketeer Influenced And Corrupt Organizations 26; Racketeer Influenced And Corrupt Organizations 28

Limited partner could not state actionable claim against bank for aiding and abetting in general partner's violation of Racketeer Influenced and Corrupt Organizations Act (RICO) where it was not reasonable to assume that bank would have intentionally risked $14 million to allow general partner to convert funds bank advanced to partnership. Laro, Inc. v. Chase Manhattan Bank (Nat. Ass'n), S.D.N.Y.1994, 866 F.Supp. 132, affirmed 60 F.3d 810. Racketeer Influenced And Corrupt Organizations 10

Aider and abettor of two predicate acts can be civilly liable under RICO; aider and abettor liability is not necessarily inconsistent with liability for operation or management of RICO enterprise. Fidelity Federal Sav. and Loan Ass’n v. Felicetti, E.D.Pa.1993, 830 F.Supp. 257. Racketeer Influenced And Corrupt Organizations

Standard for aiding and abetting RICO violation parallels that under § 10(b) of the Securities Exchange Act, and defendant must have knowledge or act with reckless scienter. In re American Continental Corporation/Lincoln Sav. and Loan Securities Litigation, D.Ariz.1992, 794 F.Supp. 1424. Racketeer Influenced And Corrupt Organizations

Each defendant in a Racketeer Influenced and Corrupt Organizations Act (RICO) prosecution must have committed, or aided and abetted the commission of, at least two predicate acts in order to be held liable. Powell v. H.E.F. Partnership, D.Vt.1992, 793 F.Supp. 91. Racketeer Influenced And Corrupt Organizations

Elements of cause of action for aiding and abetting violation of Racketeer Influenced and Corrupt Organizations Act are existence of independent primary wrong, actual knowledge by alleged aider and abettor of fraud and of his or her role in furthering it, and substantial assistance in wrong. In re American Continental Corporation/Lincoln Sav. and Loan Securities Litigation, D.Ariz.1991, 782 F.Supp. 1382. Racketeer Influenced And Corrupt Organizations

Complaint alleging that former officer of labor organization participated in pattern of racketeering activity by virtue of illegal payoff scheme adequately notified other officer defendants of crimes they were alleged to have aided and abetted, as officers’ failure to act in accordance with their fiduciary duties could form basis for aiding and abetting liability. U.S. v. District Council of New York City and Vicinity of United Broth. of Carpenters and Joiners of America, S.D.N.Y.1991, 778 F.Supp. 738. Racketeer Influenced And Corrupt Organizations

Bank’s awareness that developer to which it had loaned money was involved in fraudulent real estate scheme did not make it liable as aider and abettor for developer’s alleged securities fraud claimed as predicate acts in civil Racketeer Influenced and Corrupt Organizations Act (RICO) action, where bank refused to loan developer any more money after learning of the alleged fraud, although it continued to collect on previous loans. Rodriguez v. Banco Cent., D.Puerto Rico 1991, 777 F.Supp. 1043, affirmed 990 F.2d 7. Securities Regulation

Defendant’s failure to expose existence of fraudulent scheme of which he was aware does not rise to level of aiding and abetting in violation of the Racketeer Influenced and Corrupt Organizations Act (RICO). In re Sahlen & Associates, Inc. Securities Litigation, S.D.Fla.1991, 773 F.Supp. 342. Racketeer Influenced And Corrupt Organizations

Aider and abettor liability under Racketeer Influenced and Corrupt Organizations Act (RICO) exists where the plaintiff establishes existence of an independent wrong, knowledge of that wrong and substantial assistance on the part of the aider or abettor to effectuate that wrong. Wiley v. Hughes Capital Corp., D.N.J.1990, 746 F.Supp. 1264. Racketeer Influenced And Corrupt Organizations
Allegations in investors' civil RICO complaint, that certain specific acts of mail and wire fraud were committed in order to induce investors to invest in various bogus deals, and that each defendant had motive and opportunity and consciously engaged in behavior which, at the very least, aided and abetted predicate acts, were sufficient to state claim against defendants for conspiring to commit RICO violation. Morrow v. Black, E.D.N.Y.1990, 742 F.Supp. 1199. Conspiracy 18


Allegation that person who performed accounting and auditing services for corporate investment group knew of fraud and mismanagement and waste of corporate assets by former corporate officers and directors and that, in course of preparing financial statements and information, became aware, if he did not otherwise already know, of alleged course of conduct being engaged in by the former officers and directors sufficiently met “knowledge” requirement for pleading cause of action in aiding and abetting. Kranzdorf v. Green, E.D.Pa.1983, 582 F.Supp. 335. Fraud 41

In order to be liable for a substantive crime under this section as an aider and abettor, plaintiffs must demonstrate that defendant consciously assisted the commission of the specific crime in some active way. Laterza v. American Broadcasting Co., Inc., S.D.N.Y.1984, 581 F.Supp. 408. Commerce 80

Aiding and abetting claim under Racketeer Influenced and Corrupt Organizations Act (RICO) could not be asserted against accounting firm, where jury verdict in another district court found no RICO liability against any of the defendants still in the case. In re Laventhol & Horwath, S.D.N.Y.1992, 139 B.R. 109. Racketeer Influenced And Corrupt Organizations 64

65. Collection of unlawful debts, offenses generally

Single collection of unlawful debt satisfies “collection of unlawful debt” requirement of subsec. (c) of this section prohibiting conducting or participating in conduct of affairs of enterprise affecting interstate or foreign commerce through pattern of racketeering activity or collection of unlawful debt. U.S. v. Weiner, C.A.1 (Mass.) 1993, 3 F.3d 17. Racketeer Influenced And Corrupt Organizations 26

Evidence that defendant participated in multiple acts of extortion of local bookmakers and collection of unlawful debts was sufficient to support jury’s finding that he participated directly or indirectly in conduct of criminal enterprise's affairs through pattern of racketeering activity or collection of unlawful debt within meaning of Racketeer Influenced and Corrupt Organizations Act (RICO). U.S. v. Minicone, C.A.2 (N.Y.) 1992, 960 F.2d 1099, certiorari denied 112 S.Ct. 1511, 503 U.S. 950, 117 L.Ed.2d 648, amended on rehearing in part, certiorari denied 113 S.Ct. 199, 506 U.S. 869, 121 L.Ed.2d 142, post-conviction relief denied , affirmed 40 F.3d 1237. Racketeer Influenced And Corrupt Organizations 95

Transmission of money within organization, regardless of that organization's legality, does not constitute

Actual exchange of cash need not be shown in order to establish collection or attempted collection of unlawful debt as racketeering predicate; single act which tends to induce another to repay unlawful debt incurred in business of lending money is sufficient. U.S. v. Eufrasio, C.A.3 (Pa.) 1991, 935 F.2d 553, rehearing denied, certiorari denied 112 S.Ct. 340, 502 U.S. 925, 116 L.Ed.2d 280, denial of post-conviction relief affirmed 38 F.3d 693. Racketeer Influenced And Corrupt Organizations ⇪ 8

Inquiry in prosecution for collecting unlawful debts for enterprise engaged in interstate commerce in violation of this section was not manner in which states classify their criminal prohibitions but whether particular state involved prohibited the activity charged. U. S. v. Salinas, C.A.5 (Tex.) 1977, 564 F.2d 688, certiorari denied 98 S.Ct. 1577, 435 U.S. 951, 55 L.Ed.2d 800. Commerce ⇪ 82.10

Under Texas law, borrowers' debt, pursuant to installment purchase contract for purchase of manufactured home, was effectively released when secured lender and home seller filed deed of trust release, despite fact that the loan was never fully paid, and thus, lender's continued collection of loan payments violated Racketeer Influenced and Corrupt Organizations Act (RICO) and the Texas Debt Collection Practices Act (TDCA), and amounted to fraud; although release was ambiguous, it stated that the lien of the deed of trust was fully released. Vanderbilt Mortg. and Finance, Inc. v. Flores, S.D.Tex.2011, 789 F.Supp.2d 750, affirmed in part , reversed in part 692 F.3d 358. Antitrust and Trade Regulation ⇪ 213; Consumer Credit ⇪ 4; Fraud ⇪ 28; Mortgages ⇪ 315(1); Racketeer Influenced and Corrupt Organizations ⇪ 14

Corporation's allegation in its amended complaint, in its Racketeer Influenced and Corrupt Organizations Act (RICO) action against unions, which had been trying unsuccessfully to become bargaining representatives of its employees, that funds to be received from union dues would be used or invested by unions for numerous legitimate and illegitimate purposes, including conduct of additional extortionate corporate campaigns, payment of salaries and fees to other defendants for purposes of engaging in further corporate campaigns, and ongoing operation of unions, sufficiently stated claim for conspiracy to violate section of Racketeer Influenced and Corrupt Organizations Act (RICO) pertaining to persons who have received income derived from pattern of racketeering activity or through collection of unlawful debt. Smithfield Foods, Inc. v. United Food and Commercial Workers Intern. Union, E.D.Va.2008, 633 F.Supp.2d 214. Conspiracy ⇪ 18

Borrowers who alleged that they had paid 3.5 points as a loan origination fee on one loan and 2.25 points on a second loan did not allege that lenders charged more than twice the allowable interest “rate” so as to state a claim for amount of debt under RICO, even though governing law provided that a lender may not charge more than one “point,” as points must be prorated over the entire terms of the loan to determine if the rate of interest is usurious and a point is simply one component of the overall interest rate. Reidy v. Meritor Sav., F.S.B., D.D.C.1989, 705 F.Supp. 39, affirmed 888 F.2d 898, 281 U.S.App.D.C. 201. Racketeer Influenced And Corrupt Organizations ⇪ 14
Borrowing funds from bank and relending them at higher interest rate than paid did not constitute collection of unlawful debt in violation of Racketeer Influenced and Corrupt Organizations Act, even if usurious, where defendant was not alleged to have been in business of lending money. Marriott Bros. v. Gage, N.D.Tex.1988, 704 F.Supp. 731, opinion supplemented on denial of reconsideration 717 F.Supp. 458, affirmed 911 F.2d 1105, rehearing denied. Racketeer Influenced And Corrupt Organizations 14

Evidence was sufficient to support defendants' convictions for conducting enterprise engaged in interstate commerce through collection of unlawful debt and for conspiring to commit such acts. U. S. v. McMonagle, E.D.Pa.1977, 437 F.Supp. 721. Conspiracy 47(3.1); Extortion 39(2)

Health plan fiduciary's contact with plan beneficiary and her counsel about intention to obtain lien for medical expenses on proceeds of beneficiary's settlement of related personal injury litigation, without communicating alleged unenforceability of reimbursement lien, did not violate section of Racketeer Influenced and Corrupt Organizations Act (RICO) prohibiting party from participating in conduct of enterprise's affairs through pattern of racketeering activity or collection of unlawful debt; plan's attempt to demand reimbursement was not prohibited under ERISA so as to be unlawful debt, and issue of whether fiduciary's contacts constituted mail and wire fraud was merely a dispute over application of law and formed an insufficient legal basis to assert RICO claim. Schu- lenberg v. Rawlings Co., LLC, D.Nev.2003, 2003 WL 22129230, Unreported. Racketeer Influenced And Corrupt Organizations 7

66. Conduct or participation in enterprise, offenses generally--Generally

Insurance purchasers who sued insurers and brokers in connection with purported scheme to allocate purchasers among particular groups of insurers alleged actionable “enterprise” as to bid-rigging activities, as required to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO); complaint averred defendants' preparation of brokering plans governing placement of insurance contracts that came up for renewal, assigning business to specific insurers at target prices, and outlining coverage. In re Insurance Brokerage Antitrust Litigation, C.A.3 (N.J.) 2010, 618 F.3d 300. Racketeer Influenced And Corrupt Organizations 73

Creditors sufficiently alleged that debtor, who was denied discharge for bankruptcy fraud, participated in conduct of affairs of Chapter 7 bankruptcy estate, as enterprise under Racketeer Influenced and Corrupt Organizations Act (RICO), through predicate acts of pre-petition transfer of various assets, filing of materially false bankruptcy petition, and committing assorted perjuries at creditors' meeting and at discharge proceeding. First Capital Asset Management, Inc. v. Satinwood, Inc., C.A.2 (N.Y.) 2004, 385 F.3d 159. Racketeer Influenced And Corrupt Organizations 50

For individual defendant to be liable for conducting affairs of insurer through a pattern of racketeering activity, jury was required to find that insurer was an enterprise affecting interstate or foreign commerce, that the defendant associated with the enterprise, that the defendant participated in the conduct of the enterprise's affairs, and that defendant's participation was through a pattern of racketeering activity. Aetna Cas. Sur. Co. v. P & B Autobody, C.A.1 (Mass.) 1994, 43 F.3d 1546. Racketeer Influenced And Corrupt Organizations 34; Racketeer Influenced And Corrupt Organizations 50
Borrowers failed to establish threatened continued criminal activity by bank in connection with bank's alleged continued participation in conducting business affairs of borrowers' businesses following bank's transfer of loans and security interests in borrowers' intellectual property rights to assignee, precluding relief on nonconspiracy Racketeer Influenced and Corrupt Organizations Act (RICO) claims involving posttransfer acts; borrowers failed to show that bank's retained interest in proceeds from any eventual sale of intellectual property rights amounted to participation in conduct of business' affairs, nor did they offer examples of alleged “further advice” given to assignee. Information Exchange Systems, Inc. v. First Bank Nat. Ass'n, C.A.8 (Minn.) 1993, 994 F.2d 478, rehearing denied. Racketeer Influenced And Corrupt Organizations 79

Union, merely by conducting a recognition strike against an employer, does not “conduct or participate, directly or indirectly, in the conduct of” the employer's affairs within meaning of the Racketeer Influenced and Corrupt Organizations Act (RICO). Yellow Bus Lines, Inc. v. Drivers, Chauffeurs & Helpers Local Union 639, C.A.D.C.1990, 913 F.2d 948, 286 U.S.App.D.C. 182, certiorari denied 111 S.Ct. 2839, 501 U.S. 1222, 115 L.Ed.2d 1007. Racketeer Influenced And Corrupt Organizations 50

The substantive proscriptions of this section apply to insiders and outsiders who participate directly and indirectly in the enterprise's affairs through a pattern of racketeering activity. U. S. v. Elliott, C.A.5 (Ga.) 1978, 571 F.2d 880, rehearing denied 575 F.2d 300, certiorari denied 99 S.Ct. 349, 439 U.S. 953, 58 L.Ed.2d 344. Criminal Law 59(1)

Assertion that sales representative for a newspaper with bloated circulation figures directed others to falsely inflate newspaper's sales figures, and sweeping allegation that he provided leadership, management, and supervision to enterprises, were insufficient to allege that he conducted affairs of enterprises that artificially inflated newspaper's circulation figures, as required to state claim for violation of Racketeer Influenced and Corrupt Organizations Act (RICO) section making it unlawful to conduct affairs of an enterprise through a pattern of racketeering activity or collection of unlawful debt, where complaint contained other allegations that he was merely a trainee. Crabhouse of Douglaston Inc. v. Newsday Inc., E.D.N.Y.2011, 801 F.Supp.2d 64. Racketeer Influenced and Corrupt Organizations 50

Borrower who sued commercial lender under Racketeer Influenced and Corrupt Organizations Act (RICO) in connection with delinquent mortgage account failed to allege underlying illegal activity of collection of an unlawful debt; the only “unlawful debt" that borrower alleged was that lender attempted to collect what lender claimed was due by virtue of borrower's obligations under a promissory note, and complaint did not aver that debt stemming from mortgage-secured promissory note related to gambling activity or that interest rate on note was at least twice enforceable rate. McLaughlin v. CitiMortgage, Inc., D.Conn.2010, 726 F.Supp.2d 201. Racketeer Influenced And Corrupt Organizations 70

Alleged Ponzi scheme investors failed to allege that bank recommended certain courses of behavior to scheme's perpetrators or otherwise directed or operated scheme as required to state claim against bank under Racketeer Influenced and Corrupt Organizations Act (RICO). In re Agape Litigation, E.D.N.Y.2010, 681 F.Supp.2d 352. Racketeer Influenced And Corrupt Organizations 50
Corporation's allegations in its complaint that organizations and individuals retained as professional advisors by unions, which had been trying unsuccessfully to become bargaining representative of corporation's employees, were participating in, and conducting, campaign against corporation by investigating its operations, drafting factual reports regarding workplace safety violations, organizing protests, and proposing resolutions to city councils, were sufficient to state claim against organizations and individuals for violation of section of Racketeer Influenced and Corrupt Organizations Act (RICO) which prohibited conducting affairs of enterprise engaged in interstate or foreign commerce through pattern of racketeering activity. Smithfield Foods, Inc. v. United Food and Commercial Workers Intern. Union, E.D.Va.2008, 633 F.Supp.2d 214. Racketeer Influenced And Corrupt Organizations

Genuine issue of material fact as to whether defendant who provided racing data obtained through his membership with plaintiff’s online horse racing data system to another defendant, who used such data in scheme to defraud plaintiff, associated with a Racketeer Influenced and Corrupt Organizations Act (RICO) enterprise and participated in its operation, precluded summary judgment in RICO action. Bloodstock Research Information Services, Inc. v. Ed Bain.com, LLC, E.D.Ky.2009, 622 F.Supp.2d 504. Federal Civil Procedure

Requirement for liability, under Racketeer Influenced and Corrupt Organizations Act (RICO) provision governing operation of enterprise by pattern of racketeering activity, that enterprise be separate from structure carrying out illegal activity, was not satisfied by claim that corporation engaged in debt collection business carried on two separate businesses, one involving collection of legitimate debts, and second involving collection of illegal violation fees imposed on motorists not timely paying parking lot fees. Hansen v. Ticket Track, Inc., W.D.Wash.2003, 280 F.Supp.2d 1196. Racketeer Influenced And Corrupt Organizations

Genuine issue of material fact with respect to extent of illegal conduct engaged in by provider of insurance claims services, owners of insured Department of Housing and Urban Development (HUD) partnership properties, and their officers and agents, when such illegal conduct began and ended, whether such illegal conduct affected legitimacy of services provided by parties, and what exact relationship between parties was precluded summary judgment on basis of argument that illegal conduct of one set of parties with respect to a certain set of claims precluded relief on claims for alleged violations of Racketeer Influenced and Corrupt Organizations Act (RICO), breach of contract, and misrepresentation. Meadowbrook-Richman, Inc. v. Associated Financial Corp., S.D.N.Y.2003, 253 F.Supp.2d 666. Federal Civil Procedure

To establish civil Racketeer Influenced and Corrupt Organizations (RICO) violation, plaintiff must show conduct of enterprise through pattern of racketeering activity; more precisely, defendant's participation must be in conduct of affairs of RICO enterprise, which will ordinarily require some participation in operation or management of enterprise itself. Menuskin v. Williams, E.D.Tenn.1996, 940 F.Supp. 1199, appeal dismissed 98 F.3d 1342, affirmed in part, reversed in part 145 F.3d 755. Racketeer Influenced And Corrupt Organizations

Litigant failed to state claim upon which relief could be granted for violation of section of Racketeer Influenced and Corrupt Organizations Act (RICO) which prohibits conducting affairs of enterprise engaged in interstate or foreign commerce through pattern of racketeering activity, based upon acts relating to lawsuit over ownership of certain real estate; litigant failed to adequately allege conduct, of an enterprise, through practice of racketeering
activity, or that defendants entered into conspiracy, the overall objective of which was to conduct enterprise through pattern of racketeering. Davis v. Hudgins, E.D.Va.1995, 896 F.Supp. 561, affirmed 87 F.3d 1308, certiorari denied 117 S.Ct. 1440, 520 U.S. 1172, 137 L.Ed.2d 546. Racketeer Influenced And Corrupt Organizations § 72; Racketeer Influenced And Corrupt Organizations § 73

Indictment contained sufficient allegations that defendant participated, directly or indirectly, in operation or management of enterprise, a brokerage house, through pattern of racketeering activity to charge defendant with substantive violation of Racketeer Influenced and Corrupt Organizations Act (RICO) and with RICO conspiracy in connection with stock manipulation schemes. U.S. v. Bertoli, D.N.J.1994, 854 F.Supp. 975, affirmed in part , vacated in part 40 F.3d 1384, rehearing and rehearing in banc denied. Conspiracy § 43(6); Racketeer Influenced And Corrupt Organizations § 91

Motorist failed to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO) in connection with enforcement of traffic laws against him, absent allegation that defendants violated statute by investing in stocks, acquiring enterprise, or operating enterprise through participation in racketeering activity. U.S. ex rel. Verdone v. Circuit Court for Taylor County, W.D.Wis.1993, 851 F.Supp. 345. Racketeer Influenced And Corrupt Organizations § 73; Racketeer Influenced And Corrupt Organizations § 74

Computer supplier which allegedly paid kickbacks to employee of computer purchaser to approve invoices for goods and services that were never provided and to divert business to other vendors with which supplier was associated indirectly “conducted or participated” in conduct of purchaser's affairs within meaning of RICO; supplier exercised control over purchaser's employee, who in turn managed and controlled employer's purchasing with million-dollar budget. Edison Elec. Institute v. Henwood, D.D.C.1993, 832 F.Supp. 413. Racketeer Influenced And Corrupt Organizations § 50

Plaintiff must show conduct of enterprise through pattern of racketeering activity so as to establish violation of Racketeer Influenced and Corrupt Organizations Act (RICO) subsection providing that it is unlawful for any person employed by enterprise engaged in interstate or foreign commerce to conduct or participate in conduct of such enterprise's affairs through pattern of racketeering activity. Select Creations, Inc. v. Paliafito America, Inc., E.D.Wis.1992, 828 F.Supp. 1301. Racketeer Influenced And Corrupt Organizations § 25; Racketeer Influenced And Corrupt Organizations § 34

Restaurant which was alleged to have jointly participated in and aided and abetted embezzlement from bank by its owner and which allegedly permitted deposit into its own account of checks issued by the bank as result of the embezzlement scheme did not conduct or participate in the operation or management of the bank's affairs for RICO purposes. Amalgamated Bank of New York v. Marsh, S.D.N.Y.1993, 823 F.Supp. 209. Racketeer Influenced And Corrupt Organizations § 50

Tenants' allegations that purchasers of condominium units rented them for profit above what could have been charged prior to condominium conversion and did not record deeds, and wrote letter to tenants that did not disclose that tenants' purchase rights had already been sold were insufficient to satisfy Racketeer Influenced and Corrupt Organizations Act (RICO) participation requirement, absent allegation that purchasers participated in
F.Supp. 762. Racketeer Influenced And Corrupt Organizations 50

Borrowers adequately alleged that lender's parent corporation participated in conduct of alleged racketeering en-
terprise; borrowers alleged that lender was directly or indirectly owned by parent corporation and that lender's
position as subsidiary enabled individual defendants to participate in conduct of enterprise's affairs. Center Ca-
eteer Influenced And Corrupt Organizations 50

Importer of discount athletic shoes failed to produce any evidence that Korean export license holder, whose par-
ticipation in subject transactions involving unauthorized or counterfeit athletic shoes was limited to the pro-
cessing and preparation of standard commercial documents, was part of any Racketeer Influenced and Corrupt
919, 20 U.S.P.Q.2d 1801. Racketeer Influenced And Corrupt Organizations 79

Alleged mail fraud consisting of letter from parent corporation's credit department to corporation which pur-
chased subsidiary containing analysis of subsidiary's reserves from accounts receivable and letter to purchasing
corporation containing information about subsidiary's inventory, accounts payable, payment terms with major
suppliers, and seasonal influences on working capital could constitute RICO acts with respect to alleged scheme
of inducing corporation to purchase subsidiary at inflated price. Polycast Technology Corp. v. Uniroyal, Inc.,

Allegation that motion picture sellers retained security interest in motion pictures that entitled sellers to exercise
high level of control over buyers' principal business was sufficient to state claim that sellers conducted or parti-
cipated in affairs of buyers as RICO "enterprises" through pattern of racketeering activity. Vista Co. v.
Columbia Pictures Industries, Inc., S.D.N.Y.1989, 725 F.Supp. 1286. Racketeer Influenced And Corrupt Or-
ganizations 39

Assuming that allegedly fraudulent tax returns were mailed to IRS and allegedly fictitious figures were mailed
to IRS or communicated by interstate telephone communications, investors could sufficiently plead pattern of
racketeering with respect to abusive tax shelter scheme to satisfy RICO pattern of racketeering requirement; in-
vestors had alleged scheme by which multiple victims on numerous occasions were lured into investing in fraud-
ulent tax shelters, the scheme was ongoing, and each separate request for money would constitute separate in-
jury, as would the mailing of fraudulent tax returns. Balabanos v. North American Inv. Group, Ltd.,

Corporation failed to state cause of action against bank, which allegedly deposited checks drawn on corpo-
ration's account and forged by corporate employee, for violation of Racketeer Influenced and Corrupt Organiza-
tions Act statute making it unlawful for any person employed by or associated with any enterprise to conduct or
participate in conduct of enterprise's affairs through a pattern of racketeering activity; complaint contained no al-
legations that would have supported claim that bank was either associated with corporation or participated in
conduct of corporation's affairs. P.M.F. Services, Inc. v. Grady, N.D.Ill.1988, 681 F.Supp. 549. Racketeer Influ-

Though investor's allegations of securities fraud were sufficient to state RICO claim against broker, brokerage firm could not be held liable in that it was not active participant in alleged racketeering activity; investor merely alleged that firm had abdicated its duty to supervise its employee. *Cruse v. Equitable Securities of New York, Inc.*, S.D.N.Y.1987, 678 F.Supp. 1023. Racketeer Influenced And Corrupt Organizations


Absent allegation that husband was involved in conduct of enterprise's affairs, except as dependent of such enterprise, allegation that husband twice attempted to murder wife, in order to maintain his interest in enterprise composed of wife and those employed to manage her assets, was insufficient to state cause of action against husband under Racketeer Influenced and Corrupt Organizations Act provision prohibiting any person employed by or associated with enterprise engaged in, or activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in conduct of such enterprise's affairs through pattern of racketeering activity. *von Bulow by Auersperg v. von Bulow*, S.D.N.Y.1986, 634 F.Supp. 1284, on reargument. Racketeer Influenced And Corrupt Organizations


This section prohibiting any person, employed by or associated with an enterprise, from participating in the conduct of such enterprise through a pattern of racketeering activity does not hold the enterprise criminally liable, but only those persons who seek to participate in the affairs of the enterprise through a pattern of racketeering activity. *Bays v. Hunter Sav. Ass'n*, S.D.Ohio 1982, 539 F.Supp. 197, on subsequent appeal 625 F.2d 782.

Conviction under subsec. (c) of this section requires that defendant participated in the conduct of the enterprise's affairs by collecting an unlawful debt; mere fact that defendant is employed by the enterprise and collects unlawful debts on the premises of the enterprise does not establish that defendant participated in the conduct of the enterprise's affairs through the collection of the debts. *U. S. v. Dennis*, E.D.Mo.1978, 458 F.Supp. 197, on subsequent appeal 625 F.2d 782.

Allegations did not support claim for violation of Racketeer Influenced and Corrupt Organizations Act (RICO) by former operator of collectible stamp dealership and auction house against competing stamp dealers and auction houses, which purportedly engaged in bid-rigging of public stamp auctions, when former operator made no allegations that he competed with defendants after his dealership ceased operations outside four-year limitations period, such that his purported business was injured by defendants' alleged racketeering activity. Stolow v. Greg Manning Auctions Inc., C.A.2 (N.Y.) 2003, 80 Fed.Appx. 722, 2003 WL 22717684, Unreported. Racketeer Influenced And Corrupt Organizations

67. ---- Accountants, conduct or participation in enterprise, offenses generally

Allegation that insured borrowed money, made loans, and obtained insurance while its attorneys and accountants provided necessary legal and financial advice, guidance, and information sufficiently identified enterprise that existed apart from underlying alleged racketeering activity, as required to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO). Royal Indemnity Co. v. Pepper Hamilton LLP, D.Del.2007, 479 F.Supp.2d 419. Racketeer Influenced And Corrupt Organizations

Accounting firm did not “participate” in affairs of audit client, and thus, firm was not subject to RICO liability to plaintiffs, who allegedly extended credit and made loans to audit client in reliance on firm's allegedly negligent audits; there was no evidence that firm was in any way engaged in client's “operation or management,” or that firm knowingly directed or engaged in fraudulent activity. In re Phar-Mor, Inc. Securities Litigation, W.D.Pa.1995, 893 F.Supp. 484. Racketeer Influenced And Corrupt Organizations

Tax opinion and forecast letters drafted by attorney and accountant, which allegedly contained false statements and which were attached to private placement memorandum used to solicit investment in limited partnership, did not constitute participation in Racketeer Influenced and Corrupt Organizations (RICO) enterprise; preparation of letters was merely rendition of professional services, and such conduct does not constitute participation in direction of affairs of any of the corporate entities involved in syndication or sale of partnership interests. Gilmore v. Berg, D.N.J.1993, 820 F.Supp. 179. Racketeer Influenced And Corrupt Organizations

68. ---- Appraisers, conduct or participation in enterprise, offenses generally

Real estate appraisers' submission of allegedly misleading and fraudulent appraisals to savings and loan association was not participation in “operation or management” of enterprise for purposes of RICO liability, even though appraisers were hired as independent appraisers and had significant influence on major decisions of whether to grant loans. Fidelity Federal Sav. and Loan Ass'n v. Felicetti, E.D.Pa.1993, 830 F.Supp. 257. Racketeer Influenced And Corrupt Organizations

69. ---- Attorneys, conduct or participation in enterprise, offenses generally
Attorney's performance of services including writing emails, giving advice, and taking positions on behalf of trustor and trustees as clients was not sufficient to “conduct” affairs of associated-in-fact enterprise, within meaning of Racketeer Influenced and Corrupt Organizations Act (RICO), with alleged purpose of gaining control of trust and facilitating wrongful taking of trust assets, regardless of attorney's alleged deficient performance by not following Hawai‘i and professional standards or that she failed to stop illegal activity, since attorney did not have role in management and operation of enterprise by giving or taking directions from trust or trustees, did not attempt to control enterprise or occupy position in chain of command through which enterprise’s affairs were conducted, and was not indispensable to achieving enterprise’s goal. Walter v. Drayson, C.A.9 (Hawai‘i) 2008, 538 F.3d 1244. Racketeer Influenced And Corrupt Organizations

Attorney’s involvement in fraudulent scheme by limited partnership through preparation of two letters, partnership agreement, and assistance in bankruptcy proceeding was not sufficient to meet conduct or participation requirements for Racketeer Influenced and Corrupt Organizations (RICO) liability; fraudulent scheme began in 1976 and continued until 1987, and attorney’s limited and sporadic involvement in scheme did not begin until 1982. Baumer v. Pachl, C.A.9 (Cal.) 1993, 8 F.3d 1341. Racketeer Influenced And Corrupt Organizations

Law firm did not go beyond rendering traditional legal services to its clients by sending pre-suit civil theft demand letters on behalf of retailer clients, and thus law firm did not participate in operation or management of alleged Racketeer Influenced and Corrupt Organizations Act (RICO) enterprise itself, even if firm had used computer software to generate thousands of demand letters that automatically calculated demand amount, wrongfully threatened lawsuit, and electronically affixed attorney’s signature without attorney review. Kelly v. Palmer, Reifler, & Associates, P.A., S.D.Fla.2010, 681 F.Supp.2d 1356. Racketeer Influenced And Corrupt Organizations

Former client failed to plead with particularity claim that criminal defense attorney engaged in wire or mail fraud as predicate acts in furtherance of his enterprise, in violation of Racketeer Influenced and Corrupt Organizations Act (RICO), where complaint did not allege that client or his trustee believed monies were actually owed, and did not allege locations from which or to which supposedly fraudulent telephone and facsimile communications were made. Wade v. Gaither, D.Utah 2009, 623 F.Supp.2d 1277. Federal Civil Procedure

Judgment creditor who sued law firm and attorney, stemming from alleged fraudulent transfers from debtor's trust, failed to demonstrate operation or management of racketeering enterprise, as required to maintain claim under Racketeer Influenced and Corrupt Organizations Act (RICO); there was no evidence that defendants did anything more than offer their professional legal services to debtor. Nastro v. D’Onofrio, D.Conn.2008, 542 F.Supp.2d 207. Racketeer Influenced And Corrupt Organizations

Former client’s Racketeer Influenced and Corrupt Organizations Act (RICO) claim failed to demonstrate his alleged injuries derived from attorney's direct or indirect investment in, or maintaining an interest or control over, or participating in the operation or management of the affairs of a qualifying “enterprise.” Tenamee v. Schmukler, S.D.N.Y.2006, 438 F.Supp.2d 438. Racketeer Influenced And Corrupt Organizations
Insurance company made a prima facie showing that British law firm and one of its attorneys had minimum contacts with Pennsylvania sufficient to support personal jurisdiction with respect to Racketeer Influenced and Corrupt Organizations Act (RICO) claims; attorney allegedly made informational communications to Pennsylvania that were critical to the maintenance of the enterprise at the center of the alleged RICO conspiracy. *Lexington Ins. Co. v. Forrest*, E.D.Pa.2005, 354 F.Supp.2d 549. Federal Courts ☞ 86

Allegedly fraudulent conduct of law firms and their principals in using memorandum on deposition preparation to manufacture evidence and coach answers from their clients, who were plaintiffs in asbestos litigation, was not sufficiently pleaded to support mail and wire fraud claims asserted by manufacturer, who was defendant in underlying case, under Racketeer Influenced and Corrupt Organizations Act (RICO), as manufacturer failed to allege which clients were involved in which cases, which clients were actually deposed, and whether depositions were taken in those cases, despite fact that manufacturer was party to underlying cases and had possession of memorandum for a number of years. *G-I Holdings, Inc. v. Baron & Budd*, S.D.N.Y.2002, 238 F.Supp.2d 521. Fraud ☞ 43; Telecommunications ☞ 1014(12)

Allegations that paralegals for law firm “fixed” affidavits of clients, who were plaintiffs in asbestos litigation, by adding omitted product identification information and false signatures to affidavits, and that such affidavits were then filed in asbestos litigation against manufacturer and others, were adequately specific for manufacturer to plead mail and wire fraud claims against law firm and its principals under the Racketeer Influenced and Corrupt Organizations Act (RICO); firm and principals had notice of when behavior allegedly took place, fraud was alleged to occur under aegis of particular supervisor, and manufacturer narrowed down sea of potential cases to a smaller group of cases in which such fraud was probably involved. *G-I Holdings, Inc. v. Baron & Budd*, S.D.N.Y.2002, 238 F.Supp.2d 521. Fraud ☞ 43; Telecommunications ☞ 1014(12)

Named partners of law firm were separate and distinct legal entities from law firm, which they controlled and which in turn purportedly controlled enterprise within meaning of the Racketeer Influenced and Corrupt Organizations Act (RICO), for purpose of asbestos manufacturer's successor's claim that partners, firm, and others engaged in pattern of racketeering activity designed to obtain large settlements from manufacturer and others by improper means. *G-I Holdings, Inc. v. Baron & Budd*, S.D.N.Y.2002, 238 F.Supp.2d 521. Racketeer Influenced And Corrupt Organizations ☞ 38

Assistant United States Attorneys were entitled to absolute immunity from suit asserting claims under Racketeer Influenced and Corrupt Organizations Act (RICO), *Bivens*, and § 1985 based on attorneys' alleged wrongful conduct in defending United States in civil lawsuit; plaintiff had available forum to seek redress for attorneys' conduct, since plaintiff could have raised concerns during proceedings in which conduct occurred or with professional disciplinary body, and attorneys defending public interest should not have been faced with threat of liability for choice of litigation strategies. *Moore v. Schlesinger*, M.D.Fla.2001, 150 F.Supp.2d 1308. District And Prosecuting Attorneys ☞ 10; United States ☞ 50.10(2)

Liability under Racketeer Influenced and Corrupt Organizations Act (RICO) could not be imposed on corporation's attorneys for alleged drafting of false press releases and allegedly reckless disregard of facts about financial condition of corporation; intentional participation in conduct and affairs of RICO enterprise had to be
shown, and reckless disregard was insufficient level of intent. *In re Cascade Intern. Securities Litigation, S.D.Fla.*1993, 840 F.Supp. 1558, on reconsideration 894 F.Supp. 437. Attorney And Client

Investors in tax shelters failed to state Racketeer Influenced and Corrupt Organizations Act (RICO) claim against outside attorneys for performing various legal services for parties affiliated with RICO enterprise which facilitated operation of enterprise; providing legal advice and legal services does not constitute participation sufficient to ground allegation of RICO violation. *Morin v. Trupin, S.D.N.Y.*1993, 835 F.Supp. 126. Racketeer Influenced And Corrupt Organizations

Racketeer Influenced and Corrupt Organizations Act (RICO) did not impose civil liability on attorney who provided legal advice and services to clients, even if, in so doing, attorney intentionally assisted clients' scheme to defraud plaintiff where there was no evidence that attorney participated in operation or management of RICO enterprise. *Biofeedtrac, Inc. v. Kolinor Optical Enterprises & Consultants, S.R.L., E.D.N.Y.*1993, 832 F.Supp. 585. Racketeer Influenced And Corrupt Organizations

70. ---- Benefit or advancement of affairs of enterprise, conduct or participation in enterprise, offenses generally

Sufficient evidence established that defendants participated in affairs of enterprise, as required to support their Racketeer Influenced and Corrupt Organizations Act (RICO) convictions; first defendant sold drugs, was part of the group that decided how organization would retaliate for shooting, kept a gun in bedroom of organization's house, and allowed another member to borrow his gun, and second defendant was key member of drug distribution network, helped funnel money back to leader and leader's father, and was involved in at least two shooting incidents with members of rival drug dealing group. *U.S. v. Burden, C.A.2 (Conn.)* 2010, 600 F.3d 204, certiorari denied 131 S.Ct. 251, 178 L.Ed.2d 251, on remand 2010 WL 5071043, certiorari denied 131 S.Ct. 953, 178 L.Ed.2d 804. Racketeer Influenced And Corrupt Organizations

County judge was conducting RICO enterprise, rather than merely conducting his own affairs, when he committed acts constituting obstruction of justice, for purposes of determining whether obstruction of justice charges could extend statute of limitations on RICO charge; county judge was active judge who at least co-operated or co-managed the enterprise with other judges at time that obstruction of justice occurred, and county judge's actions had effect on the enterprise in that they helped preserve his position on bench and prolong possibility of fixing cases. *U.S. v. Maloney, C.A.7 (Ill.)* 1995, 71 F.3d 645, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 295, 519 U.S. 927, 136 L.Ed.2d 214. Criminal Law

Fact that racketeering activities of those who submitted fraudulent insurance claims to insurer were for the detriment, not the benefit, of insurer did not preclude finding that insurer was an “enterprise” for RICO purposes, as the statute does not require that the pattern of racketeering activity be in furtherance of the enterprise. *Aetna Cas. Sur. Co. v. P & B Autobody, C.A.1 (Mass.)* 1994, 43 F.3d 1546. Racketeer Influenced And Corrupt Organizations

Under this section, proper question is whether affairs of enterprise were conducted through pattern of racketeer-
ing activity, and not whether they were benefited or advanced or whether profit to enterprise resulted, and fact that labor union was harmed rather than benefited did not remove conduct from ambit of this chapter. U. S. v. Provenzano, C.A.3 (N.J.) 1982, 688 F.2d 194, certiorari denied 103 S.Ct. 492, 459 U.S. 1071, 74 L.Ed.2d 634.

Racketeer Influenced And Corrupt Organizations

Defendant's accepting unearned wages while serving as vice-president of local union from various contractors, who testified that they paid defendant to preserve union peace, and defendant's using his position as business manager to obtain payments from union treasury for expenses not properly incurred was a basis for prosecution and conviction of participating in conduct of union affairs through pattern of racketeering activity, notwithstanding that conduct was in furtherance of defendant's personal interest and did not redound to benefit of the union. U.S. v. LeRoy, C.A.2 (N.Y.) 1982, 687 F.2d 610, certiorari denied 103 S.Ct. 823, 459 U.S. 1174, 74 L.Ed.2d 1019. Commerce 82.6; Racketeer Influenced And Corrupt Organizations

Under this section the proper question is whether affairs of enterprise at issue were “conducted” through pattern of racketeering activity not whether they were “benefited” or “advanced” or whether profit to enterprise resulted, modifying United States v. Webster, 639 F.2d 174. U. S. v. Webster, C.A.4 (Md.) 1982, 669 F.2d 185, certiorari denied 102 S.Ct. 1991, 456 U.S. 935, 72 L.Ed.2d 455.

Where submission of Alcoholic Beverage Control Commission withdrawal and breakage documents was essential to success of Commissioner's scheme to obtain free liquor for himself and other officials, Commission submitted to conduct of its affairs through pattern of racketeering activity so as to satisfy element of violation of this section, notwithstanding that its affairs were not “advanced” by Commissioner's activities. U. S. v. Barber, C.A.4 (W.Va.) 1982, 668 F.2d 778, certiorari denied 103 S.Ct. 66, 459 U.S. 829, 74 L.Ed.2d 67. Racketeer Influenced And Corrupt Organizations

This section does not require proof regarding advancement of union's affairs by defendant's activities, or proof that union itself is corrupt, or proof that union authorized defendant to do whatever acts that formed basis for charge, but requires only that government establish that defendant's acts were committed in conduct of union's affairs. U.S. v. Scotto, C.A.2 (N.Y.) 1980, 641 F.2d 47, certiorari denied 101 S.Ct. 3109, 452 U.S. 961, 69 L.Ed.2d 971.

Under this section it is irrelevant that each defendant participated in enterprise's affairs through different, even unrelated crimes so long as court may reasonably infer that each crime was intended to further enterprise's affairs. U. S. v. Elliott, C.A.5 (Ga.) 1978, 571 F.2d 880, rehearing denied 575 F.2d 300, certiorari denied 99 S.Ct. 349, 439 U.S. 953, 58 L.Ed.2d 344. Criminal Law

Computer programmer alleged to have manipulated computers to conceal newspapers' actual circulation figures at the direction of his employer did not conduct affairs of enterprises that artificially inflated circulation figures, for purposes of Racketeer Influenced and Corrupt Organizations Act (RICO) section making it unlawful to conduct affairs of an enterprise through a pattern of racketeering activity or collection of unlawful debt, where his actions with regard to the enterprises were passive rather than active. Crabhouse of Douglaston Inc. v. Newsday Inc., E.D.N.Y.2011, 801 F.Supp.2d 64. Racketeer Influenced and Corrupt Organizations

Sporting goods store employees failed to state Racketeer Influenced and Corrupt Organizations Act (RICO) claim that store invested income derived from pattern of racketeering activity to acquire interest in, establish, or operate an enterprise, absent any allegation that store's use of such proceeds distinctly injured them. Barrus v. Dick's Sporting Goods, Inc., W.D.N.Y.2010, 732 F.Supp.2d 243. Racketeer Influenced And Corrupt Organizations 

Obstruction of justice by purported boss of organized crime family was sufficiently related to purpose of enterprise to sustain charge alleging violation of Racketeer Influenced and Corrupt Organizations Act (RICO), despite contention that purpose of enterprise was alleged to be to make money for its leaders, members and associates; boss would not have been able to continue in his role as family's leader if he was convicted of serious crimes with which he was charged. U.S. v. Bellomo, E.D.N.Y.2003, 263 F.Supp.2d 561. Racketeer Influenced And Corrupt Organizations

Alleged increase in voluntary donations to antiabortion activists and organizations as result of their alleged racketeering did not satisfy economic motivation requirement to state Racketeer Influenced and Corrupt Organizations Act (RICO) claim; motivation for allegedly destroying abortion clinic property, threatening clinic employees, and blocking access to clinics was not to obtain money. National Organization for Women, Inc. v. Scheidler, N.D.Ill.1991, 765 F.Supp. 937, affirmed 968 F.2d 612, rehearing denied , certiorari granted in part 113 S.Ct. 2958, 508 U.S. 971, 125 L.Ed.2d 659, reversed 114 S.Ct. 798, 510 U.S. 249, 127 L.Ed.2d 99, rehearing denied 114 S.Ct. 1340, 510 U.S. 1215, 127 L.Ed.2d 688, on remand 25 F.3d 1053, rehearing and suggestion for rehearing en banc denied. Racketeer Influenced And Corrupt Organizations


In prosecution under this section, government was not required to show that the affairs of the enterprise were advanced or profited by virtue of the racketeering activity. U. S. v. Cariello, D.C.N.J.1982, 536 F.Supp. 698. Racketeer Influenced And Corrupt Organizations

Though conviction under subsec. (c) of this section does not require proof regarding the advancement of the enterprise's affairs by the defendant's activities, that the enterprise itself was corrupt or that the enterprise authorized defendant to do the acts underlying the charge, this section does require a nexus between the prohibited activity and the conduct of the enterprise's affairs. U. S. v. Dennis, E.D.Mo.1978, 458 F.Supp. 197, on subsequent appeal 625 F.2d 782.

Subsec. (c) of this section making it a crime for any person employed by or associated with any enterprise engaged in interstate or foreign commerce to participate in conduct or affairs of enterprise through a pattern of racketeering activity does not require proof regarding advancement of union's affairs by defendant's activities, or proof that union itself is corrupt, or proof that union authorized defendant to do whatever acts that form basis for charge, but requires only that the government establish that defendant's acts were committed in conduct of un-
Conduct of city’s public works commissioner in granting “comp time” and overtime pay to employees to perform political activities could not serve as predicate offense supporting conviction under Racketeer Influenced and Corrupt Organizations Act (RICO), under theory that using public funds to pay municipal employees for political labor was bribery under Illinois law; no state-court decision supported such a view, and putting bribery statute to such a novel use to secure RICO conviction would deprive commissioner of fair warning. U.S. v. Genova, C.A.7 (Ill.) 2003, 333 F.3d 750, rehearing denied. Racketeer Influenced And Corrupt Organizations

Allegations of company’s complaint, indicating that defendant directed payment of illegal bribes and benefited from overpayments and increased contractual relations with defendant company through deception, stated cause of action under Racketeer Influenced and Corrupt Organizations Act (RICO), in that plaintiff company pled with particularity that members of enterprise operated with common purpose in making and accepting bribes. Aluminum Bahrain B.S.C. v. Alcoa Inc., W.D.Pa.2012, 866 F.Supp.2d 525, certification granted 2012 WL 5305169. Racketeer Influenced and Corrupt Organizations

Former retirement board members’ solicitation and acceptance of campaign contributions from sellers and managers of variable annuity contracts, which were publicly disclosed in campaign finance reports but not documented in accordance with Sunshine Act, did not establish an agreement to exchange campaign contributions for the awarding of retirement fund’s investment contracts, and therefore did not allege that board members defrauded the public of their honest services; thus, alleged pay-to-play scheme could not serve as Racketeer Influenced and Corrupt Organizations Act (RICO) predicate offense. Luzerne County Retirement Bd. v. Makowski, M.D.Pa.2007, 627 F.Supp.2d 506. Postal Service 35(9); Racketeer Influenced And Corrupt Organizations

Alleged actions of competitors and their owners and operators, which included paying bribes and kickbacks to city officials to obtain municipal asbestos-abatement contracts, directing lucrative contracts to associated companies that in turn paid kickbacks to competitors, and submitting fraudulent invoices that were paid by city officials, directly caused alleged injury of asbestos-abatement contractor, which thus had standing to sue under Racketeer Influenced and Corrupt Organizations Act (RICO), notwithstanding contention that city official’s false statement that city asbestos work was unavailable served as intervening, non-predicate act which broke causal link; allegations charged defendants with subverting municipal bidding process and denying contractor, the sole local contractor with bid preferences, the opportunity to bid and perform city work. Astech-Marmon, Inc. v. Lenoci, D.Conn.2004, 349 F.Supp.2d 265. Racketeer Influenced And Corrupt Organizations

Payment of bribes to obtain influence over enterprise’s activities falls short of investing in or acquiring interest in enterprise for RICO purposes, but it is sufficient to support finding that payor participated in the conduct of the enterprise. In re American Honda Motor Co., Inc. Dealerships Relations Litigation, D.Md.1996, 941 F.Supp. 528. Racketeer Influenced And Corrupt Organizations

Racketeering events set out in Racketeer Influenced and Corrupt Organizations Act counts, concerning alleged involvement of defendant, a private attorney, in scheme to bribe state court judges in order to influence case outcomes, were sufficient to show “conduct or participation” by defendant in affairs of the “enterprise,” only if Government could prove that those events were part of a larger pattern of bribery involving a particular judge, where counts did not allege actual payment of bribes to judges. U.S. v. Roth, N.D.Ill.1987, 669 F.Supp. 1386.

72. ---- Direction from others, conduct or participation in enterprise, offenses generally

Even if exhibition contractors were induced by threats of labor disruption and of damage to property to rent all of their forklifts and other material handling and personnel moving equipment from competitor of plaintiff rental equipment company, plaintiff's allegations were sufficient to support claim that contractors “conducted or participated in the conduct of the racketeering enterprise” in violation of Racketeer Influenced and Corrupt Organizations Act (RICO); contractors were properly characterized as lower-rung participants who were under the direction of enterprise's upper management, rather than as outsiders. MCM Partners, Inc. v. Andrews-Bartlett & Associates, Inc., C.A.7 (Ill.) 1995, 62 F.3d 967, on remand 1997 WL 306577.

Simple taking of directions and performance of tasks that are necessary or helpful to RICO enterprise, without more, is insufficient to constitute violation of statute prohibiting participation in RICO enterprise. U.S. v. Viola, C.A.2 (N.Y.) 1994, 35 F.3d 37.

Insurer that was victim of alleged fraudulent scheme by medical providers to obtain payment for medical services and diagnostic tests that were not medically necessary or were never performed did not constitute “enterprise” under Racketeer Influenced and Corrupt Organizations Act (RICO), since providers did not direct insurer's affairs, and none of insurer's employees participated in scheme. Allstate Ins. Co. v. Rozenberg, E.D.N.Y.2008, 590 F.Supp.2d 384.

Requirement that person participate in operation or management of enterprise in order to be held liable under federal Racketeer Influenced and Corrupt Organizations Act (RICO) does not mean that person must have primary responsibility for enterprise's affairs or hold formal position in enterprise; enterprise is operated not just by upper management but also by lower-rung participants who are under direction of upper management, and regardless of whether person is “outside” or “inside” enterprise, he may be liable if he participated in operation or management. Pedrina v. Chun, D.Hawai'i 1995, 906 F.Supp. 1377, affirmed 97 F.3d 1296, certiorari denied 117 S.Ct. 2441, 520 U.S. 1268, 138 L.Ed.2d 201.

73. ---- Direction or management, conduct or participation in enterprise, offenses generally

Term “conduct,” as used in statute prohibiting any person associated with enterprise from conducting or participating in conduct of such enterprise's affairs through pattern of racketeering activity, necessarily implies some degree of direction over enterprise's affairs. Reves v. Ernst & Young, U.S.Ark.1993, 113 S.Ct. 1163, 507 U.S. 170, 122 L.Ed.2d 525.
Insurance purchasers who sued insurers and brokers in connection with purported scheme to allocate purchasers among particular groups of insurers alleged actionable “conduct” as to bid-rigging activities, as required to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO); complaint averred that broker directed placement of insurance contracts and solicited rigged bids from insurers, which plausibly implied that broker participated in the operation or management of the enterprise itself, and complaint alleged that insurers supplied sham bids, which adequately alleged that the insurers operated the enterprise. In re Insurance Brokerage Anti-trust Litigation, C.A.3 (N.J.) 2010, 618 F.3d 300.  

Bank that was feedlot operator’s primary lender did not direct operator’s operations or management during time period in which cattle investors and corn producers allegedly were injured by bank’s purported pattern of racketeering activity, precluding bank’s liability for violating Racketeer Influenced and Corrupt Organizations Act (RICO), given that bank’s actions purportedly demonstrating bank’s control of operator were taken as creditor conducting its own affairs, including allowing commingling of funds of operator and related entities, honoring substantial overdrafts, allowing notes of related entity to bank to remain past due, and honoring operator’s insufficient-fund checks to investors, and given that bank’s participation in alteration of notes of one of operator’s customers and settlement in resulting litigation occurred long before purported predicate acts. Dahlgren v. First Nat. Bank of Holdrege, C.A.8 (Neb.) 2008, 533 F.3d 681, rehearing and rehearing en banc denied, certiorari denied 129 S.Ct. 1041, 555 U.S. 1153, 173 L.Ed.2d 469.  

Racketeer Influenced and Corrupt Organizations Act (RICO) phrase, “to conduct or participate” in conduct of enterprise’s affairs through pattern of racketeering activity, indicates some degree of direction, so that person charged to have conducted or participated in enterprise’s affairs within meaning of phrase must have had some part in directing those affairs. U.S. v. Cummings, C.A.7 (Ill.) 2005, 395 F.3d 392.  

Allegation that publishers submitted fraudulent circulation numbers for their publications to non-profit entity responsible for auditing the reported circulation numbers which, in turn, relied on those false numbers and incorporated them into the audit circulation reports that it later published was insufficient to establish that publishers operated or managed non-profit within meaning of Racketeer Influenced and Corrupt Organizations Act (RICO) provision prohibiting person associated with enterprise from conducting or participating in conduct of enterprise’s affairs through pattern of racketeering activity. Crabhouse of Douglaston Inc. v. Newsday Inc., E.D.N.Y.2011, 801 F.Supp.2d 64.  

Civil Racketeer Influenced and Corrupt Organizations Act (RICO) complaint, which alleged that subscription agent and individual subscribers conspired to defraud publishers of scientific, technical and medical journals by placing orders for the purchase of thousands of those journals at a lower or discounted “individual” subscription rate, rather than the higher “institutional” rate, and then reselling the journals to institutions for more than the individual rate, failed to plead facts from which it could be inferred that each of individual subscribers participated, directly or indirectly, in the conduct of the enterprise’s affairs; although complaint sufficiently pled that owner of corporate subscription agent had some degree of control over the operation and management of the enterprise (subscription agent), the complaint did not specifically allege any facts tending to show that owner controlled the operation or management of any association in fact. Elsevier Inc. v. W.H.P.R., Inc., S.D.N.Y.2010,
To be liable under statute prohibiting any person associated with enterprise from conducting or participating in conduct of such enterprise's affairs through pattern of racketeering activity, party must participate in operation or management of enterprise itself; liability is not limited to those with primary responsibility for enterprise's affairs, but some part in directing enterprise's affairs is required. Wiselman v. Oppenheimer & Co., Inc., M.D.Fla.1993, 835 F.Supp. 1398. Racketeer Influenced And Corrupt Organizations ⚫ 50

To participate in the conduct of enterprise's affairs within meaning of RICO § 1962(c) means to perform activities necessary or helpful to operation of enterprise, whether directly or indirectly; violation does not require defendant's operation or management of enterprise. Cincinnati Gas & Elec. Co. v. General Elec. Co., S.D.Ohio 1986, 656 F.Supp. 49. Racketeer Influenced And Corrupt Organizations ⚫ 50

Commonality requirement for class certification was satisfied under federal rules, with respect to action brought by claimants against insurers, stemming from purported breach of structured settlement agreements; question whether insurers' alleged practice of deducting fees from settlement amounts structured under Broker Assistance Program (BAP) violated Racketeer Influenced and Corrupt Organizations Act (RICO) or constituted fraud, breach of contract or unjust enrichment existed at core of case. Spencer v. Hartford Financial Services Group, Inc., D.Conn.2009, 256 F.R.D. 284. Federal Civil Procedure ⚫ 181

74. ---- Employment by or association with, conduct or participation in enterprise, offenses generally

Enterprise may be “operated” or “managed,” within meaning of federal RICO statute, by those not employed by enterprise, who exert control over it as, for example, by bribery. Reves v. Ernst & Young, U.S.Ark.1993, 113 S.Ct. 1163, 507 U.S. 170, 122 L.Ed.2d 525. Racketeer Influenced And Corrupt Organizations ⚫ 50

Allegations in judgment creditor's complaint, that bankruptcy attorneys had cooperated with judgment debtor and debtor's parents to minimize creditor's recovery on his judgment by filing Chapter 13 petition on debtor's be-
half, in which debtor, at direction of his attorneys, fraudulently inflated his expenses after executing false promissory note in favor of parents and otherwise creating sham debts, were sufficient to state civil RICO claim against attorneys for conspiring to participate in conduct of affairs of RICO enterprise, i.e., the Chapter 13 estate, through pattern of fraudulent activity; complaint, broadly construed, provides ample basis to conclude that law firm objectively manifested agreement to participate directly, or indirectly, in affairs of enterprise by committing two or more predicate crimes. Handeen v. Lemaire, C.A.8 (Minn.) 1997, 112 F.3d 1339. Conspiracy

Allegations that mayor accepted bribes and was thereby improperly influenced by real estate developer did not establish violation of Racketeer Influenced and Corrupt Organizations Act (RICO); although mayor invoked Fifth Amendment when asked about his participation in company's affairs, allegations demonstrated that wrongful conduct of which mayor was accused related not to his management of alleged RICO enterprise, but rather to his having been controlled by it. Pedrina v. Chun, C.A.9 (Hawai‘i) 1996, 97 F.3d 1296, certiorari denied 117 S.Ct. 2441, 520 U.S. 1268, 138 L.Ed.2d 201. Racketeer Influenced And Corrupt Organizations

Defendants who were private investigators employed by or affiliated with law firm and who assisted firm's attorneys in preparing for trial cases involving false witnesses, fabricated evidence and counterfeit claims were involved in playing part in direction of affairs of “enterprise” for purposes of Racketeer Influenced and Corrupt Organizations Act (RICO), so that erroneous instruction on management and control of enterprise was not plain error; defendants provided substantial assistance to lawyers who conducted enterprise. Napoli v. U.S., C.A.2 (N.Y.) 1995, 45 F.3d 680, certiorari denied 115 S.Ct. 1796, 514 U.S. 1084, 131 L.Ed.2d 724, certiorari denied 115 S.Ct. 2015, 514 U.S. 1134, 131 L.Ed.2d 1014. Criminal Law

Persons who were either insureds or claimants under automobile policies or owners or operators of body shop involved in repairing insured automobiles were “associated with” the insurer for purposes of RICO liability. Aetna Cas. Sur. Co. v. P & B Autobody, C.A.1 (Mass.) 1994, 43 F.3d 1546. Racketeer Influenced And Corrupt Organizations

Evidence was sufficient to sustain RICO convictions for making extortionate loans or collection by extortionate means even if defendant was “a collector paid $50 weekly for a bare five months”; RICO statute requires neither that defendant share in enterprise's profits nor participate for extended period of time, so long as predicate act requirement is met. U.S. v. Oreto, C.A.1 (Mass.) 1994, 37 F.3d 739, certiorari denied 115 S.Ct. 1161, 513 U.S. 1177, 130 L.Ed.2d 1116. Racketeer Influenced And Corrupt Organizations

Janitor/handyman, who worked for leader of RICO enterprise, was not liable as participant; his participation was limited to transporting some stolen beer and lamps to buyers and returning proceeds of sale to leader on two occasions, he was never consulted in decision-making process and was not within circle of people who operated or managed enterprise. U.S. v. Viola, C.A.2 (N.Y.) 1994, 35 F.3d 37. Racketeer Influenced And Corrupt Organizations

Former deputy sheriff was “associated with” amusement company which distributed illegal video poker machines, for purposes of Racketeer Influenced and Corrupt Organization Act violations, given that sole proprietor
of company paid bribes to deputy to provide police protection to its poker machines and to drive other vendors out of business, even though deputy was not associated with legitimate business conducted by company. U.S. v. Mokol, C.A.7 (Ind.) 1992, 957 F.2d 1410, rehearing denied, certiorari denied 113 S.Ct. 284, 506 U.S. 899, 121 L.Ed.2d 210. Racketeer Influenced And Corrupt Organizations


Alleged relationship between defendant, who was charged with operating affairs of his law practice through a pattern of racketeering by bribing assistant state's attorney in order to influence disposition of some of his cases, and state's attorney's office was sufficient to allege that defendant was “associated” with that office for purposes of Racketeer Influenced and Corrupt Organizations Act. U.S. v. Yonnan, C.A.7 (Ill.) 1986, 800 F.2d 164, certiorari denied 107 S.Ct. 930, 479 U.S. 1055, 93 L.Ed.2d 981. Racketeer Influenced And Corrupt Organizations

Mere fact that a defendant charged with violation of this chapter works for a legitimate enterprise and commits racketeering acts while on the business premises does not establish that the affairs of the enterprise have been conducted through a pattern of racketeering activity; instead, government must show that a person is enabled to commit the predicate offenses solely by virtue of his position in the enterprise or by involvement in or control over affairs of the enterprise, or that the predicate offenses are related to activities of that enterprise. U.S. v. Jan-noiti, C.A.3 (Pa.) 1984, 729 F.2d 213, certiorari denied 105 S.Ct. 243, 469 U.S. 880, 83 L.Ed.2d 182, certiorari denied 105 S.Ct. 244, 469 U.S. 880, 83 L.Ed.2d 182. Commerce

Where evidence was sufficient to sustain jury verdict that defendant was participant in conspiracy to facilitate illegal gambling, retirement of defendant, a deputy sheriff, from sheriff's office in 1976, even though conspiracy was alleged to have remained in existence until 1979, did not preclude use of conspiracy count as predicate act in support of racketeering charge since an “association with” an enterprise is prohibited by subsec. (c) of this section and since this chapter applies to outsiders as well as to insiders. U. S. v. Welch, C.A.5 (Tex.) 1981, 656 F.2d 1039, rehearing denied 663 F.2d 101, certiorari denied 102 S.Ct. 1767, 456 U.S. 915, 72 L.Ed.2d 173, certiorari denied 102 S.Ct. 1768, 456 U.S. 915, 72 L.Ed.2d 173. Conspiracy


Moving company failed to allege existence of enterprise that was distinct from non-vessel operating common
carrier (NVOCC) and its affiliates and employees, as required to state claim under Racketeer Influenced and 
Corrupt Organizations Act (RICO), where each corporate RICO person was affiliate of NVOCC, each alleged 
individual RICO person was employee of NVOCC or one of its affiliates, and company did not allege conduct 
by any party that was not in course of his employment or on NVOCC’s behalf. Atlantic Intern. Movers, LLC v. 

Investors that sued art dealer, alleging fraudulent practices as to art auctions conducted on cruise ships, ade-
quately alleged existence of Racketeer Influenced and Corrupt Organizations Act (RICO) “enterprise,” where 
complaint averred that dealer and cruise lines participated in ongoing association designed to funnel cruise pas-
sengers to dealer's auctions for purpose of selling worthless or overvalued artwork. In re Park West Galleries, 

Several media companies and two officers constituted association-in-fact that carried out alleged substantive vi-
olations of Racketeer Influenced and Corrupt Organizations Act (RICO), in investor's action, through his guardi-
an, based on conducting multimillion-dollar scheme to defraud investor through pattern of racketeering activity; 
officers were sole officers of one company during relevant time period, such that officers' acts and knowledge 
were imputable to company at that time and thus company shared in criminal purpose, regardless of whether 
Corporations And Business Organizations

Publisher failed to allege that competitor, its employees, distributors, and others constituted association-in-fact 
enterprise under Racketeer Influenced and Corrupt Organizations Act (RICO) to monopolize and dominate local 
print advertising market, where publisher did not allege how each defendant associated with other defendants in 
alleged enterprise, what defendants' roles were in any alleged enterprise, the structure and functioning of alleged 

Homeowners satisfied the distinctiveness requirement for pleading an association-in-fact enterprise on civil 
Racketeer Influenced and Corrupt Organizations Act (RICO) claim against title insurance company which al-
legedly engaged in fraudulent scheme with title agents to charge default basic insurance rate rather than special 
discounted reissue or refinance rate applicable to homeowners' mortgage transactions; title agents were not em-
ployees of the title insurance company but were rather separate and independent entities with non-exclusive 
agency agreements, and the combination of the title insurance company and the title agents thus constituted a 
single enterprise separate and distinct from the person of the title insurance company. Coleman v. Common-

Individuals who were allegedly wrongfully enrolled in membership programs for goods and services failed to es-

tablish existence of an association-in-fact enterprise within meaning of Racketeer Influenced and Corrupt Or-

ganizations Act (RICO), based on third party contracts between program operator, its parent corporation, and 
certain financial institutions, where third-party contractual agreements were not alleged to have formed a hier-

archical or consensual structure which provided a mechanism for controlling affairs of alleged enterprise, and al-
leged improper billing scheme perpetuated through the third-party contracts was both the alleged racketeering
enced And Corrupt Organizations 47

Present and former village mayors and commissioners of public safety were sufficiently distinct persons under
Racketeer Influenced and Corrupt Organizations Act (RICO) from alleged RICO enterprise, in which village
constables issued traffic citations without proper authority, to support civil enforcement claim under RICO,
where village constabulary would have existed even if allegedly illegal acts were removed. Brewer v. Village of

Distributor of golf carts failed to establish involvement of manufacturer in enterprise, as required for claim that
manufacturer violated Racketeer Influenced and Corrupt Organizations Act (RICO) in its dealings with distrib-
utor; conclusory allegations that there were enterprises, comprised of manufacturer and its parent, and manufac-
turer and another customer, presented without explanation, were insufficient. Club Car, Inc. v. Club Car
(Quebec) Import, Inc., S.D.Ga.2003, 276 F.Supp.2d 1276, affirmed 362 F.3d 775, rehearing and rehearing en
L.Ed.2d 461. Racketeer Influenced And Corrupt Organizations 74

Asbestos manufacturer adequately alleged enterprise that was sufficiently distinct from defendant law firm to
support manufacturer's claim alleging pattern of racketeering activity under the Racketeer Influenced and Cor-
rupt Organizations Act (RICO), arising from law firm's alleged direction of association in fact consisting of vari-
ous local counsel, doctors, and unions acting with common purpose of encouraging large settlements from man-
ufacturer and others for their own benefit; even if such individuals and entities were law firm's agents, their al-
leged actions went beyond conducting normal affairs of firm but were acts on behalf of alleged enterprise. G-I
Holdings, Inc. v. Baron & Budd, S.D.N.Y.2002, 238 F.Supp.2d 521. Racketeer Influenced And Corrupt Organ-
izations 73

Buyers of interest in limited partnership stated cause of action for RICO violation involving conduct of enter-
prise through pattern of racketeering activity; there were allegations that promoters had created, operated and
controlled each limited partnership involved in case, satisfying “operation or management” test, limited partners-
ships fell within statutory definition of what constituted an “enterprise,” and acts of mail and wire fraud and se-
curities fraud over a period of more than six years were alleged, satisfying “pattern” and “racketeering” require-
fluenced And Corrupt Organizations 72; Racketeer Influenced And Corrupt Organizations 74

To be found liable under Racketeer Influenced and Corrupt Organizations Act (RICO) for conducting affairs of
enterprise through pattern of racketeering activity, defendant must participate in operation or management of en-
terprise itself; however, liability is not limited to those with a formal position in the enterprise, rather, enterprise
also may be operated or managed by others associated with enterprise, who exert control over it. Bowdoin
721. Racketeer Influenced And Corrupt Organizations 50

Accounting firm that performed independent accounting services for limited partnerships associated with registered public offerings respecting limited partnership units was not involved in operation or management of partnerships so as to render firm liable to purchasers of limited partnership interests under Racketeer Influenced and Corrupt Organizations Act (RICO) provision prohibiting participation in conduct of enterprise's affairs through pattern of racketeering activity. Tonnemacher v. Sasak, D.Ariz.1994, 859 F.Supp. 1273. Racketeer Influenced And Corrupt Organizations

Allegations that principals of limited partnership, its affiliates, and bank knowingly furnished false and fraudulent invoices for work, labor and services that were never performed or that were overbilled with knowledge that invoices would be submitted to bank for draw-down payment stated claim under Racketeer Influenced and Corrupt Organizations Act (RICO) forbidding any person employed by or associated with any enterprise to conduct or participate, directly or indirectly, in conduct of such enterprise's affairs through pattern of racketeering activity. Attick v. Valeria Associates, L.P., S.D.N.Y.1992, 835 F.Supp. 103. Racketeer Influenced And Corrupt Organizations

Law firm's providing of legal services to general partners and to limited real estate partnership did not constitute conducting or participating directly or indirectly in conduct of affairs of corporations so as to make law firm liable under section of Racketeer Influenced and Corrupt Organization Act (RICO) prohibiting conducting or participating in conduct of enterprise through pattern of racketeering activity. Morin v. Trupin, S.D.N.Y.1993, 832 F.Supp. 93. Racketeer Influenced And Corrupt Organizations

Investors in real estate syndication failed to state cause of action against real estate broker under RICO, as party conducting or participating in racketeering activity; broker was independent contractor not participating in operation or management of organization alleged to be involved in racketeering. Morin v. Trupin, S.D.N.Y.1993, 823 F.Supp. 201. Racketeer Influenced And Corrupt Organizations

Conduct of attorneys representing issuers in public offering, consisting of providing legal services, was not sufficient to support liability under Racketeer Influenced and Corrupt Organizations Act (RICO) provision stating that it shall be unlawful for any person employed by enterprise engaged in interstate or foreign commerce to conduct or participate in conduct of such enterprise's affairs through pattern of racketeering activity. Sassoon v. Altgelt, 777, Inc., N.D.Ill.1993, 822 F.Supp. 1303. Attorney And Client

Law firm acting as seller's general counsel was “employed by or associated with” seller that was alleged to be RICO enterprise. Kline v. First Western Government Securities, E.D.Pa.1992, 794 F.Supp. 542, affirmed in part, reversed in part 24 F.3d 480, rehearing and rehearing in banc denied, certiorari denied 115 S.Ct. 613, 513 U.S. 1032, 130 L.Ed.2d 522, on remand. Racketeer Influenced And Corrupt Organizations

Affiliation of securities broker and other employees of brokerage firm was not sufficiently distinct from that inherent in conduct of pattern of racketeering as to constitute association in fact, for Racketeer Influenced and Corrupt Organizations Act (RICO) purposes. Nagle v. Merrill Lynch, Pierce, Fenner & Smith, Inc., S.D.Iowa 1992, 790 F.Supp. 203. Racketeer Influenced And Corrupt Organizations

For purposes of claim under RICO section making it unlawful for any person employed by or associated with any enterprise to conduct or participate in conduct of such enterprise's affairs through pattern of racketeering activity, employees who entered into wage deferral contracts with employer that subsequently went bankrupt could not allege that employer violated section by conducting its own affairs, since statute required that person and enterprise be distinct entities; likewise employer did not violate subsection by conducting affairs of association of itself and its controlling agents. In re Tucker Freight Lines, Inc., W.D.Mich.1991, 789 F.Supp. 884.

Accounting firm did not participate in conduct of alleged racketeering enterprise for purposes of civil Racketeer Influenced and Corrupt Organizations Act (RICO) claim by conducting limited, nonaudit review of enterprise's financial forecast for real estate investment, even if firm was one of a number of firms that provided opinions as to financial projections utilized by enterprise in selling its limited partnerships. Mekhjian v. Wollin, S.D.N.Y.1992, 782 F.Supp. 881.

Evidence created jury questions whether defendants associated in fact as enterprise engaged in extensive gambling operation and conspiracy to extort extensions of credit, whether they knowingly and intentionally participated in enterprise's illegal activities, and whether enterprise had effect on interstate commerce. U.S. v. Giovanelli, S.D.N.Y.1989, 747 F.Supp. 897.

If the Government satisfactorily proves defendant's participation in or conduct of enterprise's affairs through a pattern of racketeering activity, the Government will have satisfied the “associated with” RICO requirement. U.S. v. Paccione, S.D.N.Y.1990, 738 F.Supp. 691.

Civil RICO complaint adequately alleged an association between company officials with the RICO enterprise exceeding the scope of normal business transaction and to show participation in the conduct of the alleged enterprise's affairs as to the issuance and sale of manufactured home loan bonds necessary to state a civil RICO claim. First Financial Sav. Bank, Inc. v. American Bankers Ins. Co. of Florida, Inc., E.D.N.C.1988, 699 F.Supp. 1167.

Investor failed to state cause of action against broker, broker's officers, and broker's representative under Racketeer Influenced and Corrupt Organizations Act section making it unlawful for any person associated with any enterprise to conduct or participate in conduct of enterprise's affairs through pattern of racketeering activity; investor contended that individuals were controlled persons liable for having committed predicate acts while broker was controlling person but only persons could be held liable under statute and broker was not a person and statute only addressed the reverse situation in which enterprise was controlled by individual controlling persons. Leonard v. Shearson Lehman/American Exp. Inc., E.D.Pa.1988, 687 F.Supp. 177.

Petition, which alleged that employee of company, attorney, and bank wrested control of company from its founder by manipulating cash flow, fraudulent loan agreements, and other financial maneuvers was sufficient to allege active involvement by defendants in affairs or management of the company to state a claim under the

Defendant corporation, as alleged central figure in criminal scheme to gain control and conduct affairs of corporation through pattern of racketeering activity, could be named as both defendant and enterprise for purposes of Racketeer Influenced and Corrupt Organizations Act provision against conspiring to acquire interest in or control of any enterprise through pattern of racketeering activity or participating in conduct of such enterprise's affairs through pattern of racketeering activity. Barkman v. Wabash, Inc., N.D.Ill.1987, 674 F.Supp. 623. Racketeer Influenced And Corrupt Organizations

Defendant, a private attorney, could be “associated,” for purposes of prosecution under Racketeer Influenced and Corrupt Organizations Act, with charged enterprise, a state court, in prosecution based on allegations of participation in scheme to bribe state court judges. U.S. v. Roth, N.D.Ill.1987, 669 F.Supp. 1386. Racketeer Influenced And Corrupt Organizations

City sufficiently alleged contractors' association with enterprise to assert RICO claim based on contractors' alleged bribery of employees of the city sewer bureau by alleging that the contractors schemed with and bribed bureau employees and repeatedly mailed false permit applications to the bureau, thus associating with the bureau. City of New York v. Joseph L. Balkan, Inc., E.D.N.Y.1987, 656 F.Supp. 536. Racketeer Influenced And Corrupt Organizations

Allegations indicating that employees of French corporation acted at all times within scope of employment established that corporation was both enterprise and liable person and failed to state cause of action under racketeering statute, which prohibits person employed by enterprise from participating in conduct of enterprise's affairs through pattern of racketeering activity. American Bonded Warehouse Corp. v. Compagnie Nationale Air France, N.D.Ill.1987, 653 F.Supp. 861. Racketeer Influenced And Corrupt Organizations

Plaintiff who alleged that corporate defendants and individual defendant had submitted bids which brought them into relationship with city and city manager before defendants were awarded hazardous waste clean up contract sufficiently alleged “association” during time pertinent to case to avoid dismissal of RICO claims on grounds that defendants were not associated with an enterprise during the time the alleged illegal acts were done. State of N.Y. v. O'Hara, W.D.N.Y.1987, 652 F.Supp. 1049. Racketeer Influenced And Corrupt Organizations

Shipping corporation was not liable under RICO to bank which was defrauded of eight million dollars by scheme involving unauthorized bills of lading bought from corporation's employee where employee's actions were not authorized, bank did not deal directly with employee, and no officers or management level employees of corporation knew of or benefitted from scheme. Banque Worms v. Luis A. Duque Pena E Hijos, Ltda., S.D.N.Y.1986, 652 F.Supp. 770. Labor And Employment

Brokerage firm could not be liable under provision of Racketeer Influenced and Corrupt Organizations Act prohibiting racketeering by persons employed by or associated with enterprise; firm's branch offices were not separ-
ate enterprise, and it was business of firm, not of various branches, which was being conducted through alleged pattern of racketeering activity. *Gilbert v. Prudential-Bache Securities, Inc.*, E.D.Pa.1986, 643 F.Supp. 107, reconsideration denied. *Racketeer Influenced And Corrupt Organizations* \[44\]

Claim against brokerage firm under Racketeer Influenced and Corrupt Organizations Act provision prohibiting racketeering by persons employed by or associated with enterprise would be dismissed, where plaintiff's reading of complaint as written was that firm was the enterprise and therefore could not act as person in conducting affairs of subsidiary. *Ghouth v. Conticommodity Services, Inc.*, N.D.Ill.1986, 642 F.Supp. 1325. *Racketeer Influenced And Corrupt Organizations* \[44\]

Complaint alleging existence of scheme devised by defendants to defraud plaintiff through submission of inflated bids and creation of false invoices, in order to make kickback payments to one of plaintiff's employees, and alleging defendant's active participation in this scheme, sufficiently alleged that defendant was employed by or associated with an enterprise to conduct or participate in the conduct of a pattern of racketeering activity, so as to constitute a violation of 18 U.S.C.A. § 1962(c). *Estee Lauder, Inc. v. Harco Graphics, Inc.*, S.D.N.Y.1984, 621 F.Supp. 689. *Racketeer Influenced And Corrupt Organizations* \[74\]

Complaint by purchasers of limited partnership interests that brokerage firm knowingly conducted and participated in conduct of limited partnership sufficiently alleged association between brokerage firm and partnership to satisfy requirement under Racketeer Influenced and Corrupt Organizations Act that purchasers, who sought to recover against brokerage firm under RICO, allege that defendant was employed by or associated with enterprise and conduct or participate in conduct of such enterprise's affairs through pattern of racketeering activity. *Alfaro v. E.F. Hutton & Co., Inc.*, E.D.Pa.1985, 606 F.Supp. 1100. *Racketeer Influenced And Corrupt Organizations* \[50\]

Banks could be held liable under this chapter for taking part in alleged scheme to defraud blanket bond issuer's principal if they were “associated with” enterprise which allegedly conspired to, and did, defraud issuer's principal, even if banks were not “members” of an enterprise comprised of “individuals associated in fact.” *General Acc. Ins. Co. of America v. Fidelity and Deposit Co. of Maryland*, E.D.Pa.1984, 598 F.Supp. 1223. *Racketeer Influenced And Corrupt Organizations* \[43\]

Even though insurance company was “enterprise” within meaning of this chapter, subsec. (c) of this section runs only to those employed by or associated with enterprise; thus, as insurance company could not logically be employed or associated with itself, claim brought under subsec. (c) of this section against insurance company would be dismissed. *Saine v. A.I.A., Inc.*, D.C.Colo.1984, 582 F.Supp. 1299. *Commerce* \[80\]

To extent that cable television companies in which investors acquired investment interests constituted enterprise which was subject of investors' claim under this chapter, companies could not be liable under subsec. (c) of this section declaring it unlawful for any person employed by or associated with enterprise to conduct such enterprise's affairs through pattern of racketeering activity, since companies could not be both enterprise and persons associated with enterprise simultaneously. *Kirschner v. Cable/Tel Corp.*, E.D.Pa.1983, 576 F.Supp. 234. *Commerce* \[80\]
Violation of this section requires both an “enterprise” and a “person” who is employed by or associated with that enterprise and who participates in the conduct of its affairs through a pattern of racketeering activity. *Parnes v. Heinold Commodities, Inc.*, N.D.Ill.1982, 548 F.Supp. 20. Commerce 82.6; Racketeer Influenced And Corrupt Organizations 34

Former church member who, in claim for treble damages under section 1964 of this title on her own behalf and on behalf of class of all those who had paid money or property to church of particular ideology, its employees or agent, referred to subject church as both enterprise and as “person” from who class sought treble damages failed to state claim under subsec. (c) of this section since it is only a person, or one associated with an enterprise, not the enterprise itself, who can violate the provisions of this section. *Van Schaick v. Church of Scientology of California, Inc.*, D.C.Mass.1982, 535 F.Supp. 1125. Commerce 82.6; Criminal Law 1220; Racketeer Influenced And Corrupt Organizations 39

Defendant, the clerk of courts of Lehigh County, could be convicted under this section, despite contention that as clerk of courts he can not be charged with being associated with, or employed by, himself, in that clerk of courts is an office and defendant, although holding that office is not the office, he is merely its manager and caretaker. *U.S. v. Joseph*, E.D.Pa.1981, 526 F.Supp. 504. Racketeer Influenced And Corrupt Organizations 46

Count of indictment charging defendant with violation of subsec. (c) of this section prohibiting any person employed by or associated with any enterprise engaged in or affecting interstate commerce to conduct the affairs of that enterprise through a pattern of racketeering activity would not be dismissed on theory that said section was limited to those who managed or operated an enterprise and that defendant, who was characterized in indictment as a “broker,” was not a person who conducted or participated in conduct of the affairs of an enterprise, since section also prohibited indirect participation, and since allegations in indictment, if true, arguably rendered defendant a direct participant in conduct of the affairs of an enterprise. *U. S. v. Chovanec*, S.D.N.Y.1979, 467 F.Supp. 41. Indictment And Information 144.1(1)

Term “associated with” as used in subsec. (c) of this section is ejusdem generis with term “employed by” and refers to parties “inside” the enterprise rather than those “outside”; term was used to embrace with sufficient generality all persons substantially participating in operation of the organization and Congress' aim was to avoid either the necessity of verbose enumeration, such as agents, attorneys, etc., or risk of inviting litigation akin to that under social security and labor legislation to determine whether an individual is an employee or possesses some other status, such as independent contractor. *U.S. v. Forsythe*, W.D.Pa.1977, 429 F.Supp. 715, reversed on other grounds 560 F.2d 1127. Extortion And Threats 25.1

75. ---- Instructions, conduct or participation in enterprise, offenses generally

Supplemental instruction given for racketeering charge under Racketeer Influenced and Corrupt Organizations Act (RICO), indicating that, to acquit defendant, jury had to decide unanimously as to each of at least two of three predicate acts alleged in support of charge that government had failed to prove beyond a reasonable doubt, and that jury would be deemed to be “hung,” or at an impasse, if it failed to convict or failed to acquit in accordance with such instruction, was at most harmless error in light of jury's ultimate conclusion that government had
proved all three predicate offenses, such that instruction had no impact on jury aside from forcing it to deliberate to a conclusion as to third predicate act, which was unnecessary to conviction. U.S. v. Carr, C.A.2 (N.Y.) 2005, 424 F.3d 213, certiorari denied 126 S.Ct. 1447, 546 U.S. 1221, 164 L.Ed.2d 145, appeal after new sentencing hearing 557 F.3d 93, certiorari denied 130 S.Ct. 169, 558 U.S. 936, 175 L.Ed.2d 239, post-conviction relief denied 2011 WL 13937. Criminal Law ☞ 1172.8

Instruction in Racketeer Influenced and Corrupt Organizations Act (RICO) prosecution that terms “conduct” and “participate in the conduct of the affairs of the enterprise” include “the performance of acts, functions or duties which are necessary to or helpful in the operation of the enterprise,” without additional instruction requiring finding of operation or management of the enterprise, was harmful error; although jury found defendant guilty of conspiring to violate same RICO subsection, this did not supply missing finding relating to participation in management or operation of enterprise, and the record did not contain overwhelming evidence that defendant managed or operated enterprise. U.S. v. Swan, C.A.7 (Ill.) 2001, 250 F.3d 495. Criminal Law ☞ 1172.1(3); Racketeer Influenced And Corrupt Organizations ☞ 96

Any error of law committed by district court in instructing jury that it need not find that Racketeer Influenced and Corrupt Organizations (RICO) defendants participated in management or control of enterprise for purposes of statute, making it unlawful for person employed by enterprise engaged in commerce to participate in conduct of such enterprise's affairs through pattern of racketeering activity, was not such a fundamental defect giving rise to complete miscarriage of justice as to support a collateral attack on the final judgment since there was overwhelming evidence that defendants played some part in directing affairs of the charged enterprise. Napoli v. U.S., C.A.2 (N.Y.) 1994, 32 F.3d 31, certiorari denied 115 S.Ct. 900, 513 U.S. 1110, 130 L.Ed.2d 784, on rehearing 45 F.3d 680, certiorari denied 115 S.Ct. 1796, 514 U.S. 1084, 131 L.Ed.2d 724, certiorari denied 115 S.Ct. 2015, 514 U.S. 1134, 131 L.Ed.2d 1014. Criminal Law ☞ 1552

76. ---- Interstate commerce, conduct or participation in enterprise, offenses generally

Evidence in Racketeering Influenced Corrupt Organizations Act (RICO) conspiracy trial was sufficient to establish that the enterprise, the overall objective of which was to make money prostituting juveniles, was engaged in interstate commerce and that activities of the enterprise affected interstate commerce; defendants used automobiles and the interstate highways to take underage prostitutes across state lines, as well as elsewhere in Georgia, and the pimps and their prostitutes used instrumentalities of interstate commerce such as pagers, telephones, and mobile phones to communicate with each other while conducting business. U.S. v. Pipkins, C.A.11 (Ga.) 2004, 378 F.3d 1281, rehearing and rehearing en banc denied 125 Fed.Appx. 268, 2004 WL 2647339, rehearing and rehearing en banc denied 125 Fed.Appx. 979, 2004 WL 2806034, vacated 125 S.Ct. 1617, 544 U.S. 902, 161 L.Ed.2d 275, on remand 412 F.3d 1251. Commerce ☞ 82.60; Racketeer Influenced And Corrupt Organizations ☞ 95

De minimis connection with interstate commerce required for conviction, under Racketeer Influenced and Corrupt Organizations Act (RICO), for conducting or conspiring to conduct affairs of RICO enterprise affecting interstate commerce was satisfied where Ohio-based enterprise purchased Pennsylvania lottery tickets to protect against losses in its illegal gambling business, its members sold in Pennsylvania a ring taken from Ohio murder victim, enterprise extorted money from victim who sold fireworks in New York, and government alleged that
Pittsburgh mafia family was involved in enterprise. U.S. v. Riddle, C.A.6 (Ohio) 2001, 249 F.3d 529, certiorari denied 122 S.Ct. 292, 534 U.S. 930, 151 L.Ed.2d 216. Conspiracy $\Rightarrow$ 30

In prosecution under Racketeer Influenced and Corrupt Organization Act [18 U.S.C.A. § 1962(c) ], only the criminal enterprise must affect interstate commerce, not the conduct of each individual defendant. U.S. v. Robinson, C.A.6 (Ky.) 1985, 763 F.2d 778. Commerce $\Rightarrow$ 82.60

Employer's claims against former employees under Racketeer Influenced and Corrupt Organizations Act (RICO) sufficiently alleged the effect of RICO enterprise on interstate commerce, as required to state a claim for participating in employer's affairs through pattern of racketeering activity. Breslin Realty Development Corp. v. Schackner, E.D.N.Y.2006, 457 F.Supp.2d 132. Racketeer Influenced And Corrupt Organizations $\Rightarrow$ 69

Allegations failed to state claim under provisions of Racketeer Influenced and Corrupt Organizations Act (RICO) barring use of funds derived from racketeering activity to invest or acquire interest in enterprise involved in interstate commerce and barring use of racketeering activity to acquire or maintain interest in, or control over, enterprise involved in interstate commerce when company engaged in wholesale close-out business and two of its founders alleged that income derived from purported scheme by hosiery manufacturer, its employee, and company's third founder to defraud company was invested in and obtained ownership interest in same enterprise alleged to have been vehicle through which manufacturer, employee, and third founder purportedly engaged in unlawful predicate acts, and also alleged injuries that were proximate result of racketeering predicate, rather than requisite distinct investment injury. USA Certified Merchants, LLC v. Koebel, S.D.N.Y.2003, 262 F.Supp.2d 319, reconsideration denied 273 F.Supp.2d 501. Racketeer Influenced And Corrupt Organizations $\Rightarrow$ 75

Impact of murders on alleged victims, some of whom were rival gang members, was insufficient to constitute a de minimis effect on commerce so as to permit Racketeer Influenced and Corrupt Organizations Act (RICO) to reach gang's conduct. U.S. v. Garcia, E.D.Mich.2000, 143 F.Supp.2d 791. Commerce $\Rightarrow$ 82.60

Jury's finding that street gang was engaged in interstate commerce, as required for conviction under Racketeer Influenced and Corrupt Organizations Act (RICO), was supported by sufficient evidence, including defendant's concession that during his tenure as leader of gang, he was involved in marijuana trafficking conspiracy which was done in interstate commerce. U.S. v. Espinoza, C.A.7 (Ill.) 2002, 52 Fed.Appx. 846, 2002 WL 31769470, Unreported, certiorari denied 123 S.Ct. 2234, 538 U.S. 1065, 155 L.Ed.2d 1120, error coram nobis dismissed 2011 WL 1827232. Commerce $\Rightarrow$ 82.60

77. ---- Membership in enterprise, conduct or participation in enterprise, offenses generally

Even if inspector's enforcement of the housing code to force property owners to sell their properties to inspector or face demolition of the properties could constitute extortion and qualify as a Racketeer Influenced and Corrupt Organizations Act (RICO) predicate act, evidence failed to establish that inspector was doing anything more than conducting his own affairs, and therefore did not demonstrate that he engaged in “conduct of an enterprise.” Steinhauser v. City of St. Paul, D.Minn.2008, 595 F.Supp.2d 987, affirmed in part, reversed in part 619 F.3d
823, rehearing and rehearing en banc denied 636 F.3d 380, certiorari granted 132 S.Ct. 548, 181 L.Ed.2d 395, certiorari dismissed 132 S.Ct. 1306, 181 L.Ed.2d 1035. Racketeer Influenced And Corrupt Organizations

Racketeer Influenced and Corrupt Organizations Act (RICO) complaint sufficiently alleged association-in-fact between pharmaceutical manufacturers and pharmacy benefit managers (PBM) acting as middlemen between manufacturers and employee health-benefit plans, involving hidden profit making schemes based on fraudulently overstated average wholesale prices (AWP) for manufacturers' prescription drugs; allegations provided plausible common fraudulent purpose, a falsely-inflated AWP, and described systematic linkages, common communication networks, and regular meetings among associates. In re Pharmaceutical Indus. Average Wholesale Price Litigation, D.Mass.2004, 307 F.Supp.2d 196. Racketeer Influenced And Corrupt Organizations

Commercial vehicle insurer sufficiently alleged that insurance broker “participated” in conduct of alleged enterprise, to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO), when insurer asserted that broker was key participant in scheme to defraud insurer, that broker made critical misrepresentations to insurer regarding ownership and operation of insured vehicles, and that broker served as point of communication between insurer and other alleged participants in scheme. United States Fire Ins. Co. v. United Limousine Service, Inc., S.D.N.Y.2004, 303 F.Supp.2d 432. Racketeer Influenced And Corrupt Organizations


78. ---- Racketeering activity, conduct or participation in enterprise, offenses generally

Evidence that a murder and attempted murder carried out by one street gang member were committed in support of gang’s criminal enterprise was sufficient to support sentence enhancement on such basis in convictions for racketeering and racketeering conspiracy in violation of Racketeer Influenced and Corrupt Organizations Act (RICO); murder victim was hated by gang because she had “disrespected” it, gang members testified that members were obligated to respond with violence to “disrespect,” another gang member provided shooter with assistance, and evidence that a gang gun was used supported inference that gang leader authorized the shooting. U.S. v. Olson, C.A.7 (Wis.) 2006, 450 F.3d 655, on remand 2006 WL 2585035, on remand 2006 WL 2845693, on remand 2007 WL 128340, opinion after remand 223 Fed.Appx. 509, 2007 WL 1354176, habeas corpus denied 2008 WL 4830799, certificate of appealability denied 2009 WL 56945, on remand 2007 WL 1502173. Racketeer Influenced And Corrupt Organizations; Sentencing And Punishment

By use of word “through” in subsec. (c) of this section proscribing participation in conduct of affairs of enterprise through pattern of racketeering activity, Congress intended only to require sufficient nexus between racketeering activities and affairs of enterprise and did not intend to require that racketeering activities benefit enterprise. U. S. v. Welch, C.A.5 (Tex.) 1981, 656 F.2d 1039, rehearing denied 663 F.2d 101, certiorari denied 102 S.Ct. 1767, 456 U.S. 915, 72 L.Ed.2d 173, certiorari denied 102 S.Ct. 1768, 456 U.S. 915, 72 L.Ed.2d 173. Racketeer Influenced And Corrupt Organizations
Evidence did not have to show that defendants participated in each and every racketeering act charged to convict defendants of racketeering, but rather had only to show that each defendant participated in at least two of the racketeering acts. U. S. v. Peacock, C.A.5 (Ga.) 1981, 654 F.2d 339, vacated in part on rehearing 686 F.2d 356, certiorari denied 104 S.Ct. 404, 464 U.S. 965, 78 L.Ed.2d 344. Racketeer Influenced And Corrupt Organizations

The language “conduct or participate” used in this section requires some involvement in the operation or management of the business; this section requires proof of some connection between the pattern of racketeering activity and the conducting or operating of the business. U. S. v. Mandel, C.A.4 (Md.) 1979, 591 F.2d 1347, on rehearing 602 F.2d 653, rehearing denied 609 F.2d 1076, certiorari denied 100 S.Ct. 1647, 445 U.S. 961, 64 L.Ed.2d 236. Racketeer Influenced And Corrupt Organizations

Violation of this section was not made out where there was total want of proof of connection between racketeering activities and affairs of business in question; geographical juxtaposition of enterprises was insufficient, and there was no showing that affairs of corporate enterprise charged in indictment were advanced through racketeering. U. S. v. Nerone, C.A.7 (Ill.) 1977, 563 F.2d 836, certiorari denied 98 S.Ct. 1577, 435 U.S. 951, 55 L.Ed.2d 801. Racketeer Influenced And Corrupt Organizations

Indictment alleging that defendant was a member of union local who occupied positions of influence within the local's criminal enterprise, that he was a member of a group of local members who was willing to engage in acts of violence and destruction of property against construction contractors, that he engaged in a pattern of racketeering on approximate dates against named contractors, and that he sought specific property, was sufficient to allege racketeering conspiracy. U.S. v. Larson, W.D.N.Y.2011, 807 F.Supp.2d 142. Conspiracy

Assertion that chief financial officer (CFO) of newspaper distributor actively directed the operation of the scheme to inflate newspaper's sales figures was sufficient to allege that CFO conducted affairs of enterprises that artificially inflated newspaper's circulation figures, as required to state claim for violation of Racketeer Influenced and Corrupt Organizations Act (RICO) section making it unlawful to conduct affairs of an enterprise through a pattern of racketeering activity or collection of unlawful debt, where CFO and others would meet on a regular basis to instruct two individuals as to the best method for newspaper to fraudulently adjust sales affidavits, and also allegedly intimated to newspaper's distributor's Executive Vice President that it would be “better” for him to cooperate with newspaper in helping to falsely inflate the circulation numbers. Crabhouse of Douglaston Inc. v. Newsday Inc., E.D.N.Y.2011, 801 F.Supp.2d 64. Racketeer Influenced and Corrupt Organizations

Plaintiff's allegations against credit solutions companies and their employees were sufficient to allege violation of Racketeer Influenced and Corrupt Organizations Act (RICO) provision making it unlawful for any person associated with any enterprise engaged in, or activities of which affect, interstate or foreign commerce to conduct or participate, directly or indirectly, in conduct of such enterprise's affairs through pattern of racketeering activity, where plaintiff alleged that defendants formed association-in-fact with common purpose of defrauding financially distressed homeowners, that defendants were residents of New Jersey and directed their scheme at Pennsylvania homeowners, and that defendants engaged in predicate acts of mail and wire fraud based on inter-
state phone calls to solicit loans. Brock v. Thomas, E.D.Pa.2011, 782 F.Supp.2d 133. Racketeer Influenced And Corrupt Organizations 31; Racketeer Influenced And Corrupt Organizations 43; Racketeer Influenced And Corrupt Organizations 50

Complaint, which alleged that subscription agent and individual subscribers conspired to defraud publishers of scientific, technical and medical journals by placing orders for the purchase of thousands of those journals at a lower or discounted “individual” subscription rate, rather than the higher “institutional” rate, and then by reselling the journals to institutions for more than the individual rate, failed to plead Racketeer Influenced and Corrupt Organizations Act (RICO) predicate acts of mail and wire fraud against subscription agent with sufficient particularity; complaint contained not a single allegation about what subscription agent did to further the fraudulent scheme, or to commit an act of mail or wire fraud, directly or indirectly. Elsevier Inc. v. W.H.P.R., Inc., S.D.N.Y.2010, 692 F.Supp.2d 297. Federal Civil Procedure 636

Alleged acts of retailer’s chief executive officer (CEO) in persuading suppliers not to deal with retailer’s competitor did not involve extortion under Hobbs Act and were not racketeering activity; even if suppliers’ ability to sell freely to competitor or the profits derived from those sales were a cognizable form of property under the Hobbs Act, the CEO did not obtain or acquire that property, and if competitor’s own potential profits derived from its own ability to sell to the public was the property right acquired, competitor never consented to relinquishing this alleged and attenuated property right to the CEO. Ace Pro Sound and Recording, LLC v. Albertson, S.D.Fla.2007, 512 F.Supp.2d 1259. Extortion 23

Genuine issue of material fact existed as to whether physician conducted or participated in racketeering activities of entities involved in a scheme to fraudulently bill insurers for unnecessary medical tests, precluding summary judgment for physician on insurers’ claims alleging a civil Racketeer Influenced and Corrupt Organizations Act (RICO) violation. State Farm Mut. Auto. Ins. Co. v. Weiss, M.D.Fla.2006, 410 F.Supp.2d 1146. Federal Civil Procedure 2509.5

Allegation that president of five corporations engaged in business of acquiring and selling used clothing, president’s son, and another corporation formed by president re-invested proceeds of their illicit activities back into their alleged illegal operations was insufficient to establish violation of Racketeer Influenced and Corrupt Organizations Act (RICO) section barring use of funds derived from racketeering activity to invest or acquire interest in enterprise involved in interstate commerce. Tuscano v. Tuscano, E.D.N.Y.2005, 403 F.Supp.2d 214. Racketeer Influenced And Corrupt Organizations 16

Debit cardholders sufficiently stated pattern element of claim against bank under section of the Racketeer Influenced and Corrupt Organizations Act (RICO) prohibiting conducting or participating in the affairs of an enterprise through a pattern of racketeering activity; plaintiffs sufficiently pled an open-ended pattern in that alleged history of Ponzi scheme which bank facilitated suggested that it posed a continuing threat, which did not end even after plaintiffs’ accounts were frozen by bank. OSRecovery, Inc. v. One Groupe Intern., Inc., S.D.N.Y.2005, 354 F.Supp.2d 357, reconsideration denied 2005 WL 309758, opinion adhered to on reconsideration 2005 WL 309755. Racketeer Influenced And Corrupt Organizations 28

Incumbent local telephone exchange carrier (ILEC) and its subsidiaries were sufficiently separate legal entities that they could form “enterprise,” for purposes of Racketeer Influenced and Corrupt Organizations Act (RICO) claim by competitive local exchange carrier (CLEC) that enterprise, forced to share facilities with CLEC, engaged in racketeering activity by submitting false billings and information regarding line losses caused by customer cancellations. Z-Tel Communications, Inc. v. SBC Communications, Inc., E.D.Tex.2004, 331 F.Supp.2d 513. Racketeer Influenced And Corrupt Organizations


Telecommunications provider’s customer did not satisfy “enterprise” element of claim for alleged violation of Racketeer Influenced and Corrupt Organizations Act (RICO) when customer alleged that provider’s executives qualified as enterprise because they had agreement to perform or assist in performance of acts amounting to mail and wire fraud, inasmuch as claim did not allege structure and alternative purpose aspects of RICO enterprise. Von Grabe v. Sprint PCS, S.D.Cal.2003, 312 F.Supp.2d 1285. Racketeer Influenced And Corrupt Organizations

Participation in conduct of enterprise’s affairs is sufficient for RICO liability, and defendant need not have conducted the racketeering enterprise. In re American Continental Corporation/Lincoln Sav. and Loan Securities Litigation, D.Ariz.1992, 794 F.Supp. 1424. Racketeer Influenced And Corrupt Organizations

Use of the word “through” in this section making it unlawful for any person employed or engaged in activities which affect interstate or foreign commerce to conduct or participate, directly or indirectly, in the conduct of such enterprise “through” a pattern of racketeering activity does not require a showing that the acquisition or maintenance of an interest in the enterprise is directly caused by, rather than merely associated with, the alleged racketeering. U.S. v. Mandel, D.C.Md.1976, 415 F.Supp. 997, supplemented 415 F.Supp. 1025. Racketeer Influenced And Corrupt Organizations

Insurance underwriter and related entities who brought action against its former corporate parent and former common directors of its former and current parent corporations, failed to establish that defendants engaged in racketeering activity, as element of claim under the Racketeer Influenced and Corrupt Organizations Act (RICO); although plaintiffs asserted predicate acts of mail and wire fraud, they offered no evidence that defendants had a scheme to defraud them, or acted with intent to deceive. Waddell & Reed Financial, Inc. v. Torchmark Corp., D.Kan.2004, 223 F.R.D. 566. Postal Service; Postal Service; Telecommunications

Evidence was sufficient to establish that defendant engaged in a pattern of racketeering activity by showing that defendant’s involvement in interstate transportation of fraudulently obtained motorcycle was connected to the other predicates charged against him relative to his activities of his motorcycle gang, thus supporting conviction for substantive violation of Racketeer Influenced and Corrupt Organizations Act (RICO); evidence permitted in-
ference that members of enterprise dealt in stolen motorcycles as a matter of course, and that one purpose of dealing in stolen motorcycles was to allow gang members to fulfill their financial obligations to the gang. U.S. v. Garland, C.A.6 (Ohio) 2008, 320 Fed.Appx. 295, 2008 WL 2939507, Unreported. Racketeer Influenced And Corrupt Organizations ∴ 28

Consumers who brought action against business services corporation, dealers and infomercial actor, stemming from leasing of e-commerce services and products, properly alleged cognizable injury traceable to purported racketeering acts, as required to maintain RICO claim; even though consumers failed to provide factual detail regarding actual damages, averment that each consumer suffered damages “as a result of the foregoing violations [of RICO] in such amount as may be determined but at least in the amount of $50,000” was sufficient to withstand motion to dismiss. Zito v. Leasecomm Corp., S.D.N.Y.2003, 2003 WL 22251352, Unreported. Racketeer Influenced And Corrupt Organizations ∴ 75

79. ---- Takeover of enterprise, conduct or participation in enterprise, offenses generally

Absent any evidence that general partner obtained acquisition and control over partnerships' managing agent through racketeering conduct or that minority partners were injured by such acquisition or maintenance, minority partners could not establish that general partner violated Racketeer Influenced and Corrupt Organizations Act (RICO) subsection prohibiting the takeover of legitimate businesses through racketeering activity. Lugosch v. Congel, N.D.N.Y.2006, 443 F.Supp.2d 254, reconsideration denied 2006 WL 2645125. Racketeer Influenced And Corrupt Organizations ∴ 50; Racketeer Influenced And Corrupt Organizations ∴ 62

Company failed to allege separate acquisition injury required to state claim under provision of Racketeer Influenced and Corrupt Organizations Act (RICO) prohibiting takeover of legitimate business through racketeering when only injury alleged was loss of company's money caused by former employees' alleged illegal transfers of company funds that served as predicate acts, and when factual allegations did not seek to redress takeover of legitimate business through racketeering acts, notwithstanding language in complaint parroting RICO statute. Breslin Realty Development Corp. v. Schackner, E.D.N.Y.2005, 397 F.Supp.2d 390. Racketeer Influenced And Corrupt Organizations ∴ 75

Knowing participation in criminal enterprise engaging in racketeering activities can make out violation of Racketeer Influenced and Corrupt Organizations Act even though alleged conspiracy did not aim at takeover of an enterprise. Fireman's Fund Ins. Co. v. Plaza Oldsmobile Ltd., E.D.N.Y.1985, 600 F.Supp. 1452. Racketeer Influenced And Corrupt Organizations ∴ 50

80. ---- Weight and sufficiency of evidence, conduct or participation in enterprise, offenses generally

Sufficient evidence established that organization was an enterprise, as required to support defendants' convictions for violating Racketeer Influenced and Corrupt Organizations Act (RICO); organization had multiple members who joined in shared purpose of selling drugs and promoting such sales, they had a meeting place where they were able to traffic drugs out of public's eye, there was a hierarchical structure in place, defendants agreed to retaliate against members of a different group after someone was shot, and evidence established that leader continued to direct operations from jail. U.S. v. Burden, C.A.2 (Conn.) 2010, 600 F.3d 204, certiorari denied© 2013 Thomson Reuters. No Claim to Orig. US Gov. Works.
Allegations by insured that group health insurer conducted and participated in the affairs of another company that marketed the insurance products, that insurer assisted the company in setting the dues or premiums, and that the insurer controlled the marketing information disseminated by the company about insurer's health care products did not state Racketeer Influenced and Corrupt Organizations Act (RICO) claim against insurer under association-in-fact enterprise theory, absent any allegation that the insurer directed or conducted an enterprise, that the insurer and company had more than a marketing arrangement, or that the enterprise had an organizational structure or hierarchy. Crichton v. Golden Rule Ins. Co., C.A.7 (Ill.) 2009, 576 F.3d 392. Racketeer Influenced And Corrupt Organizations 

Evidence was sufficient to prove that defendant participated in the conspiracy, as required to support conviction for Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy, notwithstanding that defendant did not have specific knowledge of or participation in each predicate act conducted by coconspirators; government presented evidence that defendant was formally inducted as a soldier into an organized crime family, and that the induction ceremony involved defendant's pledge to use any means necessary to further the family's objectives. U.S. v. Yannotti, C.A.2 (N.Y.) 2008, 541 F.3d 112, certiorari denied 129 S.Ct. 1648, 173 L.Ed.2d 999, post-conviction relief denied 2011 WL 891330, affirmed 475 Fed.Appx. 784, 2012 WL 1292749. Conspiracy

The evidence was sufficient to establish that defendant participated in the operation or management of the criminal enterprise, as element of substantive Racketeer Influenced and Corrupt Organizations Act (RICO) violation; the evidence indicated that one of the activities of the criminal enterprise was the distribution of controlled substances and that defendant supplied large quantities of drugs to other members of the enterprise with the knowledge that the members would resell the drugs at a profit. U.S. v. Lawson, C.A.6 (Ohio) 2008, 535 F.3d 434, as amended. Racketeer Influenced And Corrupt Organizations

Evidence was sufficient to establish that organization of which defendant was a member was a racketeering enterprise, rather than simply a neighborhood social group, as element of offense of racketeering conspiracy; evidence showed that members of the organization distributed narcotics and shared drug distribution opportunities, that organization maintained the same core membership for 12 years, that it regulated drug dealing within the territory it controlled, and that the members adhered to rules of conduct. U.S. v. Stewart, C.A.2 (N.Y.) 2007, 485 F.3d 666. Racketeer Influenced And Corrupt Organizations

Evidence was sufficient to permit jury to conclude beyond reasonable doubt, under Racketeer Influenced and Corrupt Organizations Act (RICO), that relatively structured narcotics trafficking enterprise existed, which had been conducted over substantial period of time, where, among other things, participant testified that “lieutenants” typically obtained prepackaged heroin and crack and delivered bundles of packets to street-level dealers, another participant testified that lieutenants were responsible for supervising four or five sellers and making sure that dealers were adequately supplied with product, and lieutenants were generally salaried at $500 per week. U.S. v. Jones, C.A.2 (Conn.) 2006, 455 F.3d 134, republished at 482 F.3d 60, certiorari denied 127
Evidence was sufficient to support defendants' convictions for substantive Racketeer Influenced and Corrupt Organizations Act (RICO) violations; evidence established that defendants, who were plumbing inspectors who worked in city's construction services department (CSD), improperly accepted payments from plumbers whose work they inspected, that the CSD was an ongoing organization with some sort of framework for making or carrying out decisions, and that each defendant performed a role in the group consistent with the CSD's organizational structure. U.S. v. Urban, C.A.3 (Pa.) 2005, 404 F.3d 754, certiorari denied 126 S.Ct. 732, 546 U.S. 1030, 163 L.Ed.2d 568, appeal after new sentencing hearing 240 Fed.Appx. 528, 2007 WL 2030283, habeas corpus denied 2007 WL 2597614, habeas corpus denied 2009 WL 579383. Racketeer Influenced And Corrupt Organizations 

Investors failed to show that banks' violation of state escrow fund reporting requirements proximately caused investors' loss of money through lawyer's Ponzi scheme, in lawsuit under Racketeer Influenced and Corrupt Organizations Act (RICO); racketeering activities alleged were not substantial factor in chain of causation that led to investors' losses, losses were not reasonably foreseeable consequence of banks' conduct, and, at worst, banks' conduct qualified as breach of banks' agreements with lawyer's fund, not as RICO predicate act. Lerner v. Fleet Bank, N.A., C.A.2 (N.Y.) 2003, 318 F.3d 113, as amended , certiorari denied 124 S.Ct. 532, 540 U.S. 1012, 157 L.Ed.2d 424, on remand 2005 WL 2064088. Racketeer Influenced And Corrupt Organizations 

Despite defendants' contrary accounts, testimony of two former members of defendants' group, which engaged in scheme to kidnap narcotics traffickers and hold them for ransom, that they personally saw defendants participate in kidnappings, supported district court's factual findings that defendants took part in kidnappings that served as relevant conduct for sentencing. U.S. v. Ruggiero, C.A.2 (N.Y.) 1996, 100 F.3d 284, certiorari denied 118 S.Ct. 1102, 522 U.S. 1138, 140 L.Ed.2d 156. Sentencing And Punishment 

Evidence established participation of individual defendant in “enterprise” existing among liability insurance purchase group and its affiliated service companies operating as continuing business unit, for purposes of parent corporation's Racketeer Influenced and Corrupt Organizations Act (RICO) claim against the individual for failing to properly forward premiums that had been paid to insure health maintenance organizations (HMOs) owned or managed by parent's subsidiary. United HealthCare Corp. v. American Trade Ins. Co., Ltd., C.A.8 (Minn.) 1996, 88 F.3d 563. Racketeer Influenced And Corrupt Organizations 

Evidence in civil action against parent of seller of automobile loan paper known as “enhanced automobile receivables” (EARs) alleging fraud was sufficient to support finding that seller “participated in the conduct” of RICO enterprise for purposes of federal RICO statute; evidence included proof of parent's close relationship with seller, proof that parent was party to, or guarantor of, secured value pool purchase agreements and promissory notes in connection with sales of EARs, and there was evidence permitting inference that parent was participating in conduct of selling EARs via fraudulent misrepresentations in order to keep seller afloat. Resolution Trust Corp. v. Stone, C.A.10 (Okla.) 1993, 998 F.2d 1534. Racketeer Influenced And Corrupt Organizations
Evidence was sufficient to establish that defendant's involvement in victim's murder and defendant's stolen property transactions were related to conduct of criminal enterprise, rather than isolated incidents, as required to support Racketeer Influenced and Corrupt Organizations Act (RICO) convictions; murder was performed for purpose of enriching enterprise's members and consolidating its power, and stolen property was shoplifted by long-time associate of enterprise. U.S. v. Minicone, C.A.2 (N.Y.) 1992, 960 F.2d 1099, certiorari denied 112 S.Ct. 1511, 503 U.S. 950, 117 L.Ed.2d 648, amended on rehearing in part, certiorari denied 113 S.Ct. 199, 506 U.S. 869, 121 L.Ed.2d 142, post-conviction relief denied, affirmed 40 F.3d 1237. Racketeer Influenced And Corrupt Organizations

Evidence in prosecution under this chapter showed that enterprise defined as group of individuals and corporation associated in fact undertook construction projects for enrichment of its members, and that to promote the projects, defendants committed bribery as well as mail and wire fraud in securing tax evasions, building contracts, public financing and fraudulent work payments, thereby supporting conclusion that each of the defendants agreed to conduct or participate in conduct of enterprise's activities through commission of predicate offenses. U.S. v. Aimone, C.A.3 (N.J.) 1983, 715 F.2d 822, certiorari denied 104 S.Ct. 3585, 468 U.S. 1217, 82 L.Ed.2d 883, certiorari denied 104 S.Ct. 3586, 468 U.S. 1217, 82 L.Ed.2d 883. Conspiracy

Allegations by juvenile that wives of juvenile court judges were owners and operators of corporate entity involved in the payment of kickbacks and hiding of funds, in connection with scheme to divert juvenile offenders to newly constructed privately-owned juvenile detention center, in return for kickbacks, but that the judges actually controlled the corporation did not state §§ 1983 conspiracy claim or Racketeer Influenced and Corrupt Organizations Act (RICO) claim against the wives, absent allegations that the wives agreed, assisted, knew of, or otherwise personally participated in the alleged conspiracy or racketeering enterprise beyond owning and operating the corporation. Clark v. Conahan, M.D.Pa.2010, 737 F.Supp.2d 239. Conspiracy; Racketeer Influenced And Corrupt Organizations

Homeowners alleged sufficient facts to satisfy the minimum structure standards for pleading an association-in-fact enterprise in civil Racketeer Influenced and Corrupt Organizations Act (RICO) action alleging that title insurance company engaged in fraudulent scheme to charge default basic insurance rate rather than special discounted reissue or refinance rate applicable to homeowners' mortgage transactions; alleged enterprise consisted of title insurance company and title/settlement agents operating in a hierarchical structure governed by agency agreement, which along with statutory regulations standardized methods agents allegedly used at mortgage closings to deliberately overcharge homeowners for policies provided by title insurance company. Coleman v. Commonwealth Land Title Ins. Co., E.D.Pa.2010, 684 F.Supp.2d 595. Racketeer Influenced And Corrupt Organizations

Arbitration judgment creditor failed to provide any particular detail indicating locations of debtor's chairman and treasurer when they had alleged interstate phone call regarding outstanding debt owed to creditor, or to allege that they discussed avoiding paying creditor, as would have constituted predicate acts of mail or wire fraud, precluding claim in action to enforce arbitration award of $314,925.59 that debtor and its affiliated companies violated Racketeer Influenced and Corrupt Organizations Act (RICO). Plainville Elec. Products Co., Inc. v. Vulcan Advanced Mobile Power Systems, LLC, D.Conn.2009, 638 F.Supp.2d 245. Fraud; Telecommunications

Airline employees' conclusory allegations that union, union president and employer formed an association-in-fact and enterprise were insufficient to plead existence of enterprise, as required to state Racketeer Influenced and Corrupt Organizations Act (RICO) claim against union. Propst v. Association of Flight Attendants, E.D.N.Y.2008, 546 F.Supp.2d 14, affirmed 330 Fed.Appx. 304, 2009 WL 1740274. Racketeer Influenced And Corrupt Organizations 73

Evidence was insufficient to demonstrate a link between the charged racketeering activities of loansharking and construction industry racketeering and defendant's investment in or withdrawal from his alleged dummy corporation, the alleged enterprise, as would support conviction for Racketeer Influenced and Corrupt Organizations Act (RICO) violation; defendant had multiple sources of illegal income other than the charged racketeering activities, including illegal gambling and stock fraud, defendant's alleged collection or rent from or taking out loans against real property owned by the alleged dummy corporation was not linked with the racketeering activities, in light of prior plea agreement, pursuant to which government released its lien and returned property to defendant after he satisfied the forfeiture requirements, and there was no showing that specific funds identified by government as derived from loansharking or construction industry extortion were invested in the alleged dummy corporation. U.S. v. Gotti, S.D.N.Y.2006, 457 F.Supp.2d 403. Racketeer Influenced And Corrupt Organizations 49

There was sufficient evidence to support jury's finding that defendant was member of racketeering enterprise, even though he was member for short period of time, in light of enterprise's former leader's testimony that defendant joined enterprise, that he drove with defendant looking for members of rival gang to shoot, and that he provided perpetrator with gun used to murder rival gang member. U.S. v. Brandao, D.Mass.2006, 448 F.Supp.2d 311, affirmed 539 F.3d 44, post-conviction relief denied 2010 WL 1981566. Racketeer Influenced And Corrupt Organizations 95

Proof that defendants' unlawful debt collection was successful because of their positions within criminal organization, and that three other co-defendants connected with criminal organization were also charged with loansharking activities directed at one of the same victims, if produced by government at trial, would satisfactorily establish a vertical relationship between defendants' alleged debt collection and the charged Racketeer Influenced and Corrupt Organizations Act (RICO) enterprise, as required for conviction of RICO violations and RICO conspiracy by means of collecting an unlawful debt. U.S. v. Megale, D.Conn.2005, 363 F.Supp.2d 359. Racketeer Influenced And Corrupt Organizations 39

Distributor of golf carts failed to establish involvement of manufacturer in enterprise, as required for claim that manufacturer violated Racketeer Influenced and Corrupt Organizations Act (RICO) in its dealings with distributor; conclusory allegations that there were enterprises, comprised of manufacturer and its parent, and manufacturer and another customer, presented without explanation, were insufficient. Club Car, Inc. v. Club Car (Quebec) Import, Inc., S.D.Ga.2003, 276 F.Supp.2d 1276, affirmed 362 F.3d 775, rehearing and rehearing en banc denied 111 Fed.Appx. 1003, 2004 WL 1585294, certiorari denied 125 S.Ct. 618, 543 U.S. 1002, 160 L.Ed.2d 461. Racketeer Influenced And Corrupt Organizations 74

Civil Racketeer Influenced and Corrupt Organizations (RICO) complaint did not contain facts showing existence
of an enterprise that would include bank, which closed plaintiff’s checking account at her request and failed to
give information to a check-clearing company upon plaintiff’s request; no facts supported the conclusion that all
defendants shared the common purpose of getting hotel away from plaintiff without having to pay her for it or
that each defendant worked in concert with the others to advance that goal. Pennino v. Selig, W.D.Ark.2003,
258 F.Supp.2d 914. Racketeer Influenced And Corrupt Organizations \(\Rightarrow\) 73

81. Control, offenses generally

In order to support claim of RICO violation, actual day-to-day involvement in management and operations of
borrower or ability to compel borrower to engage in unusual transactions is required for purposes of showing
that lending institution had control over borrower. NCNB Nat. Bank of North Carolina v. Tiller, C.A.4 (S.C.)
1987, 814 F.2d 931. Racketeer Influenced And Corrupt Organizations \(\Rightarrow\) 50

Companies providing collection services for casino operated on Indian premises without exercising any control
function over casino, did not participate in allegedly illegal gambling enterprise, and were consequently not
covered by Racketeer Influenced and Corrupt Organizations Act (RICO) provision barring conduct of enter-
prise’s affairs through pattern of racketeering activity or collection of unlawful debt. Burdett v. Harrah’s Kansas
ganizations \(\Rightarrow\) 50

Failure on part of purchasers of real property, to show they were injured by vendors' acquisition of control over
corporation they founded to conduct construction work, as opposed to injury caused by faulty work, precluded
claim that vendors acquired interest in enterprise through pattern of racketeering activity, in violation of Racket-
reported. Racketeer Influenced And Corrupt Organizations \(\Rightarrow\) 62

82. Enterprise, offenses generally--Generally

See Notes of Decisions under section 1961 of this title.

Racketeer Influenced and Corrupt Organizations Act (RICO) complaint sufficiently alleged that employer was
engaged in operation or management of enterprise, by averring that employer and recruiters, under employer's
direction, worked together to recruit illegal workers to come to Georgia and that they had common purpose of
providing illegal workers to employer so that employer could reduce its labor costs and recruiters could get paid.
U.S. 1260, 167 L.Ed.2d 174. Racketeer Influenced And Corrupt Organizations \(\Rightarrow\) 74

“Enterprise” was proven independent of predicate acts to support Racketeer Influenced and Corrupt Organiza-
tions Act conviction, where Government presented evidence of network of safe houses, continuing strategy and
planning sessions, and link among numerous criminal acts. U.S. v. Ferguson, C.A.2 (N.Y.) 1985, 758 F.2d 843,
certiorari denied 106 S.Ct. 124, 474 U.S. 841, 88 L.Ed.2d 102, certiorari denied 106 S.Ct. 125, 474 U.S. 841, 88
L.Ed.2d 102, certiorari denied 106 S.Ct. 592, 474 U.S. 1032, 88 L.Ed.2d 572. Racketeer Influenced And Corrupt
Organizations  39

Enterprise offense under this section may be committed by an individual acting alone, while a conspiracy offense cannot, and an enterprise offense, unlike a conspiracy offense, requires commission of choate acts. U.S. v. Marrone, C.A.3 (Pa.) 1984, 746 F.2d 957. Racketeer Influenced And Corrupt Organizations  5

Cigarette supplier's sale of unstamped cigarettes to companies that sold unstamped cigarettes in violation of Contraband Cigarettes Trafficking Act (CCTA), did not constitute an “enterprise” under Racketeer Influenced and Corrupt Organizations Act (RICO), absent evidence that any of the illegal acts genuinely in dispute in any way required the existence of any other defendant's illegal act in order to be effective in bringing profits to upstream cigarette supplier, that supplier acted in a symbiotic manner with any other supplier defendant, that supplier collaborated or cooperated with any other supplier defendant, that any supplier defendant ever had any meeting, discussion, or understanding with any other defendant for the purposes of discussing how to evade cigarette taxes, that the defendants as a whole operated as a continuing unit, that any supplier defendant acted to benefit any other supplier defendant, or that any supplier defendant's benefits from the overall scheme relied on, or were dependent on, in any way the participation of any other supplier defendant. City of New York v. Chavez, S.D.N.Y.2013, 2013 WL 1966049. Racketeer Influenced and Corrupt Organizations  47

Insurance subscribers failed to adequately allege that health insurer conducted enterprise's affairs, as required to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO) for participating in conduct of RICO enterprise that allegedly caused subscribers to receive reimbursement for out-of-network services (ONS) that was lower than the promised “usual, customary, and reasonable” (UCR) rates; subscribers offered no more than conclusory assertions that insurer directed, as opposed to simply being involved in, RICO enterprise's manipulation of data market to depress UCR reimbursement rates. In re WellPoint, Inc. Out-of-Network UCR Rates Litigation, C.D.Cal.2012, 903 F.Supp.2d 880. Racketeer Influenced and Corrupt Organizations  47

Under nerve center test used to determining territoriality of an alleged Racketeer Influenced and Corrupt Organizations Act (RICO) enterprise, non-vessel operating common carriers' (NVOCC) association-in-fact was a “domestic,” rather than “foreign” enterprise, even though the effects of its alleged scheme were felt abroad, where enterprise members were all United States corporations, and the shipments which were part of the alleged scheme to charge foreign vessel operating common carrier (VOCC) for unnecessary or nonexistent inland carriage of freight had been arranged in substantial part within the United States. Mitsui O.S.K. Lines, Ltd. v. Seafarmer Logistics, Inc., N.D.Cal.2012, 871 F.Supp.2d 933. Racketeer Influenced And Corrupt Organizations  23; Racketeer Influenced And Corrupt Organizations  39

Independent consulting firm hired by competitor of national provider of construction project news and information was not alleged by provider, in asserting claim against competitor under Racketeer Influenced and Corrupt Organizations Act (RICO), to have intended to participate in any racketeering scheme or to have shared common fraudulent purpose with other alleged members of purported RICO enterprise, and thus could not be considered to be part of enterprise. Reed Const. Data Inc. v. McGraw-Hill Companies, Inc., S.D.N.Y.2010, 745 F.Supp.2d 343. Racketeer Influenced And Corrupt Organizations  47

Complaint, which alleged that subscription agent and individual subscribers conspired to defraud publishers of scientific, technical and medical journals by placing orders for the purchase of thousands of those journals at a lower or discounted “individual” subscription rate, rather than the higher “institutional” rate, and then reselling the journals to institutions for more than the individual rate, pleaded Racketeer Influenced and Corrupt Organizations Act (RICO) sufficiently alleged the existence of an enterprise, namely the subscription agent, which was a corporate purveyor of subscriptions to professional journals. Elsevier Inc. v. W.H.P.R., Inc., S.D.N.Y.2010, 692 F.Supp.2d 297. Racketeer Influenced And Corrupt Organizations

Former California Highway Patrol (CHP) employee sufficiently alleged facts to establish involvement by former Staff Service Manager (SSM) for Disability and Retirement Section (DRS) in Racketeer Influenced and Corrupt Organizations Act (RICO) “enterprise”; she alleged, inter alia, that SSM, State Compensation Insurance Fund (SCIF), and attorney of record for CHP, who was also member of SCIF board of trustees, associated for common purpose of engaging in course of conduct, that SSM was involved in formal, or informal, ongoing organization, and facts that, if proven, provided sufficient evidence that various associates functioned as continuing unit. Vierria v. California Highway Patrol, E.D.Cal.2009, 644 F.Supp.2d 1219. Racketeer Influenced And Corrupt Organizations

Borrowers failed to adequately allege that lenders formed enterprise to engage in predatory lending practices, and thus failed to state claim against lenders under Racketeer Influenced and Corrupt Organizations Act (RICO), even though complaint identified four entities, where one entity was successor of entity that made loan, and there were no allegations specific to other entities. Ayala v. World Savings Bank, FSB, C.D.Cal.2009, 616 F.Supp.2d 1007. Racketeer Influenced And Corrupt Organizations

An “enterprise” under the Racketeer Influenced and Corrupt Organizations Act (RICO) is a group of persons associated together for a common purpose of engaging in a course of conduct, while a “pattern of racketeering activity” is, on the other hand, a series of criminal acts; the enterprise is not the pattern of racketeering activity, but is an entity separate and apart from the pattern of activity in which it engages. Kottler v. Deutsche Bank AG, S.D.N.Y.2009, 607 F.Supp.2d 447. Racketeer Influenced And Corrupt Organizations; Racketeer Influenced And Corrupt Organizations; Racketeer Influenced And Corrupt Organizations

Genuine issue of material fact, as to whether bar and restaurant lessee’s involvement in concert hosted at golf dome constituted facilitation of the alleged enterprise, precluded summary judgment on former business coowner's Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy count. LaFlamboy v. Landek, N.D.Ill.2008, 587 F.Supp.2d 914. Federal Civil Procedure

Legitimate associated-in-fact enterprise was not alleged in suit under Racketeer Influenced and Corrupt Organizations Act (RICO) claiming that bidder seeking to provide satellite launch services operated enterprise consisting of government agencies and bidders for those contracts through a pattern of racketeering activity by employing proprietary information improperly obtained from another bidder to influence bid process; bidders could not be associated for necessary common purpose as they each sought to be awarded contracts placing them in a competitive relationship. Lockheed Martin Corp. v. Boeing Co., M.D.Fla.2005, 357 F.Supp.2d 1350. Racketeer Influenced And Corrupt Organizations

Female borrowers properly stated association-in-fact enterprise under Racketeer Influenced and Corrupt Organizations Act (RICO) against lenders allegedly engaged in pattern or practice of predatory and sexually discriminatory lending; complaint stated that enterprise was ongoing and coordinated, and not merely an ad hoc collection of individuals who temporarily joined forces, and complaint alleged a structure of the enterprise and roles separate from predicate acts themselves. Eva v. Midwest National Mortgage Bank, Inc., N.D.Ohio 2001, 143 F.Supp.2d 862. Racketeer Influenced And Corrupt Organizations

Allegation that long distance carrier and its independent sales representatives constituted “association-in-fact” enterprise through which carrier engaged in its alleged racketeering activity did not adequately allege “enterprise” for purposes of representative's RICO claim; existence of any centralized decision-making authority or common personnel was not alleged, and common financial interests or connections could not be inferred. Comwest, Inc. v. American Operator Services, Inc., C.D.Cal.1991, 765 F.Supp. 1467. Racketeer Influenced And Corrupt Organizations

Allegations by limited partners in two oil and gas limited partnerships, that cogeneral partners and their legal representatives conducted each partnership through single, distinct act of securities fraud, and that each partnership was separate enterprise, were insufficient to state viable RICO claim because such claim requires identification of single enterprise, the affairs of which are conducted through pattern of racketeering activity. Bastian v. Petren Resources Corp., N.D.Ill.1988, 681 F.Supp. 530, reconsideration denied 682 F.Supp. 956. Racketeer Influenced And Corrupt Organizations

83. ---- Beneficiaries of racketeering, enterprise, offenses generally

For purposes of claim under § 1962(a) of RICO, defendant securities firm could be held to be liable both as person and enterprise if it engaged in racketeering activities and was direct or indirect beneficiary of pattern of racketeering activity. Hoxworth v. Blinder, Robinson & Co., Inc., C.A.3 (Pa.) 1990, 903 F.2d 186. Racketeer Influenced And Corrupt Organizations

Where corporation engages in racketeering activities and is direct or indirect beneficiary of pattern of racketeering activity, it can be both the “person” and the “enterprise” under section of RICO prohibiting any person from using money derived from racketeering to acquire interest in enterprise. Schreiber Distributing Co. v. Serv-Well Furniture Co., Inc., C.A.9 (Cal.) 1986, 806 F.2d 1393. Racketeer Influenced And Corrupt Organizations

84. ---- Corporations, enterprise, offenses generally

Parent company, a privately held company specializing in oil and gas exploration, was distinct from a Racketeer Influenced and Corrupt Organizations Act (RICO) enterprise involved in a complex investment program, which involved the leasing of thoroughbred mares, breeding those mares for a season and then keeping the resulting foal, and later provided reinvestment in mineral opportunities, even though two of the key participants in the enterprise were subsidiary corporations, where parent company and each of its subsidiaries performed distinct roles that helped facilitate the fraudulent scheme, and the enterprise included other entities that were neither owned or acting as agents for parent corporation. In re ClassicStar Mare Lease Litigation, C.A.6 (Ky.) 2013, 2013 WL 3746220. Racketeer Influenced and Corrupt Organizations
Consumers who entered into usurious rent-to-own agreements with rental company failed to show sufficient distinctiveness between company, its parent corporation, and other related subsidiaries as required to maintain claim under Racketeer Influenced and Corrupt Organizations Act (RICO) provision creating liability for those persons who conduct or participate in conduct of RICO enterprise, since company, parent, and subsidiaries were all part of one corporate family operating under common control. Fogie v. THORN Americas, Inc., C.A.8 (Minn.) 1999, 190 F.3d 889. Racketeer Influenced And Corrupt Organizations

Violation of Racketeer Influenced and Corrupt Organizations Act section governing civil violations of the Act by a corporate entity requires an association with an enterprise that is not the same as the corporation. B.F. Hirsch v. Enright Refining Co., Inc., C.A.3 (N.J.) 1984, 751 F.2d 628, on remand 617 F.Supp. 49. Racketeer Influenced And Corrupt Organizations

German wholesaler adequately alleged existence of individual defendants and a distinct enterprise in the form of a New York corporation and its principals, as required to state civil claim under Racketeer Influenced and Corrupt Organizations Act (RICO) premised on conduct of enterprise's affairs through pattern of racketeering activity arising from corporation's sale of purportedly brand-new luxury watches; corporation was separate from principals who conducted its affairs, and it was only the principals who were alleged to have used the corporation as a hub for their racketeering activities. Kalimantano GmbH v. Motion in Time, Inc., S.D.N.Y.2013, 2013 WL 1499408. Racketeer Influenced and Corrupt Organizations

Shipper plausibly alleged that carrier, its parent corporation, and its sister subsidiary participated in operation or management of the enterprise, as required to state a claim for violation of the Racketeer Influenced and Corrupt Organizations Act (RICO), where it alleged that carrier did not handle its own billing, that parent corporation oversaw carrier's operations, and that sister subsidiary performed billing functions for carrier, and it provided detailed allegations regarding control and oversight of information technology used to perpetrate schemes to up-weight packages and overcharge for Canadian customs. U1IT4less, Inc. v. FedEx Corp., S.D.N.Y.2012, 896 F.Supp.2d 275. Racketeer Influenced and Corrupt Organizations

Puerto Rican automobile insurers were each an “enterprise,” as required to support insurers' claims alleging that insurance claimants violated Racketeer Influenced and Corrupt Organizations Act (RICO) by engaging in a scheme to defraud insurers by submitting false insurance claims; RICO broadly defined “enterprise” to include corporations such as plaintiffs that were authorized to engage in insurance business. Puerto Rico American Ins. Co. v. Burgos, D.Puerto Rico 2011, 867 F.Supp.2d 216. Racketeer Influenced and Corrupt Organizations

Third party payors' (TPP) allegations that the enterprise at issue included drug manufacturer, network of marketing firms employing physicians and research organizations, contracting with third-party advertisers, proliferation firms and outside consultants, and was used to promote the off-label use of drug to accomplish the common goal of increasing profits by increasing the use and off-label use of the drug, was sufficient to plead an enterprise under Racketeer Influenced and Corrupt Organizations Act (RICO). District 1199P Health and Welfare Plan v. Janssen, L.P., D.N.J.2011, 784 F.Supp.2d 508. Racketeer Influenced And Corrupt Organizations

Corporation's allegations in its complaint that if unions, which had been trying unsuccessfully to become bargaining representatives of its employees, were able to extort voluntary recognition by employees, they would gain substantial autonomy and control over corporation's business operations, among other things, and that unions were attempting to achieve those objectives by interfering with corporation's business relationships with third parties and damaging corporation's relations with its shareholders and in institutional investment community, thereby inflicting significant financial losses on corporation, sufficiently stated claim for conspiracy to violate section of Racketeer Influenced and Corrupt Organizations Act (RICO) prohibiting acquisition or maintenance of interest in enterprise engaged in interstate or foreign commerce through pattern of racketeering activity or collection of unlawful debt. Smithfield Foods, Inc. v. United Food and Commercial Workers Intern. Union, E.D.Va.2008, 633 F.Supp.2d 214. Conspiracy

Vice president and co-owner of five corporations engaged in business of acquiring and selling used clothing failed to state a claim against corporations' president, president's son, and another corporation formed by president, under Racketeer Influenced and Corrupt Organizations Act (RICO) section prohibiting use of pattern of racketeering activity to acquire or control enterprise, where cause of action identified president's corporation as both the RICO “enterprise” and the enterprise over which defendants gained control through their alleged racketeering activity, complaint failed to allege how commission of underlying predicate mail and wire frauds allowed president and son to acquire or maintain an interest in president's corporation, and vice president did not allege that defendants' motivation for carrying out their racketeering activities was to acquire or maintain control of president's corporation. Tuscano v. Tuscano, E.D.N.Y.2005, 403 F.Supp.2d 214. Racketeer Influenced And Corrupt Organizations

Even if district court had jurisdiction over Racketeer Influenced and Corrupt Organizations Act (RICO) claim brought on behalf of individuals who suffered damages under apartheid South Africa against multinational corporations that did business with apartheid South Africa, plaintiffs failed to plead that corporations formed racketeering enterprise, as required to state actionable RICO claim; plaintiffs failed to explain “common purpose” of corporations, particular fraudulent course of conduct engaged in, or how corporations, which were engaged in multitude of different industries, worked together to achieve such purpose. In re South African Apartheid Litigation, S.D.N.Y.2004, 346 F.Supp.2d 538, affirmed in part, vacated in part and remanded 504 F.3d 254, motion to stay mandate denied 509 F.3d 148, affirmed 128 S.Ct. 2424, 553 U.S. 1028, 171 L.Ed.2d 225, on remand 617 F.Supp.2d 228, reconsideration denied. Racketeer Influenced And Corrupt Organizations

Corporation, its employees, its legal counsel, and its expert witnesses did not constitute “enterprise” distinct from corporation itself, for purposes of Racketeer Influenced and Corrupt Organizations Act (RICO), with respect to allegedly fraudulent concealment of information in products liability action against corporation, where corporation's agents were working within scope of their employment, and alleged scheme's objective was to diminish or extinguish corporation's legal liability. Matsuura v. E.I. du Pont de Nemours and Co., D.Hawai'i 2004, 330 F.Supp.2d 1101, reversed and remanded 431 F.3d 353, certiorari denied 126 S.Ct. 2861, 547 U.S. 1192, 165 L.Ed.2d 895, on remand 2006 WL 2734291. Racketeer Influenced And Corrupt Organizations

Payors, who alleged that numerous pharmaceutical companies fraudulently overstated the published average wholesale price (AWP) of many of their prescription drugs, which resulted in inflated payments for such drugs by beneficiaries of the federal Medicare Part B program, failed to allege facts that established Racketeer Influ-
enced and Corrupt Organizations Act (RICO) enterprise requirement through the “AWP enterprises;” plaintiffs
did not allege an association in fact between a specific pharmaceutical company and a specific medical care pro-
vider or a specific network of providers, that formed a continuing unit with a common purpose, but rather, al-
leged a series of enterprises, each consisting of hundreds or thousands of medical care providers whose only re-
lationship to each other was that they all prescribed a covered drug with an AWP. In re Pharmaceutical Industry
Average Wholesale Price Litigation, D.Mass.2003, 263 F.Supp.2d 172. Racketeer Influenced And Corrupt Or-
ganizations 73

Corporate entity cannot be both person who conducts affairs of enterprise and enterprise itself, for purposes of
Corrupt Organizations 47

Complaint failed to allege Racketeer Influenced and Corrupt Organizations Act (RICO) enterprises separate and
distinct from RICO persons; complaint failed to allege anything more than individual corporations carrying out
134 F.3d 1321, rehearing and suggestion for rehearing en banc denied, certiorari denied 119 S.Ct. 57, 525 U.S.
818, 142 L.Ed.2d 44. Racketeer Influenced And Corrupt Organizations 73

Alleged enterprise, a parent company, and alleged person, its subsidiary, were not sufficiently distinct to state
claim under Racketeer Influenced and Corrupt Organizations Act (RICO), where all alleged businesses were
conducted in accordance with directions given and policy set by subsidiary. Emery v. American General Fin-

Alleged “person,” a parent corporation, and alleged “enterprise,” an association-in-fact consisting of the parent
and its former subsidiary, were not sufficiently distinct to state Racketeer Influenced and Corrupt Organizations
(RICO) claim arising out of fraud perpetrated by parent and subsidiary against the government and concealed
from purchaser of the subsidiary; elements of ongoing structure and organization capable of hierarchical or con-
sensual decision-making were nothing more than the existing corporate structure of parent and subsidiary, while
the element of joint purpose was merely the normal business affairs the parent corporation. Chamberlain Mfg.
47

Corporation and its employees, who allegedly continued their racketeering activity after leaving employment in
corporation, may be enterprise separate and distinct from Racketeer Influenced and Corrupt Organizations Act
affirmed 99 F.3d 401. Racketeer Influenced And Corrupt Organizations 40

If corporation is identified as “enterprise” in RICO claim based on conducting of enterprise's affairs through pat-
tern of racketeering activity, corporation cannot also be defendant alleged to have conducted enterprise's affairs
Influenced And Corrupt Organizations 38
Under Racketeer Influenced and Corrupt Organizations Act (RICO) provision making it unlawful for any person employed by or associated with any enterprise to conduct enterprise's affairs through pattern of racketeering activity, requirement that person and enterprise be distinct from each other is not satisfied by merely naming corporation and its employees, affiliates, and agents as association-in-fact, since corporation acts through its employees, subsidiaries and agents, and would thereby be merely associated with itself. Rodriguez v. Banco Cent., D.Puerto Rico 1991, 777 F.Supp. 1043, affirmed 990 F.2d 7. Racketeer Influenced And Corrupt Organizations ☞ 47


For purposes of RICO claim based on § 1962(a), in which money obtained from the predicate acts is invested in or used in the operation of an enterprise involving or affecting interstate commerce, the defendant person need not be distinct from the enterprise, in the case of a corporate defendant. Smith v. MCI Telecommunications Corp., D.Kan.1987, 678 F.Supp. 823, reconsideration denied 124 F.R.D. 665. Racketeer Influenced And Corrupt Organizations ☞ 38

Where corporation was identified as “enterprise” under Racketeer Influenced and Corrupt Organizations Act claim, it could not also be party defendant to that claim. Rolls-Royce Motors, Inc. v. Charles Schmitt & Co., S.D.N.Y.1987, 657 F.Supp. 1040. Racketeer Influenced And Corrupt Organizations ☞ 38

For purposes of Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C.A. § 1962(c), a corporate entity may not simultaneously be “enterprise” and “person” who conducts affairs of enterprise through a pattern of racketeering activity. Grant v. Union Bank, D.Utah 1986, 629 F.Supp. 570. Racketeer Influenced And Corrupt Organizations ☞ 38

Corporation which telecast heavyweight prizefight could not be the “enterprise” and at the same time be the “person” sued under Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C.A. §§ 1962(b, c) and 1964(c), nor could corporation's individual officers, employees or agents be the culpable “persons,” since corporation could not operate except through its officers and agents. Medallion TV Enterprises Inc. v. SelectTV of California, Inc., C.D.Cal.1986, 627 F.Supp. 1290, affirmed 833 F.2d 1360, certiorari denied 109 S.Ct. 3241, 492 U.S. 917, 106 L.Ed.2d 588. Racketeer Influenced And Corrupt Organizations ☞ 39

Consumers who brought action against business services corporation, dealers and infomercial actor, stemming from leasing of e-commerce services and products, properly alleged that defendants were engaged in “enterprise,” as required to maintain RICO claim; complaint charged that corporation operated integrated scheme by which it would recruit companies making fraudulent pitches for different products, which would induce customers to enter leases with corporation that would be aggressively enforced, despite customers' anticipated dissatisfaction with products and services provided. Zito v. Leasecomm Corp., S.D.N.Y.2003, 2003 WL 22251352, Unreported. Racketeer Influenced And Corrupt Organizations ☞ 47
Corporation engaged in commercial real estate development, and brokers engaged to procure insurance for property, did not form “enterprise,” for purposes of claim that president of corporation operated “enterprise” through pattern of racketeering activity, in violation of Racketeer Influenced and Corrupt Organizations Act (RICO); brokers and corporation were in conventional business relationship, involving sale of a service, and lack common purpose needed for RICO “enterprise.” RD Management Corp. v. Samuels, S.D.N.Y. 2003, 2003 WL 21254076, Unreported. Racketeer Influenced And Corrupt Organizations 47

85. ---- Employees, enterprise, offenses generally

Employees of corporation associating together to commit pattern of predicate acts in course of their employment and on behalf of corporation does not result in formation of enterprise distinct from corporation for purposes of civil enforcement claim under Racketeer Influenced and Corrupt Organizations (RICO) Act, in light of fact that corporation can function only through its employees and agents so that any act of corporation could be viewed as act of such alleged enterprise. Riverwoods Chappaqua Corp. v. Marine Midland Bank, N.A., C.A.2 (N.Y.) 1994, 30 F.3d 339. Racketeer Influenced And Corrupt Organizations 47

If individual has employees or associates, “enterprise” is distinct from him and one with which he can be “associated” within meaning of Racketeer Influenced and Corrupt Organizations Act, and it then makes no difference what legal form “enterprise” takes; only important thing is that it be either formally, e.g., when there is incorporation, or practically, e.g., when there are other people besides proprietor working in organization, separable from individual. McCullough v. Suter, C.A.7 (Ill.) 1985, 757 F.2d 142. Racketeer Influenced And Corrupt Organizations 40

Toy manufacturer that sued former design employee, stemming from dispute over rights to fashion dolls purportedly based upon manufacturer's product, alleged sufficient “enterprise” to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO); complaint averred common purpose among participants of attempting to defraud manufacturer and steal its trade secrets, that participants coordinated efforts at depriving manufacturer of its proprietary information, and that scheme was continuing. Bryant v. Mattel, Inc., C.D.Cal. 2007, 573 F.Supp.2d 1254. Racketeer Influenced And Corrupt Organizations 73

Assertions that vice president of circulation for a newspaper with bloated circulation figures directed others to falsely inflate newspaper’s sales figures, that he was aware of changes to circulation volume, and that he was directly supervising someone who was making changes, were insufficient to allege that he conducted affairs of enterprises that artificially inflated newspaper’s circulation figures, as required to state claim for violation of Racketeer Influenced and Corrupt Organizations Act (RICO) section making it unlawful to conduct affairs of an enterprise through a pattern of racketeering activity or collection of unlawful debt, where allegations were stated in the disjunctive, and failed to attach any specific factual allegations to him. Crab House of Douglaston, Inc. v. Newsday, Inc., E.D.N.Y. 2006, 418 F.Supp.2d 193. Racketeer Influenced And Corrupt Organizations 74

Failure to name participants in alleged criminal association-in-fact forming enterprise that bidder for government contract allegedly controlled through pattern of racketeering activity that were not fundamentally distinct from bidder precluded Racketeer Influenced and Corrupt Organizations Act (RICO) claim; participants were either employees of bidder or agents hired to assist in contract procurement. Lockheed Martin Corp. v. Boeing
Co., M.D.Fla.2005, 357 F.Supp.2d 1350. Racketeer Influenced And Corrupt Organizations 40; Racketeer Influenced And Corrupt Organizations 47

Even if foreign bank sufficiently pleaded an “enterprise” within meaning of Racketeer Influenced and Corrupt Organizations Act (RICO), domestic bank could not be held liable under RICO for its employees’ alleged participation in customer’s money-laundering scheme, absent evidence that domestic bank had some part in directing the operation or management of the enterprise. Dubai Islamic Bank v. Citibank, N.A., S.D.N.Y.2003, 256 F.Supp.2d 158. Racketeer Influenced And Corrupt Organizations 50

Employee who simply acts within scope of employment cannot be considered distinct from his or her corporate employer so as to satisfy requirement of Racketeer Influenced and Corrupt Organizations Act (RICO) that “person” be distinct from “enterprise” which person conducts through pattern of racketeering activity, as corporations can only act through their employees. Nebraska Sec. Bank v. Dain Bosworth, Inc., D.Neb.1993, 838 F.Supp. 1362. Racketeer Influenced And Corrupt Organizations 47

Plaintiffs adequately alleged existence of enterprises which were separate from the RICO defendants by alleging that individual employees were persons liable and their corporations were the enterprises. Babst v. Morgan Keegan & Co., E.D.La.1988, 687 F.Supp. 255. Racketeer Influenced And Corrupt Organizations 40

85a. ---- Health care organization, enterprise, offenses generally

Allegations in no-fault automobile insurers’ amended complaint that the purpose of health care providers’ association was limited to engaging in predicate acts of racketeering were sufficient to allege an enterprise under Racketeer Influenced and Corrupt Organizations Act (RICO). Allstate Ins. Co. v. Linea Latina De Accidentes, Inc., D.Minn.2011, 781 F.Supp.2d 837. Racketeer Influenced And Corrupt Organizations 47

Hospitals sufficiently alleged a Racketeer Influenced and Corrupt Organizations Act (RICO) enterprise consisting of defendant hospital owner, a number of hospitals that were wholly owned, separately incorporated subsidiaries, at least one hospital that was part of a joint venture with defendant, hospitals leased by subsidiaries of defendant, and their officers, directors, managers, employees, agents, representatives, and outside consultants. State of Fla., Office of Atty. Gen., Dept. of Legal Affairs v. Tenet Healthcare Corp., S.D.Fla.2005, 420 F.Supp.2d 1288. Racketeer Influenced And Corrupt Organizations 47

Health care delivery system in United States, or region of United States, was not an “enterprise,” for purposes of claim that managed care insurance companies (HMOs) violated Racketeer Influenced and Corrupt Organizations (RICO) by conducting affairs of enterprise through pattern of racketeering activity. In re Managed Care Litigation, S.D.Fla.2001, 135 F.Supp.2d 1253. Racketeer Influenced And Corrupt Organizations 47

86. ---- Labor organizations, enterprise, offenses generally

Defendants convicted of conspiracy under Racketeer Influenced and Corrupt Organizations Act (RICO) were jointly and severally liable under RICO’s forfeiture provision for amounts extorted by one defendant in exchange
for his assistance in maintaining labor peace, notwithstanding absence of evidence that defendant who engaged in extortion shared proceeds with other members of RICO enterprise, inasmuch as defendant's membership in enterprise facilitated extortion. U.S. v. Corrado, C.A.6 (Mich.) 2000, 227 F.3d 543. Forfeitures 7

Security company that sued union, stemming from purported attempts to force company into signing labor agreements, failed to allege Hobbs Act violations as predicate acts under Racketeer Influenced and Corrupt Organizations Act (RICO); complaint did not aver that union attempted to obtain any of company’s rights or property, but merely that union improperly coerced or attempted to coerce it to do something to which it was not otherwise inclined or required to do. Wackenhut Corp. v. Service Employees Intern. Union, S.D.Fla.2009, 593 F.Supp.2d 1289. Racketeer Influenced And Corrupt Organizations 70

Inasmuch as mailing of allegedly fraudulent invoice was not cause of injuries suffered by clients as result of attorney's allegedly negligent handling of their case, alleged mail fraud resulting from sending of invoices was not predicate act of racketeering that could support civil claim under Racketeer Influenced and Corrupt Organizations Act (RICO) claim. Kir v. Hepp, S.D.N.Y.2006, 423 F.Supp.2d 147. Racketeer Influenced And Corrupt Organizations 62

Union's amended complaint in Racketeer Influenced and Corrupt Organizations Act (RICO) action failed to demonstrate open-ended continuity of alleged racketeering activities, through showing that predicate acts or offenses were part of ongoing entity's regular way of doing business; even assuming that allegations were sufficient to define association in fact enterprise, they were inadequate to support inference that enterprise was ongoing one that would, absent discovery of election-related fraud, have continued to engage in criminal activity, and mere risk of recurrence of criminal activity in connection with future election was insufficient. International Broth. of Teamsters v. Carey, S.D.N.Y.2004, 297 F.Supp.2d 706, affirmed 124 Fed.Appx. 41, 2005 WL 481573. Racketeer Influenced And Corrupt Organizations 28

Although employer alleged in Racketeer Influenced and Corrupt Organizations Act (RICO) complaint that local union was both “person” and “enterprise” for purposes of RICO section prohibiting person employed by or associated with enterprise engaged in interstate commerce from conducting enterprise’s affairs through pattern of racketeering activity, its allegations were sufficient to sustain claim under section, since it also alleged that local union and its individual officers were persons distinct from enterprise, that is, international union or employer, and, in the alternative, that local union was associated-in-fact with international union, and overlap between local union and alleged enterprise thus was only partial. National Elec. Ben. Fund v. Heary Bros. Lightning Protection Co., Inc., W.D.N.Y.1995, 931 F.Supp. 169. Racketeer Influenced And Corrupt Organizations 45

Older airline pilots, who alleged that pilots union, along with airline and lender that financed debtor-in-possession (DIP) loan, formed an association-in-fact for the purpose of devising and carrying out a scheme to defraud pilots through decimation of pilots' pension plan for their own financial and monetary advantages, sufficiently alleged existence of Racketeer Influenced and Corrupt Organizations Act (RICO) enterprise; liberally read, pilots' complaint alleged that defendants were intent on continually reducing pilots' pensions, and facts alleged in complaint sufficiently supported existence of a common purpose among defendants, multiple interactions between defendants, an ascertainable structure of the enterprise, an enterprise that was distinct from the al-

87. ---- Membership in enterprise, offenses generally

Sufficient evidence established that defendant was member of enterprise, as required to support conviction under provision of Racketeer Influenced and Corrupt Organizations Act (RICO) prohibiting any person associated with enterprise from conducting or participating in conduct of such enterprise's affairs through pattern of racketeering activity, where evidence included coconspirator's testimony that he and defendant worked together, that defendant and his cousin informed coconspirator about interlopers who were poaching on “the crew’s” territory, that defendant sold marijuana in front of barbershop and that defendant chose that location in order to minimize possibility that his grandparents would see him selling drugs, and that defendant and his cousin worked together selling marijuana. U.S. v. Praddy, C.A.2 (N.Y.) 2013, 725 F.3d 147. Racketeer Influenced and Corrupt Organizations 95

Fact that two members of association in fact alleged to constitute RICO enterprise were also persons named as RICO defendants did not mean that plaintiffs could not show enterprise distinct from person as required under RICO; collective entity such as association in fact composed of five entities was more than members of which it was comprised. Atlas Pile Driving Co. v. DiCon Financial Co., C.A.8 (Minn.) 1989, 886 F.2d 986. Racketeer Influenced And Corrupt Organizations 38


Cigarette manufacturers and tobacco-related trade organizations comprised association-in-fact “enterprise,” for purposes of Racketeer Influenced and Corrupt Organizations Act (RICO), even though organizations were dissolved pursuant to prior master settlement agreement, where parties shared central objective of maximizing manufacturers’ profits by acting in concert to preserve and enhance market for cigarettes through overarching scheme to defraud existing and potential smokers, manufacturers created and used formal and informal entities, many with overlapping participants and purposes, to serve that central mission, enterprise functioned as continuous unit for over fifty years, manufacturers continued to adhere to many positions formulated at enterprise's genesis, manufacturers taken together had bought and sold over $1 trillion of goods and services in interstate and foreign commerce since enterprise was formed, each defendant knew general nature and purpose of enterprise, that it extended beyond any defendant's individual role, and that all other defendants were participating in enterprise to achieve their shared objective, each individual defendant was separate legal entity, high-level employees of each manufacturer participated in enterprise's operation and management, each manufacturer, acting through those employees, played significant role in making and implementing decisions in furtherance of enterprise's activities and purposes, and most manufacturers endeavored to conceal or suppress information and documents and to destroy records that may have been detrimental to interests of enterprise's members. U.S. v. Philip Morris

Assertion that sales representative for a newspaper with bloated circulation figures directed others to falsely inflate newspaper's sales figures, and sweeping allegation that he provided leadership, management, and supervision to enterprises, were insufficient to allege that he conducted affairs of enterprises that artificially inflated newspaper's circulation figures, as required to state claim for violation of Racketeer Influenced and Corrupt Organizations Act (RICO) section making it unlawful to conduct affairs of an enterprise through a pattern of racketeering activity or collection of unlawful debt, where complaint contained other allegations that he was merely a trainee. Crab House of Douglaston, Inc. v. Newsday, Inc., E.D.N.Y. 2006, 418 F.Supp.2d 193. Racketeer Influenced And Corrupt Organizations

Allegations of business referrals between bank and investment advisors, as discrete number of members who mutually benefited from such arrangement, stated association-in-fact enterprise under Racketeer Influenced and Corrupt Organizations Act (RICO) separate and distinct from members' alleged scheme to defraud investors, where investors provided sufficient detail of members of enterprise and how they functioned and associated as group; members allegedly had nefarious scheme to induce investment, and to obtain loans for purposes of further investment, in entities that otherwise would have existed to generate sales and income for members as co-owners, partners, or beneficiaries. Schuster v. Anderson, N.D.Iowa 2005, 413 F.Supp.2d 983. Racketeer Influenced And Corrupt Organizations

Allegations that hospital suspended nursing shift supervisor for making statements in media that were critical of United States President and of hospital's handling of young patient without health insurance failed to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO), absent identification of any enterprise or pattern of racketeering activity and allegation that scheme amounted to, or posed threat of, continuing criminal activity. Connolly v. H.D. Goodall Hosp., Inc., D.Me. 2005, 353 F.Supp.2d 84, affirmed 427 F.3d 127, on remand 2006 WL 270222. Racketeer Influenced And Corrupt Organizations


Insurer sufficiently asserted existence of “enterprise,” to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO), when it alleged that insurance broker and others constituted entity that shared common purpose of obtaining commercial vehicle insurance which was not otherwise available at favorable premium, that entity was structured with broker at top, and that entity engaged in wrongful conduct other than predicate acts of mail and wire fraud, including selling insurance under insurer’s name without its approval. United States Fire Ins. Co. v. United Limousine Service, Inc., S.D.N.Y.2004, 303 F.Supp.2d 432. Racketeer Influenced And Corrupt Organizations  44

Fact that members of association in fact, which was alleged to be RICO enterprise, were also persons named as RICO defendants did not mean that plaintiffs failed to show enterprise distinct from persons, as required under RICO; association in fact was not named as defendant in complaint, and it was not alleged that the RICO enterprise was a legal entity. Corporacion Insular de Seguros v. Reyes Munoz, D.Puerto Rico 1993, 826 F.Supp. 599. Racketeer Influenced And Corrupt Organizations  50

Although a single entity may not simultaneously be both a “person” and the “enterprise” with which the person is engaged in a pattern of racketeering activity under the Racketeer Influenced and Corrupt Organizations Act (RICO), there is no prohibition against a single entity being both the “person” and one of a number of entities comprising the “enterprise.” Amendolare v. Schenkers Intern. Forwarders, Inc., E.D.N.Y.1990, 747 F.Supp. 162. Racketeer Influenced And Corrupt Organizations  38

Racketeering “enterprise” can include a defendant as one of its members, so long enterprise is different from defendant; if defendant enterprise is corporation, defendant must be person different from corporation; but if enterprise is group of individuals, defendant may be one of its members. Benard v. Hoff, D.Md.1989, 727 F.Supp. 211. Racketeer Influenced And Corrupt Organizations  38

For purposes of motions to dismiss for failure to state claim, allegations that individual defendants were “persons” under Racketeer Influenced and Corrupt Organizations Act, and that certain combinations of such defendants were “associations in fact” that constituted RICO “enterprises” sufficiently distinguished between liable “persons” and “enterprises”; single defendant could be part of individuals that made up RICO enterprise. Washington v. Baenziger, N.D.Cal.1987, 673 F.Supp. 1478. Racketeer Influenced And Corrupt Organizations  73

Complaint pleaded “person” distinct from “enterprise” under Racketeer Influenced and Corrupt Organizations Act, where enterprise alleged was association in fact of group of corporations and individuals, while persons to be held liable were the individual defendants who participated in the association by committing predicate acts which related to and furthered association’s purported common purpose. In re Gas Reclamation, Inc. Securities Litigation, S.D.N.Y.1987, 659 F.Supp. 493. Racketeer Influenced And Corrupt Organizations  38

Complaint filed by brokers against other brokers and client based on alleged non-payment of commissions did not sufficiently allege enterprise to state cause of action under Racketeer Influenced and Corrupt Organizations Act (RICO), where it alleged merely that defendants participated in scheme to defraud plaintiff brokers, but did
not assert that defendants worked together to achieve common purpose, and factual allegations concerning transactions involved different combinations of defendants and different conduct, which thus failed to depict requisite concerted action. Kades v. Organic Inc., S.D.N.Y.2003, 2003 WL 470331, Unreported. Racketeer Influenced And Corrupt Organizations

88. ---- Nexus with racketeering activity, enterprise, offenses generally

Evidence that five predicate acts, including conspiracy to commit murder and attempted murder, conspiracy to commit arson and arson, and conspiracy to commit murder and murder, were acts of retaliation ordered directly or indirectly by defendant in his capacity as leader of gang was sufficient for jury to find a nexus between gang, as an enterprise, and racketeering activity, as required for defendant's conviction for conspiracy to violate Racketeer Influenced and Corrupt Organizations Act (RICO). U.S. v. Smith, C.A.10 (Utah) 2005, 413 F.3d 1253, certiorari denied 126 S.Ct. 1093, 546 U.S. 1120, 163 L.Ed.2d 908, post-conviction relief dismissed 2007 WL 1795743, certificate of appealability denied 283 Fed.Appx. 647, 2008 WL 2588697, certiorari denied 129 S.Ct. 316, 555 U.S. 932, 172 L.Ed.2d 229. Racketeer Influenced And Corrupt Organizations

For failure to show that alleged bank fraud was related to alleged enterprise, lender failed to show that injury to its tangible property interest was “by reason of” violation of Racketeer Influenced and Corrupt Organizations Act (RICO), and, consequently, lender lacked standing to make claim under RICO; lender's security interest was of no value from inception of loan, so nothing that occurred subsequent to funding of loan proximately caused any harm to lender, and lender's allegation of fraud in loan application process was not related to alleged RICO enterprise. Regions Bank v. J.R. Oil Co., LLC, C.A.8 (Mo.) 2004, 387 F.3d 721. Racketeer Influenced And Corrupt Organizations

Even if no nexus existed between alleged enterprise under Racketeer Influenced and Corrupt Organizations Act (RICO) consisting of check cashing business and bar owned by defendant and defendant's alleged racketeering acts involving extortion and collection of illegal debts, defendant's numerous acts of money laundering, sustainably found by jury, supported conviction for RICO violations. U.S. v. London, C.A.1 (Mass.) 1995, 66 F.3d 1227, rehearing and suggestion for rehearing en banc denied, certiorari denied 116 S.Ct. 1542, 517 U.S. 1155, 134 L.Ed.2d 646. Racketeer Influenced And Corrupt Organizations

Sufficient nexus existed between enterprise consisting of judicial office and racketeering activity for purposes of conviction under Racketeer Influenced and Corrupt Organizations Act (RICO), where defendant judge physically used his judicial office, i.e., telephones and physical office itself, to conduct predicate offenses to RICO charge, not to mention prestige and power of office, and power and prestige of office placed defendant in position to perform discreet, corrupt and fraudulent acts with which he was convicted and which made up predicate offenses. U.S. v. Grubb, C.A.4 (W.Va.) 1993, 11 F.3d 426, habeas corpus denied 859 F.Supp. 227, affirmed as modified 65 F.3d 167. Racketeer Influenced And Corrupt Organizations

Simply because one provides goods or services that ultimately benefit Racketeer Influenced and Corrupt Organizations Act (RICO) enterprise does not mean that one becomes liable under RICO as a result; there must be a nexus between person and conduct in affairs of enterprise. University of Maryland at Baltimore v. Peat, Marwick, Main & Co., C.A.3 (Pa.) 1993, 996 F.2d 1534. Racketeer Influenced And Corrupt Organizations

Sufficient nexus existed between acts of racketeering activity allegedly involving murder and murder conspiracies and defendants’ narcotics distribution network to establish violation of Racketeer Influenced and Corrupt Organizations Act (RICO), where conspiracy arose out of head of network's refusal to supply heroin to members until his wife's attackers had been caught and punished, and murder stemmed from narcotics debts to head of network and may have induced other members to conform to operation standards. U.S. v. Simmons, C.A.2 (N.Y.) 1991, 923 F.2d 934, certiorari denied 111 S.Ct. 2018, 500 U.S. 919, 114 L.Ed.2d 104, certiorari denied 112 S.Ct. 383, 502 U.S. 943, 116 L.Ed.2d 334, post-conviction relief denied, habeas corpus denied. Racketeer Influenced And Corrupt Organizations

Employer's complaint against union, which alleged that persons acting on union's behalf during strike engaged in acts of violence and intimidation through acts committed against employer's trucks, failed to adequately allege that union's relationship with employer “facilitated” commission of predicate acts, and thus complaint did not satisfy requirement for bringing action under Racketeer Influenced and Corrupt Organizations Act that there be nexus between racketeering activity and affairs of enterprise; employer did not allege that union's relationship to employer at least made it easier for union to injure employer's property. Overnite Transp. Co. v. Truck Drivers, Oil Drivers, Filling Station and Platform Workers Union Local No. 705, C.A.7 (Ill.) 1990, 904 F.2d 391, rehearing denied. Racketeer Influenced And Corrupt Organizations

Evidence was sufficient to prove underlying predicate acts to sustain RICO violation and to show nexus with enterprise in trial of defendant for fixing DUI cases; predicate acts were based upon evidence of defendant's taking bribe and defendant's aiding codefendant in getting bribes in violation of same Act and furthermore, when defendant bribed codefendant to steal prosecutor's files, defendant rendered it virtually impossible to prosecute defendant's clients. U.S. v. Goot, C.A.7 (Ind.) 1990, 894 F.2d 231, certiorari denied 111 S.Ct. 45, 498 U.S. 811, 112 L.Ed.2d 22. Bribery

There was sufficient evidence of nexus between crime organization and murders to sustain Racketeer Influenced and Corrupt Organizations Act convictions; there was evidence that one murder was related to organization's function of resolving leadership disputes within a crime family and evidence of involvement of organization in other murders. U.S. v. Salerno, C.A.2 (N.Y.) 1989, 868 F.2d 524, certiorari denied 109 S.Ct. 3192, 491 U.S. 907, 105 L.Ed.2d 700, certiorari denied 110 S.Ct. 56, 493 U.S. 811, 107 L.Ed.2d 24, certiorari denied 110 S.Ct. 56, 493 U.S. 811, 107 L.Ed.2d 25, denial of habeas corpus affirmed 964 F.2d 172, habeas corpus denied, affirmed 990 F.2d 623. Racketeer Influenced And Corrupt Organizations

To meet nexus requirement of Racketeer Influenced and Corrupt Organizations Act Government must prove beyond reasonable doubt that defendant has in fact committed at least two of the racketeering acts alleged, that defendant's association with enterprise facilitated his commissions of racketeering acts, and that predicate acts have some effect on enterprise. U.S. v. Carlock, C.A.5 (La.) 1986, 806 F.2d 535, certiorari denied 107 S.Ct. 1611, 480 U.S. 949, 94 L.Ed.2d 796, certiorari denied 107 S.Ct. 1613, 480 U.S. 950, 94 L.Ed.2d 798. Racketeer Influenced And Corrupt Organizations

In prosecution of police officer for violating provision of Racketeer Influenced and Corrupt Organizations Act making it unlawful for any person associated with enterprise to conduct affairs of enterprise through pattern of
racketeering activity [18 U.S.C.A. § 1962(c)], evidence that police officer sought to influence disposition or affect handling of criminal cases in traffic court through solicitation of bribes, falsification of court records, use of court offices and equipment, and contact with court judges established nexus between traffic court and officer's racketeering activities sufficient to sustain conviction. U.S. v. Blackwood, C.A.7 (Ill.) 1985, 768 F.2d 131, certiorari denied 106 S.Ct. 569, 474 U.S. 1020, 88 L.Ed.2d 554. Racketeer Influenced And Corrupt Organizations

Proof of illegal activity's effect upon common, everyday affairs of otherwise legitimate enterprise is not minimum required to establish relation between enterprise and racketeering activity sufficient to find illegal conspiracy under this section, proof that facilities and services of enterprise were regularly and repeatedly utilized to make possible racketeering activity also establishes conduct of affairs of enterprise “through” pattern of racketeering activity under terms of this chapter. U.S. v. Carter, C.A.11 (Ga.) 1984, 721 F.2d 1514, certiorari denied 105 S.Ct. 89, 469 U.S. 1020, 88 L.Ed.2d 36, vacated in part 886 F.2d 304. Conspiracy

Nexus between mailings of W-2 forms and fraudulent scheme of submitting time cards in names of people who did not work existed to sufficient extent that convictions for mail fraud in which only evidence of mailings was of the W-2 forms was not such egregious misapplication of legal principles as to constitute clear and gross injustice, and thereby require reversal in absence of defendants' renewal of motion for acquittal following their introduction of evidence, where schemes required for their continuing success creation of appearance of business as usual and mailings at issue were integral part of that appearance and where defendants contemplated generation of mailings by forging addresses on W-4 forms to prevent the W-2 forms from being sent to persons who would reveal scheme. U. S. v. Greenleaf, C.A.1 (Mass.) 1982, 692 F.2d 182, certiorari denied 103 S.Ct. 1522, 460 U.S. 1069, 75 L.Ed.2d 946, certiorari denied 103 S.Ct. 1523, 460 U.S. 1069, 75 L.Ed.2d 946. Postal Service

Under this section, it is only when predicate acts are unrelated to enterprise or actor's association with it that nexus element is missing. U. S. v. Provenzano, C.A.3 (N.J.) 1982, 688 F.2d 194, certiorari denied 103 S.Ct. 492, 459 U.S. 1071, 74 L.Ed.2d 634. Racketeer Influenced And Corrupt Organizations

Sufficient nexus had been established between deceptive activities employed by defendants in inspection of breaded shrimp produced for consumption by military and common everyday affairs of enterprise, i.e., production of breaded shrimp, to meet government's burden of proving conduct “through” pattern of racketeering activities for purpose of conviction under this section. U. S. v. Hartley, C.A.11 (Fla.) 1982, 678 F.2d 961, rehearing denied 688 F.2d 852, certiorari denied 103 S.Ct. 815, 459 U.S. 1170, 74 L.Ed.2d 1014, certiorari denied 103 S.Ct. 834, 459 U.S. 1183, 74 L.Ed.2d 1027. Racketeer Influenced And Corrupt Organizations

Where only defendant's position in state Department of Agriculture and his control over its affairs enabled him to hawk its services for personal gain, nexus between office and offenses was clear for purposes of conviction under this section; that defendant may have planned to spend all or part of his illegally acquired funds on another campaign for office only underlined vital connection between office and offense. U. S. v. Dozier, C.A.5 (La.) 1982, 672 F.2d 531, rehearing denied 677 F.2d 113, certiorari denied 103 S.Ct. 256, 459 U.S. 943, 74 L.Ed.2d 200. Racketeer Influenced And Corrupt Organizations
Evidence, which revealed clear connection between enterprise and predicate acts committed by defendant, a county sheriff who utilized power of sheriff's office for personal gain, showed that defendant did participate in affairs of sheriff's office through pattern of racketeering activity and thus was sufficient to support his racketeering conviction. U. S. v. Welch, C.A.5 (Tex.) 1981, 656 F.2d 1039, rehearing denied 663 F.2d 101, certiorari denied 102 S.Ct. 1767, 456 U.S. 915, 72 L.Ed.2d 173, certiorari denied 102 S.Ct. 1768, 456 U.S. 915, 72 L.Ed.2d 173. Bribery

Indictment alleging that county sheriff's office was an enterprise, and that defendant, the sheriff, used his official position as sheriff to commit the racketeering acts charged in the indictment, which included tampering with a witness, victim, or informant, honest services mail fraud, bribery, and aiding and abetting in the possession with intent to distribute marijuana, and further alleged that certain acts were committed in the defendant's physical office, alleged a sufficient nexus between the enterprise and the defendant's racketeering activity to support a Racketeer Influenced and Corrupt Organizations Act (RICO) charge. U. S. v. Presgraves, W.D.Va.2009, 658 F.Supp.2d 770. Racketeer Influenced And Corrupt Organizations

Medical equipment company adequately pled nexus between alleged enterprise and predicate acts in alleged pattern of racketeering in its action under Racketeer Influenced and Corrupt Organizations Act (RICO), where complaint stated that company's vice president of marketing and sales recruited other employees and former employees to form competing companies, and that defendants committed wire and mail fraud and obtained and received stolen property through organized racketeering association-in-fact. Freedom Medical Inc. v. Gillespie, E.D.Pa.2007, 634 F.Supp.2d 490. Racketeer Influenced And Corrupt Organizations

Issue of whether criminal defense attorney's alleged extortion of funds from former client was perpetrated in association with enterprise involved fact question that could not be resolved on motion to dismiss client's action against attorney for violations of Racketeer Influenced and Corrupt Organizations Act (RICO). Wade v. Gaither, D.Utah 2009, 623 F.Supp.2d 1277. Federal Civil Procedure

Franchise operators' allegations that company that provided equipment leasing and financing services and its associates utilized deceptive and inaccurate leasing agreements and invoices to overcharge franchisees, and collaborated to keep franchisees at a distance so as to prevent them from acquiring complete information about the nature of their loans was sufficient to allege that the various parties functioned as a unit in furtherance of alleged scheme to deceive and overcharge franchisees, as required to satisfy enterprise element of Racketeer Influenced and Corrupt Organizations Act (RICO) claim. HT of Highlands Ranch, Inc. v. Hollywood Tanning Systems, Inc., D.N.J.2008, 590 F.Supp.2d 677. Racketeer Influenced And Corrupt Organizations

Plaintiffs failed to allege any specific nexus between county's alleged pattern of racketeering activities and solid waste district, in regards to who in particular committed the alleged predicate acts of mail fraud and wire fraud, and additionally, when exactly the acts took place, as required to state a claim under Racketeer Influenced and Corrupt Organizations Act (RICO) provision prohibiting a person employed or associated in an entity involved in interstate or foreign commerce from engaging in racketeering activity. Masterson v. Meade County Fiscal Court, W.D.Ky.2007, 489 F.Supp.2d 740. Racketeer Influenced And Corrupt Organizations
Computer programmer who created programs used for distribution of two newspapers with bloated circulation figures did not conduct affairs of enterprises that artificially inflated circulation figures, for purposes of Racketeer Influenced and Corrupt Organizations Act (RICO) section making it unlawful to conduct affairs of an enterprise through a pattern of racketeering activity or collection of unlawful debt, where his actions with regard to the enterprises were passive rather than active. *Crab House of Douglaston, Inc. v. Newsday, Inc.*, E.D.N.Y.2006, 418 F.Supp.2d 193. Racketeer Influenced And Corrupt Organizations ☞ 50

Company adequately alleged enterprise element of claim under provision of Racketeer Influenced and Corrupt Organizations Act (RICO) prohibiting conducting of affairs of enterprise through pattern of racketeering activity, given allegations that association-in-fact enterprise consisting of at least three of company's former employees existed for purpose of committing acts of larceny and was formed to carry out alleged activities, that defendants participated in scheme in which company's funds were wrongly diverted as vacation pay and into retirement accounts of members of enterprise, and that each defendant participated in conduct and control of enterprise. *Breslin Realty Development Corp. v. Schackner*, E.D.N.Y.2005, 397 F.Supp.2d 390. Racketeer Influenced And Corrupt Organizations ☞ 40; Racketeer Influenced And Corrupt Organizations ☞ 50

Real property owners sufficiently pled distinct Racketeer and Corrupt Organizations Act (RICO) “enterprise” and persons to state a claim under RICO provision prohibiting conducting affairs of enterprise through pattern of racketeering activity by alleging that property insurance program operated in part by nondefendants constituted the RICO enterprise, as the program itself constituted the association-in-fact enterprise separate from the individual defendant companies. *Charleswell v. Chase Manhattan Bank*, N.A., D.Virgin Islands 2004, 308 F.Supp.2d 545. Racketeer Influenced And Corrupt Organizations ☞ 38

Creditors adequately alleged existence of association-in-fact enterprise under Racketeer Influenced and Corrupt Organizations Act (RICO) as element of their claims that debtor acquired or maintained interest in enterprise through pattern of racketeering activity and that debtor conducted or participated in conducting of affairs of enterprise through pattern of racketeering activity when creditors alleged that debtor's “financial empire” was RICO enterprise, with purpose of accomplishing fraudulent transfer of debtor's assets and continuing custodianship of those assets to shield them from creditors, that several persons, including debtor, functioned together to form and maintain such enterprise, and that debtor participated in various business entities through pattern of racketeering activity, thereby connecting those entities to form enterprise. *Cadle, Co. v. Flanagan*, D.Conn.2003, 271 F.Supp.2d 379. Racketeer Influenced And Corrupt Organizations ☞ 73

Even if makers and distributors of video games, violent movie and purportedly obscene Internet websites formed enterprise that resulted in injury to parents of children murdered by 14-year-old user of products, user's actions constituted superseding cause of parents' injuries, thereby relieving makers and distributors of liability under Racketeer Influenced and Corrupt Organizations Act (RICO) for deaths of victims. *James v. Meow Media, Inc.*, W.D.Ky.2000, 90 F.Supp.2d 798, affirmed 300 F.3d 683, certiorari denied 123 S.Ct. 967, 537 U.S. 1159, 154 L.Ed.2d 893. Racketeer Influenced And Corrupt Organizations ☞ 62

Utility companies did not establish that manufacturer of nuclear power plant system violated Racketeer Influenced and Corrupt Organizations Act (RICO) subsection making it unlawful for person through pattern of racketeering activity to conduct affairs of enterprise through pattern of racketeering activity.
eteering activity to acquire interest in enterprise which is engaged in interstate or foreign commerce; there was no nexus between racketeering activities alleged and acquisition of interest in or maintenance of control of alleged enterprises. South Carolina Elec. & Gas Co. v. Westinghouse Elec. Corp., D.S.C.1993, 826 F.Supp. 1549.

Racketeer Influenced And Corrupt Organizations


RICO statute provision prohibiting acquisition of enterprise through pattern of racketeering activity requires showing that enterprise existed which affected interstate commerce, and that each defendant acquired or maintained interest in or control over that enterprise through pattern of racketeering; showing of relationship or nexus between racketeering activity and interest or control obtained is required. Trautz v. Weisman, S.D.N.Y.1992, 809 F.Supp. 239. Commerce; Racketeer Influenced And Corrupt Organizations; Racketeer Influenced And Corrupt Organizations

“Nexus” between RICO enterprise in which defendant allegedly participated and pattern of racketeering activity which he is alleged to have committed does not require proof that defendant advanced the affairs of the enterprise, that enterprise itself is corrupt, or that enterprise authorized defendant to perform racketeering acts, but only that plaintiff establish that defendant's acts were conducted in the conduct of the affairs of the enterprise; as such, it is not necessary that plaintiff establish that defendant solidified or otherwise enhanced his position in the enterprise through the commission of the predicate offenses. U.S. v. Private Sanitation Industry Ass'n of Nassau/Suffolk, Inc., E.D.N.Y.1992, 793 F.Supp. 1114. Racketeer Influenced And Corrupt Organizations

Racketeer Influenced and Corrupt Organizations Act (RICO) section which prohibits acquiring or maintaining interest in or control of enterprise through pattern of racketeering activity requires proof of nexus between alleged pattern of racketeering activity and interest or control obtained thereby as well as evidence of causal connection between defendant's interest or control and plaintiff's injuries. Browning Ave. Realty Corp. v. Rosen shein, S.D.N.Y.1991, 774 F.Supp. 129. Racketeer Influenced And Corrupt Organizations; Racketeer Influenced And Corrupt Organizations

Nexus between alleged racketeering enterprise and alleged predicate acts of enterprise's former officer embezzling buyer's funds after sale of enterprise's corporate assets was not established by officer's mere use of his law office bank account to carry out scheme of embezzlement and to hold legitimate funds belonging to enterprise in connection with legal services performed for enterprise, and, thus, participation in enterprise's affairs through pattern of racketeering activity was not established; no showing was made that diverted funds were channeled into enterprise or to stockholder, were paid to persons to perform services for enterprise, or were used to advance or affect affairs of enterprise. Steco, Inc. v. S & T Mfg., Inc., E.D.Pa.1991, 772 F.Supp. 1495. Racketeer Influenced And Corrupt Organizations

Investors in limited partnership adequately alleged enterprise as association in fact between surety guaranteeing
investors' obligations and agent, common ongoing purpose of association, and pattern of racketeering activity to
state Racketeer Influenced and Corrupt Organizations Act (RICO) claim against surety, which issued bond guar-
anteeing their obligations following restructuring, provided that they were able to establish loss causation.
ation, vacated in part, appeal dismissed in part on other grounds 937 F.2d 77. Racketeer Influenced And Corrupt
Organizations  72; Racketeer Influenced And Corrupt Organizations  74

When a defendant is also the RICO enterprise and a racketeering scheme is not the enterprise's sole purpose, in-
vestment of proceeds from the pattern of racketeering for general operations is too attenuated a causal connec-
tion to satisfy a RICO claim. Williamson v. Simon & Schuster, a Div. of Gulf & Western Corp., S.D.N.Y. 1990,
735 F.Supp. 565. Racketeer Influenced And Corrupt Organizations  16

Intent in absence of actual nexus between defendant and enterprise will not satisfy requirements of Racketeer In-
fluenced and Corrupt Organizations Act; “actual nexus” is shown when defendant is associated with enterprise
271, affirmed 933 F.2d 1001. Racketeer Influenced And Corrupt Organizations  49

Predicate acts have “nexus” to Racketeer Influenced and Corrupt Organizations Act enterprise when one is en-
abled to commit predicate offenses solely by virtue of his position in the enterprise or involvement in or control
over affairs and enterprise, or predicate offenses are related to activities of that enterprise. In re Gas Reclama-
tion, Inc. Securities Litigation, S.D.N.Y. 1987, 659 F.Supp. 493. Racketeer Influenced And Corrupt Organiza-
tions  49

Discharged employee's allegations that employer's operations manager utilized his position in employer's
“enterprise” to engage in racketeering activity by stealing and distributing employer's goods established suffi-
cient connection between racketeering activity and manager's participation in enterprise to state cause of action
under Racketeer Influenced and Corrupt Organizations Act, even though racketeering activity inured only to be-
enefit of manager and did not further interests of enterprise. Acampora v. Boise Cascade Corp., D.N.J. 1986, 635
F.Supp. 66. Racketeer Influenced And Corrupt Organizations  49

Sufficient nexus exists between predicate offenses and enterprise for purpose of a RICO claim if defendant is
enabled to commit predicate offense solely by virtue of his position in enterprise or his involvement in or control
over its affairs, or predicate offenses are related to activities of that enterprise. Hunt v. Weatherbee,

Stockholders who were heavily involved in operation of their company both prior to and after sale of stock and
whose positions within company were alleged to have facilitated their commission of racketeering acts and argu-
ably may have been sole reason they were able to induce purchaser's reliance upon their allegations in entering
into purchase agreement had sufficient nexus with affairs of company to support civil RICO claim. Media Gen-
Complaint by corporation performing abortions against “pro-life activists” stated claim under Racketeer Influenced and Organizations Act section [18 U.S.C.A. § 1962(c)] where it described the enterprise as a “group of individuals who have entered into a conspiracy which has as its goal the destruction of plaintiff's business and property.” Northeast Women's Center, Inc. v. McMonagle, E.D.Pa.1985, 624 F.Supp. 736. Racketeer Influenced And Corrupt Organizations 39

Graphics center franchisees had only to prove that predicate acts of corporation which controlled franchisor and of wholly-owned subsidiary created to provide optional lease financing of graphics center package to franchisees were related to affairs of the RICO enterprise, the franchisor, in order to maintain civil racketeering suit. Virden v. Graphics One, C.D.Cal.1985, 623 F.Supp. 1417. Racketeer Influenced And Corrupt Organizations 49

Complaint which alleged that individual acted as the agent of two corporations and asserted that one of the corporations acted as agent of the other corporation adequately alleged a person acting upon an enterprise in such a way as to have the enterprise's affairs conducted in a pattern of racketeering. Ross v. Omnibusch, Inc., W.D.Mich.1984, 607 F.Supp. 835. Racketeer Influenced And Corrupt Organizations 73


To establish criminal violation of this section, there must, in addition to elements of casualty and underlying pattern of racketeering activity, be an enterprise and there must be some nexus between pattern of racketeering activity and enterprise. Moss v. Morgan Stanley Inc., S.D.N.Y.1983, 553 F.Supp. 1347, affirmed 719 F.2d 5, certiorari denied 104 S.Ct. 1280, 465 U.S. 1025, 79 L.Ed.2d 684. Commerce 82.6; Racketeer Influenced And Corrupt Organizations 3

Collection of unlawful debts by an employee from coemployees on the premises of an enterprise affecting interstate commerce does not, in absence of any nexus between the alleged debt collection and the conduct of the enterprise affecting interstate commerce, constitute the offense of participation in the enterprise's affairs through collection of unlawful debts. U. S. v. Dennis, E.D.Mo.1978, 458 F.Supp. 197, on subsequent appeal 625 F.2d 782. Commerce 82.60

Absence of explanatory language regarding requisite nexus between unlawful acts of individual and union activities in subsec. (c) of this section making it unlawful for any person employed by or associated with an enterprise engaged in interstate or foreign commerce to participate in conduct of affairs of enterprise through a pattern of racketeering activity is not fatal to subsec. (c) since no particular degree of interrelationship is required. U. S. v. Field, S.D.N.Y.1977, 432 F.Supp. 55, affirmed 578 F.2d 1371, certiorari dismissed 99 S.Ct. 43, 439 U.S. 801, 58 L.Ed.2d 94. Racketeer Influenced And Corrupt Organizations 2

Lenders failed to state claim under Racketeer Influence and Corrupt Organizations Act (RICO) for use of racket-
ering income to acquire or maintain interest in alleged enterprise as result of alleged fraudulent misrepresenta-

tions by corporate borrower and its officers of equipment lease financing transactions used as security for loans,
absent allegation as to how borrowers used income derived from loans, or how investment of income resulted in

89. ---- Officers, enterprise, offenses generally

Allegations in former employee's complaint, that officers and employees of timber company had conducted
company's affairs through pattern of racketeering activity in allegedly dismissing and blacklisting him solely be-
cause he had given testimony unfavorable to company in proceedings before House Subcommittee, sufficiently
alleged RICO “person” distinct from RICO “enterprise,” though timber company could act only through its of-
And Corrupt Organizations

Allegations that chief financial officer (CFO) of newspaper distributor conducted affairs of an enterprise by at-
tending regular bi-monthly meetings to discuss best method of fraudulently adjusting newspaper's circulation
figures and directing changes to newspaper's circulation volume supported claim for violation of Racketeer Influ-
enced and Corrupt Organizations Act (RICO) section making it unlawful to conduct affairs of an enterprise
through a pattern of racketeering activity or collection of unlawful debt. Crab House of Douglaston, Inc. v.

As bank's civil Racketeer Influenced and Corrupt Organizations Act (RICO) liability was predicated on its role
as a “person,” and not as the “enterprise,” complaint stated claim against bank on basis of its vicarious liability
, subsequent determination 413 F.Supp.2d 983. Racketeer Influenced And Corrupt Organizations

Collection of village officials identified as “Village Constabulary” was “enterprise” which could be operated
through pattern of racketeering activity or used for collection of unlawful debts, in violation of Racketeer Influ-
enced and Corrupt Organizations Act (RICO), despite claim that Constabulary had no legitimate existence separate and apart from alleged illegal activities; Constabulary also enforced non-traffic local ordinances. Wood v. Incorporated Village of Patchogue of New York, E.D.N.Y.2004, 311 F.Supp.2d 344. Racketeer Influenced And Corrupt Organizations

Plaintiff stated a claim for relief under the Racketeer Influenced and Corrupt Organizations Act (RICO) against
farm marketing cooperative, where plaintiff alleged existence of enterprise consisting of individual directors, of-
ficers, and other active members of cooperative, all acting in their individual capacities, which was distinct from
defendant cooperative; moreover, plaintiff alleged that defendants engaged in multiple instances of mail and se-
eer Influenced And Corrupt Organizations; Racketeer Influenced And Corrupt Organizations

A corporation and its principal officers cannot form a separate criminal “enterprise” within meaning of section
of the Racketeer Influenced and Corrupt Organizations Act (RICO) making it unlawful for a person employed by or associated with an enterprise to conduct or participate in the conduct of such enterprise’s affairs through a pattern of racketeering activity. Official Publications, Inc. v. Kable News Co., Inc., S.D.N.Y.1991, 775 F.Supp. 631. Racketeer Influenced And Corrupt Organizations


Individual directors and officers of corporation could not be “persons” apart from corporation as “enterprise,” for purposes of permitting investors to maintain action under Racketeer Influenced and Corrupt Organizations Act based on alleged securities fraud. Data Controls North, Inc. v. Financial Corp. of America, Inc., D.Md.1988, 688 F.Supp. 1047, affirmed 875 F.2d 314. Racketeer Influenced And Corrupt Organizations

Racketeer Influenced and Corrupt Organizations Act petition, which alleged association-in-fact enterprise between company and two individual officers to commit fraud, sufficiently stated cause of action, even though corporation could not be both enterprise and person who conducts enterprise through racketeering activity, where alleged enterprise was itself a distinct entity, separate from each individual officer and the corporation. Greenfield v. Professional Care, Inc., E.D.N.Y.1987, 677 F.Supp. 110. Racketeer Influenced And Corrupt Organizations

One of corporate borrower’s two shareholders, who served as its president, and borrower’s secretary and vice-president were separate and distinct from borrower for purposes of determining existence of “enterprise” under Racketeer Influenced and Corrupt Organizations Act (RICO). Crawford & Sons, Ltd. Profit Sharing Plan v. Besser, E.D.N.Y.2003, 216 F.R.D. 228, reconsideration denied 298 F.Supp.2d 317. Racketeer Influenced And Corrupt Organizations

Determination, that corporation engaged in real estate management stated claim that its president and brokers engaged to procure insurance violated Racketeer Influenced and Corrupt Organizations Act (RICO) by forming enterprise to divert excess premium payments and refunds, precluded determination that there was no RICO conspiracy to violate RICO. RD Management Corp. v. Samuels, S.D.N.Y.2003, 2003 WL 21254076, Unreported. Conspiracy

Customer did not sufficiently allege the existence of an “enterprise” separate and distinct from the “person,” as required to state a claim under Racketeer Influenced and Corrupt Organizations Act (RICO), in action in which alleged RICO violation was that a person conducted or participated in an enterprise through a pattern of racketeering, relating to allegedly fraudulent scheme by owner of home improvement retail stores to induce tool rental customers into purchasing allegedly unnecessary damage protection; customer alleged that owner not only devised a scheme or artifice to defraud but also that it acted with specific intent to defraud by devising, participat-

ing in, and/or abetting the scheme, so that owner was both the “enterprise” and the “person.” Fuller v. Home De-

For purpose of liability under Racketeer Influenced and Corrupt Organizations Act (RICO) and its Florida coun-
terpart, aircraft manufacturer was not “person,” sufficiently detached from enterprise consisting of team of em-
ployees and former employee of competitor allegedly stealing competitor’s trade secrets, to be employed or as-
associated with enterprise and able to operate it through pattern of racketeering activity or collection of unlawful
debt. Lockheed Martin Corp. v. Boeing Co., M.D.Fla.2004, 314 F.Supp.2d 1198. Racketeer Influenced And Cor-
rupt Organizations 39; Racketeer Influenced And Corrupt Organizations 105

To demonstrate violation of this section one must show existence of enterprise affecting interstate or foreign
commerce, that defendant associated with or participated in conduct of the affairs of the enterprise and that de-
fendant participated through pattern of racketeering activity, and this chapter clearly envisions relationship
between “person” and “enterprise” as element of the offense proscribed. D & G Enterprises v. Continental
Illinois Nat. Bank and Trust Co. of Chicago, N.D.Ill.1983, 574 F.Supp. 263. Commerce 82.6

Plaintiff could not assert claim under provision of the Racketeer Influenced and Corrupt Organizations Act
(RICO) establishing private action against any person who engages in fraudulent scheme through an enterprise,
with respect to one of two designated “enterprises” which consisted solely of the “person” in question. Lathrop
tions 38

91. ---- Separate from person, enterprise, offenses generally

Plaintiff insurer demonstrated sufficient distinction between RICO person and RICO enterprise, as required to
maintain claim under Racketeer Influenced and Corrupt Organizations Act (RICO) section prohibiting any per-
son employed by or associated with any enterprise from participating in or conducting the affairs of that enter-
prise through a pattern of racketeering activity, where insurer identified claimant, her husband, and her mother
as defendants, and thus as RICO persons, and it alleged that the enterprise was essentially the association-in-fact
fluenced And Corrupt Organizations 39

Despite overlapping ownership, three corporations were distinct entities and could be indicted as persons under
Racketeer Influenced and Corrupt Organizations Act (RICO) while also being considered jointly as constituting
an association-in-fact enterprise comprised of the three corporations and four individual defendants; each cor-
poration, incorporated in different states and operating as separate ongoing business, was distinct “person,” and
each corporation was distinct from the association consisting of the union of all three corporations. U.S. v. Gold-
L.Ed.2d 491. Racketeer Influenced And Corrupt Organizations 47

For purposes of Racketeer Influenced and Corrupt Organizations Act (RICO) provision stating that it shall be
unlawful for any person employed by or associated with any enterprise engaged in of affecting interstate or foreign commerce to conduct or participate in the conduct of such enterprise’s affairs through a pattern of racketeering activity or collection of unlawful debt, indictment must name a RICO person distinct from the RICO enterprise; corporation may not be simultaneously named as a liable “person” and as the “enterprise” in such RICO actions; abrogating--United States v. Hartley, 678 F.2d 961 (11th Cir.1982). U.S. v. Goldin Industries, Inc., C.A.11 (Ala.) 2000, 219 F.3d 1268, on remand 219 F.3d 1271. Racketeer Influenced And Corrupt Organizations

Defendant was not improperly charged as both person and enterprise, under section of Racketeer Influenced and Corrupt Organizations Act (RICO) prohibiting person employed by or associated with an enterprise to conduct or participate in conduct of enterprise’s affairs through pattern of racketeering; although indictment charged several defendants individually as persons, it did not charge any defendant singularly as an enterprise, but only charged that, collectively, defendant and his associates were an enterprise. U.S. v. Fairchild, C.A.8 (Iowa) 1999, 189 F.3d 769. Racketeer Influenced And Corrupt Organizations

Alleged “enterprise” under Racketeer Influenced and Corrupt Organizations Act (RICO) consisting of bar and check cashing business owned by defendant was sufficiently distinguishable from defendant to support RICO conviction, as both entities had employees other than defendant. U.S. v. London, C.A.1 (Mass.) 1995, 66 F.3d 1227, rehearing and suggestion for rehearing en banc denied, certiorari denied 116 S.Ct. 1542, 517 U.S. 1155, 134 L.Ed.2d 646. Racketeer Influenced And Corrupt Organizations

For purposes of satisfying requirement of distinctness between enterprise and person conducting or participating in affairs of enterprise, for purposes of liability under RICO, it matters not that defendant acted through individual whose distinctness from enterprise is open to question; what matters is that defendant itself and the enterprise are distinct. Davis v. Mutual Life Ins. Co. of New York, C.A.6 (Ohio) 1993, 6 F.3d 367, rehearing denied, certiorari denied 114 S.Ct. 1298, 510 U.S. 1193, 127 L.Ed.2d 650. Racketeer Influenced And Corrupt Organizations

Imposition of civil Racketeer Influenced and Corrupt Organizations (RICO) Act liability requires existence of “person” engaged in racketeering as well as “enterprise” through which illegal conduct occurs. Gentry v. Resolution Trust Corp., C.A.3 (N.J.) 1991, 937 F.2d 899. Racketeer Influenced And Corrupt Organizations

Insurance corporation and financial group could not be named in amended civil Racketeer Influenced and Corrupt Organizations Act (RICO) complaint as both enterprises and defendants, where RICO section not permitting such dual naming was the only available basis for liability. Banks v. Wolk, C.A.3 (Pa.) 1990, 918 F.2d 418, on remand. Racketeer Influenced And Corrupt Organizations

Racketeer Influenced and Corrupt Organizations Act (RICO) provision prohibiting any person who has received income derived from pattern of racketeering activity from using that money to acquire, establish or operate any enterprise that affects interstate commerce permits naming of the same entity as RICO enterprise and defendant, but section prohibiting any person employed by or associated with enterprise affecting interstate commerce from
conducting or participating in conduct of enterprise's affairs through pattern of racketeering activity does not. Banks v. Wolk, C.A.3 (Pa.) 1990, 918 F.2d 418, on remand. Racketeer Influenced And Corrupt Organizations ☞ 64

Pilots' union, as a RICO enterprise, could not also be a RICO “person” under theory regarding union as vehicle for racketeering activities perpetrated by airline and pilot representing union in negotiations with airline; language of governing RICO section dealt with a “person employed by or associated with any enterprise,” indicating Congress' intention that RICO person and enterprise be separate entities. Landry v. Air Line Pilots Ass'n Intern. AFL-CIO, C.A.5 (La.) 1990, 901 F.2d 404, modified on denial of rehearing, certiorari denied 111 S.Ct. 244, 498 U.S. 895, 112 L.Ed.2d 203, on remand. Racketeer Influenced And Corrupt Organizations ☞ 45

A businessman who alleged that two associates engaged in a scheme to appropriate the businessman's legitimate real estate investment and development business sufficiently alleged the existence of an enterprise distinct from the associates under RICO; businessman alleged that he voluntarily relinquished control over all real estate activities so that the associates could conduct activities during his incarceration and that the associates acquired ownership interests in the enterprise by various illicit means, rather than conducting affairs of the business as his fiduciaries. Jacobson v. Cooper, C.A.2 (N.Y.) 1989, 882 F.2d 717, on remand. Racketeer Influenced And Corrupt Organizations ☞ 39

Oil company which employed several individuals other than officers who conspired to operate it through pattern of racketeering activity was sufficiently distinct from officers to constitute RICO “enterprise.” Ashland Oil, Inc. v. Arnett, C.A.7 (Ind.) 1989, 875 F.2d 1271. Racketeer Influenced And Corrupt Organizations ☞ 38

Political party, as defendant in civil RICO action, could be considered an “enterprise” to extent it served as vehicle for some individuals' predicate acts of racketeering and also as “person” to extent it conducted affairs of defendant county as an enterprise. Rose v. Bartle, C.A.3 (Pa.) 1989, 871 F.2d 331, on remand. Racketeer Influenced And Corrupt Organizations ☞ 39


Under this section, the liable person and the enterprise which has its affairs conducted through pattern of racketeering activity must be separate entities; requirement that liable person be employed by or associated with the enterprise appears to contemplate that the liable person be distinct from the enterprise. Haroco, Inc. v. American Nat. Bank and Trust Co. of Chicago, C.A.7 (Ill.) 1984, 747 F.2d 384, certiorari granted 105 S.Ct. 902, 469 U.S. 1157, 83 L.Ed.2d 917, affirmed 105 S.Ct. 3291, 473 U.S. 606, 87 L.Ed.2d 437, dissenting opinion 105 S.Ct. 3292, 473 U.S. 479, 87 L.Ed.2d 346, on remand 662 F.Supp. 590. Racketeer Influenced And Corrupt Organizations ☞ 38

In asserting claim for alleged violation of Racketeer Influenced and Corrupt Organizations Act (RICO), national provider of construction project news and information failed to allege that corporate competitor was distinct from alleged RICO enterprise, as required to establish competitor's liability, where complaint rested upon alleged misconduct of competitor, which was only named defendant, and all additional persons and entities that were identified in complaint and alleged to have been part of enterprise were expressly described as competitor's agents. Reed Const. Data Inc. v. McGraw-Hill Companies, Inc., S.D.N.Y.2010, 745 F.Supp.2d 343. Racketeer Influenced And Corrupt Organizations 73

Racketeer Influenced and Corrupt Organizations Act (RICO) complaint identifying chief executive officer (CEO) of companies engaged in sale of mobile homes as RICO person and his companies as RICO enterprise sufficiently alleged RICO person distinct from RICO enterprises. Vanderbilt Mortg. and Finance, Inc. v. Flores, S.D.Tex.2010, 735 F.Supp.2d 679. Racketeer Influenced And Corrupt Organizations 73

In bringing Racketeer Influenced and Corrupt Organizations Act (RICO) action against title insurer for allegedly misrepresenting, through its title agents, the amount of money due and owing for title insurance, Pennsylvania homeowners who purchased title insurance sufficiently pleaded a “person” distinct from the “enterprise,” by alleging that title insurer was the liable “person” and the “enterprise” was an association-in-fact between title insurer and its title agents in Pennsylvania; the title agents were not employees of title insurer, but rather they were nonexclusive agents who worked with different title insurance companies, and, although the title agents had an agency agreement with the defendant title insurer, they were still separate, independent entities who did not function as subsidiaries or employees of the defendant title insurer. Levine v. First American Title Ins. Co., E.D.Pa.2010, 682 F.Supp.2d 442. Racketeer Influenced And Corrupt Organizations 73

Taxpayers claiming that banks and investment advisory firm participated in a scheme to defraud taxpayers by facilitating the marketing and selling of tax shelters that were subsequently found to be unlawful tax-avoidance schemes failed to allege a specific enterprise that was separate and distinct from the fraudulent tax shelter scheme, as required to state a claim against the banks and firm for violation of the Racketeer Influenced and Corrupt Organizations Act (RICO). Kottler v. Deutsche Bank AG, S.D.N.Y.2009, 607 F.Supp.2d 447. Racketeer Influenced And Corrupt Organizations 43

Financial services providers and their principals, and direct mail marketing firm and its principals, which together purportedly formed an enterprise to promote providers' services as being endorsed by non-profit advocacy organization, were each “persons” distinct from the alleged enterprise under Racketeer Influenced and Corrupt Organizations Act (RICO), as required for organization to state claim against defendants under RICO. AARP v. American Family Prepaid Legal Corp., Inc., M.D.N.C.2009, 604 F.Supp.2d 785. Racketeer Influenced And Corrupt Organizations 39

Tenants of rent-stabilized apartments, who alleged that corporate lessors, their owners and officers, and affiliated building managers were involved in a fraudulent scheme to demand and collect rents in amounts beyond those permitted under state law with the goal of illegally increasing regulating rents and/or evicting tenants entitled to rent regulation, adequately pleaded a Racketeer Influenced and Corrupt Organizations Act (RICO) enterprise that was distinct from the RICO persons, and the hierarchy and organization of that enterprise, and al-
leged solid information regarding the hierarchy, organization and activities of the alleged association-in-fact enterprise, from which the court could fairly conclude that its members functioned as a unit; each member of the enterprise was alleged to have associated together for the purpose of investing, owning, managing, and operating residential properties, collecting rents, and converting rental apartment buildings into condominium and cooperative units. *Buyers and Renters United to Save Harlem v. Pinnacle Group N.Y. LLC, S.D.N.Y.2008, 575 F.Supp.2d 499. Racketeer Influenced And Corrupt Organizations* ☏ 73

Plaintiffs asserting that insurer and sales agent organizations violated federal mail and wire fraud statutes in connection with their alleged scheme to defraud senior citizens into purchasing deferred annuities that were inappropriate for them sufficiently alleged enterprise distinct from persons, as required to state claim under provision of Racketeer Influenced and Corrupt Organizations Act (RICO) prohibiting any person from unlawfully participating in conduct of enterprise's affairs through pattern of racketeering activity, where alleged enterprise also included individual sales agents. *In re National Western Life Ins. Deferred Annuities Litigation, S.D.Cal.2006, 467 F.Supp.2d 1071. Racketeer Influenced And Corrupt Organizations* ☏ 47

Racketeer Influenced and Corrupt Organizations Act (RICO) claim could not be based on allegations that retailer and its contractors both engaged in the racketeering activity, and also constituted the RICO enterprise; RICO person and the RICO enterprise could not be identical. *Zavala v. Wal-Mart Stores, Inc., D.N.J.2006, 447 F.Supp.2d 379, motion to certify appeal denied 2007 WL 1134110, affirmed 691 F.3d 527. Racketeer Influenced And Corrupt Organizations* ☏ 38; *Racketeer Influenced And Corrupt Organizations* ☏ 47

Claim against Mexican bank, arising from dispute over property located in Mexico, lacked sufficient enterprise allegations distinguishing between a person and the enterprise, for purposes of stating claim under Racketeer Influenced and Corrupt Organizations Act (RICO); defendant bank itself, with its employees and agents, could not satisfy both the “person” and the “enterprise” elements. *Dtex, LLC v. BBVA Bancomer, S.A., D.S.C.2005, 405 F.Supp.2d 639, affirmed 214 Fed.Appx. 286, 2007 WL 173711. Racketeer Influenced And Corrupt Organizations* ☏ 38

Conclusory statements that certain entities and individuals constituted an enterprise of an association in fact was not sufficient to plead an “enterprise” distinct from the “persons” and/or pattern of racketeering activity as required by Racketeer Influenced and Corrupt Organizations Act (RICO); complaint was deficient because it failed to plead a RICO “enterprise” distinct from individuals who associated to commit predicate acts. *Schuster v. Anderson, N.D.Iowa 2005, 378 F.Supp.2d 1070, subsequent determination 413 F.Supp.2d 983. Racketeer Influenced And Corrupt Organizations* ☏ 73

Managing agency named by celebrity wardrobe stylist as the “enterprise” for purposes of her claim under Racketeer Influenced and Corrupt Organizations Act (RICO) could not be held vicariously liable under RICO for acts of its principal, which included falsely representing to stylist that agency did not owe stylist money paid to agency by her clients; although agency may have benefited from and played a role in principal's misconduct, holding agency liable would violate RICO requirement that person and enterprise be two distinct entities. *Moses v. Martin, S.D.N.Y.2004, 360 F.Supp.2d 533. Racketeer Influenced And Corrupt Organizations* ☏ 47; *Racketeer Influenced And Corrupt Organizations* ☏ 64

Limited liability company alleged to be the “enterprise” for purposes of the Racketeer Influenced and Corrupt Organizations Act (RICO) could not also be a “person” engaged in racketeering activities. Multi-Media Intern., LLC v. Promag Retail Services, D.Kan.2004, 343 F.Supp.2d 1024. Racketeer Influenced And Corrupt Organizations ☞ 38

Under Racketeer Influenced and Corrupt Organizations Act (RICO) and its Florida counterpart, determination that aircraft manufacturer was not person distinct from enterprise, alleged to consist of employees and one former employee of competitor all engaged in theft of competitor's trade secrets, precluded claim that manufacturer and members of enterprise conspired to operate enterprise through pattern of racketeering or unlawful collection of debt. Lockheed Martin Corp. v. Boeing Co., M.D.Fla.2004, 314 F.Supp.2d 1198. Conspiracy ☞ 2

Count alleging violation of section of Racketeer Influenced and Corrupt Organizations Act (RICO) making it “unlawful for any person employed by or associated with any enterprise *** to conduct or participate *** in the conduct of such enterprise's affairs through a pattern of racketeering activity” improperly conflated “persons” and the “enterprise.” Burrows v. Combs, S.D.N.Y.2004, 312 F.Supp.2d 449, affirmed 124 Fed.Appx. 70, 2005 WL 670644. Racketeer Influenced And Corrupt Organizations ☞ 73

Golf cart distributor failed to state claim that manufacturer which had allegedly dealt improperly with distributor violated Racketeer Influenced and Corrupt Organizations Act (RICO), by conducting or participating in affairs of enterprise through pattern of racketeering activity; distributor failed to make necessary showing that manufacturer was “person” separate from enterprise it operated. Club Car, Inc. v. Club Car (Quebec) Import, Inc., S.D.Ga.2003, 276 F.Supp.2d 1276, affirmed 362 F.3d 775, rehearing and rehearing en banc denied 111 Fed.Appx. 1003, 2004 WL 1585294, certiorari denied 125 S.Ct. 618, 543 U.S. 1002, 160 L.Ed.2d 461. Racketeer Influenced And Corrupt Organizations ☞ 73

Accounting firm could not be both person who conducted affairs of enterprise and enterprise itself for purposes of civil Racketeer Influenced and Corrupt Organizations Act (RICO) claim. Feirstein v. Nanbar Realty Corp., S.D.N.Y.1997, 963 F.Supp. 254. Racketeer Influenced And Corrupt Organizations ☞ 38

Under RICO statute, there must be only some separate and distinct existence for person and enterprise. LaSalle Bank Lake View v. Seguban, N.D.Ill.1996, 937 F.Supp. 1309. Racketeer Influenced And Corrupt Organizations ☞ 38

For liability to attach under provision of Racketeer Influenced and Corrupt Organizations Act (RICO) prohibiting person employed by enterprise to participate in enterprise's affairs through pattern of racketeering activity, person and enterprise must be distinct; by virtue of distinctness requirement, corporate entity may not be both person and enterprise. Protter v. Nathan's Famous Systems, Inc., E.D.N.Y.1996, 925 F.Supp. 947. Racketeer Influenced And Corrupt Organizations ☞ 38; Racketeer Influenced And Corrupt Organizations ☞ 47

Allegations that partners and employees of accounting firm or accounting firm itself participated in operation or management of one or more of the entities affiliated with firm or an association in fact of the firm partners and
employees did not allege distinct person and enterprise, as required to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO). Department of Economic Development v. Arthur Andersen & Co. (U.S.A.), S.D.N.Y.1996, 924 F.Supp. 449. Racketeer Influenced And Corrupt Organizations

Discharged employee's failure to allege an “enterprise” independent and distinct from former employer, its subsidiary, and coemployee precluded discharged employee from stating a cause of action against former employer, subsidiary, and coemployee for a violation of the Racketeer Influenced and Corrupt Organizations Act (RICO) section prohibiting a person employed by an enterprise from conducting the enterprise's affairs through a pattern of racketeering activity. Dugan v. Bell Telephone of Pennsylvania, W.D.Pa.1994, 876 F.Supp. 713. Racketeer Influenced And Corrupt Organizations

Competitors of photograph and fingerprint services supplier which were controlled by single shareholder did not constitute “association in fact” under Racketeer Influenced and Corrupt Organizations Act (RICO) where supplier alleged that purpose for which competitors associated was to eliminate supplier from business through pattern of racketeering activity; thus, no RICO violation was established because alleged enterprise was not separate from persons sued. D’Last Corp. v. Ugent, N.D.Ill.1994, 863 F.Supp. 763, affirmed 51 F.3d 275. Racketeer Influenced And Corrupt Organizations

In complaint alleging that entities in business of selling and financing automobiles and related intangible products had forced plaintiff to pay for insurance they procured because she had allowed her own insurance on vehicle to lapse, plaintiff failed, for purposes of the Racketeer Influenced and Corrupt Organizations Act (RICO), to allege “persons” distinct from the “enterprise,” where the enterprises were alleged to consist of associations in fact but, apart from the three named defendants, none of the affiliate entities referred to in the complaint was alleged to be hooked up, in terms of the conduct of their affairs, with the allegedly fraudulent conduct that was said to have defrauded plaintiff. Richmond v. Nationwide Cassel L.P., N.D.Ill.1994, 847 F.Supp. 88, affirmed 52 F.3d 640. Racketeer Influenced And Corrupt Organizations

In order to state claim under RICO provision prohibiting person employed by or associated with an enterprise from conducting enterprise's affairs through pattern of racketeering, plaintiff must describe person that is separate and distinct from enterprise being used by person. Hilliard v. Shell Western E & P, Inc., W.D.Mich.1993, 836 F.Supp. 1365, reversed 149 F.3d 1183, certiorari denied 119 S.Ct. 608, 525 U.S. 1048, 142 L.Ed.2d 548. Racketeer Influenced And Corrupt Organizations

Under Racketeer Influenced and Corrupt Organizations Act (RICO) subsection making it unlawful for person who has received income derived from pattern of racketeering activity to use any part of such income in acquisition of any interest in enterprise which is engaged in interstate or foreign commerce, the enterprise alleged does not have to be distinct from person receiving income from pattern of racketeering activity. South Carolina Elec. & Gas Co. v. Westinghouse Elec. Corp., D.S.C.1993, 826 F.Supp. 1549. Racketeer Influenced And Corrupt Organizations

“Enterprise” alleged by investors in real estate limited partnerships in their RICO claim against general partners and related business organizations and individuals for conducting affairs of “enterprise” through pattern of rack-
eteering activity was not appropriate RICO “enterprise”; RICO enterprise and person who conducts affairs of that enterprise must be distinct entities, investors alleged that general partners, business organizations, and individuals were single legal entity, and, thus, partners, organizations, and individuals were both “persons” perpetrating RICO violation and “enterprise.” Gurfein v. Sovereign Group, E.D.Pa.1993, 826 F.Supp. 890. Racketeer Influenced And Corrupt Organizations 39

Residents of adult care facility for mentally and emotionally disturbed people adequately distinguished between Racketeer Influenced and Corrupt Organizations Act (RICO) enterprise and person; residents alleged that individual owners-operators together with manager and lessor of property used for facility were an enterprise which used facility as its modus operandi. Trautz v. Weisman, S.D.N.Y.1993, 819 F.Supp. 282. Racketeer Influenced And Corrupt Organizations 73


Account holders failed to state claim for relief under Racketeer Influenced and Corrupt Organizations Act (RICO) provision prohibiting any person employed or associated with enterprise affecting interstate commerce from conducting enterprise’s affairs through pattern of racketeering, against bank which assessed fees against account holders for checks held for insufficient funds, as account holders named bank as both enterprise and person. Marrazzo v. Bucks County Bank and Trust Co., E.D.Pa.1993, 814 F.Supp. 437. Racketeer Influenced And Corrupt Organizations 43

Racketeer Influenced and Corrupt Organizations Act (RICO) section making it unlawful for any “person” who has received income from a pattern of racketeering activity to invest the income into any “enterprise” which is engaged in commerce does not require a “person” distinct from “enterprise” to have liability. Downing v. Haliburton & Associates, Inc., M.D.Ala.1993, 812 F.Supp. 1175, affirmed 13 F.3d 410. Racketeer Influenced And Corrupt Organizations 38


Customers of industrial loan corporation who purchased thrift certificates and passbook accounts as investments adequately alleged that corporation was “enterprise” distinct from liable persons for purposes of Racketeer Influenced and Corrupt Organizations Act and its Utah counterpart. Bradford v. Moench, D.Utah 1992, 809 F.Supp. 1473. Racketeer Influenced And Corrupt Organizations 73; Racketeer Influenced And Corrupt Organizations 115

Allegation that rest home operators fraudulently received payment from residents while providing substandard care failed to state civil RICO claim for using enterprise to conduct racketeering activity; corporate entity could


Racketeer Influenced and Corrupt Organizations Act (RICO) required that enterprise exist separate and distinct from racketeer in order to recover under section making it unlawful for person to use or invest income derived from pattern of racketeering activity to establish, operate, or acquire interest in enterprise; until enterprise invests in, acquires interest in, controls, or conducts affairs of separate enterprise through pattern of racketeering activity, it should not be subject to RICO criminal and civil liability provisions. Nagle v. Merrill Lynch, Pierce, Fenner & Smith, Inc., S.D.Iowa 1992, 790 F.Supp. 203. Racketeer Influenced And Corrupt Organizations

Computer software licensor's negotiation of licensing agreement in its own capacity could not serve as predicate act of racketeering; licensor could not be both “person” charged with RICO violations and “enterprise” at the same time. Charles River Data Systems, Inc. v. Oracle Complex Systems Corp., D.Mass.1991, 788 F.Supp. 54. Racketeer Influenced And Corrupt Organizations

Consulting firm which rendered pension administration services and its president could not be both defendants in Racketeer Influenced and Corrupt Organizations Act (RICO) and an enterprise; accordingly, pension funds failed to allege RICO violation. Mitnik v. Cannon, E.D.Pa.1992, 784 F.Supp. 1190, reconsideration denied 789 F.Supp. 175, affirmed 989 F.2d 488. Racketeer Influenced And Corrupt Organizations

Individual defendant and corporation owned and/or controlled by him were not sufficiently distinct from corporation and other entities comprising alleged association in fact enterprise to sustain Racketeer Influenced and Corrupt Organizations Act (RICO) conviction as “persons” conducting affairs of enterprise through pattern of racketeering activity. U.S. v. Crysopt Corp., D.Md.1991, 781 F.Supp. 375. Racketeer Influenced And Corrupt Organizations

Although Racketeer Influenced and Corrupt Organizations Act (RICO) requires that “person” be separate and distinct from “enterprise” association-in-fact enterprise can have as member one of a number of RICO defendants. Cadle Co. v. Schultz, N.D.Tex.1991, 779 F.Supp. 392. Racketeer Influenced And Corrupt Organizations

Under sections of Racketeer Influenced and Corrupt Organizations Act (RICO) proscribing investment of income derived from pattern of racketeering in enterprise and acquiring or maintaining an interest in that enterprise through pattern of racketeering, the enterprise need not be distinct from the liable person. Bowman v. Western Auto Supply Co., W.D.Mo.1991, 773 F.Supp. 174, reversed 985 F.2d 383, rehearing denied, certiorari denied 113 S.Ct. 2459, 508 U.S. 957, 124 L.Ed.2d 674. Racketeer Influenced And Corrupt Organizations

In action under Racketeer Influenced and Corrupt Organizations Act provision making it unlawful for any person associated with any enterprise to conduct that enterprise’s affairs through pattern of racketeering activity, person must be separate and distinct from enterprise. Comwest, Inc. v. American Operator Services, Inc., C.D.Cal.1991, 765 F.Supp. 1467. Racketeer Influenced And Corrupt Organizations

Purchaser of contact lenses failed to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO) against department store and optical company arising out of her purchase of contact lenses, inasmuch as purchaser failed to allege existence of enterprise separate and distinct from persons or defendants alleged to have violated Act. Skeet v. Sears, Roebuck & Co., D.Kan.1991, 760 F.Supp. 872. Racketeer Influenced And Corrupt Organizations


 Broker who worked for two brokerages successively and allegedly induced inappropriate investments was the only “person” associated with brokerages to extent brokerages were considered enterprises for purposes of Racketeer Influenced and Corrupt Organizations Act (RICO) section proscribing conducting affairs of enterprise affecting interstate commerce through pattern of racketeering activity or collection of unlawful debt, and broker was accordingly the only potentially liable defendant under that provision, which requires person and affected enterprises to be distinct entities. Cooperativa de Ahorro y Credito Aguada v. Kidder, Peabody & Co., D.Puerto Rico 1991, 758 F.Supp. 64. Racketeer Influenced And Corrupt Organizations


“Person” and “enterprise” need not be distinct for purposes of RICO provision prohibiting use or investment of racketeering funds by person to acquire interest in or establish enterprise, or provision prohibiting racketeering activity of person directed toward acquiring interest in or controlling enterprise. Bumgarner v. Blue Cross and Blue Shield of Kansas, Inc., D.Kan.1988, 716 F.Supp. 493. Racketeer Influenced And Corrupt Organizations

Prohibition against using or investing proceeds derived from pattern of racketeering activity to acquire or operate enterprise does not require distinction between person and enterprise. Raymark Industries, Inc. v. Stemple, D.Kan.1988, 714 F.Supp. 460. Racketeer Influenced And Corrupt Organizations

For purpose of pleading claim pursuant to section of RICO making it unlawful for person to invest income derived from pattern of racketeering activity in an enterprise, person and enterprise need not be separate entities. Long Island Lighting Co. v. General Elec. Co., E.D.N.Y.1989, 712 F.Supp. 292. Racketeer Influenced And Corrupt Organizations

Under RICO, the “person” is the active wrongdoer, while the “enterprise” is the passive instrumentality through which the person performs predicate acts. Salvador v. Mazzocone, E.D.Pa.1987, 686 F.Supp. 528. Racketeer Influenced And Corrupt Organizations

Allegations of civil RICO complaint, that individual and union defendants conducted or participated in conduct of organized crime family's affairs and that organized crime family, along with individual defendants, infiltrated and exploited union enterprise, did not erroneously assert that organized crime family fulfilled both role of RICO enterprise and “person” violating RICO. U.S. v. Bonanno Organized Crime Family of La Cosa Nostra, E.D.N.Y.1988, 683 F.Supp. 1411, affirmed 879 F.2d 20. Racketeer Influenced And Corrupt Organizations

Civil RICO complaint failed to adequately allege entity enterprise distinct from persons named as defendants after elimination of alleged coconspirators allegedly forming part of racketeering enterprise alleged in civil RICO complaint, which were merely businesses used by the RICO defendants to manufacture and sell defendants' heart valves, and there was no allegation that the “co-conspirators” were familiar with one or more of the racketeering activities. Medical Inc. v. Angicor Ltd., D.Minn.1988, 677 F.Supp. 1000. Racketeer Influenced And Corrupt Organizations

Registered travel agency, claiming to have been defrauded and deprived of monies illegally obtained by outside sales agent, failed to state civil Racketeer Influenced and Corrupt Organizations Act claim based upon agent's use of money derived from pattern of racketeering activity to invest in or operate enterprise; assertion that agent himself was “enterprise” was insufficient to state claim in absence of any allegations that monies obtained by agent were invested or used by him to operate, or obtain interest in himself. Anitora Travel, Inc. v. Lapian, S.D.N.Y.1988, 677 F.Supp. 209. Racketeer Influenced And Corrupt Organizations


Terminated insurance agent failed to state RICO cause of action, even if insurer's offer of job was made to in-

Complaint which cast same company as both the “enterprise” and the “person” conducting the affairs of the enterprise did not state a claim under RICO. Fingar v. Prudential-Bache Securities, Inc., E.D.N.Y.1987, 662 F.Supp. 1119. Racketeer Influenced And Corrupt Organizations


Borrowers failed to state Racketeer Influenced and Corrupt Organizations Act claim against two lending institutions for their computation and charge of interest; by alleging that lending institutions were both the “enterprise” and person who corrupted the “enterprise,” borrowers failed to distinguish between alleged “enterprise” and culpable “person” as required by RICO. Criswell v. Production Credit Ass’n, S.D.Ohio 1985, 660 F.Supp. 14. Racketeer Influenced And Corrupt Organizations

With regard to section of Racketeer Influenced and Corrupt Organizations Act making it unlawful for a “person” employed or associated with an enterprise to conduct or participate, directly or indirectly, in conduct of such enterprise's affairs through a pattern of racketeering activity, a “person” charged with violation of the section may not be the “enterprise” itself. Klapper v. Commonwealth Realty Trust, D.Del.1987, 657 F.Supp. 948, stay granted, motion to certify appeal granted 662 F.Supp. 235. Racketeer Influenced And Corrupt Organizations

City College Board, accused of violation of Racketeer Influenced and Corrupt Organizations Act, could not be both person and enterprise under Act. Robinson v. City Colleges of Chicago, N.D.Ill.1987, 656 F.Supp. 555. Racketeer Influenced And Corrupt Organizations

Requirement, under section of Racketeer Influenced and Corrupt Organizations Act prohibiting “a person employed by or associated with any enterprise engaged in * * * interstate or foreign commerce,” from participating in enterprise's activities through racketeering, that liable person and enterprise be separate, did not preclude allegation that individual defendants were persons, that corporate defendants were each an “enterprise” and that individual defendants violated the Act. Temple University v. Salla Bros., Inc., E.D.Pa.1986, 656 F.Supp. 97. Racketeer Influenced And Corrupt Organizations

Plaintiff seeking relief under section of RICO statute governing prohibited acts of person associated with or employed by enterprise must allege person separate and distinct from enterprise, the affairs which were conducted by the person through a pattern of racketeering activity. O'Keefe v. Courtney, N.D.Ill.1985, 655 F.Supp. 16. Racketeer Influenced And Corrupt Organizations

Allegations under Racketeer Influenced and Corrupt Organizations Act that individual himself, and association in fact of individual with persons to whom he sold shares of plaintiff’s common stock, constituted enterprise within meaning of Act, and that each sale of stock constituted indictable act under mail or wire fraud statutes or offense involving fraud in sale of securities, sufficiently stated RICO claim to withstand motion to dismiss. *A.L. Williams Corp. v. Faircloth*, N.D.Ga.1986, 652 F.Supp. 51. Racketeer Influenced And Corrupt Organizations

RICO provision, prohibiting person receiving income derived from pattern of racketeering activity to use part of such income in acquiring or operating any enterprise, did not require separation between “person” charged with wrongdoing and affected “enterprise,” as was required for violation of RICO prohibition against conducting affairs of enterprise through pattern of racketeering activity. *Philadelphia TMC, Inc. v. AT & T Information Systems, Inc.*, E.D.Pa.1986, 651 F.Supp. 169. Racketeer Influenced And Corrupt Organizations

To establish violation of § 1962(c) of RICO, individual defendant must be separate from enterprise as, if person is not separate from enterprise, person could not conduct affairs of enterprise. *NL Industries, Inc. v. Gulf & Western Industries, Inc.*, D.Kan.1986, 650 F.Supp. 1115. Racketeer Influenced And Corrupt Organizations

Retirement trust and trustees who failed to allege “enterprise” separate and apart from “person” who perpetrated alleged scheme to defraud did not state claim under civil RICO section. *Hatherley v. Palos Bank and Trust Co.*, N.D.Ill.1986, 650 F.Supp. 832. Racketeer Influenced And Corrupt Organizations


Investor’s allegations that conduct of futures commission merchant and its employee-agent who was handling investor’s commodity trading account violated RICO in that conduct constituted “pattern of racketeering activity,” that each used mails or telephone to further scheme to defraud, and that merchant constituted “enterprise” as contemplated by RICO statute did not state claim; “enterprise” was meant to refer to being different from, not same as or part of, person whose behavior RICO statute was designed to prohibit, and failing that, to punish. *Burton v. Heinold Commodities, Inc.*, E.D.Va.1986, 646 F.Supp. 360. Racketeer Influenced And Corrupt Organ-
Racketeer Influenced and Corrupt Organizations Act section making it unlawful for person who has received income from pattern of racketeering activity to invest in enterprise engaged in interstate or foreign commerce and section making it unlawful for person through pattern of racketeering activity to acquire or maintain interest in or control of enterprise engaged in interstate or foreign commerce do not require distinct identities of “person” and “enterprise” be present. *Vietnam Veterans of America, Inc. v. Guerdon Industries, Inc.*, D.Del.1986, 644 F.Supp. 951. Racketeer Influenced And Corrupt Organizations

Investor’s actions against securities broker for violation of Racketeer Influenced and Corrupt Organization Act section making it unlawful for any person employed by or associated with enterprise engaged in interstate commerce to conduct or participate in conduct of such enterprise’s affairs through pattern of racketeering activity sufficiently alleged enterprise separate and distinct from securities broker; investor alleged that broker was person engaging in pattern of racketeering activity and that three brokerage firms by whom broker was employed during relevant time period were the required enterprises. *Winer v. Patterson*, D.N.H.1986, 644 F.Supp. 898, order vacated in part on reconsideration 663 F.Supp. 723. Racketeer Influenced And Corrupt Organizations

Defendant in action alleging violation of Racketeer Influenced and Corrupt Organizations Act cannot also serve as “enterprise” in regard to claim under provision of Act prohibiting person employed by or associated with “enterprise” from conducting its affairs through pattern of racketeering activity; however, defendant and “enterprise” may be the same for purposes of claim under Act provision prohibiting use of racketeering income to acquire interest in enterprise engaged in interstate commerce. *Rhoades v. Powell*, E.D.Cal.1986, 644 F.Supp. 645, affirmed 961 F.2d 217. Racketeer Influenced And Corrupt Organizations

Separate person/enterprise requirement for imposition of liability under section of the Racketeer Influenced and Corrupt Organizations Act, prohibiting person employed by or associated with enterprise engaged in, or activities of which affect interstate or foreign commerce, to conduct or participate in conduct of enterprise’s affairs through pattern of racketeering activity or collection of unlawful debt, was not satisfied by applying doctrine of respondeat superior to hold commodities firm, the alleged enterprise, liable for its brokers’ alleged violations of RICO. *Schofield v. First Commodity Corp. of Boston*, D.Mass.1985, 638 F.Supp. 4, affirmed 793 F.2d 28. Racketeer Influenced And Corrupt Organizations

Alleged agency relationship between insurance agent and insurer and between claims adjuster and insurer did not effect a merger of agent and claims adjuster into insurer and, therefore, did not prevent insured from making allegation that either agent or claims adjuster served as “person” distinct from insurer as “enterprise” for purposes of Racketeer Influenced and Corrupt Organizations Act complaint. *Wright v. Everett Cash Mut. Ins. Co.*, W.D.Pa.1986, 637 F.Supp. 155. Racketeer Influenced And Corrupt Organizations

Plaintiff, whose complaint under the Racketeer Influenced and Corrupt Organizations Act named only one defendant, failed to distinguish between the RICO “person” and the RICO “enterprise,” so that plaintiff could not maintain action. *Bishop v. B.J.J. Brake Co., Inc.*, E.D.Tex.1986, 632 F.Supp. 10, affirmed 802 F.2d 122. Racketeer Influenced And Corrupt Organizations


Long-distance telephone provider could not serve as both “person” and “enterprise” under subsection of statute making it unlawful for any person through a pattern of racketeering to maintain any interest in, or control of enterprise engaged in interstate or foreign commerce, and thus, provider could not be held liable under that statute for allegedly defrauding customers by overcharging. Bruss Co. v. Allnet Communication Services, Inc., N.D.Ill.1985, 606 F.Supp. 401. Racketeer Influenced And Corrupt Organizations

Buyer, which was allegedly the enterprise for RICO purposes, could not also be a “person” named as a defendant. Ideal Stencil Mach. and Tape Co. v. Merchiori, S.D.Ill.1985, 600 F.Supp. 185. Racketeer Influenced And Corrupt Organizations

Complaint filed by securities customers alleging violation of this chapter was deficient in that it alleged the defendant broker was an “enterprise.” Lopez v. Dean Witter Reynolds, Inc., N.D.Cal.1984, 591 F.Supp. 581. Racketeer Influenced And Corrupt Organizations

Plaintiffs alleging violations of this chapter arising out of loans made at announced prime rate rather than subprime rate offered to most creditworthy commercial borrowers improperly sued affected enterprises and not persons who conducted affairs of enterprises. Wilcox Development Co. v. First Interstate Bank of Oregon, N.A., D.C.Or.1984, 590 F.Supp. 445, reversed 815 F.2d 522. Racketeer Influenced And Corrupt Organizations


Allegations by recipient of mail order catalog from women’s clothing manufacturer that manufacturer had unlawfully discriminated in its pricing structures by sending catalogs which contained different discount offers to different groups of customers were insufficient to allege conduct of enterprise by person through pattern of racketeering activity in violation of Racketeer Influenced and Corrupt Organizations (RICO), and were insufficient to state civil RICO claim on that basis, where recipient alleged enterprise consisting of manufacturer, companies

Investors that allegedly made certain purchasers from antique dealer in reliance on her false representations failed to satisfy their burden of demonstrating any racketeering “enterprise” separate from dealer herself, as required for investors to maintain cause of action under the Racketeer Influenced and Corrupt Organizations (RICO) Act, where entities identified in investors’ complaint as being companies for which dealer worked were merely trade names utilized by dealer to carry on her business. *In re McGinty*, Bkrtcy.N.D.Miss.2000, 276 B.R. 489. Racketeer Influenced And Corrupt Organizations

Allegations in former Chapter 7 debtor's complaint, regarding defendant's attempt to collect upon discharged lease obligation by its alleged predicate acts of mail or wire fraud, were insufficient to state claim under federal racketeering law, absent allegation of some racketeering enterprise distinct from defendant. *Molloy v. Primus Automotive Financial Services*, C.D.Cal.2000, 247 B.R. 804. Racketeer Influenced And Corrupt Organizations

92. ---- Separate from pattern of racketeering, enterprise, offenses generally

While “enterprise” and “pattern of racketeering activity” are separate elements of Racketeer Influenced and Corrupt Organizations Act (RICO) offense, proof of these two elements need not be separate or distinct, but may in fact coalesce. *U.S. v. Patrick*, C.A.1 (Mass.) 2001, 248 F.3d 11, certiorari denied 122 S.Ct. 620, 534 U.S. 1043, 151 L.Ed.2d 542, certiorari denied 122 S.Ct. 1215, 535 U.S. 910, 152 L.Ed.2d 152. Racketeer Influenced And Corrupt Organizations

Even under stricter United Energy Owners' “separate existence” test for establishing that Racketeer Influenced and Corrupt Organization's (RICO) enterprise is entity separate and apart from pattern of racketeering activity in which it engages, allegations that racketeering enterprise included group of entities, associated in-fact, consisting of brokerage houses, blind pool companies that were involved in alleged predicate acts, and blind pool companies that, although controlled by defendant, were not charged as involved in racketeering, met separate existence test, where it was fair implication from indictment that brokerage houses engaged in activities other than those predicate acts that involved three blind pool corporations because both were alleged to be securities brokerages with extensive operations and both were involved with public offering of several other blind pool corporations that were never alleged to have been subject of predicate acts. *U.S. v. Blinder*, C.A.9 (Nev.) 1993, 10 F.3d 1468. Racketeer Influenced And Corrupt Organizations

In appropriate case under the Racketeer Influenced and Corrupt Organizations Act (RICO), enterprise can be inferred from proof of pattern, and there are not separate tests for lawful and unlawful enterprises, though the proof necessary to establish enterprise and pattern may differ. *U.S. v. Pelullo*, C.A.3 (Pa.) 1992, 964 F.2d 193, rehearing denied. Racketeer Influenced And Corrupt Organizations

Purchasers of allegedly defective residential oil furnaces did not state claim against manufacturer or its parent
corporation under § 1962(c) of Racketeer Influenced and Corrupt Organizations Act (RICO) where neither parent corporation nor manufacturer could realistically serve as enterprise through which one or other could be viewed as conducting pattern of racketeering activity; parent corporation and its subsidiary did not have distinctiveness which would permit separation of one from the other for purposes of RICO claim. Glessner v. Kenny, C.A.3 (N.J.) 1991, 952 F.2d 702. Racketeer Influenced And Corrupt Organizations

The element of a RICO violation, that enterprise exist apart from pattern of racketeering activity, is satisfied if the evidence shows the organization coordinated the commission of different predicate offenses on an ongoing basis. U.S. v. Sanders, C.A.10 (Okla.) 1991, 928 F.2d 940, certiorari denied 112 S.Ct. 142, 502 U.S. 845, 116 L.Ed.2d 109, denial of post-conviction relief affirmed 21 F.3d 1123. Racketeer Influenced And Corrupt Organizations

Evidence established that acts of enterprise made up of law firm of which first defendant was member and two police departments, to which second and third defendants belonged, formed “pattern,” under the Racketeer Influenced and Corrupt Organizations Act (RICO), separate from enterprise; evidence indicated that purpose of enterprise was to bring under first defendant's influence the principal police agencies operating in his area of activity and that, when first defendant discovered that his wife was having affair, her murder was solicited and second and third defendants aided in concealment of defendants' actions relating to murder. U.S. v. Masters, C.A.7 (Ill.) 1991, 924 F.2d 1362, rehearing denied, certiorari denied 111 S.Ct. 2019, 500 U.S. 919, 114 L.Ed.2d 105, certiorari denied 112 S.Ct. 86, 502 U.S. 823, 116 L.Ed.2d 58. Racketeer Influenced And Corrupt Organizations

RICO “enterprise” is not to be equated with conspiracy to commit racketeering acts; enterprise must involve more than agreement to engage in pattern of racketeering activity. Hartz v. Friedman, C.A.7 (Ind.) 1990, 919 F.2d 469. Racketeer Influenced And Corrupt Organizations

Allegation that bank, which filed involuntary bankruptcy petition, was itself “enterprise” and that bank's behavior immediately before and in connection with involuntary bankruptcy petition constituted pattern of racketeering activity, was insufficient to state RICO claim against bank; single entity could not be both defendant and enterprise for RICO purposes. Paradise Hotel Corp. v. Bank of Nova Scotia, C.A.3 (Virgin Islands) 1988, 842 F.2d 47. Racketeer Influenced And Corrupt Organizations

Union's strike and organizing activities were sufficient participation in conduct of employer's affairs to allow employer to name itself as enterprise and union official and members as racketeering parties, in petition under Racketeer Influenced and Corrupt Organizations Act, even though employer and union were associated only for limited period of time. Yellow Bus Lines, Inc. v. Drivers, Chauffeurs & Helpers Local Union 639, C.A.D.C.1988, 839 F.2d 782, 268 U.S.App.D.C. 103, rehearing denied, certiorari denied 109 S.Ct. 309, 488 U.S. 926, 102 L.Ed.2d 328, vacated on other grounds 109 S.Ct. 3235, 492 U.S. 914, 106 L.Ed.2d 583, on remand 883 F.2d 132, 280 U.S.App.D.C. 60, rehearing granted. Racketeer Influenced And Corrupt Organizations

With regard to section of Racketeer Influenced and Corrupt Organizations Act prohibiting participation in an en-
terprise “through a pattern of racketeering activity,” the “pattern of racketeering activity” is a separate element of the offense, distinct from both existence of the enterprise and participation of the individual in the enterprise; because of such separate element, an individual may be prosecuted for more than one violation in connection with same enterprise, so long as each violation involved a different “pattern of racketeering activity.” U.S. v. Ruggiero, C.A.11 (Fla.) 1985, 754 F.2d 927, certiorari denied 105 S.Ct. 2661, 86 L.Ed.2d 277, certiorari denied 105 S.Ct. 2679, 471 U.S. 1137, 86 L.Ed.2d 697. Racketeer Influenced And Corrupt Organizations

Discrete existence, rather than legality or illegality of enterprise's activities or goals, is test of separateness from acts of racketeering for purposes of this chapter. Bennett v. Berg, C.A.8 (Mo.) 1982, 685 F.2d 1053, on rehearing 710 F.2d 1361, certiorari denied 104 S.Ct. 527, 464 U.S. 1008, 78 L.Ed.2d 710, on remand. Racketeer Influenced And Corrupt Organizations

In order for association with enterprise which is distinct from participation and conduct of enterprise through pattern of racketeering activity to exist, enterprise must be more than informal group created to perpetrate acts of racketeering. U. S. v. Bledsoe, C.A.8 (Mo.) 1982, 674 F.2d 647, certiorari denied 103 S.Ct. 456, 459 U.S. 1040, 74 L.Ed.2d 608. Racketeer Influenced And Corrupt Organizations

Where enterprise under charge of this chapter is a wholly criminal one, proof of its existence may overlap proof of connecting pattern of racketeering activity, but proof of one does not necessarily establish the other; in that situation, the enterprise is not the pattern of racketeering activity but is an entity separate and apart from pattern of activity in which it engages and its separate existence must be proved in order to convict. U. S. v. Griffin, C.A.4 (Md.) 1981, 660 F.2d 996, certiorari denied 102 S.Ct. 1029, 454 U.S. 1156, 71 L.Ed.2d 313. Racketeer Influenced And Corrupt Organizations

Congress intended that the phrase “a group of individuals associated in fact although not a legal entity,” as used in its definition of the term “enterprise” in this chapter encompasses only an association having an ascertainable structure which exists for purpose of maintaining operations directed toward an economic goal that has existence that can be defined apart from commission of predicate acts constituting the “pattern of racketeering activity.” U. S. v. Anderson, C.A.8 (Ark.) 1980, 626 F.2d 1358, certiorari denied 101 S.Ct. 1351, 450 U.S. 912, 67 L.Ed.2d 336. Commerce; Racketeer Influenced And Corrupt Organizations

Employer participating in multiple employer death benefit plan and its owner failed to allege the plan sponsor and two law firms that issued opinions supporting the legality of the plan existed as an association-in-fact separate and apart from the alleged Racketeer Influenced and Corrupt Organizations Act (RICO) activity, as required to establish a civil RICO claim, but rather alleged that they came together strictly for the purpose of creating the plan, as an allegedly fraudulent tax shelter. Eaves v. Designs for Finance, Inc., S.D.N.Y. 2011, 785 F.Supp.2d 229. Racketeer Influenced and Corrupt Organizations; Racketeer Influenced and Corrupt Organizations

Homeowners sufficiently alleged pattern of racketeering which encompassed fraudulent behavior by title insurance company and its title/settlement agents, that was distinct from association-in-fact enterprise consisting of company and agents and enterprise’s legitimate business activities, in civil Racketeer Influenced and Corrupt Organizations Act (RICO) action alleging that company engaged in fraudulent scheme to charge default basic insurance rate rather than special discounted reissue or refinance rate applicable to homeowners’ mortgage transactions; despite seeming legitimacy of some of company’s activities, such as providing systems and procedures for conducting title searches and issuing policies, activities were not legitimate when used to advance allegedly fraudulent scheme directed by company which included deliberate overcharging and misappropriating amounts due for insurance in violation of state law and federal mail and wire fraud statutes. Coleman v. Commonwealth Land Title Ins. Co., E.D.Pa.2010, 684 F.Supp.2d 595. Racketeer Influenced And Corrupt Organizations

Non-profit advocacy organization’s allegation that financial services providers and their principals, and direct mail marketing firm and its principals, conspired to design, create, and mail lead cards bearing organization’s mark to senior citizens to promote providers’ services as being endorsed by organization was insufficient to allege an enterprise separate from alleged racketeering activity under Racketeer Influenced and Corrupt Organizations Act (RICO), notwithstanding contention that providers’ and firm’s principals directed and controlled alleged activity; organization failed to allege management was of purported enterprise, and failed to demonstrate more than a series of predicate acts. AARP v. American Family Prepaid Legal Corp., Inc., M.D.N.C.2009, 604 F.Supp.2d 785. Racketeer Influenced And Corrupt Organizations

Enterprise did not exist as entity separate and apart from pattern of illegal activity, as required to establish Racketeer Influenced and Corrupt Organizations (RICO) Act association-in-fact enterprise, where sole, discrete goal of enterprise was to engage in fraudulent activity of “scamming” those who might have been interested in engaging in oil and gas industry. Clark v. National Equities Holdings, Inc., E.D.Tex.2006, 561 F.Supp.2d 632, remanded in part 229 Fed.Appx. 314, 2007 WL 1573954, on remand 558 F.Supp.2d 692. Racketeer Influenced And Corrupt Organizations

Genuine issue of material fact as to existence of Racketeer Influenced and Corrupt Organizations Act (RICO) enterprise separate and apart from pattern of racketeering activity precluded summary judgment on claim that employees violated RICO through scheme to bilk company of money by providing false information regarding vacation pay and bonuses to company’s payroll servicing company. Breslin Realty Development Corp. v. Schackner, E.D.N.Y.2006, 457 F.Supp.2d 132. Federal Civil Procedure

Indictment charging defendants with violations of Racketeer Influenced and Corrupt Organizations Act (RICO) in connection with alleged bribery scheme was not required to allege facts showing that association-in-fact enterprise was entity separate and apart from pattern of racketeering activity in which it engaged or that its members were connected or associated on ongoing basis and engaged in operation and management of enterprise. U.S. v. Triumph Capital Group, Inc., D.Conn.2002, 260 F.Supp.2d 444. Racketeer Influenced And Corrupt Organizations

Competitors of corporation engaged in providing alternative infusion therapies satisfied requirement for stating claim under Racketeer Influenced and Corrupt Organizations Act (RICO), that there be an enterprise involved
with but having existence beyond that necessary to carry out racketeering purposes; alleging that corporation was part of enterprise satisfied outside existence requirement, as corporation had other purposes. **Pharmacare v. Caremark, D.Hawai'i 1996, 965 F.Supp. 1411. Racketeer Influenced And Corrupt Organizations**

Allegations that employees of plaintiff automaker were induced by defendant automaker to steal plaintiff's trade secrets met Racketeer Influenced and Corrupt Organizations Act's (RICO) requirement that enterprise have a structure and goals separate from predicate acts; complaint alleged that defendant automaker participated in theft and coverup by providing facilities for copying and shredding, individual employees who stole trade secrets had special tasks based on their area of expertise, and goals of enterprise were to steal plaintiff's trade secrets, personally enrich employees, and enable defendant automaker to cut costs and compete more favorably. **General Motors Corp. v. Ignacio Lopez de Arriortua, E.D.Mich.1996, 948 F.Supp. 670. Racketeer Influenced And Corrupt Organizations**

Pleading of RICO enterprise was inadequate under rule requiring pleading fraud with particularity where allegations of complaint failed to indicate whether there was any distinction between the enterprises and the alleged pattern of racketeering. **O & G Carriers, Inc. v. Smith, S.D.N.Y.1992, 799 F.Supp. 1528. Federal Civil Procedure**

In proving Racketeer Influenced and Corrupt Organizations Act (RICO) case, plaintiff must show not only existence of pattern of racketeering, but must also prove existence of enterprise as functioning unit with structure apart from mere coming together of participants for purposes of committing criminal predicate acts. **Rodriguez v. Banco Cent., D.Puerto Rico 1991, 777 F.Supp. 1043, affirmed 990 F.2d 7. Racketeer Influenced And Corrupt Organizations**

Whereas “legal” entity like corporation or partnership is deemed to be continuing organization with identifiable structure as matter of law, plaintiff in civil Racketeer Influenced and Corrupt Organizations Act (RICO) action alleging association-in-fact must prove ongoing associative nature of relationship; association-in-fact enterprise must have ongoing organization or be continuing unit, such that enterprise has existence that can be defined apart from commission of predicate acts. **Rodriguez v. Banco Cent., D.Puerto Rico 1991, 777 F.Supp. 1043, affirmed 990 F.2d 7. Racketeer Influenced And Corrupt Organizations**

Racketeering enterprise must be ongoing organization whose associates function as continuing unit and whose identity is separate and apart from pattern of racketeering activity in which it engages. **Steco, Inc. v. S & T Mfg., Inc., E.D.Pa.1991, 772 F.Supp. 1495. Racketeer Influenced And Corrupt Organizations**

Allegation of purchasers of interests in gas wells/leases effectively precluded possibility of proving that enterprise formed to engage in allegedly fraudulent sale of gas wells was separate and apart from pattern of racketeering activity in which it engaged, and thus, warranted summary judgment for defendants as to Racketeer Influenced and Corrupt Organizations Act (RICO) claim; allegation admitted that enterprise was not ongoing unit with existence apart from pattern of racketeering activity in which it allegedly engaged, as only possible relationship between individuals and entities named as enterprise was their alleged activities in carrying out racket-

A civil Racketeer Influenced and Corrupt Organizations Act (RICO) claim against top corporate insiders dependent on the alleged racketeering activity of the corporation, corporate officials and an employee of another company, did not sufficiently allege an “association-in-fact” with an existence separate and apart from the pattern of activity in which it engaged, even though the corporation itself had a distinct and separate existence. Uniroyal Goodrich Tire Co. v. Mutual Trading Corp., N.D.Ill.1990, 749 F.Supp. 869. Racketeer Influenced And Corrupt Organizations 73

Contractual joint venture arrangements entered into between Louisiana corporation and another corporation to facilitate search for oil and gas wells constituted an “enterprise” under Racketeer Influenced and Corrupt Organizations Act; evidence indicated that corporations contemplated and established long-term, ongoing organization and enterprise existed separate and apart from predicate acts committed by participants in enterprise. George v. Blue Diamond Petroleum, Inc., W.D.La.1989, 718 F.Supp. 539, affirmed 922 F.2d 838. Racketeer Influenced And Corrupt Organizations 39

Complaint charging commodity broker with RICO violation in regard to sale of commodity futures to West German citizens through its European agents sufficiently alleged enterprise separate from alleged pattern of racketeering to state RICO claim; complaint alleged that broker and its “agents” were separate and distinct and existed apart from pattern of racketeering involved. Gassner v. Stotler and Co., N.D.Ill.1987, 671 F.Supp. 1187. Racketeer Influenced And Corrupt Organizations 44

Claim that mayor, attorneys, and newspaper publishers participated in RICO “enterprise” for purpose of attempting to harm physician by putting his medical practice to an end failed to sufficiently allege “enterprise” requirement of civil RICO action absent evidence of decision-making structure, or evidence that alleged organization was separate and distinct entity from activity it engaged in. Manax v. McNamara, W.D.Tex.1987, 660 F.Supp. 657, affirmed 842 F.2d 808. Racketeer Influenced And Corrupt Organizations 46


Complaint alleging that enterprise was ongoing organization with framework or structure for making decisions, that its members functioned as a continuing unit and that defendants engaged in a pattern of racketeering activity consisting of repeated acts of mail fraud and commercial bribery sufficiently alleged “enterprise” separate and apart from acts of racketeering to support action under section of Racketeer Influenced and Corrupt Organizations Act. Temple University v. Salla Bros., Inc., E.D.Pa.1986, 656 F.Supp. 97. Racketeer Influenced And Corrupt Organizations 36

Complaint under Racketeer Influenced and Corrupt Organizations Act did not sufficiently allege separate and
distinct enterprise, where it suggested that enterprise was made up of defendants, individually or collectively with their officers, and enterprise alleged was inherent in conduct of alleged pattern of racketeering activity. District Telecommunications Development Corp. v. District Cablevision, Inc., D.D.C. 1985, 638 F.Supp. 418. Racketeer Influenced And Corrupt Organizations 38


Count in civil action under federal Racketeering Influenced and Corrupt Organizations Act, brought by investors as result of investment scheme, alleging that brokerage firm and certain employees thereof associated with scheme formed RICO enterprise did not appear to satisfy requirement that enterprise be pled as entity separate from pattern of racketeering activity, but investors could prove facts satisfying requirement so that failure of pleading did not require dismissal of count. Schnitzer v. Oppenheimer & Co., Inc., D.Or. 1985, 633 F.Supp. 92. Racketeer Influenced And Corrupt Organizations 73

Where there was no indication that alleged association between former employee of insurance company and representatives of competitive company had any existence separate and apart from alleged predicate acts forming basis of civil action under this section, association between former employee and competitor's representatives did not constitute “enterprise” within meaning of this chapter. Saine v. A.I.A., Inc., D.Colo. 1984, 582 F.Supp. 1299. Commerce 80

“Enterprise” under this chapter need not be separate and distinct from “pattern of racketeering activity” that is alleged; in fact, enterprise, under this chapter, need consist of nothing more than some of the predicate racketeering acts. Gerace v. Utica Veal Co., Inc., N.D.N.Y. 1984, 580 F.Supp. 1465. Commerce 82.6

Where in claiming that corporation itself had violated this chapter broker and stockholders claimed that corporation was both the person involved in an enterprise's racketeering activity as well as the enterprise, corporation did not violate this section making it unlawful for any person employed by or associated with any enterprise to participate in conduct of such enterprise's affairs through pattern of racketeering activity. In re Action Industries Tender Offer, E.D.Va. 1983, 572 F.Supp. 846. Racketeer Influenced And Corrupt Organizations 50

Industrial machinery owner's complaint, which did not provide any clear delineation of scope or activities of enterprise, failed to satisfy requirement under this chapter that organization be an entity separate and apart from pattern of activity in which it is engaged since pleaded existence of enterprise was apparently synonymous with defendants' alleged pattern of racketeering activity. Seville Indus. Machinery Corp. v. Southmost Machinery Corp., D.C.N.J. 1983, 567 F.Supp. 1146, affirmed in part, reversed in part 742 F.2d 786, certiorari denied 105 S.Ct. 1179, 469 U.S. 1211, 84 L.Ed.2d 327. Racketeer Influenced And Corrupt Organizations 73

Count of complaint under this chapter, which alleged brokerage partnership as the “enterprise,” and that the

“pattern of racketeering activity” was an ongoing scheme of securities fraud, perpetrated by defendants, who were affiliated in various ways with brokerage partnership, sufficiently alleged an “enterprise” separate and distinct from the “pattern of racketeering,” because even though complaint alleged that defendants were transforming brokerage partnership into a vehicle for underwriting of speculative issues, it was also alleged that partnership was a brokerage and investment banking firm until it went into receivership, and as such still rendered services to its customers apart from alleged acts of fraud. Kimmel v. Peterson, E.D.Pa.1983, 565 F.Supp. 476.

Developed infrastructure for criminal partnership, used to help carry out its goals and enforce its aims, would suffice to give group an adequate separate entity to meet requirement for violation of this section that enterprise is entity separate and apart from pattern of racketeering activity. Moss v. Morgan Stanley Inc., S.D.N.Y.1983, 553 F.Supp. 1347, affirmed 719 F.2d 5, certiorari denied 104 S.Ct. 1280, 465 U.S. 1025, 79 L.Ed.2d 684. Commerce 82.6; Racketeer Influenced And Corrupt Organizations 73

93. ---- Shareholders, enterprise, offenses generally

Holders of convertible debentures failed to allege sufficient facts to show that controlling shareholders of issuing corporation were distinct entities from alleged “enterprise” consisting of corporation, as required to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO) section prohibiting conducting of enterprise's affairs through pattern of racketeering activity, even though corporation was not wholly owned subsidiary; allegation that shareholders directed corporation's fraudulent acts suggested that subsidiary carried out affairs of parent, and allegations of complaint suggested that shareholders and corporation engaged in concerted action. Lorenz v. CSX Corp., C.A.3 (Pa.) 1993, 1 F.3d 1406. Racketeer Influenced And Corrupt Organizations 73

Association in fact enterprise, as pled in plaintiff's complaint, was distinct from any of particular company or individual defendants for purposes of plaintiff's claim under Racketeer Influenced and Corrupt Organizations Act (RICO) subsection making it unlawful for any person employed by or associated with any enterprise from conducting or participating in conduct of such enterprise's affairs through pattern of racketeering activity; individual defendants owned common stock in some, but not all, of closely held corporations named as party defendants, alleged association-in-fact enterprise included at least one company which was owned by individual defendant and which was not affiliated with any of other company or individual defendants, and individual defendants did not merely act as officers or employees of enterprise members, but instead acted in their dual roles as plaintiff's employees and enterprise associates. Standard Chlorine of Delaware, Inc. v. Sinibaldi, D.Del.1992, 821 F.Supp. 232. Racketeer Influenced And Corrupt Organizations 73

94. ---- Sole proprietorship, enterprise, offenses generally

Unincorporated sole proprietorship through which operator ran fraudulent scheme was not RICO “enterprise” distinct from RICO “person,” as required to state RICO claim; proprietorship was merely name under which operator did business for purposes of carrying out his scheme. Guidry v. Bank of LaPlace, C.A.5 (La.) 1992, 954 F.2d 278. Racketeer Influenced And Corrupt Organizations 73
Indictment which alleged that the defendant, “George I. Benny,” associated with a sole proprietorship “George I. Benny” as an enterprise in violation of RICO, 18 U.S.C.A. § 1962(c), was sufficient, despite claim that RICO defendant cannot also be the related enterprise, where the proprietorship had four employees. U.S. v. Benny, C.A.9 (Cal.) 1986, 786 F.2d 1410, certiorari denied 107 S.Ct. 668, 479 U.S. 1017, 93 L.Ed.2d 720. Racketeer Influenced And Corrupt Organizations 91

95. ---- Success, enterprise, offenses generally

Proof of success of efforts of defendants to legalize gambling and gain control of that industry within the state was not necessary for conviction under this section. U. S. v. Bagnariol, C.A.9 (Wash.) 1981, 665 F.2d 877, certiorari denied 102 S.Ct. 2040, 456 U.S. 962, 72 L.Ed.2d 487. Racketeer Influenced And Corrupt Organizations 3; Racketeer Influenced And Corrupt Organizations 102


96. ---- Victim, enterprise, offenses generally

Indictment stating that insurance company was both enterprise through which racketeering acts were committed and victim of such racketeering activity was sufficient to allege Racketeer Influenced and Corrupt Organizations Act (RICO) violation, where defendant and company were named as part of enterprise and victims of enterprise included company as well as another insurance company, regulators, policyholders, customers, potential customers, insurance agents, public and others. U.S. v. Stewart, E.D.Pa.1997, 955 F.Supp. 385. Racketeer Influenced And Corrupt Organizations 91

Under section of Racketeer Influenced and Corrupt Organizations Act prohibiting “a person employed by or associated with any enterprise engaged in * * * interstate or foreign commerce,” from participating in enterprise's activities through racketeering, an enterprise may be a victim of a pattern of racketeering injury. Temple University v. Salla Bros., Inc., E.D.Pa.1986, 656 F.Supp. 97. Racketeer Influenced And Corrupt Organizations 49

96a. Fraud, offenses generally

Allegations against insurance broker for contractors that defaulted on loans were sufficient to establish standing against broker, and broker's agency, in lender's action under Racketeer Influenced and Corrupt Organizations Act (RICO), as allegations raised genuine question as to broker's commission of mail fraud related to lender's factoring agreement with contractors, and broker demonstrated his discretionary authority and direction of alleged enterprise by recruiting financing for the enterprise, obtaining bonds and insurance coverage, issuing false insurance certificates, concealing contractors' deceptive payroll practices, and representing them in meetings with lender. Baisch v. Gallina, C.A.2 (N.Y.) 2003, 346 F.3d 366. Racketeer Influenced And Corrupt Organizations
Automobile insurer adequately stated claim for civil Racketeer Influenced and Corrupt Organizations Act (RICO) violation based on mail fraud by medical center's alleged fraudulent noncompliance with licensing requirements, under Article 28 of New York Public Health Law, that rendered center ineligible to receive no-fault payments, even though center was approved and licensed by New York State Department of Health (DOH), since Article 28 facility could not hide behind shield of its operating certificate while misleading DOH about facility's fraudulent conduct, DOH could revoke approval of Article 28 facility due to fraud or failure to comply with any requirement for approving facility, and insurer was entitled to test validity of center's license. *Allstate Ins. Co. v. Elzanaty*, E.D.N.Y.2013, 916 F.Supp.2d 273, subsequent determination 2013 WL 937876, motion to certify appeal granted 2013 WL 2154759. Insurance 3415; Postal Service 35(10); Racketeer Influenced and Corrupt Organizations 10

Sole shareholder of insurance company failed to adequately allege that association of insurance regulators and association of guaranty funds caused alleged mail or wire communications for purpose of executing fraud, as required to state civil claim under Racketeer Influenced and Corrupt Organizations Act (RICO) that associations' mail and wire fraud delayed shareholder's recovery of approximately $14 million from liquidated estate of insurance company; communications were made by individual allegedly affiliated with state insurance regulator, not associations, and shareholder did not identify the recipients of any of the communications. *Petrosurance, Inc. v. National Ass'n of Ins. Com'rs*, S.D.N.Y.2012, 888 F.Supp.2d 491, affirmed 514 Fed.Appx. 51, 2013 WL 1092603. Racketeer Influenced and Corrupt Organizations 50

Borrowers' allegations in their amended complaint that Florida attorneys either made misrepresentations or concealed material information from loan broker concerning purported lender, and that attorneys knowingly supported unlawful acts of purported lender and other defendants, stated Racketeer Influenced and Corrupt Organizations Act (RICO) claim and negligent misrepresentation claim against attorneys and their law firm arising from alleged loan fraud scheme. *CGC Holding Co., LLC v. Hutchens*, D.Colo.2012, 896 F.Supp.2d 970. Attorney And Client 26; Racketeer Influenced And Corrupt Organizations 10; Racketeer Influenced And Corrupt Organizations 50

Insurers' complaint against various doctors and health care providers, alleging schemes to fraudulently obtain insurance proceeds intended to pay for medical services for people injured in automobile accidents, complied with Racketeer Influenced and Corrupt Organizations Act's (RICO's) distinctness rule, where complaint expressly alleged that professional corporation formed by each cluster of defendants alone constituted RICO enterprise, and those professional corporations were not included as RICO defendants. *Allstate Ins. Co. v. Lyons*, E.D.N.Y.2012, 843 F.Supp.2d 358. Racketeer Influenced and Corrupt Organizations 47

Union member driver's complaint, alleging that employer engaged in wage-skimming scheme which violated New Jersey Wage Payment Law (NJWPL), Fair Labor Standards Act (FLSA), and New Jersey Minimum Wage Act, failed to plead allegations of mail fraud and wire fraud with particularity, as required to state claim for violations of Racketeer Influenced and Corrupt Organizations Act (RICO); driver did not identify date, time, or place of any misrepresentations by employer or its officials, or which officials made misrepresentations to
Allegations that corporations and individuals who purchased advertising from two newspapers with bloated circulation figures received mailings boasting a fraudulently inflated paid circulation volume during specified date ranges were sufficient to plead violations of the Racketeer Influenced and Corrupt Organizations Act (RICO) with sufficient particularity, despite the lack of exact dates that the mailings were received. *Crabhouse of Douglaston Inc. v. Newsday Inc.*, E.D.N.Y. 2011, 801 F.Supp.2d 64. Federal Civil Procedure 636

Purchasers of land failed to identify particular developer responsible for alleged misrepresentations that constituted mail fraud in complaint seeking return of pre-construction deposits and payments from amalgamation of 16 entities involved in development scheme, and thus failed to allege facts supporting predicate acts of mail fraud and wire fraud with heightened level of specificity required for fraud claims, as required for Racketeer Influenced and Corrupt Organizations Act (RICO) claims against developers. *Oginsky v. Paragon Properties of Costa Rica LLC*, S.D.Fla. 2011, 784 F.Supp.2d 1353. Federal Civil Procedure 636

Third party payors (TPPs) failed to allege predicate acts of mail and wire fraud with sufficient particularity to state civil Racketeer Influenced and Corrupt Organizations Act (RICO) claim against manufacturer of anti-psychotic drug, who allegedly promoted drug for off-label uses through misrepresentation; TPPs failed to allege how manufacturer's allegedly fraudulent acts directly impacted TPPs, how such acts had been made in furtherance of the alleged scheme of off-label promotion of the drug, or how manufacturer used mail system to further their alleged scheme. *District 1199P Health and Welfare Plan v. Janssen*, L.P., D.N.J. 2011, 784 F.Supp.2d 508. Federal Civil Procedure 636

Consumers pled with sufficient particularity claim that debt-buying company, debt collection agency, process service company, and others violated Racketeer Influenced and Corrupt Organizations Act (RICO) by engaging in scheme to fraudulently obtain default judgments against them and others in state debt collection actions, where complaint included at least twenty allegedly fraudulent statements and eighteen acts involving use of mail and wires over three years in furtherance of alleged fraud, alleged facts giving rise to strong inference of fraudulent intent, and established defendants' conscious misbehavior or recklessness with respect to preparing false filings with state courts. *Sykes v. Mel Harris and Associates, LLC*, S.D.N.Y. 2010, 757 F.Supp.2d 413. Federal Civil Procedure 636

Treating physicians, who had denied receiving any unsolicited off-label detailing by manufacturers' sales representatives and who had stated that their knowledge about drug's efficacy for off-label indications had been informed by their clinical experience with drug along with information received from trusted colleagues, did not rely on alleged fraudulent off-label marketing by manufacturers, and thus element of causation had not been proved on claim under Racketeer Influenced and Corrupt Organizations Act (RICO) alleging mail or wire fraud as predicate acts by such detailing without any reliable scientific evidence suggesting that drug had been effective in off-label treatment. *In re Neurontin Marketing and Sales Practices Litigation*, D.Mass. 2010, 754 F.Supp.2d 293, reversed in part , vacated in part 712 F.3d 60. Racketeer Influenced And Corrupt Organizations 62
Partnership and its partners failed to allege facts giving rise to strong inference of bank's fraudulent intent, as required to satisfy heightened pleading requirement for fraud claims, thus precluding civil Racketeer Influenced and Corrupt Organizations Act (RICO) claim based on alleged underlying fraud arising from former business associate's scheme to establish and draw from line of credit in partners' names. Silverman Partners, L.P. v. First Bank, E.D.N.Y. 2010, 687 F.Supp.2d 269. Federal Civil Procedure ⊳ 636

Mortgagors' complaint in putative class action against bank, which included facts setting forth when billing statements were received, who received them, what was contained in bills, and why statements were materially deceptive, and described logic used to calculate fees and generate bills, explained with sufficient particularity how bank executed alleged scheme to charge excessive servicing fees, as well as how bank regularly used mails to send out mortgage statements in carrying out fraudulent scheme, as required to plead fraudulent scheme with sufficient particularity with respect to claims under Racketeer Influenced and Corrupt Organizations Act (RICO) and California law, predicated upon mail and wire fraud. Young v. Wells Fargo & Co., S.D.Iowa 2009, 671 F.Supp.2d 1006. Federal Civil Procedure ⊳ 636

Pharmacy management firm pled with sufficient particularity claim that workers' compensation insurers and claims administrators violated Racketeer Influenced and Corrupt Organizations Act (RICO) by engaging in scheme to defraud it through collusive and systematic campaign of sham litigation, fraudulent objections, and dilatory conduct carried out by mail fraud and wire fraud, to avoid payment of valid bills and liens relating to its physicians in-office medication dispensing program, even though firm did not provide specific time and date of each alleged fraudulent act, where complaint alleged that insurer’s misrepresentations were fraudulent both individually and in aggregate, and provided content of “lulling” communications, including insurers' alleged representation that their objections were “business-as-usual” and that they intended to “resolv[e] the objections in good faith.” California Pharmacy Management, LLC v. Zenith Ins. Co., C.D.Cal.2009, 669 F.Supp.2d 1152. Federal Civil Procedure ⊳ 636

Family that perpetrated criminal scheme to obtain forced labor and to harbor alien fugitive for private financial gain engaged in racketeering activity by committing mail and wire fraud, thus supporting victim's civil Racketeer Influenced and Corrupt Organizations Act (RICO) claim; family engaged in scheme to defraud by not fulfilling promise to properly compensate victim and to treat her well, confining her to their home, confiscating her passport, allowing her visa to lapse, not fulfilling promise to send money to victim's parents, and using mail and wire communications to facilitate trafficking victim into United States, to open and close bank account in victim's name, to divert victim's letters from United States mail, and to force victim to send financial information to her parents. Martinez v. Calimlim, E.D.Wis.2009, 651 F.Supp.2d 852. Postal Service ⊳ 35(10); Telecommunications ⊳ 1014(8)

Genuine issues of material fact, regarding whether former partners intentionally defrauded developer of money or property using mails or wires in furtherance, as required to constitute predicate act of mail or wire fraud, precluded summary judgment on developer's claim under Racketeer Influenced and Corrupt Organizations Act (RICO), stemming from purported scheme to force developer from partnership and cause projects to fail. Ward v. Nierlich, S.D.Fla.2008, 617 F.Supp.2d 1226. Federal Civil Procedure ⊳ 2509.5
Non-profit advocacy organization's allegation that financial services providers and their principals, and direct mail marketing firm and its principals, conspired to design, create, and mail lead cards bearing organization's mark to senior citizens to promote providers' services as being endorsed by organization was sufficient to allege that defendants shared common purpose of defrauding seniors, in determining whether defendants formed an association-in-fact enterprise under Racketeer Influenced and Corrupt Organizations Act (RICO), even though purpose of alleged scheme was ultimately to sell providers' services, and firm's payment for mailing cards was not contingent upon completed sales. AARP v. American Family Prepaid Legal Corp., Inc., M.D.N.C.2009, 604 F.Supp.2d 785. Racketeer Influenced And Corrupt Organizations

Practitioners in several unrelated fields not requiring medical doctor (MD) degree failed to plead with sufficient particularity claim that affiliated insurers engaged in mail and wire fraud in connection with their alleged conspiracy to systemically reduce, delay, and deny payments, in violation of Racketeer Influenced and Corrupt Organizations Act (RICO), where complaint did not identify any specific instance in which false representation was made by any defendant to any plaintiff, did not identify any fraudulent representation made to plaintiffs, did not allege how plaintiffs relied on false representations, and did not set out for each defendant how defendant participated in fraud. Solomon v. Blue Cross and Blue Shield Ass'n, S.D.Fla.2008, 574 F.Supp.2d 1288. Federal Civil Procedure

Plaintiff failed to allege a pattern of racketeering activity and failed to state the facts of the fraud with particularity, as required to state claim under the Racketeer Influenced and Corrupt Organizations Act (RICO) founded on a theory of mail fraud. Uland v. City of Winsted, D.Minn.2008, 570 F.Supp.2d 1114. Federal Civil Procedure

Mere allegation that defendants sent false statements through mail or wire did not satisfy element of Racketeer Influenced and Corrupt Organizations Act (RICO) claim; mails or wire must have been used to further scheme to defraud or obtain money or property through false pretenses. Hall v. Witteman, D.Kan.2008, 569 F.Supp.2d 1208, reconsideration denied 2008 WL 4490620, affirmed 584 F.3d 859. Postal Service

Judgment creditor who sued law firm and attorney, stemming from alleged fraudulent transfers from debtor's trust, failed to establish underlying predicate acts, as required to maintain claim under Racketeer Influenced and Corrupt Organizations Act (RICO); there was insufficient evidence to demonstrate defendants' knowing violation of mail fraud or wire fraud statutes via participation in scheme to defraud creditor. Nastro v. D'Onofrio, D.Conn.2008, 542 F.Supp.2d 207. Postal Service

Alleged fraudulent taking of health plans' assets by plans' third-party administrator (TPA) was not proximate cause of injury allegedly sustained by subcontractors that performed claims administration for TPA, as required for subcontractors to bring civil Racketeer Influenced and Corrupt Organizations Act (RICO) claims against TPA for injury to their business or property based upon alleged acts of mail fraud, wire fraud, and embezzlement, where TPA's alleged fraud scheme was directed at its customers, not at subcontractors. Corporate Healthcare Financing, Inc. v. BCI Holdings Co., D.Md.2006, 444 F.Supp.2d 423. Racketeer Influenced And Corrupt Organizations

Civil Racketeer Influenced and Corrupt Organizations Act (RICO) complaint filed by purchaser of deferred annuities against life insurance company, which used mail fraud and wire fraud as predicate acts for RICO claim, did not satisfy civil procedure rule requirement that all averments of fraud be stated with particularity, where purchaser did not allege a single date or location of any communication that facilitated the alleged scheme to defraud, even with respect to her own purchase of annuities. *Bendzak v. Midland Nat. Life Ins. Co.*, S.D.Iowa 2006, 440 F.Supp.2d 970. Federal Civil Procedure 636


Issue of whether automobile insurer sustained damages by paying higher third-party settlements and awards in reliance upon physician's false medical documentation involved fact questions that could not be resolved on motion to dismiss insurer’s action against physician for Racketeer Influenced and Corrupt Organizations Act (RICO) and common law fraud. *Allstate Ins. Co. v. Seigel*, D.Conn.2004, 312 F.Supp.2d 260. Federal Civil Procedure 1831

Financially distressed homeowners' allegations that defendants perpetrated schemes to swindle them out of equity in their real estate by misrepresenting that they were involved in organization that helped people to save their homes, forging their signatures on land contract, and failing to honor terms of agreements were sufficient to plead fraud as racketeering activity in suit alleging Racketeer Influenced and Corrupt Organizations Act (RICO) violations. *Bryant v. Bigelow*, S.D.Ohio 2004, 311 F.Supp.2d 666. Racketeer Influenced And Corrupt Organizations 70

Racketeer Influenced and Corrupt Organizations Act (RICO) complaint sufficiently alleged that pharmaceutical manufacturers conducted or participated in conduct of their enterprises with pharmacy benefit managers (PBM) acting as middlemen between manufacturers and employee health-benefit plans, involving hidden profit making schemes based on fraudulently overstated average wholesale prices (AWP) for manufacturers’ prescription drugs; complaint alleged that defendants were not simply acting legally to promote their products, but rather promoted fraudulent AWP scheme. *In re Pharmaceutical Indus. Average Wholesale Price Litigation*, D.Mass.2004, 307 F.Supp.2d 196. Racketeer Influenced And Corrupt Organizations 50

Distributor of golf carts did not establish mail fraud, as predicate offense for Racketeer Influenced and Corrupt Organizations Act (RICO) claim brought against manufacturer, through allegations that manufacturer collected Quebec sales tax due on sales to distributor but failed to remit any funds to taxing authority for two years after collection began; there was no showing of fraudulent intent, as opposed to human error on part of manufacturer's accountant. *Club Car, Inc. v. Club Car (Quebec) Import*, Inc., S.D.Ga.2003, 276 F.Supp.2d 1276, affirmed 362 F.3d 775, rehearing and rehearing en banc denied 111 Fed.Appx. 1003, 2004 WL 1585294, certiorari denied 125 S.Ct. 618, 543 U.S. 1002, 160 L.Ed.2d 461. Postal Service 35(5)

Allegations that debtor fraudulently transferred portion of his assets to others prior to filing for bankruptcy pro-
tection and did so to keep those assets out of bankruptcy estate and away from his creditors, and that debtor filed false bankruptcy accounts in connection with his bankruptcy proceeding, supported claim that debtor engaged in racketeering activity for purposes of Racketeer Influenced and Corrupt Organizations Act (RICO). Cadle, Co. v. Flanagan, D.Conn.2003, 271 F.Supp.2d 379. Racketeer Influenced And Corrupt Organizations 70

Manufacturer's alleged fraud in obtaining approval from Environmental Protection Agency (EPA) for use and sale of non-agricultural pesticide did not constitute “racketeering activity” under Racketeer Influenced and Corrupt Organizations Act (RICO), since alleged scheme was designed to obtain EPA regulatory approval of pesticide, not to deprive EPA of money or property. Williams v. Dow Chemical Co., S.D.N.Y.2003, 255 F.Supp.2d 219. Racketeer Influenced And Corrupt Organizations 59

Insurer was permitted to proceed with effort to recover health care expenditures allegedly attributable to tobacco manufacturers based on claim of fraud through Racketeer Influenced and Corrupt Organizations Act (RICO); although risk of impermissible double recovery existed, risk of double recovery was remote, adequate remedy to individual plaintiffs was practically foreclosed, theory advanced by insurer served principles that underlie equitable subrogation, insurer's subrogation claim was not an offensive pass on suit under RICO, and public policy favored insurer's effort to recover expenditures. Blue Cross and Blue Shield of New Jersey, Inc. v. Philip Morris, Inc., E.D.N.Y.2001, 138 F.Supp.2d 357. Racketeer Influenced And Corrupt Organizations 59

Prerequisites for certification of settlement class were satisfied with respect to Racketeer Influenced and Corrupt Organizations Act (RICO) and state law claims based on allegation that defendants engaged in a scheme to sell long-term deferred annuities to purchasers by using fraudulent misrepresentations; class consisted of approximately 387,000 individuals that purchased company annuities issued during the class period or which later received an ownership interest in such annuities, claims arose from the same alleged scheme to defraud, and there were no conflicts of interest between the class representatives and the absent class members. In re American Investors Life Ins. Co. Annuity Marketing and Sales Practices Litigation, E.D.Pa.2009, 263 F.R.D. 226, enforcement granted in part, denied in part 695 F.Supp.2d 157, motion for relief from judgment denied 2011 WL 6046737, entered 2011 WL 6057556, enforcement granted 2013 WL 3463503. Federal Civil Procedure 182.5

Proposed amended complaint in African-American and Hispanic home purchasers' putative class action, seeking to add claim against mortgage lender for mail fraud in violation of the Racketeer Influenced and Corrupt Organizations Act (RICO), was not futile on ground that it failed to provide adequate particularity regarding fraud allegations, where proposed complaint specified which loans allegedly contained fraudulent statements, and contained specific and detailed explanation of alleged fraudulent scheme. Wilson v. Toussie, E.D.N.Y.2003, 2003 WL 22466219, Unreported. Federal Civil Procedure 851

97. Impact on legitimate business, offenses generally

Even if a conviction for violation of this section does require the use of or an impact on ostensibly legitimate business, but requirement was met by evidence that two jewelry stores in two different states were ostensibly used by the conspiracy both as a locale for the transaction of business in narcotics, which was the main purpose of the criminal activity, and as the locale for the transaction of stolen goods and a conduit for the disposal of

District court would not stay suit by insurance company alleging that “risk managers” fraudulently induced it to enter into film finance transactions in violation of the Racketeer Influenced and Corrupt Organizations Act (RICO), pending outcome of British suit against insurance company by film production creditors; while resolution of the British litigation would clarify whether insurance company had a claim for additional damages, it would not address company’s alleged loss of millions of dollars in legal fees incurred in defending creditors' claims, and it would not determine whether defendants committed wire and mail fraud within the forum or whether those frauds unlawfully injured company. Lexington Ins. Co. v. Forrest, E.D.Pa.2003, 263 F.Supp.2d 986. Federal Courts

Taking over and maintaining previously legitimate businesses, in violation of Racketeer Influenced and Corrupt Organizations Act (RICO), is established by showing use or investment of income in acquiring, establishing, or operating enterprise; violation is not established by showing participation in alleged pattern of racketeering activity or derivation of income from that pattern. Zaro Licensing, Inc. v. Cinmar, Inc., S.D.N.Y.1991, 779 F.Supp. 276. Racketeer Influenced And Corrupt Organizations

Hauler was not entitled to recover under Racketeer Influenced and Corrupt Organizations Act (RICO) against truck broker due to broker's agreement with creditor for accounts receivable financing which resulted in creditor having superior claim to accounts receivable proceeds than hauler; accounts receivable financing was common business practice and not stealing or theft. Delta Pride Catfish, Inc. v. Marine Midland Business Loans, Inc., E.D.Ark.1991, 767 F.Supp. 951. Larceny

98. Injury, offenses generally--Generally

An injury caused by an overt act that is not an act of racketeering or otherwise wrongful under the Racketeer Influenced and Corrupt Organizations Act (RICO) is not sufficient to give rise to a RICO cause of action for a person injured by reason of a conspiracy. Beck v. Prupis, U.S.Fla.2000, 120 S.Ct. 1608.

Foreign workers' conclusory allegations that their injuries were caused by recruiting company's use and investment of income derived from pattern of racketeering activity were insufficient to support Racketeer Influenced and Corrupt Organizations Act (RICO) claim under section prohibiting use or investment of racketeering income in an enterprise engaged in commerce; rather, workers' alleged injuries stemmed from company's alleged predicate acts of visa fraud, immigration violations, Travel Act violations, and money laundering. Abraham v. Singh, C.A.5 (La.) 2007, 480 F.3d 351. Racketeer Influenced And Corrupt Organizations

Alleged harm to lender's intangible property interests, such as its secondary security interest or contractual right to repayment under note, was not type of injury that could have supported standing for lender to bring claim against borrower under Racketeer Influenced and Corrupt Organizations Act (RICO). Regions Bank v. J.R. Oil Co., LLC, C.A.8 (Mo.) 2004, 387 F.3d 721. Racketeer Influenced And Corrupt Organizations
Complaint did not state claim under Racketeer Influenced and Corrupt Organizations Act (RICO) for "acquisition or maintenance" of enterprise through pattern of racketeering activity; complaint did not allege any facts to support finding that control over alleged enterprise, which existed by virtue of stock ownership in wholly owned subsidiary, was "acquired" or "maintained" through pattern of racketeering activity, or allege the sort of "acquisition injury" necessary to state a claim. Discon, Inc. v. NYNEX Corp., C.A.2 (N.Y.) 1996, 93 F.3d 1055, certiorari denied 118 S.Ct. 49, 522 U.S. 809, 139 L.Ed.2d 14, certiorari granted 118 S.Ct. 1298, 523 U.S. 1019, 140 L.Ed.2d 465, vacated 119 S.Ct. 493, 525 U.S. 128, 142 L.Ed.2d 510, on remand 184 F.3d 111. Racketeer Influenced And Corrupt Organizations 73

Indictment charging violations of Racketeer Influenced and Corrupt Organizations Act (RICO) fairly alleged that defendant brokerage firm's customers suffered monetary loss from arbitrarily established prices for blind pool securities purchased from defendant so that one could reasonably infer that victims suffered pecuniary loss due to defendant's fraudulent trading practices as required to support wire fraud allegations underlying RICO conspiracy count. U.S. v. Blinder, C.A.9 (Nev.) 1993, 10 F.3d 1468. Racketeer Influenced And Corrupt Organizations 91

Plaintiff seeking civil damages for alleged violation of Racketeer Influenced and Corrupt Organizations Act (RICO) must allege facts tending to show that he or she was injured by use or investment of racketeering income. Nugget Hydroelectric, L.P. v. Pacific Gas and Elec. Co., C.A.9 (Cal.) 1992, 981 F.2d 429, certiorari denied 113 S.Ct. 2336, 508 U.S. 908, 124 L.Ed.2d 247. Racketeer Influenced And Corrupt Organizations 75

Under RICO section prohibiting any person who has received income derived from pattern of racketeering activity from using that money to establish an enterprise affecting interstate commerce, plaintiff must allege injuries specifically from use of investment of income and named enterprise. Kehr Packages, Inc. v. Fidelcor, Inc., C.A.3 (Pa.) 1991, 926 F.2d 1406, rehearing denied, certiorari denied 111 S.Ct. 2839, 501 U.S. 1222, 115 L.Ed.2d 1007. Racketeer Influenced And Corrupt Organizations 58

In prosecution for violation of Racketeer Influenced and Corrupt Organizations Act and mail and wire fraud statutes, evidence was sufficient to prove a scheme to defraud with respect to real estate transactions in question, except transaction in which kickback came out of third party's pocket, so that breach of fiduciary duty and acceptance of kickback did not create any "detriment" to defendants' employers. U.S. v. Conner, C.A.11 (Fla.) 1985, 752 F.2d 566, certiorari denied 106 S.Ct. 72, 474 U.S. 821, 88 L.Ed.2d 59. Postal Service 49(11); Racketeer Influenced And Corrupt Organizations 95; Telecommunications 1018(4)

Moving company's allegations that non-vessel operating common carrier (NVOCC) and its affiliates and employees extorted funds from its clients, invested those funds back into companies, then used those funds to bring lawsuit against it were insufficient to allege injury incurred as result of investment of proceeds of racketeering activity, in violation of Racketeer Influenced and Corrupt Organizations Act (RICO). Atlantic Intern. Movers, LLC v. Ocean World Lines, Inc., E.D.N.Y.2012, 914 F.Supp.2d 267. Racketeer Influenced and Corrupt Organizations 63
Third party payors' (TPP) injury theory based on financial losses of overpayment purportedly sustained by paying for off-label uses of anti-psychotic drug, over cheaper more effective alternative drugs, was inadequate to sustain a Racketeer Influenced and Corrupt Organizations Act (RICO) injury, absent specific allegations that manufacturer's drug was on some level inferior for off-label uses and therefore worth less than what the TPPs paid for it. District 1199P Health and Welfare Plan v. Janssen, L.P., D.N.J.2011, 784 F.Supp.2d 508. Racketeer Influenced And Corrupt Organizations

Investor did not suffer any unique harm from investment by various media companies and officers of alleged racketeering-generated funds, precluding investor's Racketeer Influenced and Corrupt Organizations Act (RICO) claim, through his guardian, for illegal investment of racketeering income in acquisition of, or operation of, any enterprise; investor alleged only that defendants' RICO conspiracy caused him approximately $70 million in injury, but no separate injury stemming from defendants' reinvestment of those funds. Allen ex rel. Allen v. Devine, E.D.N.Y.2010, 726 F.Supp.2d 240. Racketeer Influenced And Corrupt Organizations

Third-party payors (TPP) that did not undertake any studies of prescription anticonvulsant drug's off-label indications, did not restrict coverage to prescriptions by neurologists, and did not directly communicate with pharmaceutical manufacturer failed to establish that manufacturer's allegedly fraudulent marketing campaign was cause of any losses, and thus TPPs failed to establish that manufacturer violated Racketeer Influenced and Corrupt Organizations Act (RICO) as result of their predicate acts of wire and mail fraud. In re Neurontin Marketing and Sales Practices Litigation, D.Mass.2010, 677 F.Supp.2d 479, reversed in part , vacated in part 712 F.3d 51. Racketeer Influenced And Corrupt Organizations

Medical clinics, clinics' officers and directors, management companies, and healthcare providers, which worked together to operate sham medical clinics and billing agencies so as to defraud insurers, were jointly and severally liable for damages incurred by insurers as a result of Racketeer Influenced and Corrupt Organizations Act (RICO) violations. Allstate Ins. Co. v. Palterovich, S.D.Fla.2009, 653 F.Supp.2d 1306. Racketeer Influenced And Corrupt Organizations

Employers' refusal to provide sales representatives with same post-assignment opportunities, discounts, incentives, group ads, and packages, which did not appear to violate corporate policy, as union agents, hampered sales representatives' Racketeer Influenced and Corrupt Organizations Act (RICO) claims against employers and union agents; had things of value not been solely funneled to union agents, sales representatives and other non-union employees would have allegedly also been able to take advantage of those opportunities. Marceau v. International Broth. of Elec. Workers, D.Ariz.2009, 618 F.Supp.2d 1127. Racketeer Influenced And Corrupt Organizations

Alleged conduct by county sheriff, undersheriff, and other officers of tricking or coercing county jail detainee into signing a settlement agreement, releasing his alleged over-detention claim, did not constitute an injury to a property interest in violation of Racketeer Influenced and Corrupt Organizations Act (RICO), absent a showing that detainee suffered lost wages and economic opportunities due to the over-detention. Avalos v. Baca, C.D.Cal.2007, 517 F.Supp.2d 1156, affirmed 596 F.3d 583. Racketeer Influenced And Corrupt Organizations
Customer did not sufficiently allege injury, as element for stating a claim under Racketeer Influenced and Corrupt Organizations Act (RICO), in action in which alleged RICO violation was acquiring or maintaining, through pattern of racketeering activity, an interest in an enterprise, relating to allegedly fraudulent scheme by owner of home improvement retail stores to induce tool rental customers into purchasing allegedly unnecessary damage protection; customer merely alleged injury as result of owner's alleged racketeering activity, i.e., that owner's mail fraud and wire fraud caused customer to be charged money for unnecessary damage protection, and customer did not allege that his injury resulted from owner's acquisition or maintenance of interest in an enterprise. Fuller v. Home Depot Services, LLC, N.D.Ga.2007, 512 F.Supp.2d 1289. Racketeer Influenced And Corrupt Organizations 63

Any injury to mortgagor allegedly resulting from investment of racketeering income by real estate settlement providers' from their alleged kickback and referral scheme would not have been distinct from injury resulting from predicate acts themselves, as required to establish violation of Racketeer Influenced and Corrupt Organizations Act (RICO). Yates v. All American Abstract Co., E.D.Pa.2007, 487 F.Supp.2d 579. Racketeer Influenced And Corrupt Organizations 63

Television network's broadcast of program suggesting that Jesus Christ and Mary Magdalene were married and had children creating lineage that Roman Catholic Church sought to conceal in effort to protect its own authority did not violate Racketeer Influenced and Corrupt Organizations Act (RICO), absent indication that program was broadcast more than once, that program was obscene, or that churchmember bringing suit was personally injured by having viewed program. Viola v. A & E Television Networks, W.D.Pa.2006, 433 F.Supp.2d 613. Racketeer Influenced And Corrupt Organizations 7; Racketeer Influenced And Corrupt Organizations 26; Racketeer Influenced And Corrupt Organizations 59

Debtors who sued law firm and attorneys, alleging illegal debt collection practices, failed to allege that they suffered injury to their businesses or property, as required to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO); although debtors disputed timeliness of firm's collection efforts and ordered firm to cease all communications and collection efforts, debtors did not make any payments on disputed debts. Godfredson v. JBC Legal Group, P.C., E.D.N.C.2005, 387 F.Supp.2d 543. Racketeer Influenced And Corrupt Organizations 59

Revenue lost by pay telephone owners when long distance service provider failed to reveal additional end-user charge constituted an injury to owners, for purpose of establishing Racketeer Influenced and Corrupt Organizations Act (RICO) claim against provider's principals; by deceiving owners about amount of money owed them, principals were able to retain significant additional revenues that would otherwise have been paid to owners. Regency Communications, Inc. v. Cleartel Communications, Inc., D.D.C.2004, 304 F.Supp.2d 1. Telecommunications 1012

Commercial vehicle insurer failed to allege that it suffered “injury” that resulted from acquisition of interest in enterprise by insurance broker and others, rather than from defendants' commission of predicate acts of mail and wire fraud, in connection with insurance fraud scheme, as required to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO) section, making it unlawful for any person through pattern of racketeer-


Allegations that debtor fraudulently transferred assets in contemplation of shielding those assets from bankruptcy estate and, after filing bankruptcy, concealed income derived from those assets from his creditors, thereby depriving creditors of their property and injuring their business, supported injury element of claim that debtor's conduct violated Racketeer Influenced and Corrupt Organizations Act (RICO). Cadle, Co. v. Flanagan, D.Conn.2003, 271 F.Supp.2d 379. Racketeer Influenced And Corrupt Organizations

Manufacturer's alleged mail and wire fraud directed at consumers of non-agricultural pesticide did not constitute injury under Racketeer Influenced and Corrupt Organizations Act (RICO), where consumers alleged that they suffered personal injuries as result of fraud, not injuries to their business or property. Williams v. Dow Chemical Co., S.D.N.Y.2003, 255 F.Supp.2d 219. Racketeer Influenced And Corrupt Organizations

Investors in limited partnership involved in video rentals stated cause of action under Racketeer Influenced and Corrupt Organizations Act (RICO) § 1962(b); investors had alleged existence of RICO enterprise and pattern of racketeering activity and had shown that they were injured in their business or property as a result of promoters' acquisition or maintenance of interest or control of video rental business. Pahmer v. Greenberg, E.D.N.Y.1996, 926 F.Supp. 287, affirmed 123 F.3d 717. Racketeer Influenced And Corrupt Organizations

Developers planning residential units and gravel pit established element of injury to business or property, as required to state cause of action under RICO; developers had alleged extortion of fire wood, timber, gravel and sand worth hundreds of thousands of dollars, extortion of one third of capital stock of corporation owning gravel pit, and demands that developers expend large amounts of money to purchase "gifts" for specified people and threatened unfavorable actions in retaliation for not complying with demands, including denial or delay of building permits, certificates of occupancy, and over-estimating tax assessments. DeFalco v. Dirie, S.D.N.Y.1996, 923 F.Supp. 473. Racketeer Influenced And Corrupt Organizations

Investor in limited partnership failed to establish pattern of racketeering under continuity test for purposes of his claim under Racketeer Influenced and Corrupt Organizations Act (RICO) against various individuals involved in partnership; investor alleged injury to himself only, investor alleged single scheme to defraud, and his separate investments in partnership, which were eventually lost, did not constitute distinct injuries. Kleban v. S.Y.S. Restaurant Management, Inc., N.D.Ill.1995, 912 F.Supp. 361. Racketeer Influenced And Corrupt Organizations
Complaint failed to allege any injury specifically resulting from use or investment of defendants' profits, as contrasted with injury resulting from alleged underlying activity itself, and therefore complaint failed to state claim under section of Racketeer Influenced and Corrupt Organizations Act (RICO) prohibiting use or investment of racketeering-derived income in operation of enterprise. *Rhodes v. Consumers’ Buyline, Inc.*, D.Mass.1993, 868 F.Supp. 368. **Racketeer Influenced And Corrupt Organizations [RICO]** 75


Master franchisee failed to allege requisite investment injury required for recovery under first subsection of prohibited activity section of the Racketeer Influenced and Corrupt Organizations (RICO) Act where the real source of franchisee's purported injury was that franchisor and its officers and director supposedly made certain misrepresentations and failed to disclose certain facts, not that franchisee was injured by franchisor's investment of money generated by those actions in the operation of the franchisor, which was the alleged RICO enterprise. *Gotham Print, Inc. v. American Speedy Printing Centers, Inc.*, E.D.Mich.1994, 863 F.Supp. 447. **Racketeer Influenced And Corrupt Organizations [RICO]** 62

Plaintiff’s allegation that company defendants defrauded and injured plaintiff solely by having been acquired by or brought under control of one or more of other defendants did not state claim under Racketeer Influenced and Corrupt Organizations Act (RICO) subsection for injury resulting from acquisition or maintenance of enterprise through pattern of racketeering activity; allegation indicated that plaintiff sought to recover damages for injuries allegedly resulting from predicate racketeering acts of fraud and such injuries could not serve as basis for liability under this RICO subsection. *Standard Chlorine of Delaware, Inc. v. Sinibaldi*, D.Del.1992, 821 F.Supp. 232. **Racketeer Influenced And Corrupt Organizations [RICO]** 75

Former employees, who solicited investors in limited partnerships for employer, could not recover in their action against employer under Racketeer Influenced and Corrupt Organizations (RICO) section prohibiting acquisition of interest in entity through racketeering activity alleging that employer mailed false tax documents and financial statements and made oral misrepresentations over telephone concerning compensation and expenses; employees failed to show any injury from employer’s acquisition or maintenance of control over partnerships. *Greenberg v. Tomlin*, E.D.Pa.1993, 816 F.Supp. 1039. **Racketeer Influenced And Corrupt Organizations [RICO]** 61


Any connection between lenders’ investment of income resulting from allegedly fraudulent loan deferral practice and borrowers’ injuries was insufficient to confer standing to borrowers under Racketeer Influenced and Corrupt Organizations (RICO) Act statute providing for civil action against person who has received income derived from pattern of racketeering activity and subsequently uses or invests that income. *Livingston v. ITT Consumer*

Gasoline retail service station failed to state RICO claim based on use and investment of racketeering income against corporation that allegedly committed fraud in supplying gasoline, where service station did not allege injury caused by investment or use of income derived from alleged racketeering activity. Rhone v. Energy North, Inc., D.Mass.1991, 790 F.Supp. 353. Racketeer Influenced And Corrupt Organizations

Plaintiff must allege injury by reason of use or investment of racketeering income in enterprise in order to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO) section making it unlawful for person to use or invest income derived from pattern of racketeering activity to establish, operate, or acquire interest in enterprise. Nagle v. Merrill Lynch, Pierce, Fenner & Smith, Inc., S.D.Iowa 1992, 790 F.Supp. 203. Racketeer Influenced And Corrupt Organizations

Purchaser failed to show that it suffered any actual injury as result of alleged fraudulent scheme on part of corporation directors, either in form of lost sales or profits or undisclosed liabilities, and, thus, purchaser could not recover pursuant to Racketeer Influenced and Corrupt Organizations Act (RICO). Goodridge v. Harvey Group, Inc., S.D.N.Y.1991, 778 F.Supp. 115. Racketeer Influenced And Corrupt Organizations


Plaintiff did not have to sustain economic injury as result of each predicate act of mail fraud in order for act to serve as predicate for claim under Racketeer Influenced and Corrupt Organizations Act (RICO). Com-Tech Associates v. Computer Associates Intern., Inc., E.D.N.Y.1990, 753 F.Supp. 1078, affirmed 938 F.2d 1574. Racketeer Influenced And Corrupt Organizations

A corporation's use and investment of income allegedly derived from fraudulent conduct in a business relationship over several years sufficiently alleged injury by reason of use or investment of the income derived from a pattern of racketeering to survive a motion to dismiss. Uniroyal Goodrich Tire Co. v. Mutual Trading Corp., N.D.Ill.1990, 749 F.Supp. 869. Racketeer Influenced And Corrupt Organizations

RICO complaint was insufficient where it failed to allege that plaintiff was injured as result of defendants' alleged use of racketeering income. Grafman v. Century Broadcasting Corp., N.D.Ill.1989, 727 F.Supp. 432. Racketeer Influenced And Corrupt Organizations

Because real nature of investors' claim under Racketeer Influenced and Corrupt Organizations Act appeared to flow from allegation that predicate acts induced them to invest in gas reclamation units, applicable section was section governing economic injury by virtue of predicate acts, rather than section governing use or investment of

Investors bringing action against brokerage firm under Racketeer Influenced and Corrupt Organization Act provision prohibiting use or investment of income received from pattern of racketeering activity were required to plead facts that would realistically establish that firm's investment of racketeering proceeds proximately caused injury to them. De Muro v. E.F. Hutton, S.D.N.Y.1986, 643 F.Supp. 63. Racketeer Influenced And Corrupt Organizations

Even if purchase of car rental corporation by car rental agency and its chairman and president violated prohibitions of this section against investing income derived from racketeering in enterprise engaged in interstate commerce and against using racketeering tactics to control an enterprise, the corporation could not bring action against the agency under this chapter based on that conduct where its injury, if any, was sustained when the agency sold the corporation and not when it purchased it. Econo-Car Intern., Inc. v. Agency Rent-A-Car, Inc., D.C.Mass.1984, 589 F.Supp. 1368. Racketeer Influenced And Corrupt Organizations

Allegations by recipient of mail order catalog from women's clothing manufacturer that manufacturer had unlawfully discriminated in its pricing structures by sending catalogs which contained different discount offers to different groups of customers were insufficient to establish that manufacturer had used income from pattern of racketeering activity in business enterprise, as would support civil Racketeer Influenced and Corrupt Organizations (RICO) action; no allegation of pattern of racketeering activity or of injury caused by use or investment of racketeering income was made, and allegation of mail fraud was not sufficient to establish injury. Katzman v. Victoria's Secret Catalogue, S.D.N.Y.1996, 167 F.R.D. 649, reargument denied 939 F.Supp. 274, affirmed 113 F.3d 1229. Racketeer Influenced And Corrupt Organizations

A seller of overstocked and defective computer components established reasonable likelihood of showing an injury derived from buyer's racketeering activity; it was reasonably likely that buyer funneled a substantial amount of money into companies involved in secondary market for the seller's computer components, resulting in a flooding of the market with unauthorized components, causing significant harm to the seller. Digital Equipment Corp. v. Currie Enterprises, D.Mass.1992, 142 F.R.D. 27. Racketeer Influenced And Corrupt Organizations

Claim under the Racketeer Influenced and Corrupt Organizations Act (RICO) accrues when plaintiffs know, or should know, of their injury. In re Bernheim Litigation, D.N.J.2003, 290 B.R. 249. Limitation Of Actions

Debtor, as a company with whom seat manufacturer had contracted, could not recover under the Racketeer Influenced and Corrupt Organizations Act (RICO) for acts of mail fraud that manufacturer's officers allegedly committed when they created allegedly false tax returns and submitted them to the Internal Revenue Service (IRS); assuming that mail fraud occurred, the IRS, not debtor, was injured as a proximate result of the tax fraud. In re Husco, Inc., Bkrtcy.W.D.Pa.2001, 268 B.R. 441. Racketeer Influenced And Corrupt Organizations
99. ---- Causation, injury, offenses generally

Assuming that alleged violation of Jenkins Act by out-of-state online seller of cigarettes, in failing to file a report with the State listing the name, address, and quantity of cigarettes purchased from online seller by state residents, could constitute a predicate offense under the Racketeer Influenced and Corrupt Organizations Act (RICO), such violation was not proximate cause of city's alleged injury from loss of tax revenues based on failure of city residents to pay city's use tax for their cigarette purchases from online seller, as required for a RICO civil claim based on the plaintiff being injured in his business or property by reason of a RICO predicate offense, because the conduct directly causing the harm to city, i.e., cigarette purchasers' failure to pay use taxes to city, was distinct from the conduct giving rise to the alleged predicate acts of fraud, i.e., the online seller's failure to file Jenkins Act reports with the State. (Per Chief Justice Roberts, with three Justices concurring and one Justice concurring in part and concurring in the judgment.) Hemi Group, LLC v. City of New York, N.Y., U.S.2010, 130 S.Ct. 983, 559 U.S. 1, 175 L.Ed.2d 943. Racketeer Influenced And Corrupt Organizations

Manufacturer's alleged misrepresentations as to efficacy and side effects of drug, as predicate offense under Racketeer Influenced and Corrupt Organizations Act (RICO), was too attenuated to have required direct causal connection to alleged excess price that unions and insurers, as third-party payors (TPPs), ultimately paid for each prescription. UFCW Local 1776 v. Eli Lilly and Co., C.A.2 (N.Y.) 2010, 620 F.3d 121. Racketeer Influenced And Corrupt Organizations

Lender's allegations that assignee of camera distributor and others developed a scheme to defraud retailers by stealing or fraudulently obtaining used cameras and reselling them as new, by allegedly obtaining returned cameras, destined for lender, by fraud, were sufficient to plead proximate cause between the fraud and lender's injury in having their property, the cameras, stolen or fraudulently obtained, as required to state a civil Racketeer Influenced and Corrupt Organizations Act (RICO) claim; even though retailers were also victims of the fraud, lender was still a direct victim of the crime. RWB Services, LLC v. Hartford Computer Group, Inc., C.A.7 (Ill.) 2008, 539 F.3d 681. Racketeer Influenced And Corrupt Organizations

Foreign workers' Racketeer Influenced and Corrupt Organizations Act (RICO) complaint against recruiting company that allegedly engaged in scheme to convince them to borrow money to travel to United States for employment failed to allege facts that would show causal relationship between their injuries and company's acquisition or maintenance of interest in enterprise. Abraham v. Singh, C.A.5 (La.) 2007, 480 F.3d 351. Racketeer Influenced And Corrupt Organizations

Borrower's alleged violation of Racketeer Influenced and Corrupt Organizations Act (RICO) in use of proceeds from loan did not proximately cause injury to lender's secondary security interest or contractual right to repayment under note, since intangible property interests that lender possessed at time of alleged violation were without value from inception of loan. Regions Bank v. J.R. Oil Co., LLC, C.A.8 (Mo.) 2004, 387 F.3d 721. Racketeer Influenced And Corrupt Organizations

Former hospital employee, who was terminated allegedly for refusing to complete fraudulent Medicare, Medicaid, and Medical Assistance forms, lacked standing to sue hospital under Racketeer Influenced and Corrupt Or-
ganizations Act provision that prohibited persons employed by enterprise engaged in interstate commerce from participating in conduct of enterprise's affairs through pattern of racketeering activity, since termination was not injury substantially caused by hospital's alleged violations of provision; direct victims of alleged racketeering were Medicare and Medicaid programs and taxpayers, and hospital's alleged racketeering did not substantially cause termination. Rehkop v. Berwick Healthcare Corp., C.A.3 (Pa.) 1996, 95 F.3d 285. Racketeer Influenced And Corrupt Organizations

Quick-lube franchisor failed to establish requisite injury for civil RICO claim against motor oil supplier and competitor, which entered into joint venture with supplier; franchisor claimed that supplier's theft of its trade secrets was racketeering income and investment of that income injured it as supplier used secrets to build competing business but alleged injury stemmed from pattern of racketeering, rather than investment of funds. Lightning Lube, Inc. v. Witco Corp., C.A.3 (N.J.) 1993, 4 F.3d 1153. Racketeer Influenced And Corrupt Organizations

Primary consideration in determining whether plaintiff's injuries have been proximately caused by defendant's RICO violations is the directness of the relationship between the injury asserted and the injurious conduct alleged. Bieter Co. v. Blomquist, C.A.8 (Minn.) 1993, 987 F.2d 1319, rehearing denied, certiorari denied 114 S.Ct. 81, 510 U.S. 823, 126 L.Ed.2d 50, on remand 848 F.Supp. 1446, on remand 156 F.R.D. 173. Racketeer Influenced And Corrupt Organizations

Causal language of section of the Racketeer Influenced and Corrupt Organizations Act (RICO) outlawing conduct of affairs of an enterprise through a pattern of racketeering activity requires that compensable injury stem from violation of that section, so any injury under related section of RICO outlawing use or investment of income derived from pattern of racketeering activity must flow from the use or investment of racketeering income. Parker & Parsley Petroleum Co. v. Dresser Industries, C.A.5 (Tex.) 1992, 972 F.2d 580, rehearing denied 985 F.2d 555. Racketeer Influenced And Corrupt Organizations

Injury caused by predicate racketeering acts is sufficient to state violation of RICO section which makes it unlawful for person who has received income from "pattern of racketeering activity" to "use or invest" such income in enterprise engaged in or affecting interstate or foreign commerce; thus, "investment use" rule, under which injuries caused by only alleged racketeering activity are insufficient to support cause of action under RICO section in question, is invalid. Busby v. Crown Supply, Inc., C.A.4 (Va.) 1990, 896 F.2d 833, on remand. Racketeer Influenced And Corrupt Organizations

Interstate transportation of environmental group's confidential documents by private security firm hired by chemical companies to infiltrate group was not proximate cause of group's injuries, and thus did not constitute predicate criminal act supporting group's claim against companies and firm under Racketeer Influenced and Corrupt Organizations Act (RICO), where diminished value of group's property was direct result of its theft and dissemination to wide audience, not its interstate transportation. Greenpeace, Inc. v. Dow Chemical Co., D.D.C.2011, 808 F.Supp.2d 262. Racketeer Influenced and Corrupt Organizations

Third party payors' (TPP) allegations that manufacturer of anti-psychotic drug “unlawfully” promoted drug for
off-label uses through misrepresentation and that TPPs were directly targeted by such scheme was insufficient to establish causation, as required to support their civil Racketeer Influenced and Corrupt Organizations Act (RICO) claim, absent allegation that manufacturer's misrepresentations were the “but for” cause of TPPs' injuries. District 1199P Health and Welfare Plan v. Janssen, L.P., D.N.J.2011, 784 F.Supp.2d 508. Racketeer Influenced And Corrupt Organizations

Provider of processed tomato products failed to show that its alleged injuries were the direct and proximate result of competitors' alleged agreement to collude on domestic prices for the sale of their products, to allocate customers, and to bribe customers' purchasing agents, as required to state a Racketeer Influenced and Corrupt Organizations Act (RICO) claim against competitors, where immediate victims of competitors' alleged conduct were consumers who were forced to pay higher prices, not provider, and provider did not allege that it competed for same contracts as competitors and would have secured a contract in the absence of competitors' alleged conduct. Morning Star Packing Co. v. SK Foods, L.P., E.D.Cal.2010, 754 F.Supp.2d 1230. Racketeer Influenced And Corrupt Organizations

Third-party payers (TPPs), who did not directly rely on misrepresentations by manufacturer and who did not present any evidence as to how many or which physicians who prescribed drug to their members relied on alleged fraud, could not establish causation on claim under Racketeer Influenced and Corrupt Organizations Act (RICO) alleging mail or wire fraud as predicate acts, by manufacturer's promotion of drug for off-label treatment without any reliable scientific evidence suggesting that drug had been effective in off-label treatment; although TPPs had demonstrated likelihood of some injury through use of national data, correlated with information about manufacturer's promotional spending, to determine percentages of drug prescriptions that were “caused” by manufacturer's fraud, they did not demonstrate extent of harm caused by that fraud, as opposed to run-of-the-mill off-label detailing. In re Neurontin Marketing and Sales Practices Litigation, D.Mass.2010, 754 F.Supp.2d 293, reversed in part, vacated in part 712 F.3d 60. Racketeer Influenced And Corrupt Organizations

Union member seeking to state claim for Racketeer Influenced and Corrupt Organizations Act (RICO) violation failed to allege any injury resulting from investment of racketeering income distinct from injury caused by predicate acts themselves; allegation of injuries caused by defendant's “misappropriation of funds” was insufficient. Molina v. Union Independiente Autentica de LA AAA, D.Puerto Rico 2010, 750 F.Supp.2d 417. Racketeer Influenced And Corrupt Organizations

Borrower, who alleged that he was victimized by a fraudulent refinance scheme in which mortgage broker procured an inflated appraisal of his home and induced him to enter into a large adjustable rate mortgage in order to receive an illegal kickback from lender, could not show that his alleged injuries were caused “by reason of” the alleged Racketeer Influenced and Corrupt Organizations Act (RICO) violation; borrower's injuries were unrelated to the inflated appraisal, which only influenced the size of his loan, but instead, flowed from the high interest rate and unfavorable terms of his adjustable rate mortgage, which were the product of negotiation between himself and broker and were not wholly determined by the magnitude of the loan. Wallace v. Midwest Financial & Mortg. Services, Inc., E.D.Ky.2010, 728 F.Supp.2d 906, reversed in part 714 F.3d 414. Racketeer Influenced And Corrupt Organizations

Evidence that third-party payor (TPP) relied on pharmaceutical manufacturer's fraudulent misrepresentations regarding its prescription anticonvulsant drug's off-label indications in deciding to place drug on its formulary for off-label uses, and that prescriptions dropped by 34% after TPP conducted information campaign with more complete data regarding off-label uses that was initiated after news reports of manufacturer's fraudulent activities began to surface was sufficient to create fact dispute regarding causation, thus precluding summary judgment on TPP's claim against manufacturer for violations of Racketeer Influenced and Corrupt Organizations Act (RICO). In re Neurontin Marketing and Sales Practices Litigation, D.Mass.2010, 677 F.Supp.2d 479, reversed in part, vacated in part 712 F.3d 51. Federal Civil Procedure 2509.5

Health and welfare fund did not sufficiently allege that pharmaceutical company's wrongful conduct in connection with marketing of drug proximately caused fund injury in violation of Racketeer Influenced and Corrupt Organizations Act (RICO), as calculation of fund's losses would be purely speculative; doctors could consider many factors in determining what medication to administer to patient, doctors were presumed to go beyond advertising and to use their independent knowledge in making medical decisions, loss calculation would require analysis of whether particular physician ever received or relied on company's alleged fraudulent statements, and whether physician, knowing risks and benefits of drugs, would still have used it during operation, and it would require knowledge of dosages for patients, and the varying cost calculation over ten-year period. Southeast Laborers Health and Welfare Fund v. Bayer Corp., S.D.Fla.2009, 655 F.Supp.2d 1270. Racketeer Influenced And Corrupt Organizations 62

Preferential treatment that employers allegedly afforded to union agents in form of post-assignment opportunities such as discounts and incentives for customers did not proximately cause sales representatives' alleged harm from lost opportunities, as required for Racketeer Influenced and Corrupt Organizations Act (RICO) claims against employers and union agents, although sales representatives were most direct victims of alleged scheme to provide telephone directory advertising accounts to union agents; determination of amount of representatives' injuries attributable to alleged conduct was speculative. Marceau v. International Broth. of Elec. Workers, D.Ariz.2009, 618 F.Supp.2d 1127. Racketeer Influenced And Corrupt Organizations 62

Toy manufacturer that sued former design employee, stemming from dispute over rights to fashion dolls purportedly based upon manufacturer's product, alleged sufficient “injury” to business or property to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO); complaint averred damages flowing from theft of trade secrets and confidential information committed by direct competitor, and from infringement of copyrights alleged to make millions of dollars. Bryant v. Mattel, Inc., C.D.Cal.2007, 573 F.Supp.2d 1254. Racketeer Influenced And Corrupt Organizations 75

Acute care hospital that sued health care provider network, alleging illegal scheme to increase Medicare outlier reimbursements by “turbocharging,” failed to establish that network's conduct directly caused its claimed injury, as required to maintain claim under Racketeer Influenced and Corrupt Organizations Act (RICO); network's receipt of outlier funds from Medicare had no immediate impact on hospital, hospital's damages from alleged theft were speculative, and alleged predicate acts of network were unequivocally directed at third party. Boca Raton Community Hosp., Inc. v. Tenet Healthcare Corp., S.D.Fla.2007, 502 F.Supp.2d 1237, affirmed 582 F.3d 1227. Racketeer Influenced And Corrupt Organizations 75

Claimed injury of arrestee's fiancée in her business and property through arrestee's loss of infomercial contract allegedly due to racketeering acts of city, county, and officials leading to his arrest, guilty plea, and conviction, was not direct injury to fiancée's own business or property proximately caused by Racketeer Influenced and Corrupt Organizations Act (RICO) violation; fiancée was not party to infomercial contract, lost no profits from contract cancellation, and was not married at time of infomercial contract. Moore v. Guesno, W.D.N.Y.2007, 485 F.Supp.2d 300, affirmed 301 Fed.Appx. 17, 2008 WL 5082982. Racketeer Influenced And Corrupt Organizations

Real estate company adequately alleged that it was injured by employees' scheme to bilk company of money by providing false information regarding vacation pay and bonuses to company's payroll servicing company, in violation of Racketeer Influenced and Corrupt Organizations Act (RICO); company alleged that fraudulent transfer of funds, falsification of records and subsequent cover-up resulted in loss of hundreds of thousands of dollars. Breslin Realty Development Corp. v. Schackner, E.D.N.Y.2006, 457 F.Supp.2d 132. Racketeer Influenced And Corrupt Organizations

Undocumented workers' allegations that, as result of retailer's predicate immigration violations, retailer obtained their janitorial labor at rates below legally mandated levels were insufficient to allege proximate cause necessary to support Racketeer Influenced and Corrupt Organizations Act (RICO) claim; even if retailer committed the predicate immigration violations with the intent to later underpay wages, there was no showing of a direct causal connection between predicate act and injury, given difficulty of ascertaining what part of alleged wage underpayment damage was caused by workers' immigration status. Zavala v. Wal-Mart Stores, Inc., D.N.J.2006, 447 F.Supp.2d 379, motion to certify appeal denied 2007 WL 1134110, affirmed 691 F.3d 527. Racketeer Influenced And Corrupt Organizations

Shareholder's alleged losses as result of scheme by his business partners, corporate employees, and outside accountant to defraud him of his fair share of corporate profits were not proximately caused by defendants' alleged mail, wire, and bank fraud, money laundering, or breach of fiduciary duty, and thus were insufficient to establish claim under Racketeer Influenced and Corrupt Organizations Act (RICO), even if money laundering, mailings, and communications were necessary to conceal scheme from shareholder, where money laundering, mailings, and wire communications were not necessary to theft itself, there was no tangible loss alleged as result of bank fraud, and defendants' refusal to permit shareholder to examine corporations' financials did not derive from any racketeering activity. Leung v. Law, E.D.N.Y.2005, 387 F.Supp.2d 105. Racketeer Influenced And Corrupt Organizations

Student, who alleged damage to his schooling progress which cost him tuition money and time as result of alleged mail fraud wherein church defendants represented that they were interested in a settlement agreement when they were not, failed to show a causal nexus between the alleged Racketeer Influenced and Corrupt Organizations Act (RICO) activity and his indictment on extortion charges since the injuries student allegedly suffered were a result of his indictment. Hall v. Tressic, N.D.N.Y.2005, 381 F.Supp.2d 101. Racketeer Influenced And Corrupt Organizations

Disappointed bidder for government contract failed to satisfy injury requirement of Racketeer Influenced and
Corrupt Organizations Act (RICO) provision barring use of proceeds from racketeer activities in operation of enterprise when harm to bidder arose from predicate racketeering acts causing loss of contract, rather than application of proceeds from racketeering activities to profits of successful bidder, as enterprise. **Lockheed Martin Corp. v. Boeing Co., M.D.Fla.2005, 357 F.Supp.2d 1350.** Racketeer Influenced And Corrupt Organizations 63

Debit cardholders sufficiently stated causation element of claim against bank under section of the Racketeer Influenced and Corrupt Organizations Act (RICO) prohibiting conducting or participating in the affairs of an enterprise through a pattern of racketeering activity; plaintiffs asserted that bank provided a master account system which gave racketeering enterprise unlimited access to plaintiffs' funds, and such unlimited access allowed enterprise defendants to misappropriate money deposited into sub-accounts. **OSRecovery, Inc. v. One Groupe Intern., Inc., S.D.N.Y.2005, 354 F.Supp.2d 357,** reconsideration denied 2005 WL 309758, opinion adhered to on reconsideration 2005 WL 309755. Racketeer Influenced And Corrupt Organizations 62

Complaint under the civil enforcement provisions of the Racketeer Influenced and Corrupt Organizations Act (RICO), alleging a worldwide conspiracy to engage in extensive criminal activities, failed to alleged the required injury to plaintiff; alleged injuries to plaintiff's business reputation and good will, and alleged peril to his safety, life, liberty and right not to live in fear, did not constitute actionable injuries to business or property. **Hollander v. Flash Dancers Topless Club, S.D.N.Y.2004, 340 F.Supp.2d 453,** amended on denial of reconsideration , affirmed 173 Fed.Appx. 15, 2006 WL 267148, certiorari denied 127 S.Ct. 49, 549 U.S. 829, 166 L.Ed.2d 49. Racketeer Influenced And Corrupt Organizations 59

Products liability defendant's alleged obstruction of justice in parallel case was too remote to establish proximate causation necessary to support claims against defendant under Racketeer Influence and Corrupt Organizations Act (RICO) based on allegedly fraudulent settlement of claims. **Matsuura v. E.I. du Pont de Nemours and Co., D.Hawai'i 2004, 330 F.Supp.2d 1101,** reversed and remanded 431 F.3d 353, certiorari denied 126 S.Ct. 2861, 547 U.S. 1192, 165 L.Ed.2d 895, on remand 2006 WL 2734291. Racketeer Influenced And Corrupt Organizations 62

Physician's maintenance of medical practice did not violate Racketeer Influenced and Corrupt Organizations Act's (RICO) prohibition against use of funds derived from racketeering activities to maintain interest in business, absent indication that maintenance of such interest injured insurer separately from injuries insurer sustained as result of physician's fraudulent billing practices. **Allstate Ins. Co. v. Seigel, D.Conn.2004, 312 F.Supp.2d 260.** Racketeer Influenced And Corrupt Organizations 63

Motorist bringing Racketeer Influenced and Corrupt Organizations Act (RICO) claim against village officials failed to allege that he suffered injury as result of officials' maintenance of interest in enterprise consisting of village justice court allegedly used to illegally ticket and fine motorists; claimed injury incurred in having to interrupt normal activities to go to court was not separate and apart from injury arising from illegal ticketing constituting RICO predicate acts. **Wood v. Incorporated Village of Patchogue of New York, E.D.N.Y.2004, 311 F.Supp.2d 344.** Racketeer Influenced And Corrupt Organizations 63
Racketeer Influenced and Corrupt Organizations Act (RICO) claim that defendant conducted affairs of enterprise through pattern of racketeering activity requires proof that injuries of which plaintiff complains were caused by one or more of the specified acts of racketeering; merely proving that alleged predicate acts were cause in fact of plaintiff's injuries will not be sufficient, rather, proof that at least one of defendant's predicate acts was proximate cause of plaintiff's injuries is required. In re Pharmaceutical Indus. Average Wholesale Price Litigation, D.Mass.2004, 307 F.Supp.2d 196. Racketeer Influenced And Corrupt Organizations

Health care providers sufficiently alleged that individual physicians' injuries, sustained when they were not paid fully or in a timely manner for medical services provided to insureds, were proximately caused by managed care health insurers' fraudulent scheme to underpay physicians, to satisfy requirements of Racketeer Influenced and Corrupt Organizations Act (RICO); injuries were alleged to have resulted from conduct of participants in managed care industry who had been “coerced” into participating in insurers' alleged scheme. In re Managed Care Litigation, S.D.Fla.2003, 298 F.Supp.2d 1259. Racketeer Influenced And Corrupt Organizations

French citizen who allegedly was victim of purported conspiracy to affect judicial processes of Peruvian government in connection with exploitation of mineral resources in Peru failed to allege, in support of his claims under Racketeer Influenced and Corrupt Organizations Act (RICO), that he suffered requisite injury “in his business or property by reason of” defendants' purported wrongful conduct, given that French citizen did not allege facts showing that his ability to carry on business activity was affected by defendants' purported efforts to defame him or show that he held any ownership right respecting underlying mineral interests, but rather alleged at most expectancy to obtain some form of property for his clients in which he was to share, and given absence of allegations indicating that defendants' purported conduct could be considered proximate cause of claimed injuries. Maugein v. Newmont Mining Corp., D.Colo.2004, 298 F.Supp.2d 1124. Racketeer Influenced And Corrupt Organizations

Plaintiff seeking civil damages for violation of RICO must allege facts showing injury from use and investment of racketeering income; injury from racketeering activity itself is not enough. Arena Land & Inv. Co., Inc. v. Petty, D.Utah 1994, 906 F.Supp. 1470, affirmed 69 F.3d 547. Racketeer Influenced And Corrupt Organizations


Allegation that principals of limited partnership desired to acquire interest in real property failed to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO) forbidding any person through pattern of racketeering activity to acquire or maintain, directly or indirectly, any interest in or control of any enterprise; real property was not “enterprise,” and plaintiff failed to allege causal connection between principals' interest or control of enterprise and plaintiff's injuries. Attick v. Valeria Associates, L.P., S.D.N.Y.1992, 835 F.Supp. 103. Racketeer Influenced And Corrupt Organizations

Gravamen of a claim under section of Racketeer Influenced and Corrupt Organizations Act (RICO) proscribing use or investment of income derived from racketeering in an enterprise is an injury directly related to the investment or use of tainted money in the enterprise; section is not applicable to injury from racketeering activity itself. Arioli v. Prudential-Bache Securities, Inc., E.D.Mich.1993, 811 F.Supp. 303. Racketeer Influenced And Corrupt Organizations 

RICO claim cannot be asserted under provision of statute precluding use and investment of racketeering income by plaintiff who was injured only by underlying racketeering activity; “investment use rule” requires allegation of injury caused by use or investment of that income. Rhone v. Energy North, Inc., D.Mass.1991, 790 F.Supp. 353. Racketeer Influenced And Corrupt Organizations

Primary function of RICO statute prohibiting use or investment of income derived from pattern of racketeering activity is to halt investment of racketeering proceeds into legitimate businesses; plaintiff bringing action under statute is required to establish that his injuries were caused by use or investment of racketeering income in legitimate enterprise. Pagnotti Enterprises, Inc. v. Beltrami, M.D.Pa.1992, 787 F.Supp. 440. Racketeer Influenced And Corrupt Organizations

Holders of single-premium life policies claiming that insurer had applied greater percentage of proceeds from sale of policy toward insurer's profits, at expense of interest due policyholders, did not establish harm resulting from activities of enterprise funded by revenue obtained from illegal activities, as required under RICO; real source of policyholder's purported injury was that insurer supposedly made certain misrepresentations and failed to disclose certain facts at time policies were issued, not that policyholders were injured through investment of money generated by those investments. Berent v. Kemper Corp., E.D.Mich.1991, 780 F.Supp. 431, affirmed 973 F.2d 1291. Racketeer Influenced And Corrupt Organizations

State contractor failed to establish causal link between its alleged loss of contracts and competitors' alleged Racketeer Influenced and Corrupt Organizations Act (RICO) violations in securing contracts under minority set-aside program, despite coincidental drop in contractor's market share; regardless of competitors' conduct, contractor was not eligible for work under set-aside program. United Fence & Guard Rail Corp. v. D. Lambert Railing Co., Inc., E.D.N.Y.1991, 777 F.Supp. 205. Racketeer Influenced And Corrupt Organizations

In order to state claim under section of Racketeer Influenced and Corrupt Organizations Act (RICO) proscribing use of income derived from pattern of a racketeering activity in establishing or operating an enterprise, it was not necessary to show injury by reason of investment of racketeering income instead of mere injury by reason of acts themselves. Mylan Laboratories, Inc. v. Akzo, N.V., D.Md.1991, 770 F.Supp. 1053. Racketeer Influenced And Corrupt Organizations

Allegations were insufficient as matter of law to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO) provision making it unlawful for any person who has received any income derived from pattern of racketeering activity “to invest” such income in enterprise engaged in interstate commerce, where there was no allegation of separate injury resulting from investment of racketeer income; investor claimed only that her injury resulted from broker's 226 alleged criminal offenses and that income derived from racketeering activ-


To have standing to bring Racketeer Influenced and Corrupt Organizations Act action for receiving income from a pattern of racketeering activity, plaintiff must establish that injury was derived from that use or investment of racketeering income. Rodriguez v. Banco Cent., D.Puerto Rico 1989, 727 F.Supp. 759, appeal dismissed 917 F.2d 664. Racketeer Influenced And Corrupt Organizations 16

Allegations that motion picture sellers invested or used income derived from pattern of racketeering activity to facilitate own general operations, and that continuing operation of sellers injured buyers were insufficient to state claim that buyers had been injured specifically by use or investment of racketeering income. Vista Co. v. Columbia Pictures Industries, Inc., S.D.N.Y.1989, 725 F.Supp. 1286. Racketeer Influenced And Corrupt Organizations 58

In order to state claim, RICO plaintiff who bases his claim on violation of section of RICO which prohibits investment of racketeering income must allege that he was injured by reason of defendant's use or investment of income illegally derived from pattern of racketeering; such plaintiff cannot recover if he alleges only that he was injured by defendant's pattern of racketeering. Grove Fresh Distributors, Inc. v. Flavor Fresh Foods, Inc., N.D.Ill.1989, 720 F.Supp. 714. Racketeer Influenced And Corrupt Organizations 16

Investor lacked standing to sue broker and broker's representative and officers under Racketeer Influenced and Corrupt Organizations Act section making it unlawful for any person who has received income derived from racketeering activity to use or invest any part of income in enterprise engaged in interstate or foreign commerce; investor's injury was caused by alleged pattern of racketeering activities, but whether broker and representative invested investor's proceeds in business affecting commerce could not have been causally related to any injury. Leonard v. Shearson Lehman/American Exp. Inc., E.D.Pa.1988, 687 F.Supp. 177. Racketeer Influenced And Corrupt Organizations 62

Statutory provision making it unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity to use or invest, directly or indirectly, any part of such income provides a cause of action for injuries arising from actual use or investment of racketeering income, but not for injuries arising from underlying racketeering activity. Eastern Corporate Federal Credit Union v. Peat, Marwick, Mitchell & Co., D.Mass.1986, 639 F.Supp. 1532. Racketeer Influenced And Corrupt Organizations 16

Insurers which issued payment and performance bonds on public contracts could not recover against bank which acted as escrow agent, for receiving income derived from pattern of racketeering under 18 U.S.C.A. § 1962(a),

100. Interest in enterprise, offenses generally

Group of policyholders failed to state Racketeer Influenced and Corrupt Organizations Act (RICO) claim against insurer’s independent auditor based on auditor’s allegedly preparing false and misleading financial statements for insurer which thereafter went into statutory rehabilitation; policyholders failed to allege that auditor had any part in operating or managing affairs of insurer and any additional services provided by auditor, such as computerization of accounting services and financial services, did not push its conduct over threshold to participation in affairs of an enterprise. *University of Maryland at Baltimore v. Peat, Marwick, Main & Co., C.A.3 (Pa.) 1993, 996 F.2d 1534.* Racketeer Influenced And Corrupt Organizations \(\Rightarrow 50\)

Section of RICO prohibiting person who received income derived from pattern of racketeering activity from using money to establish enterprise could not be basis for liability where parties receiving income were not specifically linked to use or investment of income in named enterprise. *Kehr Packages, Inc. v. Fidelcor, Inc., C.A.3 (Pa.) 1991, 926 F.2d 1406,* rehearing denied, certiorari denied 111 S.Ct. 2839, 501 U.S. 1222, 115 L.Ed.2d 1007. Racketeer Influenced And Corrupt Organizations \(\Rightarrow 35\)

Relationship between union and employees whose membership in local was for sole purpose of participation in union’s welfare fund was as a “representative” so that payments to union by person acting in interest of employer were violative of the Taft-Hartley Act and formed predicate acts required to establish a “pattern of racketeering activity” under statute making it unlawful to conduct or conspire to conduct an enterprise through a pattern of racketeering activity. *U.S. v. Pecora, C.A.3 (N.J.) 1986, 798 F.2d 614,* certiorari denied 107 S.Ct. 949, 479 U.S. 1064, 93 L.Ed.2d 998. Labor And Employment \(\Rightarrow 3271;\) Racketeer Influenced And Corrupt Organizations \(\Rightarrow 12\)

This section providing that it shall be unlawful for any person through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce does not exclude property rights such as leasehold from the term interest. *U. S. v. Jacobson, C.A.2 (N.Y.) 1982, 691 F.2d 110.* Commerce \(\Rightarrow 82.6;\) Racketeer Influenced And Corrupt Organizations \(\Rightarrow 14\)

Defendant county officials and entities did not acquire and or maintain an interest in county solid waste district through racketeering or unlawful debt collection such that it injured plaintiffs in collecting fees pursuant to said district, as required to establish that defendants violated Racketeer Influenced and Corrupt Organizations Act (RICO) provision prohibiting racketeering activity in acquiring entities involved in interstate and or foreign commerce, where district was created pursuant to Kentucky statute permitting counties to create such districts. *Masterson v. Meade County Fiscal Court, W.D.Ky.2007, 489 F.Supp.2d 740.* Racketeer Influenced And Corrupt Organizations \(\Rightarrow 50\)
Plaintiffs’ allegation that insurer and sales agents violated federal mail and wire fraud statutes in connection with their alleged scheme to defraud senior citizens into purchasing deferred annuities that were inappropriate for them was sufficient to state claim under provision of Racketeer Influenced and Corrupt Organizations Act (RICO) barring acquisition or maintenance of interest in or control over enterprise through pattern of racketeering activity, where complaint alleged that defendants generated income from their fraudulent scheme, which led to its acquisition, maintenance, and control of enterprise. In re National Western Life Ins. Deferred Annuities Litigation, S.D.Cal.2006, 467 F.Supp.2d 1071. Racketeer Influenced And Corrupt Organizations 75

Count alleging violation of section of Racketeer Influenced and Corrupt Organizations Act (RICO) making it “unlawful for any person through a pattern of racketeering activity *** to acquire or maintain *** any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce” failed to allege “acquisition” or “maintenance” injury distinct from the predicate acts. Burrowes v. Combs, S.D.N.Y.2004, 312 F.Supp.2d 449, affirmed 124 Fed.Appx. 70, 2005 WL 670644. Racketeer Influenced And Corrupt Organizations 75

Latvian corporation satisfied requirement, for bringing RICO cause of action against its American representative, that representative had obtained “interest in” or “control of” corporation, even though representative claimed that it had only taken control of funds of corporation, an action insufficient to constitute an “interest” or “control”; term “interest in” is defined to include participation in advantage, profit and responsibility, and degree to which representative had allegedly engaged in fraud made them participants in corporation at that level, and degree of participation also placed them in control of corporation. Nafta v. Feniks Intern. House of Trade (U.S.A.) Inc., E.D.N.Y.1996, 932 F.Supp. 422. Racketeer Influenced And Corrupt Organizations 50

Litigant failed to state Racketeer Influenced and Corrupt Organizations Act (RICO) claim on which relief could be granted pursuant to section of RICO which prohibits acquisition of interest in enterprise engaged in interstate or foreign commerce through pattern of racketeering activity or collection of unlawful debt, based on acts relating to lawsuit over ownership of certain real estate; litigant failed to allege that defendants acquired interest in any sort of enterprise. Davis v. Hudgins, E.D.Va.1995, 896 F.Supp. 561, affirmed 87 F.3d 1308, certiorari denied 117 S.Ct. 1440, 520 U.S. 1172, 137 L.Ed.2d 546. Racketeer Influenced And Corrupt Organizations 74

Insurer did not gain or maintain any control or interest in alleged enterprise--Michigan automobile insurance placement facility (MAIPF)--through use of alleged racketeering in connection with refusal to pay commission to salaried agents placing insurance through MAIPF; since statute required insurer to participate in MAIPF, it did not obtain its position through use of mail fraud or extortion, insurer's members on board of governors of MAIPF acquired positions either through appointment or election, and insurer's voting power in MAIPF was determined by number of non-MAIPF policies. Whaley v. Auto Club Ins. Ass’n, E.D.Mich.1995, 891 F.Supp. 1237, affirmed 129 F.3d 1266. Racketeer Influenced And Corrupt Organizations 50

Racketeer Influenced and Corrupt Organizations Act (RICO) provision prohibiting using proceeds from racketeering activity to acquire interest in enterprise affecting interstate or foreign commerce is directed specifically at use or investment of racketeering income, and requires that plaintiff's injury be caused by use or investment of

Fact that supplier of steam generator for nuclear power plant entered into contract to supply generators and other equipment, received payments under original contract and received payments for additional work and advanced its own commercial standing as supplier of such systems did not satisfy “interest” or “control” requirement of Racketeer Influenced and Corrupt Organizations Act (RICO) section making it unlawful for person through pattern of racketeering activity to acquire or maintain interest in or control of enterprise. *Portland General Elec. Co. v. Westinghouse Elec. Corp.*, W.D.Pa.1993, 842 F.Supp. 161. Racketeer Influenced And Corrupt Organizations § 50

Investors in tax shelters failed to state Racketeer Influenced and Corrupt Organizations Act (RICO) claim against outside attorneys for aiding and abetting founder and promoter of tax shelters in his efforts to invest income which was allegedly derived from racketeering activity in violation of RICO provision prohibiting acquisition or maintenance of any interest in or control of enterprise through pattern of racketeering activity; investors failed to allege that attorneys had acquired or maintained interest in any enterprise through pattern of racketeering activity. *Morin v. Trupin*, S.D.N.Y.1993, 835 F.Supp. 126. Racketeer Influenced And Corrupt Organizations § 74

To avoid dismissal of Racketeer Influenced and Corrupt Organizations Act (RICO) claim for failure to satisfy “conduct-prohibited activities” element, plaintiff must articulate how each defendant acquired or maintained interest in enterprise, or acquired control of enterprise, by means of racketeering activity. *Cadle Co. v. Schultz*, N.D.Tex.1991, 779 F.Supp. 392. Racketeer Influenced And Corrupt Organizations § 74

Alleged actions of airport authority and various officials in engaging in a campaign of misrepresentation and disparagement which compelled fixed-base operator to sell off some of its property at an undesirable price did not amount to the acquisition of an “interest” in fixed-base operator, which was the alleged “enterprise,” and therefore fixed-base operator failed to state a claim for violation of provision of Racketeer Influenced and Corrupt Organizations Act (RICO) prohibiting any person through a pattern of racketeering activity to acquire or maintain any interest in or control of any enterprise. *Northeast Jet Center, Ltd. v. Lehigh-Northampton Airport Authority*, E.D.Pa.1991, 767 F.Supp. 672. Racketeer Influenced And Corrupt Organizations § 50

“Interest” contemplated in sections of Racketeer Influenced and Corrupt Organizations Act (RICO) prohibiting use or investment of proceeds of racketeering activity in enterprise engaged in or affecting interstate commerce and acquiring or maintaining enterprise through proscribed pattern of racketeering activity or collection of unlawful debt is in nature of proprietary one, such as acquisition of stock, and “control” contemplated is in nature of control one gains through acquisition of sufficient stock to affect composition of board of directors. *Moffatt Enterprises, Inc. v. Borden, Inc.*, W.D.Pa.1990, 763 F.Supp. 143. Racketeer Influenced And Corrupt Organizations § 50

Brokerages and broker that allegedly induced investor to make inappropriate investments could not be held liable for violation of Racketeer Influenced and Corrupt Organizations Act (RICO) section proscribing person...
from gaining control of any interstate enterprise through pattern of racketeering; control over investor which was savings and loan could not be found from investor's alleged reliance on misrepresentations, although the investor was alleged to be enterprise engaged in or affecting interstate commerce. *Cooperativa de Ahorro y Credito Aguada v. Kidder, Peabody & Co., D.Puerto Rico 1991*, 758 F.Supp. 64. Racketeer Influenced And Corrupt Organizations

Limited partnership formed to fund development and marketing of computer software program adequately alleged that corporation that was to develop and market program acquired and maintained interest in enterprise for purposes of claim under Racketeer Influenced and Corrupt Organizations Act (RICO); partnership alleged that corporation's subsidiary was general partner of limited partnership and that corporation acquired, concealed, and secreted partnership assets by underreporting royalties. *Com-Tech Associates v. Computer Associates Intern., Inc., E.D.N.Y.1990*, 753 F.Supp. 1078, affirmed 938 F.2d 1574. Racketeer Influenced And Corrupt Organizations

Motion picture buyers adequately alleged that sellers' retained security interest in motion pictures amounted to acquisition of control over buyers' only income-producing assets to state RICO violation arising out of retaining interest in or control of enterprise through pattern of racketeering. *Vista Co. v. Columbia Pictures Industries, Inc., S.D.N.Y.1989*, 725 F.Supp. 1286. Racketeer Influenced And Corrupt Organizations

Corporation failed to state action against bank, which allegedly deposited checks drawn on corporation's account and forged by corporate employee, for violation of statute making it illegal for any person, through a pattern of racketeering activity, to acquire or maintain any interest in or control any enterprise; fact that bank may have acquired corporation's money through pattern of racketeering activity was insufficient “interest” to satisfy statute. *P.M.F. Services, Inc. v. Grady, N.D.Ill.1988*, 681 F.Supp. 549. Racketeer Influenced And Corrupt Organizations

Allegations that nuclear reactor manufacturer was directly involved in management of one enterprise and held voting rights in it, and that manufacturer had multimillion dollar contract with another enterprise, sufficiently alleged elements of “interest” or “control” necessary to support claim under RICO § 1962(b). *Cincinnati Gas & Elec. Co. v. General Elec. Co., S.D.Ohio 1986*, 656 F.Supp. 49. Racketeer Influenced And Corrupt Organizations

“Interest” in an enterprise engaged in interstate or foreign commerce, which is subject to forfeiture if acquired with income derived from the pattern of racketeering activity or through collection of an unlawful debt, is akin to a continuing proprietary right in the nature of a partnership or stock ownership, or holding a debt or claim, as distinguished from “equity” investment, rather than mere dividends or distributed profits. *U. S. v. Meyers, W.D.Pa.1977*, 432 F.Supp. 456. Forfeitures

101. Interstate commerce, offenses generally

To convict defendant of Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy, the government was not required to prove that defendant knew or should have known that his gang was engaged in, or its


Telephone use by nude dancing establishment owned and managed by defendants sufficiently affected interstate commerce to satisfy RICO nexus requirement; although phone calls to get approval for credit card transactions were placed to company in fact operated by FBI, defendants made telephone calls in interstate commerce to get credit card approvals even before Government took over credit card operation. U.S. v. Muskovsky, C.A.7 (Ill.) 1988, 863 F.2d 1319, certiorari denied 109 S.Ct. 1345, 489 U.S. 1067, 103 L.Ed.2d 813, habeas corpus denied 912 F.2d 467. Commerce 82.60

Nexus with interstate commerce required by RICO is “minimal.” R.A.G.S. Couture, Inc. v. Hyatt, C.A.5 (La.) 1985, 774 F.2d 1350. Commerce 82.60

Evidence that Cook County Circuit Court purchased equipment and office supplies from companies located outside the state of Illinois was sufficient to meet interstate commerce requirement in RICO prosecution involving deputy clerk of court. U.S. v. Conn, C.A.7 (Ill.) 1985, 769 F.2d 420. Commerce 82.60

Under RICO [18 U.S.C.A. § 1962(c)], it is the affairs of the enterprise, not the person charged with violating the statute, that must affect commerce; requirement is met if the enterprise affects interstate commerce through its activities, even if it is the racketeering activities which affect commerce. U.S. v. Conn, C.A.7 (Ill.) 1985, 769 F.2d 420. Commerce 82.60

Under Racketeer Influenced and Corrupt Organizations Act [18 U.S.C.A. § 1962(c)], the criminal enterprise need only have minimal impact upon interstate commerce, and fact that alcohol sold by defendants to liquor dealer had been manufactured out of state was sufficient to affect interstate commerce. U.S. v. Robinson, C.A.6 (Ky.) 1985, 763 F.2d 778. Commerce 82.60

Supplies used in defendant's bookmaking operations which originated outside Maryland provided a sufficient nexus between the enterprise and interstate commerce to invoke this section. U. S. v. Allen, C.A.4 (Md.) 1981, 656 F.2d 964. Commerce 82.60

Vignola, D.C.Pa.1979, 464 F.Supp. 1091, affirmed 605 F.2d 1199, certiorari denied 100 S.Ct. 1015, 444 U.S. 1072, 62 L.Ed.2d 753. Commerce 82.60

County prosecutor's office had requisite nexus with interstate commerce to be within jurisdiction of this section where interstate telephone calls regularly were placed from prosecutor's office, certain supplies and materials purchased and used by prosecutor's office had their origins outside state and persons who were not citizens or residents of state were involved in investigations and litigation conducted by prosecutor's office. U. S. v. Alto-mare, C.A.4 (W.Va.) 1980, 625 F.2d 5. Commerce 82.6

In a prosecution for violation of this section, the government must show a nexus of the enterprise to interstate or foreign commerce, albeit minimal. U. S. v. Rone, C.A.9 (Cal.) 1979, 598 F.2d 564, certiorari denied 100 S.Ct. 1345, 445 U.S. 946, 63 L.Ed.2d 780. Commerce 82.60

Conviction for conspiracy to violate this section could not be sustained on mere showing by government that defendants' activities satisfied five-man and 30-day requirements of section 1955 of this title; rather, government was required to show at least slight evidence that “enterprise” in question, a casino operation, affected interstate commerce. U. S. v. Nerone, C.A.7 (Ill.) 1977, 563 F.2d 836, certiorari denied 98 S.Ct. 1577, 435 U.S. 951, 55 L.Ed.2d 801. Conspiracy 47(7)

Activities of foreign corporation had requisite effect on interstate or foreign commerce for purposes of this section, where it was owned by American citizen, financed by American banks and businessmen, had numerous domestic creditors, served primarily American tourists, and its accounts were payable in United States dollars to an American corporation. U.S. v. Parness, C.A.2 (N.Y.) 1974, 503 F.2d 430, certiorari denied 95 S.Ct. 775, 419 U.S. 1105, 42 L.Ed.2d 801, on remand 408 F.Supp. 440. Commerce 82.10

Puerto Rican automobile insurers were enterprises “affecting interstate commerce,” as required to support insurers' claims alleging that insurance claimants violated Racketeer Influenced and Corrupt Organizations Act (RICO) by engaging in a scheme to defraud insurers by submitting false insurance claims, where insurers provided coverage for their policy holders outside of Puerto Rico in the continental United States. Puerto Rico American Ins. Co. v. Burgos, D.Puerto Rico 2011, 867 F.Supp.2d 216. Racketeer Influenced and Corrupt Organizations 47

Arbitration judgment creditor's allegations regarding debtor's representations to creditor that it would be paid for work performed, as subcontractor on project and pursuant to contract, were sufficient to establish predicate acts of mail or wire fraud in its action to enforce arbitration award of $314,925.59 on theory that debtor and its affiliated companies had violated Racketeer Influenced and Corrupt Organizations Act (RICO); allegations included who from debtor or its affiliated companies communicated with creditor, contents of communication, date of communication, and locations of persons involved. Plainville Elec. Products Co., Inc. v. Vulcan Advanced Mobile Power Systems, LLC, D.Conn.2009, 638 F.Supp.2d 245. Fraud 43; Telecommunications 1014(12)
Cable television subscribers did not sufficiently allege that conduct of cable operator, its principal security officials, and law firm interfered with interstate commerce, as required to support extortion claim as predicate act for Racketeer Influenced and Corrupt Organizations Act (RICO) claim; subscribers did not allege that any of the victims of alleged extortion regularly engaged in interstate commerce as required to document pattern of trade in interstate commerce under depletion of assets theory. **Calabrese v. CSC Holdings, Inc., E.D.N.Y.2003, 283 F.Supp.2d 797. Torts 436**

Allegation of provider of transportation services to Medicaid recipients, pursuant to contract with state Department of Human Services, that competitor used telecommunications lines to commit wire fraud adequately alleged activity affecting interstate commerce, as required to state civil claim against competitor's officers under Racketeer Influenced and Corrupt Organizations Act (RICO); use of wire communications in manner set forth by provider affected interstate commerce as a matter of law, and alleged racketeering activity also affected manner in which federal monies were spent. **Freeport Transit, Inc. v. McNulty, D.Me.2003, 239 F.Supp.2d 102. Commerce 82.60**

Retail gasoline service station failed to adequately plead pattern of racketeering activity against gasoline supplier, even though allegation of numerous fraudulent invoices sufficiently showed numerous related acts; allegation failed to show that activity either amounted to or posed threat of continued criminal activity. **Rhone v. Energy North, Inc., D.Mass.1991, 790 F.Supp. 353. Racketeer Influenced And Corrupt Organizations 72**

Association-in-fact enterprise must have sufficient nexus with interstate commerce, but nexus need only be minimal and plaintiff who alleges that defendant used instrumentality of interstate commerce, the United States Postal Service, to execute defendant's fraudulent scheme sufficiently has alleged such a nexus. **Cadle Co. v. Schultz, N.D.Tex.1991, 779 F.Supp. 392. Commerce 82.6; Racketeer Influenced And Corrupt Organizations 49**

Transfers of corporate funds to foreign corporations and alleged unauthorized purchase and sale of securities were transactions which affected interstate commerce and were thus cognizable under Racketeer Influenced and Corrupt Organizations Act. **Haggiag v. Brown, S.D.N.Y.1990, 728 F.Supp. 286. Commerce 82.60**

RICO plaintiffs' allegation of interstate use of mails and wires as having effect on interstate commerce sufficed to meet pleading requirement of effect on interstate commerce under RICO statute. **Hall American Center Associates Ltd. Partnership v. Dick, E.D.Mich.1989, 726 F.Supp. 1083. Commerce 82.60**

To state claim under Racketeer Influenced and Corrupt Organizations Act, plaintiff need not demonstrate or allege that predicate acts of racketeering activity themselves directly involved interstate commerce; plaintiff only need allege minimal nexus of enterprise to interstate or foreign commerce. **Shared Network Technologies, Inc. v. Taylor, N.D.Ga.1987, 669 F.Supp. 422. Commerce 82.60**

That home for aged received both, if not all, financial resources to aid elderly patients from Federal Government was sufficient to provide interstate commerce nexus required to establish RICO claim. **Khaimi v. Schonberger, 18 U.S.C.A. § 1962 Page 224**

E.D.N.Y.1987, 664 F.Supp. 54, affirmed 838 F.2d 1203. Commerce ☞ 82.60

Complaint by borrowers against mortgage broker satisfied requirement to state Racketeer Influenced and Corrupt Organizations Act claim that broker affect interstate commerce; complaint contained conclusory allegation to that effect, and it was difficult to imagine how mortgage broker could avoid participating in national credit markets. Ferleger v. First American Mortg. Co., N.D.Ill.1987, 662 F.Supp. 584. Racketeer Influenced And Corrupt Organizations ☞ 69


Even if representative of shipping association did file false affidavits in connection with Interstate Commerce Commission application, RICO plaintiff did not show any scheme to defraud it or that the conduct of the representative was part of the scheme. Tryco Trucking Co., Inc. v. Belk Stores Services, Inc., W.D.N.C.1986, 634 F.Supp. 1327. Racketeer Influenced And Corrupt Organizations ☞ 79


Receipt of equipment in question through interstate commerce sufficiently established nexus between interstate commerce and RICO enterprise, a franchisor of graphics centers, required in civil RICO action. Virden v. Graphics One, C.D.Cal.1985, 623 F.Supp. 1417. Commerce ☞ 82.60


Wire fraud allegations were deficient where they did not allege any use of interstate wires and where all parties to alleged fraud were Illinois residents and, therefore, wire fraud allegations did not confer jurisdiction over claim under Racketeer Influenced and Corrupt Organizations Act. Harris Trust and Suv. Bank v. Ellis, N.D.Ill.1985, 609 F.Supp. 1118, affirmed 810 F.2d 700. Racketeer Influenced And Corrupt Organizations ☞ 70; Telecommunications ☞ 1014(12)
Plaintiffs failed to prove requisite elements of prohibited activities section of Racketeer Influenced and Corrupt Organizations Act [18 U.S.C.A. § 1962(a, b)], that defendants received any income from alleged racketeering activity pattern or that they acquired interest in interstate commerce enterprise through such alleged pattern. American Nursing Care of Toledo, Inc. v. Leisure, N.D.Ohio 1984, 609 F.Supp. 419. Racketeer Influenced And Corrupt Organizations 


For an individual's conduct to be criminal under this section, the individual must operate enterprise affecting interstate commerce through pattern of racketeering activities; this section is not limited in scope to interstate racketeering activity. U. S. v. Joseph, E.D.Pa.1981, 510 F.Supp. 1001. Commerce 

Sufficient nexus was shown between sheriff's office and the alleged interstate commerce to support charge under this section. U. S. v. Cryan, D.C.N.J.1980, 490 F.Supp. 1234, affirmed 636 F.2d 1211. Racketeer Influenced And Corrupt Organizations 

Government must prove as element of violation of this section that enterprise in question affects interstate commerce; activity charged in indictment as unlawful must, through operation of the enterprise, affect commerce beyond the parameters of the state. U. S. v. Barber, S.D.W.Va.1979, 476 F.Supp. 182. Commerce 

In prosecution under this section government was required to prove that named enterprise was one engaged in, or that its activities affected, interstate or foreign commerce, and government met such burden through uncontroverted testimony that traffic court wherein bribery was shown contained “out-of-state” department to collect fines assessed against owners of cars registered out-of-state which had been ticketed in Philadelphia, that drivers whose out-of-state cars had been towed by Philadelphia police were obliged to go to traffic court and pay all outstanding fines before they could get their cars back, that large automobile leasing company located in Baltimore, Maryland had paid fines to traffic court and that traffic court had contracted New Jersey computer firm to provide printouts of scofflaws. U.S. v. Vignola, E.D.Pa.1979, 464 F.Supp. 1091, affirmed 605 F.2d 1199, certiorari denied 100 S.Ct. 1015, 444 U.S. 1072, 62 L.Ed.2d 753. Bribery 

In prosecution under Racketeer Influenced and Corrupt Organizations Act (RICO), government was required to show only de minimis, not substantial, nexus between organization's activities and interstate commerce. U.S. v. Espinoza, C.A.7 (Ill.) 2002, 52 Fed.Appx. 846, 2002 WL 31769470, Unreported, certiorari denied 123 S.Ct.
102. Investment of racketeering income, offenses generally

Allegation that partner in joint venture fraudulently took funds from settlement obtained by property owner who was other joint venturer, invested such funds into enterprise, and used funds to reduce indebtedness on land that property owner had taken from him through pattern of racketeering activity sufficiently alleged violation of Racketeer Influenced and Corrupt Organizations Act (RICO) section prohibiting person who has received income from pattern of racketeering activity from investing that income in enterprise. Crowe v. Henry, C.A.5 (La.) 1995, 43 F.3d 198, rehearing denied. Racketeer Influenced And Corrupt Organizations

Donations antiabortion groups received from supporters were not derived from racketeering activity so as to form basis for RICO action by women's health centers providing abortion services and women's group; racketeering activity alleged was extortion under Hobbs Act, directed at health centers, employees and patients, but alleged relationship between defendants' criminal acts and their supporters voluntary contributions was too tenuous to satisfy requirements; plaintiffs did not allege that contributors would not have donated money to defendants but for defendant's predicate racketeering acts, and therefore income was not derived from racketeering activity. National Organization for Women, Inc. v. Scheidler, C.A.7 (Ill.) 1992, 968 F.2d 612, rehearing denied, certiorari granted in part 113 S.Ct. 2958, 508 U.S. 971, 125 L.Ed.2d 659, reversed 114 S.Ct. 798, 510 U.S. 249, 127 L.Ed.2d 99, rehearing denied 114 S.Ct. 1340, 510 U.S. 1215, 127 L.Ed.2d 688, on remand 25 F.3d 1053, rehearing and suggestion for rehearing en banc denied. Racketeer Influenced And Corrupt Organizations

Evidence was sufficient to support jury's determination beyond reasonable doubt that defendant used or invested at least part of bribe money received from drug smuggler, or some part of proceeds of that income, in the establishment or operation of multicorporation laundering enterprise, or at least some portion of it, charged in the indictment, and, thus, was sufficient to support conviction for violation of the Racketeer Influenced and Corrupt Organizations Act; the Act did not require that the tainted income be specifically and directly traced in proof from its original illegal receipt to its ultimately proscribed “use or investment” by the defendant. U.S. v. Vogt, C.A.4 (N.C.) 1990, 910 F.2d 1184, rehearing denied, certiorari denied 111 S.Ct. 955, 498 U.S. 1083, 112 L.Ed.2d 1043, dismissal of habeas corpus affirmed 17 F.3d 1435, certiorari denied 114 S.Ct. 1648, 511 U.S. 1071, 128 L.Ed.2d 367. Racketeer Influenced And Corrupt Organizations

Former employee's complaint against parent company and its subsidiaries adequately alleged that companies used money derived from pattern of racketeering to invest in enterprise as required by RICO statute; complaint alleged that subsidiaries and parent received funds from illicit scheme whereby one subsidiary would be created as front for purpose of charging fees to customers of other subsidiary for services which were not performed. Shearin v. E.F. Hutton Group, Inc., C.A.3 (Del.) 1989, 885 F.2d 1162. Racketeer Influenced And Corrupt Organizations

In the absence of showing that loans made to corporation represented funds obtained from a source prohibited by RICO, majority shareholder who made the loans and then caused them to be repaid to him from corporate income without the knowledge of other shareholders did not violate RICO prohibition against use of funds derived from a pattern of racketeering activity to acquire interest in legitimate enterprise. Garbade v. Great Divide Min.
Defendant had not violated subsection of Racketeer Influenced and Corrupt Organizations Act prohibiting investment in another enterprise of income derived from pattern of racketeering activity where complaint alleged that he had derived income from fraud, which might count as racketeering activity, but did not allege investment of that income in another enterprise. Hemmings v. Barian, C.A.7 (Wis.) 1987, 822 F.2d 688. Racketeer Influenced And Corrupt Organizations

Evidence of large cash deposits to account of defendant's business and of marijuana smuggling in which defendant and employees of his business played a role was sufficient to support finding of nexus between money and enterprise to satisfy “investment” requirement for conviction under this section. U.S. v. Cauble, C.A.5 (Tex.) 1983, 706 F.2d 1322, rehearing denied 714 F.2d 137, certiorari denied 104 S.Ct. 996, 465 U.S. 1005, 79 L.Ed.2d 229. Racketeer Influenced And Corrupt Organizations

Evidence of indirect investment of proceeds of racketeering activity into enterprise affecting interstate commerce is sufficient to establish violation of this section, which governs prohibited activities. U. S. v. McNary, C.A.7 (Ill.) 1980, 620 F.2d 621. Racketeer Influenced And Corrupt Organizations

Allegations that bank provided accounts to Islamic charities which in turn funded terrorist operations and that bank maintained investments in other Islamic banks failed to state a cause of action under the Anti-Terrorism Act (ATA), the Racketeer Influenced and Corrupt Organizations Act (RICO), or the Torture Victim Protection Act (TVPA), for purposes of actions arising out of the September 11th attacks; assertions that bank acted with knowledge of the support the charities allegedly provided to terrorists were conclusory and purely speculative. In re Terrorist Attacks on September 11, 2001, S.D.N.Y.2006, 464 F.Supp.2d 335, affirmed 714 F.3d 118. Aliens, Immigration, And Citizenship; Racketeer Influenced And Corrupt Organizations

Allegations that Racketeer Influenced and Corrupt Organizations Act (RICO) enterprise invested income derived from a pattern of racketeering activity in a competing business which appropriated opportunities of a partnership in which plaintiffs were minority partners satisfied the investment injury requirement of RICO subsection prohibiting investment of income derived from a pattern of racketeering activity; however, alleged reinvestment of funds into defendant partnership's managing agent, thereby permitting it to continue its fraudulent scheme, did not constitute a distinct investment injury. Lugosch v. Congel, N.D.N.Y.2006, 443 F.Supp.2d 254, reconsideration denied 2006 WL 2645125. Racketeer Influenced And Corrupt Organizations

Count alleging violation of section of Racketeer Influenced and Corrupt Organizations Act (RICO) making it “unlawful for any person who has received any income derived *** from a pattern of racketeering activity *** to use or invest *** any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce” failed to allege “use or investment injury.” Burrowes v. Combs, S.D.N.Y.2004, 312 F.Supp.2d 449, affirmed 124 Fed.Appx. 70, 2005 WL 670644. Racketeer Influenced And Corrupt Organizations
Real property owners who failed to distinguish in their complaint harm that resulted from reinvestment of alleged racketeering proceeds from harm caused by allegedly fraudulent activities of mortgage holders failed to state a claim under Racketeer and Corrupt Organizations Act (RICO) provision prohibiting investment of racketeering-derived income, despite claim that mortgage holders used fraudulently obtained proceeds to create affiliated company that assisted with fraudulently administered property insurance program and to widen RICO enterprise. Charleswell v. Chase Manhattan Bank, N.A., D.Virgin Islands 2004, 308 F.Supp.2d 545. Racketeer Influenced And Corrupt Organizations 75

Commercial vehicle insurer failed to allege that it suffered “injury” that resulted from investment by insurance broker and others in racketeering activity, as required to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO) section prohibiting use of money from pattern of racketeering in enterprise; insurer’s alleged injury, which consisted of providing insurance at rates less than it could have charged had it known truth, did not result from investment in racketeering proceeds, but rather it flowed directly from defendants’ predicate fraudulent acts. United States Fire Ins. Co. v. United Limousine Service, Inc., S.D.N.Y.2004, 303 F.Supp.2d 432. Racketeer Influenced And Corrupt Organizations 62

Cable subscribers failed to allege distinct injuries resulting from alleged investment of racketeering income apart from injuries resulting from predicate acts of mail and wire fraud, as required to support claim that cable operator, its principal security officials, and law firm violated section of Racketeer Influenced and Corrupt Organizations Act (RICO) prohibiting investment of racketeering income; even though subscribers alleged injuries from cable operator’s demands either that subscribers pay settlement demand or be sued for allegedly purchasing unauthorized cable decoders, subscribers did not describe how racketeering income acquired by cable operator was invested and resulted in injury to them. Calabrese v. CSC Holdings, Inc., E.D.N.Y.2003, 283 F.Supp.2d 797. Racketeer Influenced And Corrupt Organizations 75

Requirement of pleading “investment use” in order to recover under RICO provision barring use of income derived from pattern of racketeering activity to invest in enterprise does not force plaintiff to chose whether to bring given claim of injury either under that section or under the prohibition participating in enterprise through a period of racketeering activity; rather, it only requires that allegations of use of racketeering proceeds to invest in enterprise be supported by distinct allegations of how the use or investment of illicit income played a causative role. In re American Honda Motor Co., Inc. Dealerships Relations Litigation, D.Md.1996, 941 F.Supp. 528. Racketeer Influenced And Corrupt Organizations 50

In order to recover under Racketeer Influenced and Corrupt Organizations Act (RICO) section prohibiting investment of funds derived from pattern of racketeering activity in enterprise engaged in interstate commerce, plaintiffs must plead that injury flowed from defendant’s use or investment of racketeering income, not predicate acts themselves. Brooks v. Bank of Boulder, D.Colo.1995, 891 F.Supp. 1469. Racketeer Influenced And Corrupt Organizations 75

Investors in tax shelters failed to state Racketeer Influenced and Corrupt Organizations Act (RICO) claim
against outside attorneys for aiding and abetting founder and promoter of tax shelters in his efforts to invest income which was allegedly derived from racketeering activity; investors failed to allege that attorneys personally received income derived from pattern of racketeering activity and invested it to gain control of RICO enterprise. Morin v. Trupin, S.D.N.Y.1993, 835 F.Supp. 126. Racketeer Influenced And Corrupt Organizations

Although civil Racketeer Influenced and Corrupt Organizations Act (RICO) plaintiff alleged that investment of racketeering income was “substantial factor” in causing some of its injuries because said income was used to create new enterprise member companies that in turn defrauded plaintiff, plaintiff failed to show that these newly-formed, racketeering income funded enterprise members perpetrated additional fraudulent acts against plaintiff, so as to state cause of action for RICO injury resulting from investment of income derived from pattern of racketeering activity. Standard Chlorine of Delaware, Inc. v. Sinibaldi, D.Del.1992, 821 F.Supp. 232. Racketeer Influenced And Corrupt Organizations

Franchisees failed to state claim against franchisor and its principal under Racketeer Influenced and Corrupt Organizations Act (RICO) section prohibiting investment of racketeering proceeds in enterprise, despite franchisees' claim that defendants' investment of illicit proceeds in enterprise increased value of franchises to be sold, forcing franchisees to pay higher price for unsuccessful franchises; argument was not persuasive, as any increase in value of future franchise would be more than offset by injury to franchisor's reputation when prior franchises would fail. Giuliano v. Everything Yogurt, Inc., E.D.N.Y.1993, 819 F.Supp. 240. Racketeer Influenced And Corrupt Organizations

Business account holders failed to state claim for relief under Racketeer Influenced and Corrupt Organizations Act (RICO) provision making it unlawful to use or invest income derived from pattern of racketeering activity in an enterprise, against bank which assessed fees against account holders for checks held for insufficient funds, as account holders did not allege that bank invested money which it received from account holder or that account holder suffered some injury as result of bank's investment. Marrazzo v. Bucks County Bank and Trust Co., E.D.Pa.1993, 814 F.Supp. 437. Racketeer Influenced And Corrupt Organizations


Employees who entered into wage deferment agreements with employer that subsequently went bankrupt did not state claim for relief under RICO, notwithstanding fact that employer invested proceeds of its alleged racketeering activity, which was based on claimed acts of mail fraud, in itself, where complaint demonstrated that employees were not injured by investment in employer or association of employer and purchasers; injury was not shown from use or investment of racketeering income; injuries employees alleged were losses of wages, caused by alleged fraud, rather than defendants' subsequent investment proceeds, and investment did not cause subsequent losses merely by prolonging existence of employer, since employer's continued existence benefited


Claim that family members received proceeds of alleged fraudulent acts in perpetuating Racketeer Influenced and Corrupt Organizations Act (RICO) enterprise was insufficient to allege that proceeds derived from pattern of racketeering activity had been invested in or used to acquire interest in or otherwise to establish or operate enterprise; RICO violation would have been stated only if commission of predicate acts was made possible through operation of enterprise financed by investment of funds gained through pattern of racketeering activity. Firestone v. Galbreath, S.D.Ohio 1990, 747 F.Supp. 1556, affirmed in part 976 F.2d 279, rehearing denied, certified question answered 616 N.E.2d 202, 67 Ohio St.3d 87, answer to certified question conformed to 25 F.3d 323, on remand 895 F.Supp. 917. Racketeer Influenced And Corrupt Organizations

Ability to purchase stock at price less than its true market value due to fraud could be considered income for purposes of Racketeer Influenced and Corrupt Organizations Act requirement that defendants derive income from pattern of racketeering activity; savings which were a direct result of fraudulent or otherwise illegal activity could be considered income, even though savings were merely used by defendants to purchase more stock than they would have purchased had price been at its true market value. Azurite Corp. Ltd. v. Amster & Co., S.D.N.Y.1990, 730 F.Supp. 571. Racketeer Influenced And Corrupt Organizations


Using income from mineral interest to invest in children's trust did not violate statute prohibiting use or investment of income derived from pattern of racketeering activity to acquire interest in, or operate, enterprise engaged in, or activities of which affect, interstate commerce; trust was not enterprise, and there was no allegation that trust was involved in interstate commerce. Marriott Bros. v. Gage, N.D.Tex.1988, 704 F.Supp. 731, opinion supplemented on denial of reconsideration 717 F.Supp. 458, affirmed 911 F.2d 1105, rehearing denied. Racketeer Influenced And Corrupt Organizations

Clinic's allegation that former physician employee and members of his new health care organization encouraged clinic's former obstetric patients to pay clinic less than they were billed, which resulted in correspondingly higher payments to new health care organization, adequately alleged that defendants used income derived, directly or indirectly, from pattern of racketeering activity in their own operation for purposes of RICO claim, where plaintiffs established existence of pattern of racketeering and effect upon interstate commerce. Hinsdale Women's Clinic, S.C. v. Women's Health Care of Hinsdale, N.D.Ill.1988, 690 F.Supp. 658. Racketeer Influenced And Corrupt Organizations

Insurer's allegations, that individual who operated pharmacy used proceeds from his racketeering activity of submitting false and fraudulent claims for prescriptions to operate pharmacy and that insurer was injured by opera-
tion of pharmacy, were sufficient to state cause of action under RICO section proscribing using or investing income derived from pattern of racketeering activity in enterprise which is engaged in, or the activities of which affect, interstate commerce, although defendant individual who operated pharmacy allegedly did not acquire or establish pharmacy with proceeds from racketeering activity. Blue Cross of Western Pennsylvania v. Nardone, W.D.Pa.1988, 680 F.Supp. 195. Racketeer Influenced And Corrupt Organizations

To establish that defendant invested income derived from pattern of racketeering activity in establishment or operation of enterprise as required under § 1962(a) of RICO, plaintiff must be able to show not only that defendant invested illegally obtained proceeds in enterprise, but that investment caused plaintiff's harm. NL Industries, Inc. v. Gulf & Western Industries, Inc., D.Kan.1986, 650 F.Supp. 1115. Racketeer Influenced And Corrupt Organizations

Complaint which alleged that majority stockholder withdrew funds from corporation did not allege RICO violation on theory of investment of racketeering funds in an enterprise. Garbade v. Great Divide Min. and Mill. Corp., D.Colo.1986, 645 F.Supp. 808, affirmed 831 F.2d 212. Racketeer Influenced And Corrupt Organizations

Complaint asserting brokers were defrauded out of commissions in connection with acquisition of commercial real estate failed to state a claim under section of Racketeer Influenced and Corrupt Organizations Act (RICO) dealing with prohibition on use or investment of income from pattern of racketeering activity, absent sufficient allegation that use of alleged racketeering income injured plaintiff brokers; complaint proffered conclusory allegations that other brokers and client derived substantial proceeds through pattern of racketeering activity and conspired to invest, and used or invested, such proceeds in operation of association-in-fact enterprises. Kades v. Organic Inc., S.D.N.Y.2003, 2003 WL 470331, Unreported. Racketeer Influenced And Corrupt Organizations

After determining that all federal claims would be dismissed, district court would decline to exercise supplemental jurisdiction and instead would dismiss without prejudice brokers' additional state law claims against other brokers and customers for fraudulent misrepresentations, tortious interference, negligent misrepresentation, breach of contract, unjust enrichment, and violation of New York Wage Act. Kades v. Organic Inc., S.D.N.Y.2003, 2003 WL 470331, Unreported. Federal Courts

103. Mens rea, offenses generally--Generally

Defendant knowingly participated in criminal enterprise's affairs, as required for substantive conviction under Racketeer Influenced and Corrupt Organizations Act (RICO), through his admitted role in murder and attempt to extort money from individual who owed debt to another member of motorcycle club, as well as through his participation in club's drug-distribution activities. U.S. v. Fowler, C.A.6 (Ohio) 2008, 535 F.3d 408, certiorari denied 129 S.Ct. 661, 555 U.S. 1060, 172 L.Ed.2d 636, appeal after new sentencing hearing 450 Fed.Appx. 494, 2011 WL 6117947. Racketeer Influenced And Corrupt Organizations

Bank could not reasonably rely on borrowers' allegedly fraudulent misrepresentations, and thus could not estab-
lish bank fraud as predicate offense in civil action under Racketeer Influenced and Corrupt Organizations (RICO) Act, if its officers were aware of, and participated in, borrowers' activities, even if officers were acting adversely to bank, unless officers' actions exhibited total abandonment of bank's interests. Bank of China, New York Branch v. NBM LLC, C.A.2 (N.Y.) 2004, 359 F.3d 171, for additional opinion, see 89 Fed.Appx. 751, 2004 WL 322484, certiorari granted in part 125 S.Ct. 2956, 545 U.S. 1138, 162 L.Ed.2d 886, certiorari dismissed 126 S.Ct. 675, 546 U.S. 1026, 163 L.Ed.2d 545, on remand 2004 WL 1907308. Banks And Banking

Racketeer Influenced and Corrupt Organizations Act (RICO) does not impose mens rea requirement beyond that found in predicate crimes. U.S. v. Blinder, C.A.9 (Nev.) 1993, 10 F.3d 1468. Racketeer Influenced And Corrupt Organizations

Count charging conducting the affairs of an enterprise through a pattern of racketeering activity does not include a scienter element over and above that required by predicate crimes. U.S. v. Boylan, C.A.2 (N.Y.) 1980, 620 F.2d 359, certiorari denied 101 S.Ct. 103, 449 U.S. 833, 66 L.Ed.2d 38. Commerce; Racketeer Influenced And Corrupt Organizations

In prosecution under this section in connection with enterprise specializing in prostitution, evidence was sufficient as to all the defendants despite contention that the government was able to demonstrate as to some of the defendants only that they were in some sense associated with other defendants who were themselves engaged in criminal activity and thus failed to show willful participation in the enterprise, where there was evidence showing supervisory activity by each of the male defendants and participation in prostitution by female defendants. U.S. v. McLaurin, C.A.5 (Fla.) 1977, 557 F.2d 1064, rehearing denied 562 F.2d 1257, rehearing denied 562 F.2d 1258, certiorari denied 98 S.Ct. 743, 434 U.S. 1020, 54 L.Ed.2d 767. Racketeer Influenced And Corrupt Organizations

Former employees who sued construction companies and principal, alleging that employment of undocumented aliens depressed their wages, failed to plead companies' commission of predicate act by knowingly hiring aliens, as required to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO); complaint did not contain necessary allegation under Immigration and Nationality Act (INA) that defendants knew that at least 10 aliens they hired were brought into country by someone else. Nichols v. Mahoney, S.D.N.Y.2009, 608 F.Supp.2d 526. Aliens, Immigration, And Citizenship

Genuine issue of material fact as to whether purported partner in allegedly fictitious company was aware of, and participant in, alleged scheme to defraud merchandiser precluded summary judgment in merchandiser's action against partner for conspiracy, fraud, and Racketeer Influenced and Corrupt Organizations Act (RICO) violations. International Floor Crafts, Inc. v. Adams, D.Mass.2008, 578 F.Supp.2d 231. Federal Civil Procedure

Genuine issues of material fact, regarding whether vendor knowingly engaged in plan to defraud home purchasers and used mail and wires in furtherance thereof, precluded summary judgment on claim brought under Racketeer Influenced and Corrupt Organizations Act (RICO) by purchasers, alleging fraudulent scheme to sell

Complaint did not allege that defendants committed mail or wire fraud by scheme disclosing intent to defraud and use of mails or interstate wire communications in furtherance of that scheme, as required to state Racketeer Influenced and Corrupt Organizations Act (RICO) claim based on fraud. *Synergy Financial, L.L.C. v. Zarro*, W.D.N.C.2004, 329 F.Supp.2d 701. Fraud 43; Telecommunications 1014(12)


Alleged Ponzi scheme investors’ allegations that scheme promoters orchestrated “stand-in” scheme whereby temporary investors were used to satisfy minimum subscription levels, and that they knew statements in offering memoranda were false or materially incomplete, adequately alleged willfulness, as required for violation of statute governing sale of securities by means of communication in interstate commerce to serve as Racketeer Influenced and Corrupt Organizations Act (RICO) predicate act. *Burke v. Dowling*, E.D.N.Y.1995, 944 F.Supp. 1036. Securities Regulation 60.45(1)

Employer failed to state cause of action in complaint against international union under Racketeer Influenced and Corrupt Organizations Act (RICO) section prohibiting control of enterprise through racketeering activity, and prohibiting conduct of enterprise’s affairs through racketeering activity; complaint failed to allege voluntary act or omission from which it could be inferred that international union intended to participate in alleged extortion scheme. *National Elec. Ben. Fund v. Heary Bros. Lightning Protection Co., Inc.*, W.D.N.Y.1995, 931 F.Supp. 169. Racketeer Influenced And Corrupt Organizations 74

Corporation’s former chief executive officer (CEO) failed to sufficiently allege requisite fraudulent intent to support his claim that investors who gained control of corporation engaged in “racketeering activity” in violation of Racketeer Influenced and Corrupt Organizations Act (RICO); CEO failed to show that transaction entered into between corporation and investors provided investors with “clear opportunity” to effectuate their admitted desire to control corporation, as CEO retained control over four of eight seats on corporate board, and CEO’s cession in termination of voting agreement that had granted him certain powers was not result of duress. *Powers v. British Vita, P.L.C.*, S.D.N.Y.1994, 842 F.Supp. 1573, affirmed in part , reversed in part 57 F.3d 176. Racketeer Influenced And Corrupt Organizations 70

Complaint by discharged police officer under provisions of Racketeer Influenced and Corrupt Organizations Act was sufficient to state a viable claim against chief of police and assistant chief, but was not sufficient to state a viable claim against city which, being a mere corporation which could only act through its officers, was incapable of informing mens rea or criminal intent necessary to perform an act of racketeering. *Massey v. City of Oklahoma City*, W.D.Okla.1986, 643 F.Supp. 81. Racketeer Influenced And Corrupt Organizations 69
Indictment sufficiently stated under Racketeer Influenced and Corrupt Organizations Act (RICO), that public official had contemporaneous knowledge of colleague's allegedly illegal activities and overarching scheme with regard to development, by alleging that official and colleague devised scheme, official participated in directing public employee to remove documents from government files in cover-up effort, and official participated in hiring outside lawyers to help colleague avoid filing her statement of financial interests (SFI) and threatened defamation lawsuit against local newspaper for publishing story about colleague's relationship with developer. U.S. v. Gordon, C.A.3 (Del.) 2006, 183 Fed.Appx. 202, 2006 WL 1558952, Unreported.

104. ---- Economic purpose, mens rea, offenses generally


Common purpose requirement for association-in-fact enterprise under Racketeer Influenced and Corrupt Organizations Act (RICO) case was satisfied in hourly employees' action against employer alleging that employer had worked with recruiters and temporary employment agencies to recruit and employ illegal aliens in order to cut costs and drive down wages of legal workers; alleged common purpose was to reap large economic benefit. Williams v. Mohawk Industries, Inc., C.A.11 (Ga.) 2005, 411 F.3d 1252, certiorari granted in part 126 S.Ct. 830, 546 U.S. 1075, 163 L.Ed.2d 705, certiorari dismissed as improvidently granted 126 S.Ct. 2016, 547 U.S. 516, 164 L.Ed.2d 776, on remand 465 F.3d 1277. Racketeer Influenced And Corrupt Organizations | 36

Sufficient “economic purpose” was established for application of Racketeer Influence and Corrupt Organizations Act to self-professed revolutionaries, where defendants' activities centered around commission of economic crimes, defendants were charged with ten robberies and attempted robberies of armored trucks, murder of guards and police officers at scene of crimes, and use of money obtained from those robberies to support enterprise members and to maintain safe houses. U.S. v. Ferguson, C.A.2 (N.Y.) 1985, 758 F.2d 843, certiorari denied 106 S.Ct. 124, 474 U.S. 841, 88 L.Ed.2d 102, certiorari denied 106 S.Ct. 125, 474 U.S. 841, 88 L.Ed.2d 102, certiorari denied 106 S.Ct. 592, 474 U.S. 1032, 88 L.Ed.2d 572. Racketeer Influenced And Corrupt Organizations | 22

105. Misrepresentations, offenses generally

Operators of a complex investment program, which purportedly allowed investors to lease thoroughbred mares, breed those mares for a season and then keep the resulting foal, and later provided alternative mineral investment opportunities, acted recklessly with respect to potentially misleading information provided to investors, as required to establish an intent to defraud for mail or wire fraud as a predicate offense under the Racketeer Influenced and Corrupt Organizations Act (RICO), where operators were aware that mare lease interests had been oversold, operators participated in the creation of a related investment entity to conceal the oversold mare lease
interests, and operators had financial and operational control over subsidiary involved in overselling mare lease interests. In re ClassicStar Mare Lease Litigation, C.A.6 (Ky.) 2013, 2013 WL 3746220. Postal Service 35(5); Telecommunications 1014(3)

Determining whether bank artificially inflated its stated prime rate in violation of Illinois Consumer Fraud and Deceptive Practices Act and mail fraud provisions of Racketeer Influenced and Corrupt Organizations Act (RICO) to defraud prime plus borrowers involved same considerations involved in determining if stated prime rate was good faith estimate of rate that bank expected to charge to its largest and most creditworthy commercial borrowers (LMCBs) as required by common-law duty of good faith and fair dealing. Haroco, Inc. v. American Nat. Bank and Trust Co. of Chicago, C.A.7 (Ill.) 1994, 38 F.3d 1429. Antitrust And Trade Regulation 209; Racketeer Influenced And Corrupt Organizations 10

Borrowers failed to plead with sufficient particularity claim that Florida attorney and his law firm participated in fraudulent advance fee lending scheme, in violation of Racketeer Influenced and Corrupt Organizations Act (RICO), by misrepresenting identity of enterprise's principals and allegedly lenders' ability to fund loans, where complaint did not allege with particularity to whom misrepresentations were made, when misrepresentations were made, or how they constituted mail or wire fraud. CGC Holding Co., LLC v. Hutchens, D.Colo.2011, 824 F.Supp.2d 1193, motion to certify appeal denied 896 F.Supp.2d 970. Federal Civil Procedure 636

In pleading “racketeering activity” element of claims for alleged violations of Racketeer Influenced and Corrupt Organizations Act (RICO) premised upon mail or wire fraud, mortgagors failed to plead with sufficient specificity, under fraud pleading rule, misrepresentations that allegedly were made to various mortgagors by lender or related mortgage lending businesses when mortgagors asserted only that alleged misrepresentations were made before mortgagors agreed to refinance their loan with lender or that alleged misrepresentation was made before mortgagor agreed to loan refinancing, and mortgagors made no specific allegations regarding time frame in which misrepresentations purportedly occurred; fraud pleading rule required more specificity as to time and place of misrepresentations. In re Countrywide Financial Corp. Mortg. Marketing and Sales Practices Litigation, S.D.Cal.2009, 601 F.Supp.2d 1201. Federal Civil Procedure 636

Insofar as consumers' Racketeer Influenced and Corrupt Organizations Act (RICO) and California consumer fraud claims against drug manufacturer and other defendants were based solely on allegations that defendants promoted prescription drug for off-label purposes, they constituted an impermissible attempt to bring a private suit for violations of Food, Drug, and Cosmetics Act (FDCA), however, insofar as consumers could identify specific representations by defendants that were literally false, misleading, or contained material omissions, the claims were actionable under RICO and California consumer fraud laws; allegations of off-label promotion were, in essence, misbranding claims within purview of Food and Drug Administration (FDA). In re Epogen & Aranesp Off-Label Marketing & Sales Practices Litigation, C.D.Cal.2008, 590 F.Supp.2d 1282. Antitrust And Trade Regulation 222; Health 314; Health 323; Racketeer Influenced And Corrupt Organizations 10

Damages that employer sought in its action against union under Racketeer Influenced and Corrupt Organizations Act (RICO) and its state law claims alleging tortious interference with contract and unfair trade practices were
reputational in nature, and thus employer was required under First Amendment to demonstrate that union's speech during its “corporate campaign” against employer was false and made with actual malice, even if union was engaging in extortionate practices, where employer alleged that union portrayed its business and operating practices in misleading or negative light, and maliciously published false, misleading, baseless, negative, and damaging information to its analysts, and employer sought lost profits and diminution of its stock price as result of corporate campaign. Smithfield Foods Inc. v. United Food and Commercial Workers Intern. Union, E.D.Va.2008, 584 F.Supp.2d 838, opinion corrected and superseded 585 F.Supp.2d 815. Antitrust And Trade Regulation 389(1); Constitutional Law 1912; Labor And Employment 1988; Racketeer Influenced And Corrupt Organizations 85; Torts 242

Participant in airline's frequent flyer program failed to allege that airline and others obtained frequent flyer miles that he earned by means of deliberate misrepresentations, as required to make out proximate cause element of mail and wire fraud claims, as predicate acts for purposes of his claim for violation of the Racketeer Influenced and Corrupt Organizations Act (RICO); rather, his fraud claim merely alleged that after his mileage was lost, airline and others falsely told him that it was not recoverable. Ficken v. AMR Corp., D.D.C.2008, 578 F.Supp.2d 134. Racketeer Influenced And Corrupt Organizations 62

Cigarette manufacturers that violated Racketeer Influenced and Corrupt Organizations Act (RICO) by fraudulently misrepresenting adverse health effects of active smoking, addictiveness of nicotine and cigarette smoking, their manipulation of cigarettes' nicotine content, health risks attached to light and low tar cigarettes, their marketing to youth, and adverse health effects of second-hand smoke would be required to issue corrective statements to prevent and restrain them from making fraudulent public statements on smoking and health matters in future, even though prior settlement agreement precluded some manufacturers from making any “material misrepresentation of fact regarding the health consequences of using any Tobacco Product,” where manufacturers had made material misrepresentations regarding health effects of smoking for over fifty years, manufacturers continued to make fraudulent affirmative statements on smoking and health issues, and additional corrective statements were necessary to prevent current and future advertisements from becoming part of continuing deception. U.S. v. Philip Morris USA, Inc., D.D.C.2006, 449 F.Supp.2d 1, for additional opinion, see 449 F.Supp.2d 1, clarified 477 F.Supp.2d 191, on reconsideration in part 783 F.Supp.2d 23, stay pending appeal denied 449 F.Supp.2d 988, stay granted 2006 WL 4608645, affirmed in part, vacated in part 566 F.3d 1095, 386 U.S.App.D.C. 49, certiorari denied 130 S.Ct. 3501, 177 L.Ed.2d 1090, certiorari denied 130 S.Ct. 3502, 177 L.Ed.2d 1090, rehearing denied 131 S.Ct. 57, 177 L.Ed.2d 1142, on remand 787 F.Supp.2d 68, clarified 778 F.Supp.2d 8, appeal dismissed 686 F.3d 839, 402 U.S.App.D.C. 41, clarification denied 793 F.Supp.2d 164. Injunction 1495

Lender, who was alleged to have participated with truck broker in scheme to defraud haulers, did not have to be shown to have made false representation to haulers to be held liable under Racketeer Influenced and Corrupt Organizations Act (RICO). Delta Pride Catfish, Inc. v. Marine Midland Business Loans, Inc., E.D.Ark.1991, 767 F.Supp. 951. Racketeer Influenced And Corrupt Organizations 50

Racketeer Influenced and Corrupt Organizations Act (RICO) claim, alleging that defendants failed to disclose existence of scheme to defraud customers of commodities firm by soliciting and stimulating excessive trading in commodities options, was primarily based on omissions, and therefore presumption of reliance was appropriate;
since customers' theory did not present individual reliance issues, claim could be determined on classwide basis except that, with respect to requisite element of proximate cause, defendants were entitled to opportunity to rebut reliance by presenting proof that individual members of plaintiff class did not rely. Waters v. International Precious Metals Corp., S.D.Fla.1996, 172 F.R.D. 479. Racketeer Influenced And Corrupt Organizations 77

Bed purchasers failed to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO), grounded on alleged misrepresentations by manufacturer and retailers with respect to propensity of beds to develop mold and ongoing campaign by defendants to withhold information about mold problem from general public; purchasers provided no details with respect to when statements were made, how statements misled public, and intent behind statements, and provided only generalized allegations as to any losses purchasers suffered. Stearns v. Select Comfort Retail Corp., N.D.Cal.2009, 2009 WL 1635931, Unreported. Federal Civil Procedure 636

106. Organized crime, offenses generally


Although this chapter may have been aimed at organized crime, it makes unlawful certain specific acts, and commission of the proscribed act is violation of this section. Heinold Commodities, Inc. v. McCarty, N.D.Ill.1979, 513 F.Supp. 311. Racketeer Influenced And Corrupt Organizations 1

107. Pattern of racketeering activity, offenses generally--Generally

See Notes of Decisions under section 1961 of this title.

Sufficient evidence established a pattern of racketeering activity, as required to support defendants' convictions for violating Racketeer Influenced and Corrupt Organizations Act (RICO); targets of defendants' violence were other drug dealers, all charged predicate acts were retaliation for a taunt or act of violence directed at member of defendants' organization, and there was a link between the organization's narcotics activity and violence for the purpose of protecting and furthering the narcotics business. U.S. v. Burden, C.A.2 (Conn.) 2010, 600 F.3d 204, certiorari denied 131 S.Ct. 251, 178 L.Ed.2d 251, on remand 2010 WL 5071043, certiorari denied 131 S.Ct. 953, 178 L.Ed.2d 804. Racketeer Influenced And Corrupt Organizations 28

Attorneys did not engage in a pattern of racketeering activity necessary to support pro se plaintiff's civil Racketeer Influenced and Corrupt Organizations Act (RICO) claim when, in response to plaintiff's newspaper advertisement opposing judge's election, they signed ad supporting judge's election that newspaper published instead of plaintiff's second ad opposing the judge; at best, attorneys engaged in a closed-ended series of predicate acts constituting a single scheme to accomplish a discrete goal directed at only one individual with no potential to extend to other persons or entities. Hall v. Witteman, C.A.10 (Kan.) 2009, 584 F.3d 859. Racketeer Influenced And Corrupt Organizations 27; Racketeer Influenced And Corrupt Organizations 29; Racketeer Influ-
enced And Corrupt Organizations 30

Injury alleged by lender as result of contractors' default on loans, as caused by alleged pattern of racketeering activity in violation of Racketeer Influenced and Corrupt Organizations Act (RICO), whereby loans were sought under false pretenses, fell within class of risks of harm sought to be prevented by RICO, as required to establish lender's standing to pursue RICO claims. Baisch v. Gallina, C.A.2 (N.Y.) 2003, 346 F.3d 366. Racketeer Influenced And Corrupt Organizations 59

Alleged fraudulent documentation and wire transfer whereby seller of export management business sought to defraud buyer of proceeds from its sale of goods to various customers satisfied relationship element of Racketeer Influenced and Corrupt Organizations Act's (RICO's) pattern requirement; the alleged mail and wire fraud occurred within 13 months and were related by a common purpose. J.D. Marshall Intern., Inc. v. Redstart, Inc., C.A.7 (Ill.) 1991, 935 F.2d 815. Racketeer Influenced And Corrupt Organizations 28; Racketeer Influenced And Corrupt Organizations 29

Conspiracy to murder, being accessory before the fact of murder, and conducting illegal gambling business were sufficiently related to constitute a "pattern of racketeering activity" under RICO, and the statute was not unconstitutionally vague as so applied, despite contention that there was no evidence that death of murder victim was related to card game or vice-versa, where defendant was member of an organized crime family and the acts with which he was charged were all related to the affairs of the family enterprise. U.S. v. Angiulo, C.A.1 (Mass.) 1990, 897 F.2d 1169, certiorari denied 111 S.Ct. 130, 498 U.S. 845, 112 L.Ed.2d 98, post-conviction relief denied 852 F.Supp. 54, denial of post-conviction relief affirmed 57 F.3d 38.


Joint venturers' purported fraudulent scheme to divert and conceal profits from contract for demolition and salvage work on two industrial plants from demolition company did not demonstrate pattern of racketeering activity, and thus was not actionable under Racketeer Influenced and Corrupt Organizations Act (RICO), despite company's contention that venturers engaged in wire fraud consisting of interstate telephone calls and emails on approximately weekly basis over nine month period, where alleged acts of wire fraud were properly characterized as parts of single, discrete criminal episode with singular objective of diverting profits from projects, alleged fraud arose out of single contract, and there was no specific threat of repetition extending indefinitely into future. Atlantic Acquisitions, LLC v. J.H. Reid General Contractor, D.Mass.2012, 909 F.Supp.2d 32. Racketeer Influenced And Corrupt Organizations 31

Brazilian ferrosilicon producers sufficiently alleged pattern of racketeering activity, as required to state civil Racketeer Influenced and Corrupt Organizations Act (RICO) claim against domestic producers for allegedly
conspiring to file fraudulent antidumping petition that resulted in assessment of antidumping duties causing Brazilian producers to withdraw from United States market; complaint alleged that domestic producers engaged in massive price-fixing and antidumping scheme involving 57 predicate offenses in furtherance of a ten-year conspiracy to manipulate entire North American market and to eliminate from competition every ferrosilicon producer in China, Russia, Kazakhstan, Ukraine, Venezuela, and Brazil, so that conspirators could maintain prices above ordinary market conditions that affected every purchase of ferrosilicon in United States.


Government sufficiently alleged that defendants engaged in a pattern of racketeering activity in indictment charging defendants with violation of Racketeer Influenced and Corrupt Organizations Act (RICO) section prohibiting participation in conduct of affairs of a RICO enterprise, by alleging that confidential witness paid bribes to defendants for over three years and that defendants would have continued taking bribes from confidential witness had the scheme not been terminated by the Federal Bureau of Investigation (FBI).


Professional corporation's allegations, that former bookkeeper, acting alone over three-year period, committed limited number of similar acts as part of single scheme to steal from one victim, her employer, failed to satisfy pattern requirement for Racketeer Influenced and Corrupt Organizations Act (RICO) claim.


Investors who sued ambulance services, affiliates and officers, alleging that they were induced to invest through series of misrepresentations, failed to aver that defendants received any income derived from pattern of racketeering activity to use or invest, as required to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO); although complaint averred that defendants used and invested income derived from pattern of racketeering activity in one or more interstate enterprises, it did not identify entity in which defendants invested racketeering income separate and apart from purported racketeering enterprise.


Allegations of senior citizen who purchased eight deferred annuity policies, read only with respect to one deferred annuity that was purchased within statute of limitations, were sufficient to meet “pattern” requirement for a civil Racketeer Influenced and Corrupt Organizations Act (RICO) claim, where senior citizen pled predicate acts of mail fraud and wire fraud, including the allegedly fraudulent marketing or sale of living trust forms, processing applications for deferred annuities, issuing age waivers, processing premium payments, payment of sales commissions, and processing penalties and surrender charges.


Former client's Racketeer Influenced and Corrupt Organizations Act (RICO) claim failed to demonstrate his alleged injuries derived from acts by attorney that sufficiently established a pattern of racketeering activity; only
claim of unlawful conduct by attorney related to his alleged failure to disclose a conflict of interest in having represented client as well as client's sisters in connection with somewhat related criminal proceedings, while inducing client to plead guilty to allegedly false accusations by sisters, and client's complaint contained nothing more than conclusory assertion that attorney on two occasions communicated with government agents by mail and facsimile about matters pertaining to client. Tenamee v. Schmukler, S.D.N.Y.2006, 438 F.Supp.2d 438.  

Racketeer Influenced And Corrupt Organizations 26; Racketeer Influenced And Corrupt Organizations 72

Contractors' allegations that property owners engaged in a single scheme over period of 17 months by pursing false or fraudulent claims and a sham arbitration to garner a large sum of money from contractors were insufficient to establish open-ended continuity, for purposes of proving a pattern under Racketeer Influenced and Corrupt Organizations Act (RICO) provision prohibiting conduct of enterprise's affairs through a pattern of racketeering activity; complaint alleged a single scheme to accomplish a discrete goal, alleged scheme only extended to contractors, and contractors did not allege that scheme was owners' regular way of conducting business. Gotfredson v. Larsen LP, D.Colo.2006, 432 F.Supp.2d 1163, motion to amend denied 2006 WL 2943008.  

Racketeer Influenced And Corrupt Organizations 27; Racketeer Influenced And Corrupt Organizations 28

Prospective beneficiaries of foreign foundation failed to adequately plead open-ended continuity, for purposes of establishing a pattern of racketeering activity under Racketeer Influenced and Corrupt Organizations Act (RICO) by trustees of domestic inter vivos and testamentary trusts; it defied logic to suggest that a threat of continued looting activity existed when there was nothing left to loot, and allegations about trustees' conduct toward other individuals not only lacked specificity required to plead a fraud claim, but also bore no relation to the predicate acts which allegedly injured beneficiaries. Weizmann Institute of Science v. Neschis, S.D.N.Y.2005, 421 F.Supp.2d 654.  

Racketeer Influenced And Corrupt Organizations 72

Police department's single predicate act of impounding plaintiff's vehicle did not amount to "pattern of racketeering activity" required to maintain Racketeer Influenced and Corrupt Organizations Act (RICO) action against department. Banks v. Department of Motor Vehicles for Cal., C.D.Cal.2006, 419 F.Supp.2d 1186.  

Racketeer Influenced And Corrupt Organizations 26

Conclusory allegations of attorney that private entities engaged in a racketeering enterprise that injured him by a pattern of coercion, intimidation, threats, and harassment, and by a pattern of mail and wire fraud, were insufficient to state a claim under Racketeer Influenced and Corrupt Organizations Act (RICO), where attorney did not allege specifically any racketeering activity or predicate actions by any defendants, and he did not plead with specificity the existence of a racketeering enterprise, or its purported hierarchy, organization, continuing structure, or activities. Jones v. National Communication and Surveillance Networks, S.D.N.Y.2006, 409 F.Supp.2d 456, affirmed 266 Fed.Appx. 31, 2008 WL 482599.  

Racketeer Influenced And Corrupt Organizations 72; Racketeer Influenced And Corrupt Organizations 73

Absent any allegation that corporation received any income through pattern of racketeering activity to use or invest in acquisition of an enterprise or that it acquired or maintained any interest in enterprise through pattern of racketeering activity, no Racketeer Influenced and Corrupt Organizations Act (RICO) claim was stated against
Disappointed bidder for satellite launch services contract with government adequately pleaded pattern of racketeering activity by employee of successful bidder, by adequately stating claims for at least two predicate acts including wire and mail fraud, witness tampering, and obstruction of justice in connection with successful bidder’s alleged use of confidential information of disappointed bidder. *Lockheed Martin Corp. v. Boeing Co.*, M.D.Fla.2005, 357 F.Supp.2d 1350. Racketeer Influenced And Corrupt Organizations

Competitive local telephone exchange carrier (CLEC) stated claim that Incumbent local exchange carrier (ILEC) required by Telecommunications Act to share its facilities with CLEC engaged in racketeering activity, for purposes of Racketeer Influenced and Corrupt Organizations Act (RICO), by submitting false billings and information regarding line losses caused by customer cancellations; intent to deceive was not ruled out as possibility, CLEC could be found to have relied on information even though it knew some was false, there was possibility that ILEC maintained itself through racketeering activities, and that CLEC sustained injury as result of activities. *Z-Tel Communications, Inc. v. SBC Communications, Inc.*, E.D.Tex.2004, 331 F.Supp.2d 513. Racketeer Influenced And Corrupt Organizations

Requirement for stating claim under Racketeer Influenced and Corrupt Organizations Act (RICO) requirement, that continuity of predicate acts be shown, was satisfied through allegations of open-ended continuity, involving continuation of concerted activity on part of employees of aircraft manufacturer, for the purpose of stealing trade secrets from competitors, after bidding on contract that prompted initial trade secret theft activities of employees was concluded. *Lockheed Martin Corp. v. Boeing Co.*, M.D.Fla.2004, 314 F.Supp.2d 1198. Racketeer Influenced And Corrupt Organizations

Loss of jobs of two union members, allegedly as result of opposing imposition of emergency trusteeship over union local, was insufficient to establish nexus under Racketeer Influenced and Corrupt Organizations Act (RICO) which required that RICO violation be the proximate cause of their terminations, as required to have standing to maintain civil action against international union and local union activists whom they alleged had conducted or conspired to conduct union affairs through a pattern of racketeering activity to place union local under emergency trusteeship to effectuate ouster of its principal officer. *Anderson v. Ayling*, E.D.Pa.2003, 297 F.Supp.2d 805, affirmed 396 F.3d 265. Racketeer Influenced And Corrupt Organizations

Allegations by shareholders in derivative action that corporate officers and majority shareholder mailed payments to insiders and members of group attempting hostile takeover, and misrepresented to court in salvage action that corporation did not intend to sell artifacts from shipwreck, were sufficient to establish pattern of racketeering activity, as required to state civil action under Racketeer Influenced and Corrupt Organizations Act (RICO); pattern of activity lasted 28 months, putative victims included not only corporation, but over one thousand shareholders, and potential for multiple, distinct injuries existed, including financial harm and loss of historically significant artifacts. *D’Addario v. Geller*, E.D.Va.2003, 264 F.Supp.2d 367. Racketeer Influenced And Corrupt Organizations
Material issues of fact existed as to whether two of founders of wholesale close-out company knew that third founder was working as independent sales representative for hosiery manufacturer, whether there was agreement that third founder would work exclusively for company, whether third founder's work as manufacturer's sales representative harmed company and other two founders, and whether third founder engaged in scheme to defraud company and other founders and to deprive them of their honest services by concealing his work for manufacturer and using company's resources to benefit that work, precluding summary judgment for third founder on claim that he violated Racketeer Influenced and Corrupt Organizations Act (RICO) by conducting company's affairs through pattern of racketeering activity. USA Certified Merchants, LLC v. Koebel, S.D.N.Y.2003, 262 F.Supp.2d 319, reconsideration denied 273 F.Supp.2d 501. Federal Civil Procedure 2509.5

Racketeer Influenced and Corrupt Organizations Act (RICO) is not aimed at single narrow criminal episode, even if that single episode involves behavior that amounts to several crimes. Soto Negron v. Taber Partners I, Ltd. Partnership, D.Puerto Rico 2002, 235 F.Supp.2d 105, affirmed 339 F.3d 35. Racketeer Influenced And Corrupt Organizations 27

Franchisees' allegations that president and vice president of franchisor defrauded them out of cost of franchise by mailing fraudulent documents connected with purchase of franchise failed to establish pattern of racketeering, as required to prove violation of Racketeer Influenced and Corrupt Organizations Act (RICO); president made only six mailings over approximately eight months and vice president made only one, and franchisees alleged only one victim, one scheme, and one injury. Bixby's Food Systems, Inc. v. McKay, N.D.Ill.1997, 985 F.Supp. 802. Racketeer Influenced And Corrupt Organizations 31

Plaintiff in order to sustain civil claim under Racketeer Influenced and Corrupt Organizations Act (RICO) must plead sufficient facts to establish existence of “pattern” of racketeering activity, which requires at least two predicate acts and is not automatically established by large number of unrelated acts; acts must be ordered and arranged so to exhibit relatedness and continuity, and continuity prong focuses RICO's reach on long-term criminal conduct. Menuskin v. Williams, E.D.Tenn.1996, 940 F.Supp. 1199, appeal dismissed 98 F.3d 1342, affirmed in part, reversed in part 145 F.3d 755. Racketeer Influenced And Corrupt Organizations 26; Racketeer Influenced And Corrupt Organizations 28

For purposes of prosecution under Racketeer Influenced and Corrupt Organizations Act (RICO), proof of pattern of racketeering activity requires showing that racketeering predicates are related, and that they amount to or pose threat of continued criminal activity. Butte Min. PLC v. Smith, D.Mont.1995, 876 F.Supp. 1153, affirmed 76 F.3d 287. Racketeer Influenced And Corrupt Organizations 28

Borrower's bankruptcy filing allegedly to enable sale of stock in cable television company to company's officer free and clear of lenders' claims to stock did not satisfy relatedness or continuity requirements to be part of same racketeering activity as alleged conspiracy between borrower and officer to get money from lenders under false pretense that borrower would transfer its shares in company to lenders; bankruptcy filing was not in furtherance of alleged conspiracy, and no threat of continuing criminal activity existed after fraud was exposed before the bankruptcy filing. Owens v. Wade, E.D.Pa.1992, 789 F.Supp. 168. Racketeer Influenced And Corrupt Organizations 28
Relationship element of pattern of racketeering was met where all of the acts involved the same type of misconduct occurring over a relatively short period of time and all the acts were taken with a common purpose of diverting business from one company to another. Midwest Grinding Co., Inc. v. Spitz, N.D.Ill.1991, 769 F.Supp. 1457, affirmed 976 F.2d 1016. Racketeer Influenced And Corrupt Organizations \(\rightarrow 28\); Racketeer Influenced And Corrupt Organizations \(\rightarrow 29\)

In prosecution for substantive violation of Racketeer Influenced and Corrupt Organizations Act (RICO) and aiding and abetting, alleged predicate acts of murder, extortion, and illegal gambling satisfied “continuity plus relationship” test for establishing pattern of racketeering activity; acts shared the same purpose of establishing and sustaining illegal sports and numbers gambling business that spanned 17-year period. U.S. v. Gatto, D.N.J.1990, 746 F.Supp. 432, reversed on other grounds 924 F.2d 491, rehearing denied. Racketeer Influenced And Corrupt Organizations \(\rightarrow 28\)

Allegations of concealment on part of wrongdoer do not serve as sufficient basis to establish open-ended scheme or threat of repetition to satisfy continuity requirement of pattern element under Racketeer Influenced and Corrupt Organizations Act; otherwise, every past act of wrongdoing that wrongdoer attempted to conceal could serve as basis for finding continuity. Ruby Development Corp. v. Charrim Development Corp., E.D.N.Y.1990, 742 F.Supp. 1213. Racketeer Influenced And Corrupt Organizations \(\rightarrow 72\)


To prove that a RICO defendant participated in a de facto enterprise through a pattern of racketeering the government need prove only that defendant was aware that such enterprise existed and that he engaged in the two acts of racketeering that were related to activities of, or affected, that enterprise. U.S. v. Castellano, S.D.N.Y.1985, 610 F.Supp. 1359. Racketeer Influenced And Corrupt Organizations \(\rightarrow 50\)

Use of mails or wires forms a “pattern,” for purposes of establishing “pattern of racketeering activity” element for claim under the Racketeer Influenced and Corrupt Organizations Act (RICO), if the uses are related and they amount to, or pose threat of, continued criminal activity. Digital Equipment Corp. v. Currie Enterprises, D.Mass.1992, 142 F.R.D. 16. Racketeer Influenced And Corrupt Organizations \(\rightarrow 31\)

Complaint asserting fraudulent non-payment of brokerage commissions did not sufficiently allege pattern of racketeering to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO), absent allegation of facts tending to show that racketeering predicate acts were related by having same purposes, results, participants, victims, or methods of commission, or otherwise were interrelated by distinguishing characteristics and

were not isolated events; allegations asserted fraudulent activity with respect to one real estate transaction but
did not contain factual allegations concerning such activity with respect to other transactions, and one defendant
was not involved in two of transactions at issue. Kades v. Organic Inc., S.D.N.Y.2003, 2003 WL 470331, Unre-
ported. Racketeer Influenced And Corrupt Organizations 72

108. ---- Continuity, pattern of racketeering activity, offenses generally

Sheriff's deputy could be convicted of conspiracy under Racketeer Influenced and Corrupt Organizations Act
(RICO), even if he did not accept or agree to accept two bribes, where evidence showed that sheriff committed
at least two acts of racketeering activity, by accepting numerous bribes, and that deputy knew about and agreed
40.1

Employee terminated after reporting an alleged tax fraud scheme to federal law enforcement agencies ade-
quately alleged a “pattern of racketeering activity” for purposes of the Racketeer Influenced and Corrupt Or-
ganizations Act (RICO) under the “continuity plus relationship” test, despite a claim that alleged acts of retali-
ation, including his termination, a lawsuit, and defamation, were unrelated to alleged acts of fraud, including
mail fraud, destroying records, and corrupt persuasion to get the employee to sign a confidentiality agreement;
the same three actors who offered the employee an increase in salary and payment of attorney's fees if he agreed
to sign a confidentiality agreement and release all claims were also responsible for his termination, and,
moreover, there was a temporal relationship among the predicate acts. DeGuelle v. Camilli, C.A.7 (Wis.) 2011,
664 F.3d 192, on remand 2012 WL 1933743. Racketeer Influenced and Corrupt Organizations 28

Allegations that recruiting company engaged in at least two-year scheme involving repeated international travel
to convince 200 or more Indian workers to borrow thousands of dollars to travel to United States for employ-
ment with company, only to find upon arrival that jobs did not exist, and regarding workers' treatment in United
States, satisfied continuity prong of pattern of racketeering element of workers' Racketeer Influenced and Cor-
Racketeer Influenced And Corrupt Organizations 28

Arrestee's allegations that detectives coordinated a scheme of widespread criminal misconduct to erroneously
prosecute arrestee and others for victim's murder and then covered it up failed to establish a pattern of racketeer-
ing activity, as required to state a civil claim against detective under Racketeer Influenced and Corrupt Organiz-
ations Act (RICO); the criminal activity, as alleged, had a built-in end point and once the frame-up was put to
rest, the scheme was over and arrestee pleaded himself out of showing a continuing threat of continuing activity.
Gamboa v. Velez, C.A.7 (Ill.) 2006, 457 F.3d 703. Racketeer Influenced And Corrupt Organizations 72

Five-day period during which casino owner allegedly converted for private use six checks designated solely for
government use was too short of a time frame to satisfy continuity requirement for imposition of civil liability
under Racketeer Influenced and Corrupt Organizations Act (RICO), absent allegation that acts alleged were part
of owner's regular way of doing business, or that activity would continue. Soto-Negron v. Taber Partners I,
C.A.1 (Puerto Rico) 2003, 339 F.3d 35. Racketeer Influenced And Corrupt Organizations 29
Conviction for violating Racketeer Influenced and Corrupt Organizations Act (RICO) was supported by evidence that mayor used the mails to file required statements of economic interest that failed to report kickback payments mayor was receiving from scheme with city prosecutor, which defrauded city of money received as kickbacks and voters of their intangible rights to mayor's honest services, and by duration of scheme, which extended over several years and thus permitted finding of pattern of racketeering. U.S. v. Genova, C.A.7 (Ill.) 2003, 333 F.3d 750, rehearing denied. Racketeer Influenced And Corrupt Organizations 7

Complaint asserting violation of Racketeer Influenced and Corrupt Organizations Act (RICO) failed to allege adequately association-in-fact required to establish RICO enterprise when complaint essentially listed string of entities allegedly comprising enterprise and then listed string of supposed racketeering activities in which enterprise purportedly engaged, but made no factual allegations suggesting that behavior of listed entities was coordinated such that they functioned as continuing unit. Begala v. PNC Bank, Ohio, Nat. Ass'n, C.A.6 (Ohio) 2000, 214 F.3d 776, rehearing and suggestion for rehearing en banc denied, certiorari denied 121 S.Ct. 1082, 531 U.S. 1145, 148 L.Ed.2d 958. Racketeer Influenced And Corrupt Organizations 73

Alleged fraudulent documentation and wire transfer whereby seller of export management business sought to defraud buyer of proceeds from its sale of goods to various customers did not have continuity necessary to constitute "pattern of racketeering activity" under Racketeer Influenced and Corrupt Organizations Act (RICO); although there is no requirement that a RICO pattern must include multiple schemes and victims, it was not irrelevant that seller's alleged violations constituted a single scheme, involved a single victim, and were predicated upon a single transaction; considering complex relationship contractually established between buyer and seller, what emerged was a commercial dispute between two parties to a contract, not a pattern of racketeering activity. J.D. Marshall Intern., Inc. v. Redstart, Inc., C.A.7 (Ill.) 1991, 935 F.2d 815. Racketeer Influenced And Corrupt Organizations 31

German wholesaler failed to adequately allege that predicate acts of mail or wire fraud were the regular way in which New York corporation was operated by its principals, as required to state civil claim under Racketeer Influenced and Corrupt Organizations Act (RICO) premised on open-ended pattern of continuity of racketeering activity through corporation's regular business operations in connection with corporation's sale of purportedly brand-new luxury watches; corporation allegedly defrauded its customers into buying used watches no more than six times over eight-year period. Kalimantano GmbH v. Motion in Time, Inc., S.D.N.Y.2013, 2013 WL 1499408. Racketeer Influenced and Corrupt Organizations 31

Owner of horse riding business failed to demonstrate that president of consulting firm engaged in closed period of repeated racketeering activity of sufficient duration to constitute “closed-ended continuity” under Racketeer Influenced and Corrupt Organizations Act's (RICO) pattern of racketeering activity requirement; owner alleged that racketeering activity had taken place over course of approximately three to four years but had not alleged that activity had been committed continuously during that period, owner had only alleged commission of six predicate acts and presence of one scheme, and owner had not alleged wide variety of predicate acts. CVLR Performance Horses, Inc. v. Wynne, W.D.Va.2012, 852 F.Supp.2d 705, motion for relief from judgment denied 2012 WL 5465024, appeal dismissed as moot 2013 WL 2322180. Racketeer Influenced and Corrupt Organizations 29
Former co-owners of New York corporation failed to establish closed-ended pattern of racketeering activity on part of accountant and accounting firm, precluding Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy claim, even if co-owners' allegations crossed two-year threshold for RICO pattern; very limited number and variety of predicate acts, participants, and victims, and presence of separate schemes indicated lack of sufficient pattern. Abramo v. Teal, Becker & Chiaramonte, CPA’s, P.C., N.D.N.Y.2010, 713 F.Supp.2d 96, motion to certify appeal denied 2011 WL 13745. Racketeer Influenced And Corrupt Organizations ☞ 29

Complaint by former prisoner who was wrongfully convicted of rape and murder failed to allege open-ended pattern of racketeering activity, as required to support claim against law enforcement officers under Racketeer Influenced and Corrupt Organizations Act (RICO), inasmuch as none of officers named in RICO claims still worked for alleged enterprises. Spadaro v. City of Miramar, S.D.Fla.2012, 855 F.Supp.2d 1317. Racketeer Influenced and Corrupt Organizations ☞ 28

Scheme alleged by investor, that defendants formed enterprise to convince him to invest $70,000 in fraudulent movie deal, failed to return any of his investment, and sent him numerous e-mails in furtherance of scheme over five-month period, failed to demonstrate continuous pattern of criminal activity under Racketeer Influenced and Corrupt Organizations Act (RICO); allegations had alleged only single scheme with single injury to single specified victim, had failed to demonstrate threat of continued criminal activity against investor or others, and had encompassed short period of time lasting mere five months. Bridges v. Lezell Law, PC, D.D.C.2012, 842 F.Supp.2d 261. Racketeer Influenced and Corrupt Organizations ☞ 28; Racketeer Influenced and Corrupt Organizations ☞ 29

Patient sufficiently alleged open-ended continuity, as required to support his Racketeer Influenced and Corrupt Organizations Act (RICO) claim against sellers of surgical mesh which was allegedly counterfeit and otherwise defective; patient alleged that distribution and sale of surgical products through various channels was primary component of sellers' ongoing business operations, that sellers' activities took place during the scope of their business operations, that sellers' distribution networks allowed for dissemination of 15 lots of counterfeit surgical mesh, that the distribution networks remained in operation, and that sellers had ongoing business relationships with questionable and evasive foreign suppliers. Jones v. Ram Medical, Inc., D.S.C.2011, 807 F.Supp.2d 501. Racketeer Influenced and Corrupt Organizations ☞ 28

Workers adequately pled closed-ended continuity requirement of civil Racketeer Influenced and Corrupt Organizations Act (RICO) claims against company, its officers and employees, that allegedly recruited them to come from the Philippines to work in the United States and then subjected them to forced labor and involuntary servitude, by alleging that scheme lasted 18 months, involved at least 18 distinct victims, involved several predicate acts including mail fraud, wire fraud, immigration document fraud, and human trafficking and forced labor, and spanned at least two states and two countries. Magnifico v. Villanueva, S.D.Fla.2011, 783 F.Supp.2d 1217. Racketeer Influenced and Corrupt Organizations ☞ 29; Racketeer Influenced and Corrupt Organizations ☞ 31

Employers sufficiently alleged a pattern with open-ended continuity, as required to state claims for racketeering and racketeering conspiracy under Racketeer Influenced and Corrupt Organizations Act (RICO) against their
former employer, where they alleged that employee's involvement in scheme by which he diverted their business to a competitor for commissions and percentage of profit from competitor's sales was interrupted only by his termination, and that the predicate acts could have recurred indefinitely had he not been terminated. Huntair, Inc. v. Gladstone, N.D.Cal.2011, 774 F.Supp.2d 1035. Conspiracy 18; Racketeer Influenced And Corrupt Organizations 28

Information technology company did not show continued threat of copyright infringement by competitor, constituting pattern under open-ended continuity theory, as required to state cause of action under Racketeer Influenced and Corrupt Organizations Act (RICO), where alleged infringement had already occurred when competitor first used company's copyrighted collection of data pool taxonomy and attributes to create derivative from which new product data standards were developed. Edgenet, Inc. v. GS1 AISBL, E.D.Wis.2010, 742 F.Supp.2d 997, motion to certify appeal denied 2011 WL 1305219. Racketeer Influenced And Corrupt Organizations 28

Investor established closed-ended continuity required for his Racketeer Influenced and Corrupt Organizations Act (RICO) claim against various media companies and two officers, arising from alleged multimillion-dollar scheme to defraud investor, by showing that defendants engaged in mail and wire fraud and money laundering during span of approximately five years, with predicate acts occurring at short, regular intervals during that time, that conspiracy comprised approximately 27 persons, and that amount of money involved would affect family members, charities, businesses, and banks where money would otherwise have been directed. Allen ex rel. Allen v. Devine, E.D.N.Y.2010, 726 F.Supp.2d 240. Racketeer Influenced And Corrupt Organizations 28

Corporation failed to sufficiently plead any predicate acts by holding company that would show ongoing continuity of holding company's alleged racketeering activities to gain control of and develop corporation's real property, as required to allege open-ended “pattern” of racketeering in civil Racketeer Influenced and Corrupt Organizations Act (RICO) suit; complaint did not allege a specific threat of repetition extending indefinitely into future, nor did it allege that racketeering acts were part of defendant's regular way of business, but only stated that “enterprise consisted of a well-developed scam/fraud plan to deprive plaintiffs from their projects, investments and economic interests.” Trinidad v. IDI Holdings PR, Inc., D.Puerto Rico 2005, 708 F.Supp.2d 137. Racketeer Influenced And Corrupt Organizations 29

An eleven month period was not sufficient to establish close-ended continuity for purposes of establishing pattern of racketeering activity element of Racketeer Influenced and Corrupt Organizations Act (RICO) claim against union defendants, who allegedly conspired to have plaintiff terminated from his union position. Ferrer v. International Longshoremen's Ass'n (ILA) AFL-CIO, D.Puerto Rico 2009, 671 F.Supp.2d 276. Racketeer Influenced And Corrupt Organizations 29

Executives of ion exchange resin manufacturer's competitor, and manufacturer's former employees which joined competitor, did not engage in continued criminal activity as was required for manufacturer to establish “closed-ended continuity” as part of its claim that defendants engaged in “pattern of racketeering activity” in violation of Racketeer Influenced and Corrupt Organizations Act (RICO); alleged scheme to misappropriate man-
ufacturer's information through fraud concluded when targeted information was misappropriated and all relevant defendants left employ of manufacturer, there were no further acts of fraud resulting in misappropriation of manufacturer's information, subsequent business use of misappropriated information did not function to extend fraudulent scheme's duration because such use was not predicate act of scheme, and thus, alleged scheme was consummated within eight months. Bro-Tech Corp. v. Thermax, Inc., E.D.Pa.2009, 651 F.Supp.2d 378. Racketeer Influenced And Corrupt Organizations 29

Arbitration judgment creditor's allegations were insufficient to state Racketeer Influenced and Corrupt Organizations Act (RICO) claim, in action to enforce arbitration award of $314,925.59, based on closed-ended continuing criminal activity by debtor and its affiliated companies; allegations suggested only that three individuals, possibly on behalf of three different corporations, made fewer than 10 false statements regarding forthcoming contractual payment over a period that lasted just over one year. Plainville Elec. Products Co., Inc. v. Vulcan Advanced Mobile Power Systems, LLC, D.Conn.2009, 638 F.Supp.2d 245. Racketeer Influenced And Corrupt Organizations 29

Developer who sued former partners, stemming from purported scheme to force developer from partnership and cause projects to fail, failed to establish pattern of racketeering activity, as required to maintain claim under Racketeer Influenced and Corrupt Organizations Act (RICO); all of partners' alleged acts constituted only one scheme to accomplish discrete goal of gaining control of development, which was only directed at small, interrelated group of victims. Ward v. Nierlich, S.D.Fla.2008, 617 F.Supp.2d 1226. Racketeer Influenced And Corrupt Organizations 27

Foreign workers' allegations that defendants used the mails and telephone and fax to advertise for and hire foreign workers for construction jobs in the United States, with an alleged promise that workers could obtain legal permanent residence, were sufficient to plead claim that defendants were enterprise engaged in continuing pattern of racketeering activity, under Racketeering Influenced and Corrupt Organizations Act (RICO). David v. Signal Intern., LLC, E.D.La.2008, 588 F.Supp.2d 718. Racketeer Influenced And Corrupt Organizations 31

Judgment creditor who sued law firm and attorney, stemming from alleged fraudulent transfers from debtor's trust, failed to demonstrate pattern of racketeering activity, as required to maintain claim under Racketeer Influenced and Corrupt Organizations Act (RICO); only purported scheme was to deprive creditor of ability to collect on judgment, which did not continue beyond termination of trust. Nastro v. D'Onofrio, D.Conn.2008, 542 F.Supp.2d 207. Racketeer Influenced And Corrupt Organizations 27

Alleged acts of competitor's chief executive officer (CEO) in persuading suppliers not to deal with retailer did not involve pattern of racketeering activity as they were not continuous under either the closed-ended or open-ended theory of continuity; the allegedly wrongful activity lasted less than four months, and even though the retailer claimed that the CEO could repeat the alleged violations if retailer tried to reenter the music business, the alleged racketeering activity did not inherently include the potential for repetition in perpetuity. Ace Pro Sound and Recording, LLC v. Albertson, S.D.Fla.2007, 512 F.Supp.2d 1259. Racketeer Influenced And Corrupt Organizations 28
Indictment charging defendant with violating Racketeer Influenced and Corrupt Organizations Act (RICO) based upon her alleged interstate travel in aid of racketeering contained allegations that were sufficient to put defendant on notice of the facts with which the government intended to prove continuity; indictment expressly alleged that the enterprise constituted an ongoing organization, and that defendant and the enterprise engaged in racketeering activities spanning more than a decade, and it alleged 14 particular racketeering activities and spelled out how defendant allegedly managed the enterprise over time through an established system of scheduled appointments, business phone numbers, and a post office box for receipt of proceeds in the form of money orders. U.S. v. Palfrey, D.D.C.2007, 499 F.Supp.2d 34.

Allegation that predicate acts, i.e., mail and wire fraud, constituted a threat of continued racketeering activity in the future because insured's attorneys and accountants, who participated in enterprise in which insured borrowed money, made loans, and obtained insurance while they provided necessary legal and financial advice, guidance, and information, continued in the same or similar lines of business established pattern of racketeering activity element, supporting credit risk insurer's claims that attorneys and accountants violated and conspired to violate Racketeer Influenced and Corrupt Organizations Act (RICO). Royal Indemnity Co. v. Pepper Hamilton LLP, D.Del.2007, 479 F.Supp.2d 419.

Absence of showing of pattern of activities precluded determination that police sergeant violated Racketeer Influenced and Corrupt Organizations Act (RICO) in performing police work leading to arrest of juvenile on charges of attempted sexual assault in second degree; entire matter was resolved in two-month period. Frey v. Maloney, D.Conn.2007, 476 F.Supp.2d 141.

Contractors' allegations that property owners engaged in a single scheme over period of 17 months by pursing false or fraudulent claims and a sham arbitration to garner a large sum of money from contractors were insufficient to establish closed-ended continuity required to prove a pattern under Racketeer Influenced and Corrupt Organizations Act (RICO) provision prohibiting conduct of enterprise's affairs through a pattern of racketeering activity; contractors did not allege an extensive scheme or a wide variety of racketeering activities, and did not sufficiently plead a threat of future criminal conduct. Gotfredson v. Larsen LP, D.Colo.2006, 432 F.Supp.2d 1163, motion to amend denied 2006 WL 2943008.

Immigrant workers claiming that payroll checks did not include overtime pay adequately alleged relationship and continuity necessary for pattern of racketeering activity; workers alleged that thousands of false and misleading paychecks were sent through the mail over a three-year period, alleged employer had a similar purpose of denying overtime compensation, and the fraudulent scheme involved over forty individuals, including at least five active perpetrators. Choimbol v. Fairfield Resorts, Inc., E.D.Va.2006, 428 F.Supp.2d 437.

Prospective beneficiaries of foreign foundation adequately alleged closed-ended continuity, for purposes of es-
establishing a pattern of racketeering activity under Racketeer Influenced and Corrupt Organizations Act (RICO) by trustees of domestic inter vivos and testamentary trusts over a period of at least seven years, during which trustees committed at least 24 predicate acts to obtain control over foundation, inter vivos trust, trustee's artworks and bank accounts, through a variety of means, including fraudulent execution of her will, powers of attorney, letters of instructions regarding foundation's by-laws, and trust. Weizmann Institute of Science v. Neschi, S.D.N.Y.2005, 421 F.Supp.2d 654. Racketeer Influenced And Corrupt Organizations \(<\) 29

Nineteen-month period during which real estate sellers and professionals allegedly defrauded minority home purchasers was insufficient to establish closed-ended continuity necessary to show pattern of racketeering activity under Racketeer Influenced and Corrupt Organizations Act (RICO). Wiltshire v. Dhanraj, E.D.N.Y.2005, 421 F.Supp.2d 544. Racketeer Influenced And Corrupt Organizations \(<\) 29

Company adequately alleged existence of closed-ended continuity in pattern of racketeering activity, in support of claim under Racketeer Influenced and Corrupt Organizations Act (RICO), when it alleged that, over course of five-year period, its then-employees were continually involved in commission of predicate acts of mail and wire fraud in support of schemes involving unauthorized transfers of company's funds for bonus and vacation pay and fraudulent transmission of retirement account information. Breslin Realty Development Corp. v. Schackner, E.D.N.Y.2005, 397 F.Supp.2d 390. Racketeer Influenced And Corrupt Organizations \(<\) 29

Software developer's claim that competitor, acting in concert with consulting firm, illegally obtained copy of its software to perform comparative analysis did not meet requirements for pattern of racketeering activity necessary to support claim under Racketeer Influenced and Corrupt Organizations Act (RICO), despite claim that competitor sought to fraudulently obtain trade secrets from its competitors generally, where developer's allegations only encompassed one victim during four month period for specific purposes of discovering proprietary information, and there were no specific allegations regarding competitor's actions against other companies. SecureInfo Corp. v. Telos Corp., E.D.Va.2005, 387 F.Supp.2d 593. Racketeer Influenced And Corrupt Organizations \(<\) 29; Racketeer Influenced And Corrupt Organizations \(<\) 30

Alleged scheme by corporate officers and employees and outside accountant to defraud shareholder of his fair share of corporate profits did not present open-ended threat of continuing criminal activity necessary to establish “pattern of racketeering activity” under Racketeer Influenced and Corrupt Organizations Act (RICO), even if defendants continued to plunder shareholder's share of corporations, where sole purpose of alleged scheme was to deprive single shareholder of his rightful portion of profits of closed set of closely-held corporate entities. Leung v. Law, E.D.N.Y.2005, 387 F.Supp.2d 105. Racketeer Influenced And Corrupt Organizations \(<\) 28

Student did not set forth facts to demonstrate that acts alleged could demonstrate a pattern of racketeering activity for Racketeer Influenced and Corrupt Organizations Act (RICO) purposes; nature of the allegations, fraud in negotiating a settlement agreement resolving sex abuse claims against church defendants, was not the sort which demonstrated an inherent threat of future criminal activity, and one year duration of the alleged scheme was not of sufficient duration to state a closed pattern of RICO activity. Hall v. Tressic, N.D.N.Y.2005, 381 F.Supp.2d 101. Racketeer Influenced And Corrupt Organizations \(<\) 28; Racketeer Influenced And Corrupt Organizations \(<\) 29
Alleged predicate acts of distributor’s officers in connection with distributor’s effort to create its own manufacturing line, clandestinely and in derogation of its supply agreement with manufacturer, did not satisfy closed-ended or open-ended continuity, and therefore distributor and officers did not engage in a “pattern of racketeering activity” within meaning of Racketeer Influenced and Corrupt Organizations Act (RICO); alleged “pattern” was aimed at one victim, had one alleged purpose, undercutting manufacturer's position under the supply agreement, and the number of participants in the alleged scheme was limited. Medinol Ltd. v. Boston Scientific Corp., S.D.N.Y.2004, 346 F.Supp.2d 575. Racketeer Influenced And Corrupt Organizations ☞ 28; Racketeer Influenced And Corrupt Organizations

Complaint alleging scheme, over period of three years and nine months, to artificially inflate price of stock and sell it did not allege closed-ended pattern of racketeering activity, under Racketeer Influenced and Corrupt Organizations Act (RICO); allegations concerned single scheme with discrete goal. Ubuy Holdings, Inc. v. Gladstone, S.D.Fla.2004, 340 F.Supp.2d 1343. Racketeer Influenced And Corrupt Organizations ☞ 29

Products liability defendant’s alleged obstruction of justice was not sufficiently continuous to establish pattern of racketeering activity necessary to support claim under Racketeer Influence and Corrupt Organizations Act (RICO), where obstruction predicate acts occurred over period of less than two months. Matsuura v. E.I. du Pont de Nemours and Co., D.Hawai'i 2004, 330 F.Supp.2d 1101, reversed and remanded 431 F.3d 353, certiorari denied 126 S.Ct. 2861, 547 U.S. 1192, 165 L.Ed.2d 895, on remand 2006 WL 2734291. Racketeer Influenced And Corrupt Organizations ☞ 29

Group that allegedly passed trade secrets from one aerospace contract bidder to another was association-in-fact “enterprise,” for purpose of Racketeer Influenced and Corrupt Organizations Act (RICO) and Florida counterpart’s prohibition on use of enterprise to engage in racketeering activity, despite claim that group lacked required continuity, being assembled only to win bid on particular contract; there was evidence group sought to secure trade secret information involving other contracts. Lockheed Martin Corp. v. Boeing Co., M.D.Fla.2004, 314 F.Supp.2d 1198. Racketeer Influenced And Corrupt Organizations ☞ 39; Racketeer Influenced And Corrupt Organizations ☞ 105

Commercial vehicle insurer, alleging Racketeer Influenced and Corrupt Organizations Act (RICO) violations by insurance broker and others, sufficiently asserted that defendants engaged in “pattern” of racketeering activities, on a closed-end continuity basis, by alleging series of incidents of mail and wire fraud spanning over two-year period. United States Fire Ins. Co. v. United Limousine Service, Inc., S.D.N.Y.2004, 303 F.Supp.2d 432. Racketeer Influenced And Corrupt Organizations ☞ 29; Racketeer Influenced And Corrupt Organizations ☞ 31

Complaint sufficiently alleged closed-ended continuity in pattern of racketeering activity, in support of creditors' claims that debtor and others violated Racketeer Influenced and Corrupt Organizations Act (RICO), when it asserted that several persons, including debtor's friends, family members, and various legal entities purportedly created by debtor schemed together to defraud various financial institutions, and that predicate acts supporting scheme took place over several years, but within 10-year period. Cadle, Co. v. Flanagan, D.Conn.2003, 271 F.Supp.2d 379. Racketeer Influenced And Corrupt Organizations ☞ 72

Indictment charging former state treasurer, campaign officials, provider of investment services for state retirement fund, investment firm, and others with violations of Racketeer Influenced and Corrupt Organizations Act (RICO) in connection with bribery scheme sufficiently alleged existence of closed-ended or open-ended continuity, despite defendants' contentions that scheme lasted only eight months and had finite goal of financing treasurer's re-election campaign; there was nothing in nature of alleged predicate acts that suggested that enterprise's activities reached natural end or that scheme to bribe treasurer to obtain investments of state pension assets would have ended if treasurer had been re-elected, and alleged predicate act of obstruction of justice was not merely based on "exculpatory no," but rather involved corruption of grand jury investigation. U.S. v. Triumph Capital Group, Inc., D.Conn.2002, 260 F.Supp.2d 444. Racketeer Influenced And Corrupt Organizations 91

Alleged predicate acts of fraud occurring over seven-month period did not establish closed-ended continuity of a pattern of racketeering activity, as would support claim under Racketeer Influenced and Corrupt Organizations Act (RICO); closed-ended continuity could not exist over such an abbreviated period of time. G-I Holdings, Inc. v. Baron & Budd, S.D.N.Y.2002, 238 F.Supp.2d 521. Racketeer Influenced And Corrupt Organizations 29

Alleged predicate acts of law firm and its principals in connection with falsification of affidavits filed in clients' actions against asbestos manufacturer established sufficient threat of on-going criminal activity, beyond period in which predicate acts were committed, to adequately plead open-ended continuity as required to show pattern of racketeering activity in manufacurer's action against firm and principals alleging mail and wire fraud under Racketeer Influenced and Corrupt Organizations Act (RICO), in view of large-scale scope of alleged fraud, involvement of management in the alleged fraud, and nature of scheme, which was not inherently terminable, despite claim that all asbestos-injury defendants would ultimately be driven out of business. G-I Holdings, Inc. v. Baron & Budd, S.D.N.Y.2002, 238 F.Supp.2d 521. Racketeer Influenced And Corrupt Organizations 72

One-week period during which casino owner allegedly converted for private use six checks designated solely for government use was too short to satisfy closed-ended continuity requirement for imposition of civil liability under Racketeer Influenced and Corrupt Organizations Act (RICO). Soto Negron v. Taber Partners I, Ltd. Partnership, D.Puerto Rico 2002, 235 F.Supp.2d 105, affirmed 339 F.3d 35. Racketeer Influenced And Corrupt Organizations 29

The continuity necessary to prove a pattern under the Racketeering Influenced and Corrupt Organization Act (RICO) can be either closed-ended continuity or open-ended continuity, and closed-ended continuity is demonstrated by predicate acts that amount to continued criminal activity by a particular defendant, considering several factors including the length of time over which the alleged predicate acts took place, the number and variety of acts, the number of participants, the number of victims, and the presence of separate schemes, but a scheme's duration alone is not dispositive. Weizmann Institute of Science v. Neschis, S.D.N.Y.2002, 229 F.Supp.2d 234. Racketeer Influenced And Corrupt Organizations 29

Four alleged predicate acts of mail fraud, committed by one participant against a limited number of victims in furtherance of a single fraudulent scheme, were insufficient to support closed-ended continuity, for purposes of establishing a pattern of racketeering activity under the Racketeering Influenced and Corrupt Organization Act
A simple statement that the “scheme continues to date,” without more, does not suffice to allege open-ended continuity establishing a pattern of racketeering activity under the Racketeer Influenced and Corrupt Organizations Act (RICO). Weizmann Institute of Science v. Neschis, S.D.N.Y.2002, 229 F.Supp.2d 234. Racketeer Influenced And Corrupt Organizations

Closed-ended continuity did not exist, for purposes of establishing pattern of racketeering activity under Racketeer Influenced and Corrupt Organizations Act (RICO), where alleged racketeering acts occurred within less than one-year period. Citadel Management, Inc. v. Telesis Trust, Inc., S.D.N.Y.2000, 123 F.Supp.2d 133. Racketeer Influenced And Corrupt Organizations

Pattern of racketeering activity requirement, for claim under Racketeer Influenced and Corrupt Organizations Act (RICO), was not satisfied by allegations that bidders seeking to have 2012 Olympic Games held in Baltimore-Washington area unlawfully removed claimant and her company as official bidder; alleged activities covered only eight months and involved injuries only to claimant and her company. Ganzi v. Washington-Baltimore Regional 2012 Coalition, D.D.C.2000, 98 F.Supp.2d 54. Racketeer Influenced And Corrupt Organizations

Letter of credit customer’s claim brought under Racketeer Influenced and Corrupt Organizations Act (RICO) against nominating bank, which allegedly had misdirected red clause advances under the letter of credit to pay down letter of credit beneficiary’s loans, satisfied the continuity prong of predicate acts analysis where there was evidence of nominating bank’s perpetration of the alleged predicate acts, including seven telexes spanning from April 10, 1995 through March 11, 1996 and eight letters ranging from Sept. 11, 1994 through Sept. 15, 1995, over more than one year, and even if the scheme injured only one victim, that would not preclude finding of pattern of racketeering activity. Leonard A. Feinberg, Inc. v. Central Asia Capital Corp., Ltd., E.D.Pa.1997, 974 F.Supp. 822. Racketeer Influenced And Corrupt Organizations

Applicants for public employment failed to establish open ended continuity as would support pattern of racketeering in RICO claim by alleging that bribery and mail fraud took place over three month period as well as existence of one percent kickback scheme, wrongful denial of another applicant for licensing inspector position and wrongful denial of other additional civil service jobs to one of applicants; kickback scheme was unrelated to bribery and mail fraud charges, applicant for licensing inspector position claimed that his wrongful denial of employment was based on race discrimination not political association and there was no evidence that applicant was denied other positions related to transactions in issue in this case. Eisert v. Town of Hempstead, E.D.N.Y.1996, 918 F.Supp. 601. Racketeer Influenced And Corrupt Organizations

Where security offering period was of infinite duration, sale of securities did not satisfy continuity requirements of stating Racketeer Influenced and Corrupt Organizations Act (RICO) claim. In re Integrated Resources Real Estate Ltd. Partnerships Securities Litigation, S.D.N.Y.1993, 850 F.Supp. 1105, reargument denied. Racketeer

Continuity requirement for establishing pattern of racketeering activity encompasses both closed ended and open ended concept; party alleging Racketeer Influenced and Corrupt Organizations Act (RICO) violation may demonstrate continuity over closed period by proving series of related predicate acts over substantial period of time or may show that predicate acts establish threat of long-term racketeering activity. Colonial Penn Ins. Co. v. Value Rent-A-Car Inc., S.D.Fla.1992, 814 F.Supp. 1084. Racketeer Influenced And Corrupt Organizations

Committee established by alleged theocratic enterprise failed to allege sufficient “pattern” of racketeering activity to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO) against persons and organizations alleged to be affiliated with enterprise, where majority of enterprise's alleged racketeering acts caused no harm to Committee's business or property, and remaining acts, including allegation that enterprise disbursed $179,783 from Committee’s account to pay press for brochure advocating pardon of enterprise leader, posed no threat of continuing racketeering activity. Committee to Defend U.S. Constitution v. Moon, D.D.C.1991, 776 F.Supp. 568. Racketeer Influenced And Corrupt Organizations

Claim which alleged that buyer of business improperly conducted the business during the four months between the time that it took control and the time that the value of the business was to be determined did not allege the continuity required for a pattern of racketeering. Crabtree v. Tristar Automotive Group, Inc., S.D.N.Y.1991, 776 F.Supp. 155. Racketeer Influenced And Corrupt Organizations

Five-month period before closing sale of alleged racketeering enterprise's sale of assets was insufficient to meet continuity requirement of racketeering pattern connected with allegedly fraudulent scheme of enterprise's former officer and president. Steco, Inc. v. S & T Mfg., Inc., E.D.Pa.1991, 772 F.Supp. 1495. Racketeer Influenced And Corrupt Organizations

Former employer did not establish “open ended continuity” of alleged pattern of racketeering by its former employee where the conduct at issue ended when the former employee terminated his employment and began working for competitor. Midwest Grinding Co., Inc. v. Spitz, N.D.Ill.1991, 769 F.Supp. 1457, affirmed 976 F.2d 1016. Racketeer Influenced And Corrupt Organizations

Complaint which alleged as predicate acts the sale of limited partnership units over a period of three days did not allege “closed-end” continuity sufficient to satisfy pattern requirement of the Racketeer Influenced and Corrupt Organizations Act (RICO); complaint was equally deficient with respect to “open-ended” continuity, as
partnership was fully subscribed, and there was no indication that it was seeking new subscribers; moreover, allegation that corporate and individual defendants would continue to offer limited partnership investments to investors throughout the United States was not sufficient to plead open-ended continuity, absent association of corporate and individual defendants with organized crime. Ochs v. Shearson Lehman Hutton Inc., S.D.N.Y.1991, 768 F.Supp. 418. Racketeer Influenced And Corrupt Organizations \(\text{28}\); Racketeer Influenced And Corrupt Organizations \(\text{29}\)

“Continuity” required to establish pattern of racketeering signifies either closed period of repeated conduct, i.e., series of related predicates extending over substantial period of time, or past conduct that by its nature projects into the future without threat of repetition. Eureka Paper Box Co. v. WBMA, Inc., Voluntary Employee Ben. Trust, M.D.Pa.1991, 767 F.Supp. 642. Racketeer Influenced And Corrupt Organizations \(\text{28}\); Racketeer Influenced And Corrupt Organizations \(\text{29}\)

Fact that security sellers regularly used the telephone and mails to solicit investments did not show that there was a threat of future illegal activity, since there is nothing illegal about the use of the mail and telephones. Davidson v. Wilson, D.Minn.1991, 763 F.Supp. 1470, affirmed 973 F.2d 1391. Racketeer Influenced And Corrupt Organizations \(\text{28}\)

Allegations that RICO defendants were regularly misappropriating loan payments due on condominium units that had closed, that the activity implicitly threatened to continue until each and every unit had been sold, and that defendants were involved in other business transactions with other victims in which they engaged in similar activity, adequately alleged threat of future criminal activity to satisfy continuity requirement for pleading RICO pattern. Norstar Bank v. Pepitone, E.D.N.Y.1990, 742 F.Supp. 1209. Racketeer Influenced And Corrupt Organizations \(\text{72}\)

Pilots who asserted Racketeer Influenced and Corrupt Organizations Act (RICO) claims against union, airline, and lender that provided airline with debtor-in-possession (DIP) loan, in connection with defendants' activities concerning pilots' pension plans, failed to allege pattern of racketeering activity through open-ended continuity; pilots had not alleged that union's primary business was unlawful, so they had to provide some strong evidence of continued criminal activity, but pilots' only claim that there was still a risk of future criminal conduct by union was the fact that union continued to be their exclusive bargaining representative, and pilots did not indicate that this allegation was premised upon future predicate acts or the threat of any criminal activity but, rather, it appeared that pilots were relying on bald speculation as to the future acts of union and the alleged “enterprise,” which was insufficient. Vaughn v. Air Line Pilots Ass'n, Intern., E.D.N.Y.2008, 395 B.R. 520, affirmed 377 Fed.Appx. 88, 2010 WL 1932388, affirmed 604 F.3d 703. Racketeer Influenced And Corrupt Organizations \(\text{72}\)

Motorists who were plaintiffs in state-court personal injury action failed to establish a pattern of racketeering activity on part of allegedly liable driver's automobile insurer, as would support their claim that insurer violated RICO by using wire and mail fraud to obtain their confidential medical records; even if insurer committed 46 acts of mail or wire fraud by sending letters to motorists' healthcare providers that misrepresented scope of partial medical privilege waiver under state law, such acts amounted to a single scheme and did not establish a


Beneficiary of parents' estates did not allege either open-ended or close-ended continuity, and thus did not plead a pattern of activity sustaining a Racketeering Influenced and Corrupt Organizations Act (RICO) claim against executor of both of her parents' estates, and the law firm representing those estates; claim essentially alleged that a small number of parties engaged in activities with a narrow purpose directed a defrauding beneficiary and the estates of her parents and there was no evidence from which it could be inferred that the predicate acts were the regular way of operating the enterprise, which was a legitimate business, or that the nature of the predicate acts themselves implied a threat of continued criminal activity. *Lefkowitz v. Bank of New York*, S.D.N.Y.2003, 2003 WL 22480049, Unreported, affirmed in part, reversed in part and remanded 528 F.3d 102, on remand 676 F.Supp.2d 229. Racketeer Influenced And Corrupt Organizations ☞ 72

Alleged conduct by union officers of attempted extortion and tampering with a federal witness, though related, was not sufficiently continuous to establish a pattern of racketeering activity, as required to support union member's civil claim under the Racketeering Influenced and Corrupt Organizations Act (RICO); the alleged acts were part of a single-victim, single-injury, short-lived scheme with a distinct and finite purpose and threat of continuation. *Breslin v. Brainard*, E.D.Pa.2003, 2003 WL 22351297, Unreported, reconsideration denied 2004 WL 1053011, affirmed 128 Fed.Appx. 237, 2005 WL 775846. Racketeer Influenced And Corrupt Organizations ☞ 28

Complaint asserting fraud relating to non-payment of brokerage commissions failed to meet closed-ended continuity requirement sufficient to plead pattern of racketeering activity under Racketeer Influenced and Corrupt Organizations Act (RICO), where complaint made factual allegations concerning beginning date of alleged predicate acts in one transaction but failed to do so with respect to other transactions, and the complaint was replete with vague time periods such as “shortly after,” “a few weeks later,” and “at or about the same time” without sufficient detail to establish firm date for another transaction, and where other factual evidence indicated acts occurred within substantially less than two-year time period. *Kades v. Organic Inc.*, S.D.N.Y.2003, 2003 WL 470331, Unreported. Racketeer Influenced And Corrupt Organizations ☞ 72

Federal court located in Pennsylvania lacked personal jurisdiction over arrestee's claims against county department of social services and other defendants for alleged deprivation of his federal civil rights, violations of the Racketeering Influenced and Corrupt Organizations Act (RICO), and aiding and abetting alleged conspiracy among various state, federal and private actors and agencies to fabricate evidence against him and to unlawfully arrest and detain him; there was no account of the facts which demonstrated “continuous and systematic” contact

by county board of social services with Pennsylvania, social services was located in New Jersey, there was no allegation or evidence that it maintained an office in Pennsylvania, or that it had any agents or employees in Pennsylvania. Boone v. Thompson, E.D.Pa. 2002, 2002 WL 31478834, Unreported. Federal Courts 96; Federal Courts 96

Former employee failed to state civil Racketeer Influenced and Corrupt Organizations Act (RICO) claim against medical group and physician who provided independent medical opinion on which employer relied to deny employee long-term disability insurance benefits, absent allegations showing a continuity of structure or a hierarchy under which action was taken; employee merely alleged that the pattern of racketeering activity amounted to the creation of an enterprise. Morrison v. Steiman, S.D.Ohio 2002, 2002 WL 31409860, Unreported. Racketeer Influenced And Corrupt Organizations 72; Racketeer Influenced And Corrupt Organizations 73

109. ---- Related or separate acts, pattern of racketeering activity, offenses generally

Sufficient evidence established that two murders and two robberies were related to each other and the enterprise, as required to establish a pattern of racketeering activity for defendant's Racketeer Influenced and Corrupt Organizations Act (RICO) conviction; robberies were designed to enrich core members of enterprise, murders reduced risk of interference with enterprise's operations, same methods were used in that two men attacked victim at gunpoint and victim was brutally physically assaulted, defendant participated in all events, and co-participants were combination of three other members of enterprise. U.S. v. Payne, C.A.2 (N.Y.) 2010, 591 F.3d 46, certiorari denied 131 S.Ct. 74, 178 L.Ed.2d 246. Racketeer Influenced And Corrupt Organizations 28; Racketeer Influenced And Corrupt Organizations 49

Despite defendant's requested instruction, in criminal prosecution for violations of Racketeer Influenced and Corrupt Organizations Act (RICO), that multiplicity of mailings may not indicate pattern or racketeering activity because each mailing was separate offense, instruction properly charged on “pattern” element of RICO, since defendant made years of false representations in various mail and wire communications. U.S. v. Segal, C.A.7 (Ill.) 2007, 495 F.3d 826, rehearing and rehearing en banc denied, certiorari denied 128 S.Ct. 2069, 553 U.S. 1006, 170 L.Ed.2d 796. Racketeer Influenced And Corrupt Organizations 97

Evidence did not permit jury to find that shootings of two men associated with organized crime family were related to activities of crime family or arranged by defendant solely by virtue of his position in crime family, and therefore evidence did not establish relatedness required to establish defendant's criminal liability under Racketeer Influenced and Corrupt Organizations Act (RICO) with respect to shootings, when two of alleged coconspirators were defendant's cousins and another was friend of cousin, none of shooters was a “made” member of crime family, shootings were not sanctioned by crime family, and it was reasonable to conclude that defendant planned shooting to avoid repaying his loansharking debts to victims and because he despised one of victims. U.S. v. Bruno, C.A.2 (N.Y.) 2004, 383 F.3d 65. Racketeer Influenced And Corrupt Organizations 49

Predicate racketeering acts were related in that they all revolved around simple purposes of silencing dissent, retaliating for community resistance, and making the “death angels” a reality, and acts showed required continuity, because they continued over an approximate five-year period. U.S. v. Beasley, C.A.11 (Fla.) 1996, 72 F.3d 1518, certiorari denied 116 S.Ct. 2250, 518 U.S. 1027, 135 L.Ed.2d 1086, certiorari denied 117 S.Ct. 176, 519
U.S. 866, 136 L.Ed.2d 116. Racketeer Influenced And Corrupt Organizations 28; Racketeer Influenced And Corrupt Organizations 29

Requirement that predicate acts supporting violation of Racketeer Influenced Corrupt Organizations Act (RICO) be related is satisfied even if predicate acts are not directly related to each other, as long as both are related to RICO enterprise in way that they become indirectly connected to each other. U.S. v. Locascio, C.A.2 (N.Y.) 1993, 6 F.3d 924, 127 A.L.R. Fed. 599, certiorari denied 114 S.Ct. 1645, 511 U.S. 1070, 128 L.Ed.2d 365, certiorari denied 114 S.Ct. 1646, 511 U.S. 1070, 128 L.Ed.2d 365, post-conviction relief denied 267 F.Supp.2d 306. Racketeer Influenced And Corrupt Organizations 28

As to allegations in amended Racketeer Influenced and Corrupt Organizations Act (RICO) complaint by partner in partnership that was selling building against the other partner and attorney for buyers, relatedness requirement for pattern of racketeering activity was satisfied in that unspecified predicate acts of mail and wire fraud were all related to common goal of obtaining lower price for building, but predicate acts did not pose threat of continued criminal activity; alleged building scheme was attempt to defraud single investor of his interest in single piece of real estate over relatively short period of time and amounted to nothing more than isolated incident of “garden variety” real estate fraud. Banks v. Wolk, C.A.3 (Pa.) 1990, 918 F.2d 418, on remand. Racketeer Influenced And Corrupt Organizations 28

Owner of horse riding business adequately alleged that president of consulting firm engaged in “related” acts of racketeering activity, as required to establish pattern of racketeering activity under Racketeer Influenced and Corrupt Organizations Act (RICO); owner alleged that insurance proceeds president had fraudulently obtained for work never completed on damaged riding center barn were later used to pay deposit on his purchase of third-party's real property at foreclosure sale, that president had utilized funds owner thought it was paying to bank on mortgage for riding center property to make payments on loan he induced another third-party to obtain, and that president had sought equity in third parties' homes to bolster loan applications or renewals submitted to bank. CVLR Performance Horses, Inc. v. Wynne, W.D.Va.2012, 852 F.Supp.2d 705, motion for relief from judgment denied 2012 WL 5465024, appeal dismissed as moot 2013 WL 2322180. Racketeer Influenced And Corrupt Organizations 28

Insurance claimant participated in conduct of automobile insurers' enterprises through “pattern of racketeering activity,” as required to support insurers’ claims alleging that claimant violated Racketeer Influenced and Corrupt Organizations Act (RICO) by engaging in scheme to defraud insurers by submitting false insurance claims, by committing multiple related acts of mail fraud against each insurer within 10-year period; claimant signed and sent various letters containing false claims through the mail to insurers with the same purpose of obtaining payment for the false claims. Puerto Rico American Ins. Co. v. Burgos, D.Puerto Rico 2011, 867 F.Supp.2d 216. Racketeer Influenced and Corrupt Organizations 31

Wine buyer failed to allege two distinct crimes of mail or wire fraud, committed in furtherance of scheme to defraud, as required to support civil Racketeer Influenced and Corrupt Organizations Act (RICO) claim against seller for allegedly selling counterfeit wine. Koch v. Royal Wine Merchants, Ltd., S.D.Fla.2012, 847 F.Supp.2d 1370. Racketeer Influenced and Corrupt Organizations 31
Prescription assistance company that sued promotion firm and officers, stemming from alleged misrepresentation of company's services, failed to allege relatedness necessary to plead pattern element of Racketeer Influenced and Corrupt Organizations Act (RICO); although complaint averred that services were misrepresented by call center customer service representatives, there was no allegation that firm encouraged, approved of or benefited from misrepresentation, and complaint did not sufficiently allege that the schemes involved the same participants, victims, or methods. MyFreeMedicine.com, LLC v. Alpine Investors, D.Me.2010, 739 F.Supp.2d 8.

Indictment, which alleged a series of disconnected street crimes and white collar frauds carried out using divergent methods for distinct purposes at different times, failed to allege a “pattern of racketeering activity” in violation of Racketeer Influenced and Corrupt Organizations Act (RICO); the disparate acts lacked the commonality required for a finding of relatedness and thus continuity, and fact that the predicate acts as alleged spanned nearly six years was not sufficient, in and of itself, to satisfy the continuity requirement. U.S. v. Bergrin, D.N.J.2010, 707 F.Supp.2d 503, reversed 650 F.3d 257. Racketeer Influenced And Corrupt Organizations 72

Indictment alleging that defendant, a county sheriff, misused his official position as sheriff to commit over a period of several years racketeering acts that included tampering with a witness, victim, or informant, honest services mail fraud, bribery, and aiding and abetting in the possession with intent to distribute marijuana, was sufficient to show that the predicate racketeering acts were related and that they amounted to or posed a threat of continued criminal activity, so as to constitute a pattern of racketeering activity under Racketeer Influenced and Corrupt Organizations Act (RICO); predicate acts shared a common participant in the defendant and a common method of commission in the abuse of the defendant's power as sheriff. U.S. v. Presgraves, W.D.Va.2009, 658 F.Supp.2d 770. Racketeer Influenced And Corrupt Organizations 28

Former California Highway Patrol (CHP) employee sufficiently alleged “pattern” of racketeering activity needed to sustain Racketeer Influenced and Corrupt Organizations Act (RICO) claim; the predicate acts of witness tampering and retaliation which she alleged within ten year period were related insofar as both sought to advance criminal conspiracy to defraud State of California and to conceal nature and extent of their criminal activities. Vierria v. California Highway Patrol, E.D.Cal.2009, 644 F.Supp.2d 1219. Racketeer Influenced And Corrupt Organizations 28

Corporation's allegations in its complaint that predicate acts of extortion committed by unions, which had been trying unsuccessfully to become bargaining representatives of its employees, had same or similar purpose, that acts were participated in generally by same people, that alleged method of commission was same or similar, that acts were not isolated events, and that unions' alleged conduct had continued for over 18 months established pattern of racketeering activity sufficient for recovery under Racketeer Influenced and Corrupt Organizations Act (RICO). Smithfield Foods, Inc. v. United Food and Commercial Workers Intern. Union, E.D.Va.2008, 633 F.Supp.2d 214. Racketeer Influenced And Corrupt Organizations 28

Contractors' allegations that property owners, over a period of 17 months, used mail to demand that contractors remedy false repairs and to submit manipulated and falsified claims to contractors' insurance carriers demanding
payment, used wire services to file state court action against contractors, and used mail to demand $4,000,000 from contractors with suggestion that contractors demand that their insurance carriers pay it, to advise contractors that expedited arbitration would take place in Colorado, and to demand that contractors immediately indemnify one owner and hold her harmless for amount of arbitration judgment set forth sufficient facts to satisfy relationship test for a pattern under Racketeer Influenced and Corrupt Organizations Act (RICO) provision prohibiting conduct of enterprise's affairs through a pattern of racketeering activity. Gotfredson v. Larsen LP, D.Colo.2006, 432 F.Supp.2d 1163, motion to amend denied 2006 WL 2943008. Racketeer Influenced And Corrupt Organizations 28; Racketeer Influenced And Corrupt Organizations 31.

For purposes of establishing a pattern of racketeering under Racketeer Influenced and Corrupt Organizations Act (RICO), several attempts at extortion constituted a single predicate of extortion in violation of Hobbs Act; conversations between manufacturer's sales managers led dealer to finally realize that he was being shaken down for a bribe, which he then paid. Maddaloni Jewelers, Inc. v. Rolex Watch U.S.A., Inc., S.D.N.Y.2004, 354 F.Supp.2d 293. Extortion 22; Racketeer Influenced And Corrupt Organizations 26.

Allegation of full service provider of transportation services to Medicaid recipients, pursuant to contract with state Department of Human Services, that competitor fraudulently made referrals to wheelchair van providers rather than full service provider in violation of Department regulations, and thereby cost government more money, alleged pattern of racketeering activity, as required to state civil claim against competitor's officers under Racketeer Influenced and Corrupt Organizations Act (RICO); each alleged act of wire fraud had same purpose, participants, victims, and method, and allegations both referred to enduring past activity and suggested likelihood of continuing activity. Freeport Transit, Inc. v. McNulty, D.Me.2003, 239 F.Supp.2d 102. Racketeer Influenced And Corrupt Organizations 72.

Even though culminating in single transaction of sale, alleged acts of mail and wire fraud by manufacturer's parents against independent distributors of manufacturer's products, allegedly part of scheme to pass to distributors cost of divestment of manufacturer, constituted pattern of racketeering activity, as required to support distributors' Racketeer Influenced and Corrupt Organizations Act (RICO) suit against parents. Office Outfitters, Inc. v. A.B. Dick Co., Inc., E.D.Tex.2000, 83 F.Supp.2d 772. Racketeer Influenced And Corrupt Organizations 27.

Plaintiff stated claim for open-ended pattern of fraud under Racketeer Influenced and Corrupt Organizations Act (RICO) by alleging that defendants routinely placed mineral shipments by falsifying ordering instructions, that almost 250 rail cars were moved in unauthorized shipments, and that defendants had entered into new working relationship with plaintiffs without mentioning past unauthorized shipments. Concern Sojuzvneshtrans v. Buyanovski, D.N.J.1999, 80 F.Supp.2d 273. Racketeer Influenced And Corrupt Organizations 72.

Defendant's alleged fraud against insurer in filing false claim of theft of personal property was not related to alleged predicate act of fraud and obstruction of justice for defendant's misrepresentations to bankruptcy trustee, and acts thus did not constitute pattern of racketeering activity for purposes of Racketeer Influenced and Corrupt Organizations Act (RICO); insurer, not plaintiff, was victim of alleged fraud, and purpose of alleged fraud was to obtain fraudulent insurance payment, not to prevent plaintiff from collecting on debt. James v. McCoy, S.D.Ohio 1998, 56 F.Supp.2d 919, affirmed 181 F.3d 101. Racketeer Influenced And Corrupt Organizations.
Relationship component of a pattern of racketeering activity under Racketeer Influenced and Corrupt Organizations Act (RICO) is satisfied by criminal conduct which embraces criminal acts that have the same or similar purposes, results, participants, victims or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated events. Koal Industries Corp. v. Asland, S.A., S.D.N.Y.1992, 808 F.Supp. 1143. Racketeer Influenced And Corrupt Organizations

Misrepresentations or omissions consisting of failure on part of corporation to reveal that it was controlled by banks and that banks were unwilling to make further loans to corporation were sufficiently related to conduct of affairs of the corporation to meet the relationship requirement for a RICO complaint. Technology Exchange Corp. of America, Inc. v. Grant County State Bank, D.Colo.1986, 646 F.Supp. 179. Racketeer Influenced And Corrupt Organizations

One conducts the activities of an enterprise, for purposes of this section, through a pattern of racketeering when one is enabled to commit the predicate offenses solely by virtue of his position in the enterprise or the predicate offenses are related to the activity of that enterprise; simply committing predicate offenses which are unrelated to the enterprise or one's position within it is insufficient. Bulk Oil (ZUG) A.G. v. Sun Co., Inc., S.D.N.Y.1983, 583 F.Supp. 1134, affirmed 742 F.2d 1431, certiorari denied 105 S.Ct. 129, 83 L.Ed.2d 70. Racketeer Influenced And Corrupt Organizations

110. Predicate acts, offenses generally

By interfering with, disrupting, and in some instances “shutting down” clinics that performed abortions, individual and corporate organizers of antiabortion protest network did not “obtain” or attempt to obtain property from women's rights organization or abortion clinics, and so did not commit “extortion” under the Hobbs Act, as required for organization and clinics to establish Racketeer Influenced and Corrupt Organizations Act (RICO) predicate offense; while organizers may have deprived or sought to deprive organization and clinics of their alleged property right of exclusive control of their business assets, they did not acquire any such property, nor did they pursue or receive something of value from organization or clinics that they could exercise, transfer, or sell. Scheidler v. National Organization for Women, Inc., U.S.2003, 123 S.Ct. 1057, 537 U.S. 393, 188 A.L.R. Fed. 741, 154 L.Ed.2d 991, on remand 91 Fed.Appx. 510, 2004 WL 375995. Extortion 19; Racketeer Influenced And Corrupt Organizations

District Court's failure to instruct jury, that to establish a pattern of racketeering, as required to support Racketeer Influenced and Corrupt Organizations Act (RICO) conviction, government was required to show that the predicate acts were related to one another and threatened continued criminal activity, was not harmless error; if properly instructed, the jury could have found that the proven predicates were not in fact interrelated. U.S. v. Cain, C.A.2 (N.Y.) 2012, 671 F.3d 271, certiorari denied 132 S.Ct. 1872, 182 L.Ed.2d 655, petition for certiorari filed 2013 WL 867471. Criminal Law 1173.2(2); Racketeer Influenced and Corrupt Organizations

Charged Racketeer Influenced and Corrupt Organizations Act (RICO) offense was a crime of violence which

could serve as a predicate for a conviction for carrying firearms in furtherance of crime of violence; underlying predicate acts, with one exception, allegedly involved the use of violent means, including loan-sharking and violent acts of extortion, and thus the conduct charged posed a substantial risk that physical force against the person or property of another would be used in its commission. U.S. v. Ivezaj, C.A.2 (N.Y.) 2009, 568 F.3d 88, for additional opinion, see 336 Fed.Appx. 6, 2009 WL 1636018, post-conviction relief denied 2011 WL 6778475, subsequent determination 2012 WL 1122972, certiorari denied 130 S.Ct. 1749, 559 U.S. 998, 176 L.Ed.2d 223, certiorari denied 130 S.Ct. 1750, 559 U.S. 998, 176 L.Ed.2d 223, certiorari denied 130 S.Ct. 1751, 559 U.S. 998, 176 L.Ed.2d 223. Weapons 194(2)


Admission of evidence of defendant's conversations on cellular phone for which government had valid wiretap authorization was proper, despite failure of authorization to specifically identify defendant as target; affidavit in support of wiretap application named the owner of the phone and unknown others, in authorizing the interceptions, the court determined that probable cause existed to believe that the owner of the phone as well as others would use the phone to engage in illegal activities, government had no reason to believe that defendant would maintain indefinite possession of the phone, the order limited interceptions to conversations that addressed conspiratorial activities or at the end of 30 days, and it required law enforcement to submit regular reports to the issuing judge showing progress in their investigation. U.S. v. Yannotti, C.A.2 (N.Y.) 2008, 541 F.3d 112, certiorari denied 129 S.Ct. 1648, 173 L.Ed.2d 999, post-conviction relief denied 2011 WL 891330, affirmed 475 Fed.Appx. 784, 2012 WL 1292749. Telecommunications 1469

Predicate acts committed by corporate executives, in their allegedly fraudulent use of mails and wires to profess to follow first-come, first-served procedure to induce billboard site applicants to submit applications and then secretly reviewing applications with goal of appropriating desired sites for corporation's own use, did not project into future with threat of repetition, as required for claim under Racketeer Influenced and Corrupt Organizations Act (RICO) that was based on open-ended continuity, where corporation subsequently notified applicants that corporation would review all applications for billboard licenses and rule on each application in its discretion. Craig Outdoor Advertising, Inc. v. Viacom Outdoor, Inc., C.A.8 (Mo.) 2008, 528 F.3d 1001, rehearing and rehearing en banc denied , certiorari denied 129 S.Ct. 1000, 555 U.S. 1136, 173 L.Ed.2d 292. Racketeer Influenced And Corrupt Organizations 28

Jury's failure to reach unanimous decisions on whether government proved at least two racketeering acts charged against defendant, as predicate acts in support of substantive racketeering offense, did not compel his acquittal on substantive charge under the Racketeer Influenced and Corrupt Organizations Act (RICO). U.S. v. Gotti, C.A.2 (N.Y.) 2006, 451 F.3d 133. Criminal Law 872.5

Jury instructions for racketeering charge under Racketeer Influenced and Corrupt Organizations Act (RICO), in which court repeatedly emphasized that jurors could not conclude that government “proved” a predicate act if
they did not reach unanimous agreement that government had proved that act beyond a reasonable doubt, did not suggest that an inability of jurors to agree that racketeering act was “not proved” could or should lead jury to find instead that act was “proved,” and thus did not direct jury to reach guilty verdict on charge. U.S. v. Carr, C.A.2 (N.Y.) 2005, 424 F.3d 213, certiorari denied 126 S.Ct. 1447, 546 U.S. 1221, 164 L.Ed.2d 145, appeal after new sentencing hearing 557 F.3d 93, certiorari denied 130 S.Ct. 169, 558 U.S. 936, 175 L.Ed.2d 239, post-conviction relief denied 2011 WL 13937. Racketeer Influenced And Corrupt Organizations

It was reversible error for district court to instruct jury in bank's civil action under Racketeer Influenced and Corrupt Organizations (RICO) Act that bank's officers' participation in borrowers' alleged bank fraud could not be imputed to bank in determining whether bank's reliance on borrowers' actions was reasonable, where there was evidence that bank officers were aware of borrowers' purportedly fraudulent misrepresentations, and jury charge did not require bank to prove that it relied on misrepresentations or that officers were acting ultra vires. Bank of China, New York Branch v. NBM LLC, C.A.2 (N.Y.) 2004, 359 F.3d 171, for additional opinion, see 89 Fed.Appx. 751, 2004 WL 322484, certiorari granted in part125 S.Ct. 2956, 545 U.S. 1138, 162 L.Ed.2d 886, certiorari dismissed 126 S.Ct. 675, 546 U.S. 1026, 163 L.Ed.2d 545, on remand 2004 WL 1907308. Federal Courts

Tampering with witness in state judicial proceeding was not actionable under federal witness tampering statute, and thus could not serve as predicate act under Racketeer Influenced and Corrupt Organizations Act (RICO). Deck v. Engineered Laminates, C.A.10 (Kan.) 2003, 349 F.3d 1253. Racketeer Influenced And Corrupt Organizations

City mayor's failure to disclose bribery funds received on statements of economic interest that he was required to file annually could not serve as predicate offense under Racketeer Influenced and Corrupt Organizations Act (RICO); it was questionable whether, as alleged, mayor's conduct violated Illinois statute proscribing public official's performance of act in excess of his lawful authority with intent to obtain personal advantage for himself or another, such offense did not set forth bribery offense for purposes of predicate offense under RICO, and penalty clause in statute requiring statements to be filed provided for only misdemeanor conviction, which could not qualify as “racketeering activity.” U.S. v. Genova, C.A.7 (Ill.) 2003, 333 F.3d 750, rehearing denied. Racketeer Influenced And Corrupt Organizations

Where the plaintiff alleges each element of a violation under the Racketeer Influenced and Corrupt Organizations Act (RICO), the compensable injury necessarily is the harm caused by the predicate acts; in evaluating whether a plaintiff has standing under RICO, the court must evaluate the plaintiff's harm, the alleged wrongdoing by the defendants, and the relationship between them. Lerner v. Fleet Bank, N.A., C.A.2 (N.Y.) 2003, 318 F.3d 113, as amended , certiorari denied 124 S.Ct. 532, 540 U.S. 1012, 157 L.Ed.2d 424, on remand 2005 WL 2064088. Racketeer Influenced And Corrupt Organizations

Trading corporation's allocation of payroll taxes to employee-traders when calculating their commissions did not improperly shift its obligations to employee-traders in violation of federal excise tax statutes, and thus did not constitute mail fraud that could serve as predicate act under Racketeer Influenced and Corrupt Organizations Act (RICO), inasmuch as gross profits from which tax payments were subtracted did not belong to employee-traders,

Alleged false submissions made by university and professor, who was co-inventor of patented invention, to the Patent and Trademark Office (PTO) were not acts of mail fraud sufficient to constitute predicate acts for claim of Racketeer Influenced and Corrupt Organizations Act (RICO) violations asserted by student who was also co-inventor. University of West Virginia Board of Trustees v. VanVoorhies, C.A.Fed. (W.Va.) 2002, 278 F.3d 1288, 61 U.S.P.Q.2d 1449. Postal Service 35(10)

Union officials' alleged attempts to force union member to abandon his candidacy for union office, in violation of Hobbs Act, was not the proximate cause of union member's termination from his membership or from his job as union's general counsel, and alleged attempts thus were not appropriate predicate activities upon which to base claim under Racketeer Influenced and Corrupt Organizations Act (RICO); member admitted that alleged attempts did not succeed. Camelo v. American Federation, C.A.1 (Mass.) 1998, 137 F.3d 666. Racketeer Influenced And Corrupt Organizations 34

Defendant's admission in plea allocation to bribery conspiracy, $800 check, entry in cash disbursement journal authorizing the check, trial testimony of government informants, and defendant's failure to testify established two racketeering acts in civil RICO action, even though defendant claimed that evidence failed to establish commission of crime prior to corrupt acts by local officials; defendant's contention was based solely on evidence that he was concerned about being double billed, not that he agreed to offer money only after corrupt officials had taken the desired actions. U.S. v. Private Sanitation Industry Ass'n of Nassau/Suffolk, Inc., C.A.2 (N.Y.) 1993, 995 F.2d 375. Racketeer Influenced And Corrupt Organizations 79

Evidence in defendant's prosecution under Racketeer Influence and Cropt Organizations Act, including testimony of witness that while she was at home dressing for her grandmother's funeral, she allowed members of revolutionary group to prepare for robbery, and that defendant was one of women donning wigs on day of attempt, was sufficient to support finding that defendant was guilty of predicate act of attempted armed robbery. U.S. v. Ferguson, C.A.2 (N.Y.) 1985, 758 F.2d 843, certiorari denied 106 S.Ct. 124, 474 U.S. 841, 88 L.Ed.2d 102, certiorari denied 106 S.Ct. 125, 474 U.S. 841, 88 L.Ed.2d 102, certiorari denied 106 S.Ct. 592, 474 U.S. 1032, 88 L.Ed.2d 572. Racketeer Influenced And Corrupt Organizations 95

One conducts activities of enterprise through pattern of racketeering when one is enabled to commit predicate offenses solely by virtue of his position in enterprise or involvement in or control over affairs of enterprise, or predicate offenses are related to activities of that enterprise, but simply committing predicate acts which are unrelated to enterprise or one's position within it would be insufficient; furthermore, it is not necessary for person to solidify or otherwise enhance his position in enterprise through commission of predicate violations. U.S. v. Scotto, C.A.2 (N.Y.) 1980, 641 F.2d 47, certiorari denied 101 S.Ct. 3109, 452 U.S. 961, 69 L.Ed.2d 971. Commerce 82.6; Racketeer Influenced And Corrupt Organizations 34

Hospital alleged the Racketeer Influenced and Corrupt Organizations Act (RICO) predicate acts of mail and wire fraud with sufficient particularity where it alleged with particularity that health maintenance organization
(HMO) and “re-pricing” service devised a scheme to defraud by re-pricing medical claims with hospital’s discounts under an agreement which discounted bills which HMO and service had no right to take; complaint contained specific statements on the payor re-pricing transmittal that were misleading, and that the forms failed to state that HMO and service were in fact not eligible for the millions of dollars worth of discounts that they claimed. *Queen's Medical Center v. Kaiser Foundation Health Plan, Inc.*, D.Hawaii 2013, 2013 WL 2420907. Federal Civil Procedure 636

German wholesaler adequately alleged two or more predicate acts of mail or wire fraud by New York corporation and its principals in connection with sale of watches, as required to state civil claim under Racketeer Influenced and Corrupt Organizations Act (RICO) premised on conduct of enterprise’s affairs through pattern of racketeering activity; corporation allegedly sent e-mail advertisements to identifiable customers for the purpose of inducing them to buy purportedly brand-new luxury watches that were in fact used. *Kalimantano GmbH v. Motion in Time, Inc.*, S.D.N.Y.2013, 2013 WL 1499408. Racketeer Influenced and Corrupt Organizations 31

Tractor-trailer owner and lessee failed to state a Racketeer Influenced and Corrupt Organizations Act (RICO) claim, against tow truck operator and its owner, based upon predicate offense of mail fraud, premised on tow truck operator and owner's efforts to recover payment for towing and storage of tractor-trailer following its collision with a van, where they merely speculated that there were misrepresentations made by mail and electronic communications, but they did not identify the fraudulent circumstances, and they did not allege that they relied on any misrepresentation by defendants. *Central Transport, LLC v. Atlas Towing, Inc.*, E.D.Pa.2012, 884 F.Supp.2d 207, entered 2012 WL 3135404. Racketeer Influenced and Corrupt Organizations 70

Insurance claimants did not participate in conduct of automobile insurers' enterprises through “pattern of racketeering activity,” with respect to insurers against whom claimants each committed only one predicate act of mail fraud, and thus claimants had no liability to insurers on claims alleging that claimants violated Racketeer Influenced and Corrupt Organizations Act (RICO) by engaging in scheme to defraud insurers by submitting false insurance claims; each insurer comprised a single enterprise, and thus could not conglomerate claimants' predicate acts against them. *Puerto Rico American Ins. Co. v. Burgos*, D.Puerto Rico 2011, 2011 WL 4526083. Racketeer Influenced and Corrupt Organizations 31

Employees’ allegations that the 86 hospital systems and affiliates and two individuals named as defendants in their complaints devised a scheme to underpay them, and that they furthered that scheme by mailing to the Plaintiffs misleading paychecks which led them to believe defendants had included all compensable work time, failed to allege the predicate act of mail fraud with sufficient particularity, as required to state civil Racketeer Influenced and Corrupt Organizations Act (RICO) claims; employees's allegations did not show how the defendants furthered their allegedly fraudulent scheme by mailing the paychecks, and employees did not specify which of the 86 entities or two individuals mailed the paychecks. *Davis v. Abington Memorial Hosp.*, E.D.Pa.2011, 817 F.Supp.2d 556, entered 2011 WL 4007958. Federal Civil Procedure 636

Ambulance service providers failed to state plausible Racketeer Influenced and Corrupt Organizations Act (RICO) claims for relief against health insurance companies, health maintenance organizations (HMOs), hospit-
al plan corporations, and/or managed care organizations that provided health care benefits within Commonwealth of Pennsylvania based on violation of Hobbs Act as necessary predicate acts; unlawfulness of direct payment to enrollees for emergency services rendered by noncontract providers under Pennsylvania's Quality Health Care Accountability and Protection Act (“Act 68”) was necessary element of those claims, and court had declared that conduct to be lawful. Ambulance Ass’n of Pennsylvania v. Highmark Inc., W.D.Pa.2011, 794 F.Supp.2d 569, affirmed 464 Fed.Appx. 63, 2012 WL 213415. Racketeer Influenced and Corrupt Organizations 8

United States petroleum corporation's complaint against New York attorney who represented indigenous peoples of Amazonian rain forest in environmental litigation against corporation in the Republic of Ecuador (ROE), which alleged that attorney, activists, and engineers engineered wide-ranging campaign of public attacks based on false and misleading statements, trumped up criminal charges, threatened and actual fraudulent civil judgment, investigations by government agencies, and ongoing harassment and disruptions of business operations, and demanded payment of billions of dollars before activities would cease, with intent and effect of causing reasonable fear of economic loss on part of corporation, adequately alleged predicate act of extortion, as required for Racketeer Influenced and Corrupt Organizations Act (RICO) and RICO conspiracy claims. Chevron Corp. v. Donziger, S.D.N.Y.2012, 871 F.Supp.2d 229. Conspiracy 1.1; Racketeer Influenced and Corrupt Organizations 8

Mattress manufacturer and computer software developer failed to establish that owner of consumer-review websites engaged in predicate acts of commercial bribery and extortion, as required to support claim against owner for violation of Racketeer Influenced and Corrupt Organizations Act (RICO); owner did not hold itself out as making criticism of commodities or services, as required by Pennsylvania commercial bribery statute, and plaintiffs failed to articulate how owner's actions constituted extortion. Ascentive, LLC v. Opinion Corp., E.D.N.Y.2011, 842 F.Supp.2d 450, 107 U.S.P.Q.2d 1036. Racketeer Influenced and Corrupt Organizations 8; Racketeer Influenced and Corrupt Organizations 9

County sufficiently alleged predicate act of bribery to support its civil claims against provider under Racketeer Influenced and Corrupt Organizations Act (RICO) in relation to formation and performance of implementation services agreement by alleging that provider engaged in discussions with county employee regarding potential future employment in exchange for employee's assistance in securing additional consulting funds as part of agreement. County of Marin v. Deloitte Consulting LLP, N.D.Cal.2011, 836 F.Supp.2d 1030. Racketeer Influenced and Corrupt Organizations 9

Employer-sponsored health benefit plan subscribers, bringing Racketeer Influenced and Corrupt Organizations Act (RICO) claim against insurer and owner of database of provider charges, pled the predicate act of mail fraud with particularity, by detailing an underpayment scheme that was committed, in part, through the use of the United States mail and interstate wire facilities, and charging the date and contents of several mailings made from insurer to the subscribers communicating allegedly fraudulent information concerning reimbursement for out-of-network (ONET) services, the prevailing charge for the service, and the reasons why certain billed amounts were not covered. Franco v. Connecticut General Life Ins. Co., D.N.J.2011, 818 F.Supp.2d 792. Federal Civil Procedure 636
Patient sufficiently alleged two or more predicate acts of racketeering activity in relation to the trafficking of goods bearing counterfeit marks as required to plead a pattern of racketeering to support Racketeer Influenced and Corrupt Organizations Act (RICO) claim against sellers of surgical mesh which was allegedly counterfeit and otherwise defective; patient alleged that sellers intentionally manufactured, distributed, and sold surgical mesh which they knew was counterfeit, that sellers' trafficking resulted in distribution of at least 15 lots of counterfeit mesh to numerous states, and that the trafficking in counterfeit goods resulted in the implantation of counterfeit surgical mesh in a number of individuals. Jones v. Ram Medical, Inc., D.S.C.2011, 807 F.Supp.2d 501. Racketeer Influenced and Corrupt Organizations 26

Third party payors (TPP) failed to sufficiently plead bribery as a predicate act, as required to support their civil Racketeer Influenced and Corrupt Organizations Act (RICO) claim against manufacturer of anti-psychotic drug, who allegedly promoted drug for off-label uses through misrepresentation; TPPs made no effort to delineate the elements of bribery or cite to any statute which did so, and complaint did not assert any instances where manufacturer provided remuneration to a physician thereby causing the physician to prescribe drug when it was not in the patient's best interests. District 1199P Health and Welfare Plan v. Janssen, L.P., D.N.J.2011, 784 F.Supp.2d 508. Racketeer Influenced And Corrupt Organizations 9

Allegations of workers, that company, its officers and employees recruited the workers to come from the Philippines to work in the United States, using fraudulent visa applications, false promises, and misrepresentations regarding the terms and conditions of employment, then forced the workers to live in severely crowded housing and to work long hours in country clubs and hotels in Florida and New York, and threatened workers with arrest, imprisonment, deportation, cancellation of their visas, loss of work, lawsuits, and black-listing were sufficient to satisfy heightened pleading standard for fraud-related predicate acts of mail, wire, and immigration document fraud which supported their civil Racketeer Influenced and Corrupt Organizations Act (RICO) claims. Magnifico v. Villanueva, S.D.Fla.2011, 783 F.Supp.2d 1217. Federal Civil Procedure 636

No-fault automobile insurer's allegations, which identified each claim that was allegedly fraudulent, the claim number, and the date of claim, were sufficient to plead mail fraud with particularity as a predicate act for a Racketeer Influenced and Corrupt Organizations Act (RICO) claim. Allstate Ins. Co. v. Linea Latina De Accidentes, Inc., D.Minn.2011, 781 F.Supp.2d 837. Federal Civil Procedure 636

Alleged fraud in lender's pressure on appraisers who worked as independent contractors to change valuations was not stated with particularity, as required to support mail or wire fraud as predicate act to Racketeer Influenced and Corrupt Organizations Act (RICO) claim against lender, where appraisers stated that such pressure occurred on “three separate occasions” but they did not identify who, what, when, where, and how of misconduct charged. Capitol West Appraisals, LLC v. Countrywide Financial Corp., W.D.Wash.2010, 759 F.Supp.2d 1267, affirmed 467 Fed.Appx. 738, 2012 WL 345903. Federal Civil Procedure 636

Prescription assistance company that sued promotion firm and officers, stemming from alleged misrepresentation of company's services, failed to allege that firm's financial controller personally committed predicate acts of fraud, as required to state claim against controller under Racketeer Influenced and Corrupt Organizations Act (RICO); controller's peripheral involvement with firm's call center did not rise to requisite level of participation


Corporation failed to sufficiently allege series of related predicate acts by holding company, extending over a substantial period of time, as required to show closed-ended continuity of holding company's activities to gain control of and develop corporation's real property sufficient to plead “pattern” of racketeering under Racketeer Influenced and Corrupt Organizations Act (RICO); complaint contained no allegations as to period of time that activities took place, the only date specifically mentioned in complaint was date parties signed letter of intent to form partnership, and complaint merely stated that “first act occurred in September 1998” and last known act was sometime “in the year 2004.” Trinidad v. IDI Holdings PR, Inc., D.Puerto Rico 2005, 708 F.Supp.2d 137. Racketeer Influenced And Corrupt Organizations

Publisher alleging that competitor, its employees, distributors, and others attempted to monopolize and dominate local print advertising market, in violation of Racketeer Influenced and Corrupt Organizations Act (RICO), failed to plead predicate acts of mail and wire fraud with sufficient particularity, where publisher did not identify which defendant caused each allegedly fraudulent statement to be spoken, written, wired, or mailed, and to whom communication was made, when communication was made, and how it advanced fraudulent scheme. Conte v. Newsday, Inc., E.D.N.Y.2010, 703 F.Supp.2d 126. Federal Civil Procedure

Complaint, which alleged that subscription agent and individual subscribers conspired to defraud publishers of scientific, technical and medical journals by placing orders for the purchase of thousands of those journals at a lower or discounted “individual” subscription rate, rather than the higher “institutional” rate, and then reselling the journals to institutions for more than the individual rate, pleaded Racketeer Influenced and Corrupt Organizations Act (RICO) predicate acts of mail and wire fraud against subscribers with sufficient particularity; fact that the subscription orders were identified only by year, rather than by the specific day and month in which they were placed, did not render the pleading insufficiently specific since each individual subscriber was sufficiently advised of his or her allegedly fraudulent acts, and those acts were identified by both the name of the journal and the approximate time the subscription was placed. Elsevier Inc. v. W.H.P.R., Inc., S.D.N.Y.2010, 692 F.Supp.2d 297. Federal Civil Procedure

Homeowners sufficiently alleged that dollar amount on HUD-1 form representing premium for title insurance was not true and correct and was a misrepresentation which played a role in furthering title insurance company's alleged predicate acts of mail and wire fraud, as required to support civil Racketeer Influenced and Corrupt Organizations Act (RICO) claim alleging that company charged default basic insurance rate rather than special discounted reissue or refinance rate applicable to homeowners' mortgage transactions; although amount on HUD-1 reflected what was actually paid by homeowners at closing, homeowners alleged that amount charged for title insurance as reflected on HUD-1 was in fact an overcharge and that part of scheme to overcharge included misrepresenting to homeowners on HUD-1 that the correct amount of title insurance premium was charged. Cole-
Pharmaceutical manufacturers had duty to provide negative information of which they were aware regarding their prescription anticonvulsant drug in response to third-party payors' (TPP) requests for information regarding drug's off-label indications for purposes of determining any formulary restrictions, and thus TPPs could base their predicate claims of mail fraud and wire fraud upon manufacturers' breach of that duty in TPPs' action against manufacturers under Racketeer Influenced and Corrupt Organizations Act (RICO), where manufacturers submitted positive information about off-label indications. *In re Neurontin Marketing and Sales Practices Litigation*, D.Mass.2010, 677 F.Supp.2d 479, reversed in part, vacated in part 712 F.3d 51.

Pharmacy management firm's allegation that workers' compensation insurers and claims administrators lulled it into believing that they had investigated its claims for payments and intended to resolve their objections with haste and in good faith, when in fact they were conspiring with other carriers to put firm out of service and had implemented scheme to deny all payments to firm and fabricate pretextual objections to its claims, were sufficient to demonstrate predicate acts of mail and wire fraud in firm's action against insurers and administrators under Racketeer Influenced and Corrupt Organizations Act (RICO). *California Pharmacy Management, LLC v. Zenith Ins. Co.*, C.D.Cal.2009, 669 F.Supp.2d 1152.

Health and welfare fund failed to allege with specificity two predicate acts of racketeering activity or common purpose between alleged conspirators for claim against pharmaceutical company alleging that its wrongful conduct in connection with marketing of drug violated Racketeer Influenced and Corrupt Organizations Act (RICO); fund did not allege, beyond generalized statements, that company and doctors and scientists company utilized as part of marketing campaign for drug agreed to hide or misrepresent dangers presented by drug, and fund did not allege facts to indicate existence of common purpose to commit racketeering acts of mail or wire fraud between company and doctors-scientists. *Southeast Laborers Health and Welfare Fund v. Bayer Corp.*, S.D.Fla.2009, 655 F.Supp.2d 1270.

Environmental coalition challenging construction of power plant failed to describe Racketeer Influenced and Corrupt Organizations Act (RICO) predicate acts with particularity, as required to state RICO claim under feder-
al and Florida law against State of Florida, governor of Florida, state Department of Environmental Protection, department's secretary, county, and power companies. Palm Beach County Environmental Coalition v. Florida, S.D.Fla.2009, 651 F.Supp.2d 1328. Racketeer Influenced And Corrupt Organizations 70; Racketeer Influenced And Corrupt Organizations 115

Town building inspector's mailing and faxing of denial of building permit to landowner was not mail or wire fraud, and thus was not a predicate act under the Racketeer Influenced and Corrupt Organizations Act (RICO). Christian v. Town of Riga, W.D.N.Y.2009, 649 F.Supp.2d 84, reconsideration denied 2010 WL 4116785. Postal Service 35(8); Telecommunications 1014(6)

Former California Highway Patrol (CHP) employee alleged Racketeer Influenced and Corrupt Organizations Act (RICO) claims based on predicate act of “witness tampering” regarding an “official proceeding”; employee alleged an institutionalized theft of state funds between CHP, a state agency and State Compensation Insurance Fund (SCIF), a business of insurance which affected interstate commerce, that CHP and SCIF engaged in criminal conspiracy to conceal nature and extent of their criminal activities, and that they acted with intent to intimidate, threaten and corruptly dissuade plaintiff and other CHP employees from testifying or informing grand jury of identity of CHP high level officials who were fraudulently making workers’ compensation claims and to protect SCIF from being linked to fraud as form of bribery for SCIF thefts. Vierra v. California Highway Patrol, E.D.Cal.2009, 644 F.Supp.2d 1219. Torts 302

Allegations by homeowner that homeowners’ association and members of association’s board of directors engaged in various fraudulent acts, including backdating a letter approving his application for permission to build a fence in his back yard, placing improperly addressed, unstamped correspondence in homeowner’s mailbox, failing to prevent a board member from embezzling association funds, and filing a fraudulent insurance claim resulting in a check paid to the association, did not properly allege wire fraud or mail fraud, as required predicate acts to state claim for Racketeer Influenced and Corrupt Organizations Act (RICO) claim, absent allegations as to how homeowner was injured by the alleged conduct, how he relied on the alleged fraud to his detriment, or how the defendants used the mail or interstate wires to commit the fraud. Durso v. Summer Brook Preserve Homeowners Ass’n, M.D.Fla.2008, 641 F.Supp.2d 1256. Fraud 41; Racketeer Influenced And Corrupt Organizations 75; Telecommunications 1014(12)

Arbitration judgment creditor’s allegations regarding debtor's representations to creditor that it would be paid for work performed, as subcontractor on project and pursuant to contract, were sufficient to establish predicate acts of mail or wire fraud in its action to enforce arbitration award of $314,925.59 on theory that debtor and its affiliated companies had violated Racketeer Influenced and Corrupt Organizations Act (RICO); allegations included who from debtor or its affiliated companies communicated with creditor, contents of communication, date of communication, and locations of persons involved. Plainville Elec. Products Co., Inc. v. Vulcan Advanced Mobile Power Systems, LLC, D.Conn.2009, 638 F.Supp.2d 245. Fraud 43; Telecommunications 1014(12)

Medical equipment company that claimed that its vice president for marketing and sales and its competitors stole equipment and business from it failed to adequately allege nexus between enterprises and predicate acts in pat-
tern of racketeering required to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO), despite company’s contention that competitors committed hundreds of predicate acts of mail fraud, wire fraud, possession of stolen property, and transportation of stolen property, where none of the specific predicate acts was alleged to have any connection with competitors. Freedom Medical Inc. v. Gillespie, E.D.Pa.2007, 634 F.Supp.2d 490. Racketeer Influenced And Corrupt Organizations

Evidence failed to establish that former county retirement board members deliberately concealed material information regarding retirement fund's investment contracts, or the fees and commissions related to those contracts, and therefore they did not fail to disclose a conflict of interest under Pennsylvania law; consequently, board members did not commit honest services mail and/or wire fraud such that their conduct could serve as a Racketeer Influenced and Corrupt Organizations Act (RICO) predicate offense. Luzerne County Retirement Bd. v. Makowski, M.D.Pa.2007, 627 F.Supp.2d 506. Postal Service 35(9); Racketeer Influenced And Corrupt Organizations 10; Telecommunications 1014(10)

Developer who sued former partners, stemming from purported scheme to force developer from partnership and cause projects to fail, failed to establish that alleged predicate act of financial institution fraud proximately caused injury to his businesses, so as to establish standing under Racketeer Influenced and Corrupt Organizations Act (RICO); allegedly inflated land purchase price put savings institution, not developer, at risk, and the averred siphoning of partnership assets and failure to share increased capital occurred after receipt of loan at issue. Ward v. Nierlich, S.D.Fla.2008, 617 F.Supp.2d 1226. Racketeer Influenced And Corrupt Organizations

In Racketeer Influenced and Corrupt Organizations Act (RICO) suit, predicate acts of mail and wire fraud were alleged with sufficient particularity; complaint alleged that debtor's shareholders committed mail and wire fraud by instructing the indenture trustees to transfer funds in a manner prohibited by the master indentures governing debtor's subsidiaries' programs, that both the instructions and the transfers were done through interstate mail and electronic communications, that shareholders directed those fraudulent transfers from May 1998 to November 2002, kiting funds between accounts to give the appearance that each account had sufficient funds on whichever day the account's balance was periodically checked, and that shareholders kited billions of dollars to conceal from subsidiaries that they were misappropriating corporate assets. In re National Century Financial Enterprises, Inc., Inv. Litigation, S.D.Ohio 2009, 617 F.Supp.2d 700. Federal Civil Procedure

Former employees who sued construction companies and principal, alleging that employment of undocumented aliens depressed their wages, adequately pleaded companies' commission of predicate act by harboring aliens, as required to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO); complaint averred that companies hired numerous undocumented aliens during four-year period, with knowledge or reckless disregard of their status. Nichols v. Mahoney, S.D.N.Y.2009, 608 F.Supp.2d 526. Aliens, Immigration, And Citizenship

Conduct that was not susceptible to classification as generic extortion could not serve as predicate act under Racketeer Influenced and Corrupt Organizations Act (RICO). Cintas Corp. v. Unite Here, S.D.N.Y.2009, 601 F.Supp.2d 571, affirmed 355 Fed.Appx. 508, 2009 WL 4577027. Racketeer Influenced And Corrupt Organizations
Defendant's alleged violations of the Contraband Cigarettes Trafficking Act (CCTA) in connection with his alleged sale of cigarettes lacking valid New York State tax stamps while operating a retail cigarette business on an Indian reservation could serve as predicate acts in federal Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy prosecution, although regulations implementing New York cigarette tax stamp statute with respect to the collection of taxes on cigarettes sold to non-Indians on Indian reservations had not been adopted at time of the alleged racketeering acts. U.S. v. Morrison, E.D.N.Y.2009, 596 F.Supp.2d 661, as amended, on reconsideration in part 706 F.Supp.2d 304, reversed and remanded 686 F.3d 94, certiorari denied 133 S.Ct. 955, 184 L.Ed.2d 729. Conspiracy 28(3)

Participant in airline's frequent flyer program failed to allege that airline and others took his property by threat or force, as required for alleged robbery of his frequent flyer miles to serve as a predicate act for purposes of his claim for violation of the Racketeer Influenced and Corrupt Organizations Act (RICO). Ficken v. AMR Corp., D.D.C.2008, 578 F.Supp.2d 134. Robbery 6; Robbery 7

Toy manufacturer that sued former design employee, stemming from dispute over rights to fashion dolls purportedly based upon manufacturer's product, failed sufficiently to plead predicate acts of mail and wire fraud to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO); alleged predicate acts failed to detail time, place and manner of each purported instance of fraud. Bryant v. Mattel, Inc., C.D.Cal.2007, 573 F.Supp.2d 1254. Racketeer Influenced And Corrupt Organizations 70

Genuine issues of material fact, regarding whether purchasers' alleged injuries were direct result of defendants' predicate acts, precluded summary judgment on claim brought under Racketeer Influenced and Corrupt Organizations Act (RICO) by purchasers against vendor, appraiser and lender, alleging fraudulent scheme to sell and finance overvalued vacation homes. Lester v. Percudani, M.D.Pa.2008, 556 F.Supp.2d 473, reconsideration denied 2008 WL 4722749. Federal Civil Procedure 2509.5

Investors who sued ambulance services, affiliates and officers, alleging that they were induced to invest through series of misrepresentations, failed to aver predicate acts of mail fraud with specificity, as required to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO); complaint did not explain what purported solicitation forms were, what information they contained, when documents were mailed, or who sent them. DeFazio v. Wallis, E.D.N.Y.2007, 500 F.Supp.2d 197. Federal Civil Procedure 636

Money laundering conspiracy may be a predicate offense for a Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy. U.S. v. Battle, S.D.Fla.2006, 473 F.Supp.2d 1185. Racketeer Influenced And Corrupt Organizations 15

Fraudulent statements by cigarette manufacturers and tobacco-related trade organizations regarding adverse health effects of active smoking, addictiveness of nicotine and cigarette smoking, their manipulation of cigarettes' nicotine content, health risks attached to light and low tar cigarettes, their marketing to youth, and adverse
health effects of second-hand smoke evidenced specific intent to defraud necessary to establish violations of federal mail and wire fraud statutes as predicate acts in action against manufacturers under Racketeer Influenced and Corrupt Organizations Act (RICO), where statements directly contradicted manufacturers’ internal knowledge, statements were made by employees who would reasonably have been expected to have knowledge of manufacturers’ internal research, public positions, and long term strategies, and numerous executives and scientists of manufacturers participated actively in oversight and control of industry activities that were calculated to advance their fraudulent scheme. U.S. v. Philip Morris USA, Inc., D.D.C.2006, 449 F.Supp.2d 1, for additional opinion, see 449 F.Supp.2d 1, clarified 477 F.Supp.2d 191, on reconsideration in part 783 F.Supp.2d 23, stay pending appeal denied 449 F.Supp.2d 988, stay granted 2006 WL 4608645, affirmed in part , vacated in part 566 F.3d 1095, 386 U.S.App.D.C. 49, certiorari denied 130 S.Ct. 3510, 177 L.Ed.2d 1090, certiorari denied 130 S.Ct. 3502, 177 L.Ed.2d 1090, rehearing denied 131 S.Ct. 57, 177 L.Ed.2d 1142, on remand 787 F.Supp.2d 68, clarified 778 F.Supp.2d 8, appeal dismissed 686 F.3d 839, 402 U.S.App.D.C. 41, clarification denied 793 F.Supp.2d 164. Postal Service ☛ 35(12); Telecommunications ☛ 1014(9)

Undocumented workers’ allegations that retailer locked its stores' doors at night and required workers to find a manager with a key in order to exit were insufficient to state a claim for involuntary servitude, as predicate acts required to support Racketeer Influenced and Corrupt Organizations Act (RICO) claim, absent allegations that a manager ever refused to allow exit, or that retailer locked store doors at night knowing that workers would be placed into a condition of servitude. Zavala v. Wal-Mart Stores, Inc., D.N.J.2006, 447 F.Supp.2d 379, motion to certify appeal denied 2007 WL 1134110, affirmed 691 F.3d 527. Slaves ☛ 24

Insurer did not engage in mail or wire fraud, as predicate act to claim brought by medical service providers and pharmacies against insurer under Racketeer Influenced and Corrupt Organizations Act (RICO), by providing explanation of payments (EOPs), explanation of benefits (EOBs), circulars, and remittances to providers, which alerted providers to possibility that they were not getting paid to extent they should have been paid, and which otherwise did not contain any misleading information. Sanchez v. Triple-S Management Corp., D.Puerto Rico 2006, 446 F.Supp.2d 48, affirmed 492 F.3d 1, certiorari denied 128 S.Ct. 806, 552 U.S. 1076, 169 L.Ed.2d 606. Postal Service ☛ 35(10); Telecommunications ☛ 1014(8)

Inasmuch as mailing of allegedly fraudulent invoice was not cause of injuries suffered by clients as result of attorney’s allegedly negligent handling of their case, alleged mail fraud resulting from sending of invoices was not predicate act of racketeering that could support civil claim under Racketeer Influenced and Corrupt Organizations Act (RICO) claim. Kirk v. Hepp, S.D.N.Y.2006, 423 F.Supp.2d 147. Racketeer Influenced And Corrupt Organizations ☛ 62

Alleged predicate acts of supervisors in Department of Justice (DOJ), in falsifying information to Congress, allegedly in violation of mail fraud statute, did not proximately cause DOJ employee's alleged injury, as required to support her claim under Racketeer Influenced and Corrupt Organizations Act (RICO), since employee was not intended target of the violation. Weaver v. Bratt, D.D.C.2006, 421 F.Supp.2d 25. Racketeer Influenced And Corrupt Organizations ☛ 62

Hospital plaintiffs properly alleged violations of National Stolen Property Act as Racketeer Influenced and Cor-
rupt Organizations Act (RICO) predicate acts; complaint alleged that defendant hospital owner intentionally stole from the Medicare outlier system monies that did not rightfully belong to it by grossly inflating its hospitals' charges and engaging in a “systematic, ongoing course of conduct with the goal and intent to steal and/or convert money from the outlier pool,” that defendant's receipt and exercise of control over payments from the outlier pool injured the hospital plaintiffs, who were forced to absorb the costs of care for outlier patients that they would have otherwise been compensated for from the outlier pool but for defendant's improper and illegal acts, and that defendant transmitted those “stolen” funds in interstate commerce over several years in amounts that exceeded $5,000.00 for most, if not all, of the thousands of predicate acts it committed. State of Fla., Office of Atty. Gen., Dept. of Legal Affairs v. Tenet Healthcare Corp., S.D.Fla.2005, 420 F.Supp.2d 1288. Health 975

Assertions that defendants “engaged in conduct of an enterprise through a pattern of racketeering activity,” and that a law firm violated RICO by conspiring with other unspecified defendants to shut a corporation that developed a health care supply strategist certification program out of the healthcare supply industry, were insufficient to allege the “who, what, where, and when” of each purported predicate act of racketeering, as required to state a civil Racketeer Influenced and Corrupt Organizations Act (RICO) claim. Medical Supply Chain, Inc. v. Neoforma, Inc., D.Kan.2006, 419 F.Supp.2d 1316, reconsideration denied 2006 WL 2570312, appeal dismissed 508 F.3d 572. Federal Civil Procedure 636; Racketeer Influenced And Corrupt Organizations 70

Allegation that law firm and attorneys for fruit packer and related entities accepted payment for legal services rendered did not establish that firm and attorneys committed predicate act of engaging in monetary transactions in property derived from specified unlawful activity, for purposes of apple growers' claim against firm and attorneys under Racketeer Influenced and Corrupt Organizations Act (RICO), given absence of allegation that payments received were illegal or represented proceeds of unlawful activity, or that firm and attorneys knew that money received was derived from unlawful activity. Flores v. Emerich & Fike, E.D.Cal.2006, 416 F.Supp.2d 885, reconsideration denied in part 2006 WL 2536615. United States 34


Government was not judicially estopped under Due Process Clause from arguing that defendant's predicate acts of marijuana trafficking alleged in prior Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy prosecution were related to activities alleged in current prosecution, since it was plausible that defendant's purported marijuana dealings during period charged in instant indictment were related to both prior and current enterprises. U.S. v. Urso, E.D.N.Y.2005, 369 F.Supp.2d 254. Constitutional Law 4629; Estoppel 68(2); Racketeer Influenced And Corrupt Organizations 96

Fixed-base operator at municipal airport, who claimed that airport commission and municipal officials violated Racketeer Influenced and Corrupt Organizations Act (RICO) by fraudulently inducing it to enter a fixed-base
operations contract by misrepresenting the number of annual aircraft landings and takeoffs, failed to allege two predicate acts of mail or wire fraud with sufficient particularity to satisfy RICO's pattern element; operator did not specify the method of communication with respect to any communication, failed to identify the persons mailing, faxing or telephoning the alleged misrepresentations, and failed to specify the dates on which those communications were mailed or transmitted over interstate wires. Barry Aviation, Inc. v. Land O'Lakes Municipal Airport Com'n, W.D.Wis.2005, 366 F.Supp.2d 792. Federal Civil Procedure 636

Allegations by celebrity wardrobe stylist that her managing agency falsely represented, in telephone conversations, that it did not owe stylist money paid to agency by her clients, and that agency mailed invoices to clients marked “paid” even though agency had not paid stylist, were sufficient to plead predicate acts of mail and wire fraud constituting a pattern of racketeering activity, as required to state claim against agency's principal under Racketeer Influenced and Corrupt Organizations Act (RICO). Moses v. Martin, S.D.N.Y.2004, 360 F.Supp.2d 533. Postal Service 35(10); Telecommunications 1014(8)

Disappointed bidder for government contract failed to satisfy injury requirement of Racketeer Influenced and Corrupt Organizations Act (RICO) provision barring use of proceeds from racketeering activities in operation of enterprise when harm to bidder arose from predicate racketeering acts causing loss of contract, rather than application of proceeds from racketeering activities to profits of successful bidder, as enterprise. Lockheed Martin Corp. v. Boeing Co., M.D.Fla.2005, 357 F.Supp.2d 1350. Racketeer Influenced And Corrupt Organizations 63

Evidence that watch manufacturer's sales managers sought under-the-table compensation from dealer in exchange for supplying dealer with certain desirable pieces of manufacturer's inventory did not establish Racketeer Influenced and Corrupt Organizations Act (RICO) predicate offense of commercial bribe receiving in violation of New York law since there was no evidence that manufacturer would suffer a loss if the inventory were directed from one dealer of its products to another. Maddaloni Jewelers, Inc. v. Rolex Watch U.S.A., Inc., S.D.N.Y.2004, 354 F.Supp.2d 293. Bribery 1(1)

Products liability defendant's alleged intimidation of witnesses did not constitute predicate acts upon which claims under Racketeer Influenced and Corrupt Organizations Act (RICO) could be based, where only specific allegations of witness intimidation involved state courts. Matsuura v. E.I. du Pont de Nemours and Co., D.Hawai'i 2004, 330 F.Supp.2d 1101, reversed and remanded 431 F.3d 353, certiorari denied 126 S.Ct. 2861, 547 U.S. 1192, 165 L.Ed.2d 895, on remand 2006 WL 2734291. Racketeer Influenced And Corrupt Organizations 7

Racketeer Influenced and Corrupt Organizations Act (RICO) complaint failed to allege that predicate acts amounted to or posed continued threat of criminal activity; no allegations established either closed period of repeated conduct or open-ended period of on-going conduct which posed threat of repetition. Synergy Financial, L.L.C. v. Zarro, W.D.N.C.2004, 329 F.Supp.2d 701. Racketeer Influenced And Corrupt Organizations 28

Mortgagor's conclusory allegation that financial professionals engaged in mail fraud, wire fraud, and bank fraud in connection with her mortgage did not plead predicate acts of racketeering activity with sufficient particularity

Employer's alleged employment of illegal workers, knowing that those workers were smuggled or otherwise brought into the United States illegally, supported claim for violation of statute prohibiting employment of unauthorized aliens, which served as predicate act in current and former employees' action against employer under the Racketeer Influenced and Corrupt Organizations Act (RICO). *Williams v. Mohawk Industries, Inc.*, N.D.Ga.2004, 314 F.Supp.2d 1333, affirmed in part , reversed in part and remanded 411 F.3d 1252, certiorari granted in part 126 S.Ct. 830, 546 U.S. 1075, 163 L.Ed.2d 705, certiorari dismissed as improvidently granted 126 S.Ct. 2016, 547 U.S. 516, 164 L.Ed.2d 776, on remand 465 F.3d 1277. *Aliens, Immigration, And Citizenship* ☞ 787

Requirement for stating claim under Racketeer Influenced and Corrupt Organizations Act (RICO), that continuity of predicate acts be shown, was satisfied through allegations of close-ended continuity, involving employee's theft of aircraft manufacturer's trade secrets, and utilization of stolen materials by employees of competitor, all extending over period of years. *Lockheed Martin Corp. v. Boeing Co.*, M.D.Fla.2004, 314 F.Supp.2d 1198. Racketeer Influenced And Corrupt Organizations ☞ 29

Mail fraud was sufficiently alleged, as predicate act in Racketeer Influenced and Corrupt Organizations Act (RICO) suit claiming that village mayor and chief constables operated village court as RICO enterprise through which motorists were illegally ticketed and fined, through allegations by one claimant that he received mailed written notices directing him to appear in village court regarding traffic citation, even though notices themselves contained nothing fraudulent. *Wood v. Incorporated Village of Patchogue of New York*, E.D.N.Y.2004, 311 F.Supp.2d 344. Postal Service ☞ 35(8)

Plaintiff failed to allege date alleged “extortion” occurred, nature of alleged threats and coercion, effect on interstate commerce, or purpose of defendants’ alleged actions, as required to establish violation of Hobbs Act as predicate act in RICO claim. *Mathon v. Feldstein*, E.D.N.Y.2004, 303 F.Supp.2d 317. Racketeer Influenced And Corrupt Organizations ☞ 70

Genuine issue of material fact, as to whether employer showed threat of continuing racketeering activity, precluded summary judgment for local union on Racketeer Influenced and Corrupt Organizations Act (RICO) claim as to four predicate acts based on absence of closed or open-ended continuity; union argued unsuccessfully that alleged predicate acts were limited in duration to seven months and posed no threat of long term continuing racketeering activity because officials behind them were removed from office, and while alleged goal of forcing employer out of business in industry had foreseeable endpoint, employer also alleged goal of retaliating against it by intimidating it and other industry participants. *Andrea Doreen Ltd. v. Building Material Local Union 282*, E.D.N.Y.2004, 299 F.Supp.2d 129. Federal Civil Procedure ☞ 2509.5

Allegations that managed care health insurers failed to disclose a plethora of automated processing techniques
that they used to further their alleged fraudulent scheme to deny, delay, or diminish payments for medical services that they owed health care providers, were sufficient to assert that insurers committed predicate act, under Racketeer Influenced and Corrupt Organizations Act (RICO), of mail fraud, despite fact that allegations were embedded in contractual relationships between providers and insurers. In re Managed Care Litigation, S.D.Fla.2003, 298 F.Supp.2d 1259. Racketeer Influenced And Corrupt Organizations

Factual allegations of international union’s amended Racketeer Influenced and Corrupt Organizations Act (RICO) complaint were insufficient to demonstrate open-ended continuity of alleged racketeering activities, through showing that defendants’ predicate acts were inherently unlawful or in pursuit of inherently unlawful goals; unlawful activity, which allegedly occurred in context of general union president’s reelection campaign, was undertaken for mostly lawful purposes of self enrichment, protection of ongoing relationships with union, and depriving union and members of money, honest services of officers and employees, and right to have elections conducted fairly, and fraud was not inherently unlawful in RICO continuity context. International Broth. of Teamsters v. Carey, S.D.N.Y.2004, 297 F.Supp.2d 706, affirmed 124 Fed.Appx. 41, 2005 WL 481573. Racketeer Influenced And Corrupt Organizations

Allegations by patients and health care plans that pharmaceutical company, manufacturer of cancer drug, and distributor, knowingly sent numerous mailings and electronic communications to medical providers and others that contained affirmative misrepresentations that were intended to further fraudulent marketing scheme, sufficiently asserted claims for mail and/or wire fraud to satisfy predicate act element of civil action under Racketeer Influenced and Corrupt Organizations Act (RICO). In re Lupron Marketing and Sales Practices Litigation, D.Mass.2003, 295 F.Supp.2d 148. Fraud

Traffic flagging service’s allegations that union presidents enforced municipal ordinances giving police officers exclusive rights or rights of first refusal to provided traffic control services through use of extortion and physical threats were insufficient to allege commission of predicate acts constituting a “racketeering activity” under Racketeer Influenced and Corrupt Organizations Act (RICO), absent allegation that the presidents acquired property from the plaintiff. Interstate Flagging, Inc. v. Town of Darien, D.Conn.2003, 283 F.Supp.2d 641. Racketeer Influenced And Corrupt Organizations


Federal district court’s dismissal “with prejudice” of unresolved predicate counts of Racketeer Influenced and Corrupt Organizations Act (RICO) indictment, upon accepting guilty plea grounded on several extortion counts, did not bar, on claim preclusion grounds, subsequent RICO prosecution involving overlapping enterprise and different predicate acts; no fundamental unfairness was shown in bringing second indictment, and district court in dismissing earlier counts likely intended to do no more than to perpetuate plea by precluding government

Distributor of golf carts did not establish extortion, in violation of Hobbs Act, as predicate offense for Racketeer Influenced and Corrupt Organizations Act (RICO) claim brought against manufacturer, in connection with termination of agreement under which distributor had right of first refusal on used carts in its territory, and would receive commission of $100 on each used cart sold within territory; there was no showing of fear of economic loss separate and distinct from performance of contract, that fear was of sufficient degree, or that termination of agreement was obtained with distributor's consent. Club Car, Inc. v. Club Car (Quebec) Import, Inc., S.D.Ga. 2003, 276 F.Supp.2d 1276, affirmed 362 F.3d 775, rehearing and rehearing en banc denied 111 Fed.Appx. 1003, 2004 WL 1585294, certiorari denied 125 S.Ct. 618, 543 U.S. 1002, 160 L.Ed.2d 461. Extortion 19

Evidence that defendant, in his capacity as a contract prosecutor, engaged in schemes pursuant to which he received funds for work he did not actually perform, and extorted suspects in return for reduced criminal charges was sufficient to allow a reasonable jury to find defendant guilty beyond a reasonable doubt of conduct serving as predicate acts for racketeering offense. U.S. v. Jay, E.D.Ark. 2003, 274 F.Supp.2d 1052. False Pretenses 1; Racketeer Influenced And Corrupt Organizations 95


Labor organization's member's right to nominate and elect union officers was not property that members of organized crime family could “obtain” or attempt to obtain, and thus family's alleged attempt to take control of union from another family did not constitute extortion under Hobbs Act, as required to establish Racketeer Influenced and Corrupt Organizations Act (RICO) predicate offense. U.S. v. Bellomo, E.D.N.Y. 2003, 263 F.Supp.2d 561. Extortion And Threats 25.1

Racketeer Influenced and Corrupt Organizations Act (RICO) did not provide an appropriate basis for federal question jurisdiction, in intra-tribal dispute between plaintiffs of elected tribal council and defendants of appointed tribal council; allegations that members of appointed council engaged in required predicate acts of racketeering were based on appointed council's acts of taking control of tribal council, which Court lacked jurisdiction to determine. Sac and Fox Tribe of Mississippi in Iowa v. Bear, N.D.Iowa 2003, 258 F.Supp.2d 938, affirmed 340 F.3d 749. Federal Courts 197

Allegation of full service provider of transportation services to Medicaid recipients, pursuant to contract with state Department of Human Services, that competitor's making of referrals to wheelchair van providers rather than full service provider constituted misrepresentations that competitor had fulfilled its duties as to such referrals in accordance with Department regulations, and thereby cost government more money, demonstrated indictable wire fraud sufficient to show predicate offense required to support provider's civil claim against competit-
or's officers under Racketeer Influenced and Corrupt Organizations Act (RICO). Freeport Transit, Inc. v. McNulty, D.Me.2003, 239 F.Supp.2d 102. Racketeer Influenced And Corrupt Organizations 70

Four alleged predicate acts of mail fraud, committed by one participant against a limited number of victims in furtherance of a single fraudulent scheme, were insufficient to support closed-ended continuity, for purposes of establishing a pattern of racketeering activity under the Racketeering Influenced and Corrupt Organization Act (RICO). Weizmann Institute of Science v. Neschy, S.D.N.Y.2002, 229 F.Supp.2d 234. Racketeer Influenced And Corrupt Organizations 29

Allegations by designer and distributor of hair care products that counterfeit cans bearing a sticker commonly used by one defendant were purchased at drug store supplied by that defendant, that counterfeit products supplied by defendants were sold at a grocery store, that a cease and desist letter was sent to defendants because they were suspected of potentially selling counterfeit products, and that, despite notice, counterfeit products bearing defendants' markings were found at retail stores months later supported claim that defendants trafficked in counterfeit trademarks and constituted “predicate criminal acts” for purposes of Racketeer Influenced and Corrupt Organizations Act (RICO) action. Sebastian Intern., Inc. v. Russolillo, C.D.Cal.2000, 186 F.Supp.2d 1055. Trademarks 1787

Since Wire Act did not prohibit internet casino gambling or credit card companies' and issuing banks' association therewith, there could be no mail or wire fraud serving as predicate acts under Racketeer Influenced and Corrupt Organizations Act (RICO) based on alleged activities of credit card companies and issuing banks which facilitated internet gambling by providing a means to obtain virtual cash to use at internet casinos; act of making those credits available was not a violation of law, and the debts were legal and enforceable. In re MasterCard Intern. Inc., Internet Gambling Litigation, E.D.La.2001, 132 F.Supp.2d 468, affirmed 313 F.3d 257. Postal Service 35(4); Telecommunications 1014(2)

Investor in partnership units of real estate partnership stated cause of action for violation of statute prohibiting transfer or receipt of funds known to have been stolen, converted or taken by fraud, as predicate act for purposes of Racketeer Influenced and Corrupt Organizations Act (RICO); investor had alleged that partnerships in which he held units had been falsely induced to surrender assets, which promoters had then appropriated to themselves for profit. Perlman v. Zell, N.D.Ill.1996, 938 F.Supp. 1327, affirmed 185 F.3d 850, rehearing and rehearing en banc denied. Conversion And Civil Theft 161

Use of prior convictions obtained pursuant to guilty pleas entered in the Eastern District of New York as predicate acts for subsequent RICO prosecutions in the Southern District was not barred by the plea agreements, as agreements clearly indicated that bargains were between defendants and Organized Crime Strike Force for the Eastern District of New York, and agreements did not purport to, nor did they, bind any other prosecuting attorneys. U.S. v. Persico, S.D.N.Y.1985, 620 F.Supp. 836, affirmed 774 F.2d 30. Racketeer Influenced And Corrupt Organizations 5

Fixed-base operator at municipal airport which alleged that it was fraudulently induced by municipal officials to enter into fixed-base contract failed to state a claim under the Racketeer Influenced and Corrupt Organizations
(RICO) Act, given its failure to cite a single federal statute enumerated in RICO that provided the link to a pred- 
dicate act of racketeering activity. Barry Aviation, Inc. v. Land O'Lakes Municipal Airport Com'n, 
W.D.Wis.2003, 219 F.R.D. 457, reversed and remanded 377 F.3d 682, on remand 2004 WL 2778437. Racketeer 
Influenced And Corrupt Organizations 70

Check-cashing transactions between customer and check-cashing business were not unlawful and thus could not 
serve as predicate acts under Racketeer Influenced and Corrupt Organizations Act (RICO). Betts v. Advance 
America, M.D.Fla.2003, 213 F.R.D. 466. Racketeer Influenced And Corrupt Organizations 7

Pilot' conclusory statement that Retirement Systems of Alabama (RSA) committed bankruptcy fraud was insuffi- 
cient to adequately state Racketeer Influenced and Corrupt Organizations Act (RICO) predicate act, absent facts 
to explain how RSA committed the alleged criminal act. Vaughn v. Air Line Pilots Ass'n, Intern., E.D.N.Y.2008, 
Corrupt Organizations 70

Generalized and conclusory allegations of mail fraud, wire fraud, and transportation of stolen monies with re- 
spect to alleged scheme to defraud real estate brokers out of commissions were insufficient allegations of predic- 
ate acts to state a claim under Racketeer Influenced and Corrupt Organizations Act (RICO) and failed to meet 
requirements that allegations of fraud be made with particularity, in light of lack of any specific factual allega-
tions in complaint concerning use of mail or wire communications to transmit any communications to any iden-
Procedure 636; Racketeer Influenced And Corrupt Organizations 70

111. State law violations, offenses generally

By interfering with, disrupting, and in some instances “shutting down” clinics that performed abortions, indi- 
vidual and corporate organizers of antiabortion protest network did not “obtain” or attempt to obtain property 
from women's rights organization or abortion clinics, and so did not commit, attempt to commit, or conspire to 
commit “extortion” under state law, as required for organization and clinics to establish Racketeer Influenced 
2004 WL 375995. Extortion 8; Racketeer Influenced And Corrupt Organizations 8

Definitions under section 1961 of this title, required only that conduct on which federal charge is based be typic- 
al of serious crime dealt with by state statute, not that particular defendant be chargeable under state law at time 
of federal indictment; gravamen of this section, is violation of federal law, and reference to state law is neces- 
sary only to identify type of unlawful activity in which defendant intended to engage. U. S. v. Frumento, C.A.3 
(Pa.) 1977, 563 F.2d 1083, certiorari denied 98 S.Ct. 1256, 434 U.S. 1072, 55 L.Ed.2d 775, certiorari denied 98 
S.Ct. 1258, 434 U.S. 1072, 55 L.Ed.2d 776. Commerce 82.10

Exercise of supplemental jurisdiction over investors' state law claims was warranted, in investors' action against 
investment advisors which also alleged fraud in violation of federal securities laws and violation of Racketeer
Influenced and Corrupt Organizations Act (RICO), since all of investors' causes of action arose out of advisors' allegedly fraudulent conduct which thereby induced investors into investing their money, and none of discretionary situations in which district court could have declined to exercise supplemental jurisdiction were applicable under facts and procedural posture of case. Schuster v. Anderson, N.D.Iowa 2005, 413 F.Supp.2d 983. Federal Courts 17

District court would not exercise supplemental jurisdiction over investor's state law claims against investment firm after dismissal of investor's federal claims against firm under Racketeer Influenced and Corrupt Organizations Act (RICO), even though case was complicated, matter had been pending in federal court for nearly two years, discovery had been completed, case was scheduled to be tried soon, and federal judge was familiar with case, where little additional pretrial preparation would have been needed in state court, and remaining claims involved important issues of state law. Jacoboni v. KPMG LLP, M.D.Fla.2004, 314 F.Supp.2d 1172. Federal Courts 18

A former brokerage employee did not have standing to sue under the Racketeer Influenced and Corrupt Organizations Act (RICO) as a consequence of her discharge allegedly due to her uncovering of shady trading schemes and report of that scheme to her superiors, as her injuries were not alleged to have been directly occasioned by the racketeering acts. Schiffels v. Kemper Financial Services, Inc., N.D.Ill.1991, 767 F.Supp. 909, reversed 978 F.2d 344, on remand. Racketeer Influenced And Corrupt Organizations 62

112. Termination of enterprise, offenses generally

There was no basis for Racketeer Influenced and Corrupt Organizations Act (RICO) claim in connection with administration of employee benefit plan established to provide health care coverage for employees of manufacturing association where trust had been terminated and was in existence for less than a year and one half, trust had not been reinstated and there were no plans, immediate or future, for its reinstatement, and only predicate acts plaintiffs alleged were those purportedly committed in connection with administration of trust. Eureka Paper Box Co. v. WBMA, Inc., Voluntary Employee Ben. Trust, M.D.Pa.1991, 767 F.Supp. 642. Racketeer Influenced And Corrupt Organizations 28

113. Time and subject matter of acts, offenses generally

In proving the existence of a Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy within the statute of limitations, the government was not limited to the predicate acts that were pleaded in the indictment and proven to demonstrate the intended racketeering pattern. U.S. v. Pizzonia, C.A.2 (N.Y.) 2009, 577 F.3d 455, certiorari denied 130 S.Ct. 1088, 558 U.S. 1115, 175 L.Ed.2d 889. Criminal Law 150

Defendant could be convicted under statute prohibiting conducting or participating, directly or indirectly, in conduct of criminal enterprises' affairs through pattern of racketeering activity or collection of unlawful debt, even though events were not closely related in time and subject matter, where predicate acts proved were conspiracy to murder rival gang leader in February 1987, conspiracy to commit and commission or armed robbery in January 1990, and conspiracy to extort and attempted extortion in August 1990, and where all activities were designed to earn money for or increase prestige of gang. U.S. v. Wong, C.A.2 (N.Y.) 1994, 40 F.3d 1347, certior-
In order to conduct enterprise’s affairs through pattern of racketeering activity, predicate acts which make up pattern of racketeering and affairs of enterprise through which predicate acts are committed must be contemporaneous. Steco, Inc. v. S & T Mfg., Inc., E.D.Pa.1991, 772 F.Supp. 1495. Racketeer Influenced And Corrupt Organizations

Claim by holder of beneficial interest in land trust against trustee and others for violation of Racketeer Influenced and Corrupt Organizations Act (RICO) as result of scheme to defraud him out of interest in land trust accrued when trustee revised payoff from escrow account to allow another beneficiary to purchase collateral assignment of rents made by trust, even if beneficiary did not know details about subsequent predicate acts allegedly committed by enterprise, absent showing that subsequent acts caused beneficiary injuries over and above harm resulting from first act. Demes v. ABN Amro Services Co., Inc., C.A.7 (Ill.) 2003, 59 Fed.Appx. 151, 2003 WL 459042, Unreported. Limitation Of Actions

114. Usurious loans, offenses generally

Automobile dealer was not “in the business of lending money,” and thus, borrowers could not state claim against him under Racketeer Influenced and Corrupt Organizations Act (RICO) based on two allegedly usurious loan rates from dealer or his mother; dealer did not hold himself out as lender of money, did not suggest that he loan money to plaintiffs, had never made other loans, and stated that he did not intend to loan money in future. Robidoux v. Conti, D.R.I.1990, 741 F.Supp. 1019. Racketeer Influenced And Corrupt Organizations

III. CONSPIRACY

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141. Generally, conspiracy

Issue of whether racketeering conspiracy involving two former New York City police detectives and several organized crime figures continued to exist within five years of commencement of prosecution, for purposes of running of the statute of limitations in detectives’ prosecution for Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy activity, when two of the crime figures had been arrested and the detectives had retired from the police force and moved to Las Vegas, was for jury; although the defendant detectives were no longer selling confidential law enforcement information, evidence demonstrated that persons offering or performing the racketeering acts always included detectives, that the recipients of such services were members or associates of organized crime, and that the principal purpose of the enterprise was to earn money. U.S. v. Eppolito, C.A.2 (N.Y.) 2008, 543 F.3d 25, certiorari denied 129 S.Ct. 1027, 555 U.S. 1148, certiorari denied 129 S.Ct. 1027, 555 U.S. 1148, 173 L.Ed.2d 313. Criminal Law ☞ 739(3)

This chapter permits government to cast wider net than it could under traditional conspiracy principles. U. S. v. Turkette, C.A.1 (Mass.) 1981, 656 F.2d 5. Commerce ☞ 82.6; Racketeer Influenced And Corrupt Organizations ☞ 1

Congress, which specifically provided that a conspiracy to violate substantive offenses under this chapter is itself a violation of this chapter, intended to establish separate conspiracy offense distinct from substantive offenses. Seville Indus. Machinery Corp. v. Southmost Machinery Corp., D.C.N.J.1983, 567 F.Supp. 1146, af-
Conspiracy 28(2)

Definitions under this chapter of “enterprise,” “pattern of racketeering activity,” and “racketeering activity” do not incorporate any element of agreement or concerted activity, the essential element of conspiracy; Congress intended to create conspiracy offense under this chapter separate from substantive racketeering offense. U. S. v. Hawkins, M.D.Ga.1981, 516 F.Supp. 1204. Conspiracy 28(3)

142. Substantive offense proceeding, conspiracy

Even if jury were required to find existence of enterprise under both substantive Racketeer Influenced and Corrupt Organizations Act (RICO) count and count charging conspiracy to commit RICO violation, mere inconsistency between verdict on conspiracy count and non-verdict on substantive count did not warrant reversal of defendant's conviction on conspiracy count. U. S. v. Cornelius, C.A.10 (Kan.) 2012, 696 F.3d 1307. Criminal Law 878(4); Criminal Law 1175


143. Failure to establish substantive offense, conspiracy

Plausible inference could not be made on motion to dismiss for failure to state claim upon which relief can be granted that law firm had been aware of ongoing bribery-racketeering conspiracy between nation of Grenada and petroleum exploration company and its affiliates to defeat competitor's attempt to obtain offshore license, on claim of Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy, on allegations that firm was on notice that principal of company “was a convicted felon” and that principal and company and affiliated entities were financing Grenada's legal defense at international arbitration against competitor; such facts were consistent with normal business practice in which interested party funded another entity's legal representation. RSM Production Corp. v. Freshfields Bruckhaus Deringer U.S. LLP, C.A.D.C.2012, 682 F.3d 1043, 401 U.S.App.D.C. 238, rehearing en banc denied, certiorari denied 133 S.Ct. 870, 659. Conspiracy 8

RICO conspiracy conviction could be based upon defendant's alleged agreement to conduct affairs of enterprise through collection of unlawful debt, although evidence was insufficient to support conviction of substantive RICO offense of conducting criminal enterprise through collection of unlawful debt, in view of evidence that defendant conspired to further criminal enterprise for collection of debt. U. S. v. Vastola, C.A.3 (N.J.) 1990, 899 F.2d 211, vacated on other grounds 110 S.Ct. 3233, 1001, 111 L.Ed.2d 744, on remand 915 F.2d 865. Conspiracy 47(3.1)

Fact that prosecution of predicate RICO acts was time barred did not mean that they could not be considered in determining whether defendant was part of RICO conspiracy. U. S. v. Torres Lopez, C.A.1 (Puerto Rico) 1988,
Information technology company failed to state cause of action against competitor for conspiracy to violate Racketeer Influenced and Corrupt Organizations Act (RICO), in connection with data pool market for consumer product information, where RICO violation was legally impossible under facts alleged, and there were no additional facts alleged indicating conspiracy to commit predicate acts that would create RICO violation. Edgenet, Inc. v. GS1 AISBL, E.D.Wis.2010, 742 F.Supp.2d 997, motion to certify appeal denied 2011 WL 1305219. Conspiracy 28(3)

Workers' compensation insurers' and claims administrators' alleged practice of routinely consolidating claims before state workers' compensation board for purpose of delaying payments was incapable of supporting existence of scheme to defraud pharmacy management firm, even if delays were intentional, where practice did not violate board's rules. California Pharmacy Management, LLC v. Zenith Ins. Co., C.D.Cal.2009, 669 F.Supp.2d 1152. Fraud 28

Secondary wholesaler failed to sufficiently plead that its alleged Racketeer Influenced and Corrupt Organizations Act (RICO) damages, its alleged inability to compete in the wholesale pharmaceutical market, were proximately caused by the alleged predicate acts of wholesaler defendants, who sent false reports to unidentified manufacturers regarding the filling of secondary wholesaler's orders; complaint did not explain how the purported RICO violations caused injury to secondary wholesaler, but rather, just summarily alleged that they did. Rx-USA Wholesale, Inc. v. Alcon Laboratories, Inc., E.D.N.Y.2009, 661 F.Supp.2d 218, affirmed 391 Fed.Appx. 59, 2010 WL 3393737. Racketeer Influenced And Corrupt Organizations 75

Cause of action for conspiracy to violate Racketeer Influenced and Corrupt Organizations Act (RICO) failed to state a claim, absent showing of a substantive RICO violation. Tuscano v. Tuscano, E.D.N.Y.2005, 403 F.Supp.2d 214. Conspiracy 8; Conspiracy 18

Fixed-base operator at municipal airport failed to allege Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy by airport commission and municipal officials; although operator alleged that defendants engaged in a conspiracy to defraud the state and federal governments using interstate mail and wire, it did not allege any facts indicating an act of agreement among defendants, what roles each defendant would play or what agreement defendants reached to commit two predicate acts of racketeering. Barry Aviation, Inc. v. Land O'Lakes Municipal Airport Com'n, W.D.Wis.2005, 366 F.Supp.2d 792. Conspiracy 18

Complaint of two union members failed to sufficiently allege nature of injuries they suffered from being denied a “racketeer-free” membership in union local, as required to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO) against international union and local union activists who allegedly conducted or conspired to conduct union affairs through a pattern of racketeering activity to place union local under emergency trusteeship to effectuate ouster of its principal officer; trusteeship had been found legal, and members did not allege concrete financial loss resulting from alleged racketeering. Anderson v. Ayling, E.D.Pa.2003, 297 F.Supp.2d 805, affirmed 396 F.3d 265. Racketeer Influenced And Corrupt Organizations 75

Conclusory allegations that government officials and federal tax judges were involved in conspiracy to drive business and estate planner out of business, which largely alleged conduct that on its face appeared lawful, did not support claim for alleged violation of Racketeer Influenced and Corrupt Organizations Act (RICO). Chisum v. Colvin, D.D.C.2003, 276 F.Supp.2d 1. Racketeer Influenced And Corrupt Organizations Page 288


Defendant, who was attorney charged with violating this section because of his activities as investment adviser, need not have been participant in substantive racketeering activities and need not have been investing his own funds in order to have been coconspirator seeking to violate this section establishing substantive offense. U. S. v. Loften, S.D.N.Y.1981, 518 F.Supp. 839, affirmed 819 F.2d 1130. Conspiracy Page 288

144. Elements, conspiracy

The existence of an enterprise is not an element of the offense of conspiracy to commit a Racketeer Influenced and Corrupt Organizations Act (RICO) violation. U.S. v. Harris, C.A.10 (Kan.) 2012, 695 F.3d 1125. Conspiracy Page 288

For a charge of conspiracy to commit a Racketeer Influenced and Corrupt Organizations Act (RICO) violation, a jury need only be unanimous as to the types of predicate racketeering acts that the defendant agreed to commit, not to the specific predicate acts themselves. U.S. v. Randall, C.A.10 (Kan.) 2011, 661 F.3d 1291. Criminal Law Page 288

To prevail on claim of conspiracy to violate Racketeer Influenced and Corrupt Organizations Act (RICO), plaintiff had burden to prove by preponderance of evidence: that defendants agreed to acquire or maintain interest or control of enterprise or to conduct or participate in affairs of enterprise through pattern of racketeering activity, and that defendants further agreed that someone would commit at least two predicate acts to accomplish those goals. Gagan v. American Cablevision, Inc., C.A.7 (Ind.) 1996, 77 F.3d 951, rehearing denied. Conspiracy 1.1; Conspiracy 19

Liability for RICO conspiracy is proved by showing existence of enterprise affecting interstate commerce, defendant's knowingly joining the conspiracy to participate in the conduct of the affairs of the enterprise, defendant's participation in the conduct of the affairs of the enterprise, and defendant's doing so through a pattern of racketeering activity by agreeing to commit or committing two or more predicate offenses. Aetna Cas. Sur. Co. v. P & B Autobody, C.A.1 (Mass.) 1994, 43 F.3d 1546. Conspiracy 1.1


Allegations were sufficient to state a claim of conspiracy under Racketeer Influenced and Corrupt Organizations Act (RICO); plaintiff alleged that defendant was aware of fraudulent RICO enterprise and intended to participate in it, that defendant worked with other alleged RICO conspirators and personally furthered such conspiracy. Natomas Gardens Inv. Group, LLC v. Sinadinos, E.D.Cal.2010, 710 F.Supp.2d 1008. Conspiracy 18

Continuity and relationship of racketeering acts are not essential elements of charges alleging violation of Racketeer Influenced and Corrupt Organizations Act (RICO) and conspiracy to violate RICO, and thus need not be alleged in indictment; it is the “pattern of racketeering activity” that is the essential element of such offenses. U.S. v. Cuong Gia Le, E.D.Va.2004, 310 F.Supp.2d 763. Racketeer Influenced And Corrupt Organizations 25; Racketeer Influenced And Corrupt Organizations 28

Although patients and health plans alleged no intimate details on how or when pharmaceutical company, cancer drug manufacturer, and drug distributor formed conspiratorial agreement to charge overinflated prices for drug, their allegations, which set out each of the essential elements of conspiracy claim under Racketeer Influenced and Corrupt Organizations Act (RICO), were sufficient to state claim. In re Lupron Marketing and Sales Practices Litigation, D.Mass.2003, 295 F.Supp.2d 148. Conspiracy 18

Core of Racketeer Influenced and Corrupt Organizations Act (RICO) civil conspiracy claim is agreement between two or more persons to commit predicate acts of racketeering; plaintiffs need not allege that each defendant actually committed predicate act but at a minimum, plaintiffs must allege specifically an agreement and vague, conclusory allegations standing alone are insufficient. Trautz v. Weisman, S.D.N.Y.1993, 819 F.Supp. 282. Conspiracy 18
To prove a Racketeer Influenced and Corrupt Organizations (RICO) conspiracy, Government need not show that defendant committed two racketeering acts, or even that he agreed to personally commit two such acts; it is enough the defendant manifested his agreement to the objective of the violation of RICO, and a defendant is guilty of RICO conspiracy when he enters an agreement to conduct or participate in the affairs of the enterprise and an agreement to the commission of at least two predicate acts by anyone associated with the enterprise. U.S. v. Andrews, N.D.Ill.1990, 754 F.Supp. 1161, enforcement granted in part, set aside in part 754 F.Supp. 1197, vacated in part on reconsideration 754 F.Supp. 1206, clarified 764 F.Supp. 1248, reconsideration denied 764 F.Supp. 1252. Conspiracy ☞ 28(3)

To state a Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy claim, plaintiffs must allege that each defendant agreed to commit two or more specified predicate crimes in addition to alleging an agreement to participate in the conduct of an enterprise's affairs through a pattern of racketeering activity, and while an agreement to violate RICO is necessary to a RICO conspiracy claim, the conspirators need not have accomplished their underlying criminal goals to be liable for conspiracy. Gott v. Simpson, D.Me.1990, 745 F.Supp. 765. Conspiracy ☞ 18

145. Agreement, conspiracy--Generally

Foreign workers' allegation that recruiter and his company entered into agreement and that each agreed to commit at least two predicate acts of racketeering were specific enough to state claim that they conspired to violate section of Racketeer Influenced and Corrupt Organizations Act (RICO) prohibiting use of pattern of racketeering activity in conduct of affairs of enterprise. Abraham v. Singh, C.A.5 (La.) 2007, 480 F.3d 351. Conspiracy ☞ 18

Conspiracy to violate section of Racketeer and Corrupt Organizations Act (RICO) proscribing conduct of enterprise through pattern of racketeering activity does not require that one agree personally to be operator or manager; rather, one must knowingly agree to perform services of a kind which facilitate activities of those who are operating enterprise in illegal manner. Brouwer v. Raffensperger, Hughes & Co., C.A.7 (Ind.) 2000, 199 F.3d 961, certiorari denied 120 S.Ct. 2688, 530 U.S. 1243, 147 L.Ed.2d 961. Conspiracy ☞ 9

Defendant never entered into agreement to commit intentional tort, as required to support claim of conspiracy to violate Racketeer Influenced and Corrupt Organizations Act (RICO). C & B Sales & Service, Inc. v. McDonald, C.A.5 (La.) 1996, 95 F.3d 1308, modified on denial of rehearing 111 F.3d 27. Conspiracy ☞ 2

Government may prove existence of agreement to participate in RICO conspiracy by showing existence of agreement on overall objective or, in absence of agreement on overall objective, that defendant agreed personally to commit two or more predicate acts. U.S. v. Castro, C.A.11 (Fla.) 1996, 89 F.3d 1443, rehearing and suggestion for rehearing en banc denied 99 F.3d 1157, certiorari denied 117 S.Ct. 965, 519 U.S. 1118, 136 L.Ed.2d 850, rehearing denied 117 S.Ct. 1462, 520 U.S. 1182, 137 L.Ed.2d 566, rehearing denied 117 S.Ct. 1462, 520 U.S. 1183, 137 L.Ed.2d 566, post-conviction relief denied 248 F.Supp.2d 1170. Conspiracy ☞ 28(3)

In order to establish defendant's involvement in Racketeer Influenced and Corrupt Organizations Act (RICO)
conspiracy, government need only prove that defendant, by his words or actions, objectively manifested agree-
ment to participate directly or indirectly in affairs of enterprise through pattern of racketeering activity. U.S. v.
Beasley, C.A.11 (Fla.) 1996, 72 F.3d 1518, certiorari denied 116 S.Ct. 2570, 518 U.S. 1027, 135 L.Ed.2d 1086,
certiorari denied 117 S.Ct. 176, 519 U.S. 866, 136 L.Ed.2d 116. Conspiracy ⇔ 28(3)

Agreement to participate in RICO conspiracy can be proved either by showing an agreement on an overall ob-
jective, or showing that defendant agreed personally to commit two predicate acts and therefore to participate in
“single objective” conspiracy. U.S. v. Church, C.A.11 (Ga.) 1992, 955 F.2d 688, rehearing denied, certiorari
denied 113 S.Ct. 233, 506 U.S. 881, 121 L.Ed.2d 169, Conspiracy ⇔ 24(1); Conspiracy ⇔ 28(3)

RICO conspiracy law, like traditional conspiracy law, requires only that each defendant agree to join conspiracy,
not that he agree to commit each of acts that would achieve conspiracy's objective. U.S. v. Kragness, C.A.8
(Minn.) 1987, 830 F.2d 842. Conspiracy ⇔ 24(1)

Defendant who did not agree to commission of crimes constituting pattern of racketeering activity does not com-
mit conspiracy to violate Racketeer Influenced and Corrupt Organizations Act, even though he is somehow affili-
ated with RICO enterprise, and neither does defendant who agrees to commission of two criminal acts but does
not consent to involvement of enterprise. U.S. v. Neapolitan, C.A.7 (Ill.) 1986, 791 F.2d 489, certiorari denied
Conspiracy ⇔ 28(3)

§ 1962(d)] requires that government demonstrate existence of agreement, overt act in furtherance of the conspir-
acy, existence of enterprise affecting interstate or foreign commerce, defendant's association with the enterprise,
defendant's participation in conducting the enterprise's affairs, and that defendant's participation was through
pattern of racketeering activity, indicated by commission of at least two racketeering acts. U.S. v. Boldin,
C.A.11 (Ga.) 1985, 772 F.2d 719, modified on denial of rehearing 779 F.2d 618, certiorari denied 106 S.Ct.
1269, 475 U.S. 1048, 89 L.Ed.2d 577, certiorari denied 106 S.Ct. 1498, 475 U.S. 1098, 89 L.Ed.2d 899, certior-
ari denied 106 S.Ct. 1520, 475 U.S. 1110, 89 L.Ed.2d 917.

This chapter prohibits conspiracies to knowingly further affairs of enterprise, and mere agreement to commit the
predicate acts is not sufficient to support charge of conspiracy under such provision. Seville Indus. Machinery
Corp. v. Southmost Machinery Corp., C.A.3 (N.J.) 1984, 742 F.2d 786, certiorari denied 105 S.Ct. 1179, 469
U.S. 1211, 84 L.Ed.2d 327. Conspiracy ⇔ 28(3)

Proof of an agreement the objective of which is a substantive violation of this chapter, such as conducting the af-
fairs of an enterprise through a pattern of racketeering, is sufficient to establish violation of subsec. (d) of this
section making it unlawful for a person to conspire to conduct or participate in the conduct of an enterprise's af-
fairs which are conducted through a pattern of racketeering activity; it is only when proof of such an objective is
lacking that the evidence must establish defendant's participation or agreement to participate in two predicate of-
L.Ed.2d 93, certiorari denied 105 S.Ct. 164, 469 U.S. 848, 83 L.Ed.2d 100. Conspiracy ⇔ 24(1)
A conspiracy conviction under this chapter requires proof of enterprise and racketeering elements plus defendant's objective manifestation of intent to participate in affairs of the enterprise; in order to prove such conspiracy government must prove the additional element of agreement, which must include vital element of agreeing to commit predicate acts of racketeering. U.S. v. Cauble, C.A.5 (Tex.) 1983, 706 F.2d 1322, rehearing denied 714 F.2d 137, certiorari denied 104 S.Ct. 996, 465 U.S. 1005, 79 L.Ed.2d 229. Conspiracy $\Rightarrow$ 28(3)


To be convicted of conspiracy under Racketeer Influenced and Corrupt Organizations Act (RICO), one must knowingly agree to facilitate the activities of those who are operating an enterprise. LaFlamboy v. Landek, N.D.Ill.2008, 587 F.Supp.2d 914. Conspiracy $\Rightarrow$ 28(3)

To prevail in civil RICO conspiracy suit, plaintiffs must show by preponderance of evidence that defendants agreed to participate in affairs of enterprise through pattern of racketeering activity, and that defendants also agreed that someone would engage in at least two predicate acts to accomplish such goals. LaSalle Bank Lake View v. Seguban, N.D.Ill.1996, 937 F.Supp. 1309. Conspiracy $\Rightarrow$ 2; Conspiracy $\Rightarrow$ 19

Purchasers of limited partnership interests in registered public offerings respecting limited partnership units failed to show existence of conspiratorial agreement between accounting firm that performed accounting services for partnerships and other defendants and, thus, firm was not liable to purchasers for conspiracy to violate Racketeer Influenced and Corrupt Organizations Act (RICO), absent showing that firm intended to participate in criminal conduct. Tonnemacher v. Sasak, D.Ariz.1994, 859 F.Supp. 1273. Conspiracy $\Rightarrow$ 19

To prevail on a RICO conspiracy claim, plaintiffs must show an agreement among or between defendants to violate RICO and it is not enough merely to show that the defendants are affiliated with each other. Davidson v. Wilson, D.Minn.1991, 763 F.Supp. 1470, affirmed 973 F.2d 1391. Conspiracy $\Rightarrow$ 24(1)

Plaintiff need not allege that defendant personally committed or agreed to commit racketeering activities in order to state civil RICO claim; it is enough that defendant engaged in conspiracy to commit predicate act, and that coconspirator actually engaged in pattern of racketeering activities. U.S. v. Gigante, D.N.J.1990, 737 F.Supp. 292. Conspiracy $\Rightarrow$ 18
Gravamen of RICO conspiracy is the agreement on the overall objective to participate in the affairs of the enterprise.  


Under conspiracy provisions of this section, remote associates of an enterprise may be convicted as conspirators; however, to be convicted as a member of an enterprise conspiracy, an individual, by his words or actions, must have objectively manifested an agreement to participate, directly or indirectly, in affairs of an enterprise through the commission of two or more predicate crimes. _Laterza v. American Broadcasting Co., Inc., S.D.N.Y. 1984, 581 F.Supp. 408._ Conspiracy 40.1

Third-party professionals were not liable for conspiracy to commit Racketeer Influenced and Corrupt Organizations Act (RICO) violations based on their involvement in allegedly fraudulent transfer of Chapter 11 debtor's assets to affiliates for purpose of putting assets out of reach of creditors, where there were no allegations that professionals agreed to participate in predicate racketeering acts, that they agreed to pursue same criminal objective, or that they knew that general nature of the conspiracy extended beyond their individual roles. _Lippe v. Bairnco Corp., S.D.N.Y. 1998, 218 B.R. 294._ Conspiracy 10

Facts submitted to support claim against Chapter 11 debtors by French financial services company, which factored invoices for plumbing fixtures allegedly shipped by French corporation to debtors, for conspiracy to violate Racketeer Influenced and Corrupt Organization Act (RICO) were insufficient, where there were no allegations that each member of conspiracy personally agreed to participate in activities prohibited under RICO, no such agreement could even be remotely inferred, and chance of proving predicate acts of wire and mail fraud was small. _In re Windsor Plumbing Supply Co., Inc., Bkrtcy. E.D.N.Y. 1994, 170 B.R. 503._ Conspiracy 9

Evidence was insufficient to establish that defendant violated or agreed to violation of Travel Act, as predicate act of Racketeer Influenced and Corrupt Organizations Act (RICO) violation, and thus, since there was evidence that defendant committed and agreed to commission of only one other predicate act, evidence was insufficient to support his conviction for substantive RICO violation or RICO conspiracy; member of defendant's motorcycle club testified that he, defendant, and club leader traveled in van from Indiana to Ohio so leader could attend meeting, and there was other testimony that club members regularly distributed drugs and discussed it at meetings, but there was no evidence that defendant traveled to Ohio with intent to promote, manage, establish, carry on, or facilitate that illegal activity. _U.S. v. Driver, C.A.6 (Ohio) 2008, 535 F.3d 424, certiorari denied 129 S.Ct. 662, 555 U.S. 1061, 172 L.Ed.2d 637._ Commerce 82.10; Conspiracy 47(3.1)

Finding of a conspiracy under this chapter does not require that two predicate acts of racketeering activity actually occurred, nor need there be collection of unlawful debt and there need only exist an agreement to perform those acts. _U.S. v. Pepe, C.A.11 (Fla.) 1984, 747 F.2d 632._ Conspiracy 28(3)

To state claim for conspiracy to engage in activities proscribed by the Racketeer Influenced and Corrupt Organizations Act (RICO), plaintiffs must allege facts implying any agreement involving each of the defendants to commit at least two predicate acts prohibited by RICO. _Moore v. Guesno, W.D.N.Y. 2007, 485 F.Supp.2d 300,_
Lack of evidence that police officers engaged in predicate offense, of improperly influencing conduct of persons making statements regarding juvenile’s activities, precluded determination that police sergeant violated Racketeer Influenced and Corrupt Organizations Act (RICO) in performing police work leading to arrest of juvenile on charges of attempted sexual assault in second degree. Frey v. Maloney, D.Conn.2007, 476 F.Supp.2d 141. Racketeer Influenced And Corrupt Organizations

Jury, in acquitting defendant in prior trial under Racketeer Influenced and Corrupt Organizations Act (RICO) based on alleged predicate acts of conspiracies to commit three murders, did not necessarily decide that defendant did not intend to cause deaths of three victims, and, thus, government was not barred under doctrine of collateral estoppel, as incorporated into double jeopardy guarantee, from prosecuting him under RICO based on alleged predicate acts of three murders, inasmuch as acquittal could have been based on government failing to prove that defendant entered into agreement to commit murders. U.S. v. Massino, E.D.N.Y.2004, 311 F.Supp.2d 316. Double Jeopardy

To establish conspiracy to carry on enterprise through racketeering activity in violation of Racketeer Influenced and Corrupt Organizations Act (RICO), plaintiff need not show that defendant conspired or agreed to commit individual predicate acts; rather, proof of agreement, objective of which is substantive violation of RICO such as conducting affairs of enterprise through pattern of racketeering, is sufficient to establish violation. Pedrina v. Chun, D.Hawai'i 1995, 906 F.Supp. 1377, affirmed 97 F.3d 1296, certiorari denied 117 S.Ct. 2441, 520 U.S. 1268, 138 L.Ed.2d 201. Conspiracy


While the agreement proscribed by RICO conspiracy section is conspiracy to participate in charged enterprise's affairs, not conspiracy to commit predicate acts, proof of RICO conspiracy requires demonstration that defendant agreed to commit two or more predicate acts. U.S. v. Private Sanitation Industry Ass'n of Nassau/Suffolk, Inc., E.D.N.Y.1992, 793 F.Supp. 1114. Conspiracy


Conspirator must agree to commission of acts on behalf of conspiracy to violate federal racketeering statute in order to be found member of conspiracy to violate racketeering statute, but conspirator need not do predicate acts necessary to support pattern of racketeering activity. Frymire v. Peat, Marwick, Mitchell & Co., N.D.Ill.1987, 657 F.Supp. 889. Conspiracy ⇔ 2; Conspiracy ⇔ 5

Consumers who brought action against business services corporation, dealers and infomercial actor, stemming from leasing of e-commerce services and products, properly alleged that corporation and dealer conspired to further or facilitate predicate racketeering acts, as required to maintain RICO claim; complaint charged that corporation's leases were linchpin of schemes to defraud consumers, that corporation determined both content of leases and means by which they were enforced, and that dealer expended substantial sums of money in developing e-commerce product at issue. Zito v. Leasecomm Corp., S.D.N.Y.2003, 2003 WL 22251352, Unreported. Conspiracy ⇔ 18

147. ---- Inference, agreement, conspiracy

It is not necessary for conspiratorial agreement to be express, so long as its existence can plausibly be inferred from words, actions, and interdependence of activities and persons involved. Aetna Cas. Sur. Co. v. P & B Auto-body, C.A.1 (Mass.) 1994, 43 F.3d 1546. Conspiracy ⇔ 2

Defendants' agreement to participate in a RICO conspiracy may be inferred from their acts, and the Government need not prove that each defendant personally committed two racketeering violations or overt acts in furtherance of the conspiracy. U.S. v. Hughes, C.A.6 (Mich.) 1990, 895 F.2d 1135. Conspiracy ⇔ 44.2

In prosecution for conspiracy to violate this chapter, government was obligated to establish actual agreement, to commit substantive offense, but witness' testimony as to one defendant's admission of ticket-fixing scheme between herself and second defendant, a judge, was direct evidence of such agreement, and agreement could also be established by circumstantial evidence such as evidence of large number of individual racketeering acts which jury was entitled to find were committed and from which jury could infer agreement. U. S. v. Sutherland, C.A.5 (Tex.) 1981, 656 F.2d 1181, rehearing denied 663 F.2d 101, certiorari denied 102 S.Ct. 1451, 455 U.S. 949, 71 L.Ed.2d 663, certiorari denied 102 S.Ct. 1617, 455 U.S. 991, 71 L.Ed.2d 852. Conspiracy ⇔ 47(13)

Family that perpetrated criminal scheme to obtain forced labor and to harbor alien fugitive for private financial gain conspired to violate Racketeer Influenced and Corrupt Organizations Act (RICO), supporting victim's RICO conspiracy claim; agreement among family members could be inferred from parents' RICO violations and their adult children's numerous acts assisting in harboring victim in parents' home, concealing victim's presence there, extracting forced labor from victim, and restricting victim's access to outside world. Martinez v. Calimlim, E.D.Wis.2009, 651 F.Supp.2d 852. Conspiracy ⇔ 2

Allegations concerning scheme to commit fraud were insufficient to infer agreement to violate Racketeer Influenced and Corrupt Organizations Act (RICO) and to state claim of conspiracy to violate RICO, since allegations merely concerned agreement to commit common-law fraud, a state tort; there also were no allegations from which court could infer that each defendant agreed to commit affairs of enterprise through pattern of racketeer-
ing activity or that each defendant agreed to commission of at least two predicate acts. Bajorat v. Columbia-Breckenridge Development Corp., N.D.Ill.1996, 944 F.Supp. 1371. Conspiracy

Savings and loan association receiver's allegations that insurance agent carried out at least two predicate acts of mail fraud and was employed by automobile dealership as insurance agent for purpose of issuing bogus binders were sufficient to state claim under RICO conspiracy section, since court could make reasonable inference that there was agreement among conspirators that agent's acts of mail fraud were made in furtherance of enterprise's scheme to defraud. Resolution Trust Corp. v. S & K Chevrolet Co., C.D.Ill.1996, 918 F.Supp. 1235, opinion vacated in part on reconsideration 923 F.Supp. 135. Conspiracy

Allegations of investor and his wife were sufficient to raise inference of agreement required to support claims against investment advisors for conspiracy to commit fraud and for conspiracy under Racketeer Influenced and Corrupt Organizations (RICO) Act; complaint included occasions on which two or more advisors acted together, and alleged that officers of investment advice firm worked closely and had extensive individual and collective involvement in financial affairs of investor and his wife. Terrell v. Childers, N.D.Ill.1993, 836 F.Supp. 468. Conspiracy

In order to find defendant liable for Racketeer Influenced and Corrupt Organizations Act conspiracy, something other than agreement to commit predicate actions must be shown, but defendant need not have agreed to commit personally two or more predicate acts, and direct evidence of agreement is unnecessary; instead proof may rest upon inferences drawn from relevant and competent circumstantial evidence. Hill v. Equitable Bank, D.Del.1987, 655 F.Supp. 631, affirmed 851 F.2d 691, rehearing denied, certiorari denied 109 S.Ct. 791, 488 U.S. 1008, 102 L.Ed.2d 782. Racketeer Influenced And Corrupt Organizations

There was sufficient evidence that defendant agreed to rob a victim to sustain his racketeering conspiracy conviction; recorded telephone conversations involving defendant and three others constituted circumstantial evidence that the group planned together to rob the victim, and the jury could infer that one telephone exchange reflected defendant's instruction to rob the victim, followed by another individual's affirmative agreement to commit the robbery with the help of other accomplices. U.S. v. Pica, C.A.2 (N.Y.) 2012, 692 F.3d 79, certiorari denied 133 S.Ct. 1582, 185 L.Ed.2d 576. Racketeer Influenced And Corrupt Organizations

Evidence was sufficient to support finding that defendants agreed to establish enterprise and were aware of general nature of conspiracy, as required to sustain their convictions for conspiracy to violate Racketeer Influenced and Corrupt Organizations Act (RICO); as members of gang, defendants congregated daily in their territory, received tattoos signifying their membership in gang, and shared common purpose of selling drugs, drug sales in territory could only be made by gang members, and defendants provided assistance to other gang members, including paying bail when members were criminally charged and fronting drugs to members after they served jail time. U.S. v. Applins, C.A.2 (N.Y.) 2011, 637 F.3d 59, certiorari denied 132 S.Ct. 434, 181 L.Ed.2d 288, certiorari denied 132 S.Ct. 813, 181 L.Ed.2d 541, certiorari denied 132 S.Ct. 815, 181 L.Ed.2d 541, certiorari denied 132 S.Ct. 816, 181 L.Ed.2d 541. Conspiracy
Evidence that defendant entered into agreement to violate Racketeer Influenced and Corrupt Organizations Act (RICO) was sufficient to support conviction for RICO conspiracy; although there was no direct evidence that defendant entered into agreement, he was member of motorcycle club that was organization that encouraged its members to engage in drug trade, it could be inferred from the evidence that organization facilitated such endeavors so profits could be used to finance its activities, evidence that defendant supplied drugs to fellow organization members with knowledge that drugs would be resold to general public raised inference that he entered into agreement to violate RICO by operating drug ring, and there was evidence that defendant committed three RICO predicate acts. U.S. v. Lawson, C.A.6 (Ohio) 2008, 535 F.3d 434, as amended. Conspiracy (12)

Substantial evidence supported jury's finding that insurance company agreed to have some part in directing agent's affairs concerning tax avoidance scheme, which thus supported verdict against insurance company for civil violation of conspiracy provision of Racketeer Influenced and Corrupt Organizations Act (RICO); president of insurance company and agent discussed tax scheme involving sales of insurance and how they would profit from it, insurance company hired agent's agents as independent contractors to sell policies, president of insurance company appeared at agent's tax seminar and approved of agent's tax form scheme, and insurance company deviated from standard policy to destroy microfilm records while litigation was pending. Neibel v. Trans World Assur. Co., C.A.9 (Cal.) 1997, 108 F.3d 1123. Conspiracy (19)

Finding that lawyer agreed to overall objective of conspiracy to violate Racketeer Influenced and Corrupt Organizations Act (RICO) by corruptly utilizing circuit court system was supported by evidence that defendant agreed to act as bag man for circuit judge, that defendant arranged with that judge to fix case, that defendant agreed to arrange and arranged with judge to fix another case, and that defendant attempted to bribe another judge. U.S. v. Shenberg, C.A.11 (Fla.) 1996, 89 F.3d 1461, certiorari denied 117 S.Ct. 961, 519 U.S. 1117, 136 L.Ed.2d 847, certiorari denied 118 S.Ct. 598, 522 U.S. 1014, 139 L.Ed.2d 487, rehearing denied 118 S.Ct. 900, 522 U.S. 1099, 139 L.Ed.2d 885. Conspiracy (13)

Finding that defendants, who were attorneys appointed as special assistant public defenders by judges on circuit court, agreed to affect the operation or management of the circuit court was supported by evidence that they agreed to pay kickbacks to the judges in return for their appointments. U.S. v. Castro, C.A.11 (Fla.) 1996, 89 F.3d 1443, rehearing and suggestion for rehearing en banc denied 99 F.3d 1157, certiorari denied 117 S.Ct. 965, 519 U.S. 1118, 136 L.Ed.2d 850, rehearing denied 117 S.Ct. 1462, 520 U.S. 1182, 137 L.Ed.2d 566, rehearing denied 117 S.Ct. 1462, 520 U.S. 1183, 137 L.Ed.2d 566, post-conviction relief denied 248 F.Supp.2d 1170. Racketeer Influenced And Corrupt Organizations (64)

Evidence revealed single agreement among traders and brokers and others to operate system of fraudulent trading of futures contracts designed to eliminate risk of competition so as to establish existence of single conspiracy for purposes of RICO statute; to respond effectively to recurring problem of error losses, traders and brokers needed more than sporadic opportunities for profit, they needed system and they needed numerous participants; best evidence of single conspiracy involved scratch traders who acted solely to launder transactions by concealing real parties to fraudulent trade. U.S. v. Ashman, C.A.7 (Ill.) 1992, 979 F.2d 469, rehearing denied, certiorari denied 114 S.Ct. 62, 510 U.S. 814, 126 L.Ed.2d 32. Conspiracy (3.1)
Evidence was sufficient to establish that defendant, by his actions, manifested an agreement to participate in affa
cs of enterprise which operated house of prostitution and, therefore, he could be convicted under this chapter,
regardless of his knowledge of full extent of operation or his status as an independent contractor. U.S. v. 
Commerce 82.6

Investors who claimed to have lost money in fraudulent investment scheme in India failed to show agreement by 
Indian company's Florida affiliates to violate Racketeer Influenced and Corrupt Organizations Act (RICO), 
where affiliates were not involved in original investment phase of alleged fraudulent scheme, affiliates appeared 
to be engaged in ordinary business transactions, and there was no evidence that funds transferred to affiliates 
were proceeds of scheme. Rajput v. City Trading, LLC, S.D.Fla.2010, 746 F.Supp.2d 1325, vacated 476 

Although there must be agreement between members of conspiracy, direct evidence need not be shown since 
agreement can be inferred from circumstances; mere association with conspirators, knowledge of conspiracy, 
and presence during conspiratorial discussions is not sufficient to convict person of conspiracy, and it must be 
shown that defendant was aware of essential nature and scope of enterprise and intended to participate in it. La-
Flamboy v. Landek, N.D.Ill.2008, 587 F.Supp.2d 914, Conspiracy 40; Conspiracy 44.2

To establish conspiratorial agreement element of their civil conspiracy claim against health maintenance organ-
izations (HMOs) under Racketeer Influenced and Corrupt Organizations Act (RICO), which was based on al-
eged scheme to defraud physicians through use of HMOs’ automated claims processing systems to systemati-
cally underpay for services, physicians had to present evidence tending to exclude possibility of independent con-
duct and tending to show conspiratorial behavior, notwithstanding physicians’ contention that HMOs’ alleged 
parallel conduct of mail and wire fraud, being itself unlawful, sufficed to create inference of conspiracy, inas-
much as alleged proof that HMOs engaged in predicate acts of mail and wire fraud was as consistent with inde-
pendent behavior as with industry-wide conspiracy to manipulate claims processing systems. In re Managed 
acy 19

Proof that a defendant agreed to commit personally two or more predicate acts can sustain a conviction under 
248 F.Supp.2d 1170. Conspiracy 24(1)

Evidence was insufficient to establish that proposed purchaser of corporation entered into agreement with cor-
porate officials to commit predicate acts of securities fraud and wire fraud underlying minority shareholder's 
Racketeer Influenced and Corrupt Organizations Act (RICO) claim against the purchaser; first contact between 
corporation and purchaser occurred after alleged Securities Fraud Predicate Act, and there was no evidence that 

Defendant was properly convicted of conspiracy to violate Racketeer Influenced and Corrupt Organizations Act,
although he contended that absent charge and proof of agreement to commit two specified predicate crimes, he could not be convicted of conspiring to participate in affairs of enterprise through pattern of racketeering activity; there was substantial evidence from which jury could have inferred that defendant agreed to obstruct affairs of state court through pattern of racketeering activity and that he agreed to join conspiracy with knowledge of its goals and knowledge that acts of extortion or bribery would be performed by coconspirators. U.S. v. Harris, E.D.Pa.1988, 700 F.Supp. 226, affirmed 874 F.2d 123, rehearing denied. Conspiracy 28(3)

149. Participation, conspiracy

Racketeer Influenced and Corrupt Organizations Act (RICO) requirement, that defendant charged with “conduct[ing] or participat[ing]” in conduct of enterprise's affairs through pattern of racketeering activity exercise some degree of direction over those affairs, applies in conspiracy context; i.e., conspiracy defendant must knowingly facilitate activities of enterprise's operators or managers. U.S. v. Cummings, C.A.7 (Ill.) 2005, 395 F.3d 392. Conspiracy 28(3); Racketeer Influenced And Corrupt Organizations 50

Government can prove existence of agreement, as required to support conviction of conspiracy to violate Racketeer Influenced and Corrupt Organizations Act (RICO), by proving either that defendant agreed to overall objective of conspiracy, or that defendant personally committed two predicate acts, thereby participating in a single objective conspiracy. U.S. v. Shenberg, C.A.11 (Fla.) 1996, 89 F.3d 1461, certiorari denied 117 S.Ct. 961, 519 U.S. 1117, 136 L.Ed.2d 847, certiorari denied 118 S.Ct. 598, 522 U.S. 1014, 139 L.Ed.2d 487, rehearing denied 118 S.Ct. 900, 522 U.S. 1099, 139 L.Ed.2d 885. Conspiracy 28(3)

A RICO conspiracy does not demand total fusion or that all defendants participate in all racketeering acts, know of the entire conspiratorial sweep, or be acquainted with all other defendants, but the component parts must be linked together in such a way as to afford a plausible basis for the inference that an agreement existed. U.S. v. Boylan, C.A.1 (Mass.) 1990, 898 F.2d 230, certiorari denied 111 S.Ct. 139, 498 U.S. 849, 112 L.Ed.2d 106. Conspiracy 24(1); Conspiracy 24.5

Insurance claimants “participated” in the conduct of automobile insurers' enterprises, as required to support insurers' claims alleging that claimants violated Racketeer Influenced and Corrupt Organizations Act (RICO) by engaging in a scheme to defraud insurers by submitting false insurance claims; vital part of insurers' business included investigating, processing, and paying automobile insurance claims, and submission of false claims led insurers to make payments for at least 18 false claims related to automobile insurance policies. Puerto Rico American Ins. Co. v. Burgos, D.Puerto Rico 2011, 867 F.Supp.2d 216. Racketeer Influenced and Corrupt Organizations 50


Allegation that insured borrowed money, made loans, and obtained insurance while its attorneys and accountants provided necessary legal and financial advice, guidance, and information sufficiently identified enterprise that existed apart from underlying alleged racketeering activity, as required to state claim under Racketeer Influenced and Corrupt Organizations Act (RICO). Royal Indemnity Co. v. Pepper Hamilton LLP, D.Del.2007, 479 F.Supp.2d 419. Racketeer Influenced And Corrupt Organizations

Sufficient evidence established that defendant was involved in an enterprise as required to support his conviction for violating the Racketeer Influenced and Corrupt Organizations Act (RICO); cooperating witnesses testified they committed crimes as part of an ongoing criminal group and were members of an enterprise, plea allocutions of group members acknowledged the existence of an enterprise, individuals testified to the structure and hierarchy of an enterprise, and other evidence established the ongoing nature of the criminal activities committed by members of the enterprise. U.S. v. Amato, C.A.2 (N.Y.) 2004, 86 Fed.Appx. 447, 2004 WL 114999, Unreported, certiorari denied 125 S.Ct. 38, 543 U.S. 823, 160 L.Ed.2d 34. Racketeer Influenced And Corrupt Organizations

150. Direction or management, conspiracy

Defendant and his accomplice, both corrupt police officers, were operators and managers of an enterprise, as required to support Racketeer Influenced and Corrupt Organizations Act (RICO) conviction; although defendant and accomplice were not supervisors or managers for the city police department, they had substantial discretion and power to control the department’s affairs, by deciding who to arrest, which cars to pull over, and when to obtain arrest and search warrants, and defendant and accomplice were not acting as law-abiding officers when they forced suspects to part with money and drugs, performed illegal arrests and searches, and planted evidence on civilians. U.S. v. Shamah, C.A.7 (Ill.) 2010, 624 F.3d 449, certiorari denied 131 S.Ct. 1529, 179 L.Ed.2d 345, post-conviction relief denied 2013 WL 1343913. Racketeer Influenced And Corrupt Organizations


“Skip tracer” and relatively low-level employees of state unemployment compensation agency who accepted bribes from him to run improper searches of agency’s confidential database to obtain information about debtors did not “conduct or participate” in conduct of affairs of named enterprise, i.e. agency, precluding finding of Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy; neither skip tracer nor employees exercised direction over agency, or conspired knowingly to facilitate activities of anyone who was operator or manager of agency, and purpose of bribes was not to manage affairs of agency but simply to profit from confidential information. U.S. v. Cummings, C.A.7 (Ill.) 2005, 395 F.3d 392. Conspiracy; Racketeer Influenced And Corrupt Organizations
Defendant may conspire to violate section of Racketeer Influenced and Corrupt Organizations Act (RICO) prohibiting “any person employed by or associated with [an] enterprise * * * to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt,” even if that defendant could not be characterized as operator or manager of RICO enterprise. MCM Partners, Inc. v. Andrews-Bartlett & Associates, Inc., C.A.7 (Ill.) 1995, 62 F.3d 967, on remand 1997 WL 306577. Conspiracy ¶ 13

To convict defendant of RICO conspiracy, it was not necessary for government to show that defendant participated in operation or management of enterprise itself but, rather, agreement that crimes will be committed by any of coconspirators on behalf of conspiracy was sufficient. U.S. v. Quintanilla, C.A.7 (Ill.) 1993, 2 F.3d 1469. Conspiracy ¶ 24(1)

Allegations of complaint filed by survivors of victims of September 11, 2001 attacks, including that bank and charitable network may have assisted al Qaeda, failed to state cause of action under Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy provision, or provision prohibiting participation in conduct of enterprise's affairs through pattern of racketeering activity, in that allegations did not include anything approaching active management or operation. In re Terrorist Attacks on September 11, 2001, S.D.N.Y.2005, 349 F.Supp.2d 765, on reconsideration in part 392 F.Supp.2d 539, affirmed 538 F.3d 71, certiorari denied 129 S.Ct. 2859, 174 L.Ed.2d 576, affirmed 714 F.3d 118. Racketeer Influenced And Corrupt Organizations ¶ 50

Evidence that street gang existed as a single criminal enterprise during time period alleged in indictment was sufficient to support convictions for racketeering and racketeering conspiracy in violation of Racketeer Influenced and Corrupt Organizations Act (RICO); gang was part of a national organization which remained in existence during local gang's leadership dispute, two witnesses testified there was no actual break in leadership during time alleged, and any break in leadership did not compel finding that the enterprise ceased to exist. U.S. v. Olson, C.A.7 (Wis.) 2006, 450 F.3d 655, on remand 2006 WL 2585035, on remand 2006 WL 2845693, on remand 2007 WL 128340, opinion after remand 223 Fed.Appx. 509, 2007 WL 1354176, habeas corpus denied 2008 WL 4830799, certificate of appealability denied 2009 WL 56945, on remand 2007 WL 1502173. Racketeer Influenced And Corrupt Organizations ¶ 95

In prosecution for conspiracy to commit racketeering in which alleged objective of the conspiracy was an open-ended attempt to extort money through loansharking, fact that gambling enterprise in which defendant was allegedly involved folded outside of the limitations period was insufficient to establish that defendant's alleged
loansharking activities, which were primarily associated with the illegal gambling enterprise, were complete as of the date the gambling enterprise folded, outside the limitations period, where allegations in indictment did not link his alleged loansharking activities to the illegal gambling enterprise. U.S. v. Spero, C.A.2 (N.Y.) 2003, 331 F.3d 57, certiorari denied 124 S.Ct. 100, 540 U.S. 819, 157 L.Ed.2d 36. Criminal Law

Showing of tangible evidence (membership card or signature on membership role) that local unions' business agents agreed to become associated with another local union, alleged enterprise, was not necessary in order to convict agents of RICO conspiracy; it was sufficient to show that agents agreed to commit substantive RICO offense by agreeing to participate in racketeering acts relating to the conspiracy and that each knew general nature of RICO conspiracy and its extension beyond individual roles. U.S. v. Cervone, C.A.2 (N.Y.) 1990, 907 F.2d 332, certiorari denied 111 S.Ct. 680, 498 U.S. 1028, 112 L.Ed.2d 672. Conspiracy

A RICO “enterprise conspiracy” was established in that the government alleged and proved one single closely knit enterprise conspiracy to import and distribute drugs, headed by two defendants; while not every defendant participated in every venture, there was surprising continuity in participants and each person had a set job, whether it was providing the air strip, piloting the plane used in importation, offloading drugs, guarding stash house or distributing drugs. U.S. v. Russo, C.A.11 (Fla.) 1986, 796 F.2d 1443. Racketeer Influenced And Corrupt Organizations

For purposes of this section making it unlawful to conspire to conduct or participate in the conduct of an enterprise's affairs when the affairs are conducted through a pattern of racketeering activity, there need not be proof of actual employment or association independent of racketeering activity; proof of defendant's association with illegal activities of enterprise is all that is required, and associated outsiders who participate in the racketeering enterprise's affairs fall within the chapter's strictures. U.S. v. Tille, C.A.9 (Wash.) 1984, 729 F.2d 615, certiorari denied 105 S.Ct. 156, 469 U.S. 845, 83 L.Ed.2d 93, certiorari denied 105 S.Ct. 164, 469 U.S. 848, 83 L.Ed.2d 100. Conspiracy

Evidence of hierarchical structure or decision-making authority was sufficiently inferred, for purpose of investors' claim under Racketeer Influenced and Corrupt Organizations Act (RICO) that investment advisors and bank were involved in association-in-fact enterprise, based on allegations that advisors created and operated various business entities together, in some cases acting as shareholders or directors, and advisors and bank all collaborated to create numerous mutually beneficial investment opportunities. Schuster v. Anderson, N.D.Iowa 2005, 413 F.Supp.2d 983. Racketeer Influenced And Corrupt Organizations

Alleged association-in-fact enterprise, consisting of corporate internet cigarette vendors and their officers, was not distinct from corporations for purposes of showing corporations' participation in affairs of enterprise, as required to maintain civil enforcement claim under Racketeer Influenced and Corrupt Organizations Act (RICO), where only persons associated with enterprise were corporations and their officers and employees. City of New York v. Cyco.Net, Inc., S.D.N.Y.2005, 383 F.Supp.2d 526. Racketeer Influenced And Corrupt Organizations

Association-in-fact enterprise was legally sufficient as to indictment against defendants and their asbestos abate-
ment company that allegedly conspired to circumvent air and project monitoring regulations in violation of the Racketeer Influenced and Corrupt Organizations Act (RICO), even though defendants claimed that alleged conspiratorial enterprise could not be comprised of entities that were not in existence at time conspiracy began. U.S. v. Salvagno, N.D.N.Y.2004, 306 F.Supp.2d 258. Racketeer Influenced And Corrupt Organizations \[\text{36}\]

Proposed amendment to complaint asserting claim for alleged violation of Racketeer Influenced and Corrupt Organizations Act (RICO) against federal tax judge, which sought to allege specific dates or known time frames respecting overt acts in furtherance of actions of enterprise, would not remedy identified defect that alleged overt acts were not plausibly and specifically alleged to be related to illicit conspiracy involving judge, warranting denial of motion for leave to amend on grounds of futility. Chisum v. Colvin, D.D.C.2003, 276 F.Supp.2d 1. Federal Civil Procedure \[\text{851}\]

Evidence that defendant was “made” member of Mafia who acted at direction of upper Mafia management and knowingly implemented their policies was sufficient to support imposition of criminal liability under conspiracy section of Racketeer Influenced and Corrupt Organizations Act (RICO), whether under standard in effect at time of defendant's trial or “operation or management of the enterprise” standard enunciated subsequent to his conviction. U.S. v. Pungitore, E.D.Pa.1997, 965 F.Supp. 666, affirmed 172 F.3d 861, certiorari denied 119 S.Ct. 1483, 526 U.S. 1078, 143 L.Ed.2d 566. Conspiracy \[\text{47(3.1)}\]

Investor in partnership units of real estate partnership satisfied requirements for stating cause of action under conspiracy to violate RICO, that conspirators knew that predicate acts were in furtherance of illegal scheme; complaint alleged that promoters knew that acts were part of pattern of racketeering activity and agreed to commission of those acts to further schemes described above, Federal Rules of Civil Procedure allowed for knowledge and conditions of mind of person to be averred generally, and agreement may also be inferred when they are alleged as in present case, to have worked closely together in business setting. Perlman v. Zell, N.D.Ill.1996, 938 F.Supp. 1327, affirmed 185 F.3d 850, rehearing and rehearing en banc denied. Conspiracy \[\text{18}\]

Allegation that “all of the defendants conspired with each other and with one or more” partnerships to violate RICO was too conclusory to allege RICO conspiracy. O & G Carriers, Inc. v. Smith, S.D.N.Y.1992, 799 F.Supp. 1528. Conspiracy \[\text{18}\]

152. Corporations, conspiracy


Health care providers were not entitled to separate jury instruction on intra-corporate conspiracy, in insurers' Racketeer Influenced and Corrupt Organizations Act (RICO) action against providers, alleging that providers were members of conspiracy that sharply inflated costs of medical care for victims of motor vehicle accidents; it was not clear that proposed instruction expressed correct point of law and, in any event, there was evidence that providers were acting in pursuit of their own interests, which was exception to rule against intra-corporate con-
Corporation, its employee, and its wholly owned subsidiary could not as matter of law conspire among themselves to violate Racketeer Influenced and Corrupt Organizations Act (RICO); employee was at all times acting within scope of his employment, subsidiary was not specifically set up to perpetrate fraud, and employee was officer of both corporation and subsidiary. Nebraska Sec. Bank v. Dain Bosworth, Inc., D.Neb.1993, 838 F.Supp. 1362. Conspiracy ☞ 2


Under exception to “intracorporate conspiracy rule” applicable to criminal prosecutions, allegation that corporate defendant conspired with its own agents, even though agents were alleged to have used corporation to carry out their own purposes, was sufficient to state a charge of conspiracy to violate Racketeer Influenced and Corrupt Organizations Act with regard to sale and distribution of allegedly obscene materials. U.S. v. Pryba, E.D.Va.1987, 674 F.Supp. 1504, affirmed 900 F.2d 748, certiorari denied 111 S.Ct. 305, 498 U.S. 924, 112 L.Ed.2d 258. Conspiracy ☞ 43(2)


153. Injury, conspiracy

Plaintiff had standing to sue under RICO provision prohibiting conspiracy to violate other Racketeer Influenced and Corrupt Organizations Act provisions, even though he was not harmed by defendants' alleged violation of one of those other provisions and thus failed to state viable cause of action under that other provision; defendants' alleged violation of that other provision could serve as object of conspiracy, and if plaintiff were harmed by reason of any such conspiracy, he would be able to pursue claim under conspiracy provision. Rehkop v. Berwick Healthcare Corp., C.A.3 (Pa.) 1996, 95 F.3d 285. Conspiracy ☛ 18

Claimed injuries of former clients of public interest law firm were proximately caused by fraud of purported attorney employed by firm, who claimed to be attorney when he was not one and failed to provide paid-for services to clients, and not by any cover-up by firm's director and its various officers, and thus clients lacked standing to bring conspiracy action against firm's director and officers under Racketeer Influenced and Corrupt Organizations Act (RICO); clients claimed as injuries cash paid and services rendered to purported attorney in exchange for legal services that were never provided and lost wages and moving expenses resulting from purported attorney's advice, and cover-up did not prevent clients from filing lawsuits that purported attorney failed to file. Lopez v. Council on American-Islamic Relations Action Network, Inc., D.D.C.2009, 657 F.Supp.2d 104, affirmed 383 Fed.Appx. 1, 2010 WL 2689367. Conspiracy ☛ 8

Insurance claimant's mail fraud was not only the “but for” cause of automobile insurers' injury, but the proximate cause as well, and thus insurers were entitled to treble damages totaling $955,702.86 as result of claimant's violation of Racketeer Influenced and Corrupt Organizations Act (RICO) by engaging in scheme to defraud insurers by submitting false insurance claims through mail; insurers' losses were direct consequence of claimant's mail fraud, without which insurers would not have disbursed any funds to cover bogus claims. Puerto Rico American Ins. Co. v. Burgos, D.Puerto Rico 2011, 867 F.Supp.2d 216. Racketeer Influenced and Corrupt Organizations ☛ 62; Racketeer Influenced and Corrupt Organizations ☛ 85

Commercial building lessee who brought action against lessors, stemming from dispute involving utility charges, properly alleged that lessors' purported creation and mailing of fraudulent billing statements and false statements regarding calculation of electrical bills were direct causes of lessee's damages, as required to state Racketeer Influenced and Corrupt Organizations (RICO) Act claim; complaint averred facts sufficient to establish that injury suffered by lessee occurred by reason of underlying mail fraud and breach of contract claims. Heaven & Earth, Inc. v. Wyman Properties Ltd. Partnership, D.Minn.2003, 2003 WL 22680935, Unreported. Racketeer Influenced And Corrupt Organizations ☛ 62

154. Mens rea, conspiracy

Evidence was sufficient to support conviction for conspiracy to possess with intent to distribute narcotics, and to establish that defendant committed predicate act of drug conspiracy, for purposes of substantive Racketeer Influenced and Corrupt Organizations Act (RICO) violation; testimony indicated members of defendant's motorcycle club regularly dealt in drugs to fulfill financial obligations to organization, and that defendant knowingly and intentionally entered into at least tacit agreement to join and participate in conspiracy, and organization member testified that defendant would occasionally pick up cocaine purchased from him by organization leader, and that

In order to establish RICO conspiracy liability, it is not necessary to show that each defendant knew all of the details or full extent of the conspiracy including the identity and role of every other conspirator; all that was necessary was to prove that each defendant agreed with one or more coconspirators to participate in the conspiracy. Aetna Cas. Sur. Co. v. P & B Autobody, C.A.1 (Mass.) 1994, 43 F.3d 1546. Conspiracy § 1.1

In order to demonstrate RICO conspirator’s knowledge of RICO conspiracy, it is sufficient for government to show that conspirator knew general nature of enterprise and knew that enterprise extended beyond his individual role. U.S. v. Viola, C.A.2 (N.Y.) 1994, 35 F.3d 37. Conspiracy § 24.5

Conspiracy to violate Racketeer Influenced and Corrupt Organizations Act (RICO) requires showing that defendant was aware of essential nature and scope of enterprise and intended to participate in it. U.S. v. Campione, C.A.7 (Ill.) 1991, 942 F.2d 429. Conspiracy § 40.1

Broker who was to aid holders of option to purchase real estate in obtaining financing did not act with “scienter” in allegedly arranging for a purchase of property for himself or his associates, and thus, no fiduciary mail fraud or wire fraud existed that could serve as predicate act to Racketeer Influenced and Corrupt Organizations Act (RICO) claims by holders against broker and others. Marriott Bros. v. Gage, C.A.5 (Tex.) 1990, 911 F.2d 1105, rehearing denied. Postal Service § 35(5); Telecommunications § 1014(3)

Individual may be convicted of Racketeer Influenced and Corrupt Organizations Act (RICO) violation even though individual did not know all coconspirators and details of enterprise or participate in every venture. U.S. v. Young, C.A.11 (Fla.) 1990, 906 F.2d 615. Racketeer Influenced And Corrupt Organizations § 34

This chapter does not contain any separate mens rea or scienter elements beyond those encompassed in its predicate acts and instructions that jury must find that defendant, with knowledge of the conspiracy, willfully became a member of the conspiracy by agreeing to participate and, as regards substantive count, knowingly and willfully committed at least two acts of racketeering activity or knowingly or willfully collected an unlawful debt were proper. U.S. v. Pepe, C.A.11 (Fla.) 1984, 747 F.2d 632. Conspiracy § 48.2(2)

In order to establish a conspiracy to violate this section, government must prove beyond a reasonable doubt that individuals knowingly agreed to participate in the enterprise through a pattern of racketeering. U.S. v. Jannotti, C.A.3 (Pa.) 1984, 729 F.2d 213, certiorari denied 105 S.Ct. 243, 469 U.S. 880, 83 L.Ed.2d 182, certiorari denied 105 S.Ct. 244, 469 U.S. 880, 83 L.Ed.2d 182. Conspiracy § 47(3.1)

Culpability under conspiracy provisions of this section is established by showing that the defendant manifested his assent to participate, either directly or indirectly, in the affairs of the conspiracy through the commission of two or more predicate crimes; it is unnecessary to prove that a conspirator had full knowledge of every detail.
concerning the conspiracy, rather, it is sufficient to show that he had knowledge of the “essential nature of the plan.” U. S. v. Kopituk, C.A.11 (Fla.) 1982, 690 F.2d 1289, certiorari denied 103 S.Ct. 2089, 461 U.S. 928, 77 L.Ed.2d 300, certiorari denied 103 S.Ct. 2090, 461 U.S. 928, 77 L.Ed.2d 300, certiorari denied 103 S.Ct. 3542, 463 U.S. 1209, 77 L.Ed.2d 1391. Conspiracy ☞ 28(3)

Overall conspiracy to commit substantive offense under this section requires assent of each defendant who is charged, although it is not necessary that each conspirator know all details of plan or conspiracy. U. S. v. Brooklier, C.A.9 (Cal.) 1982, 685 F.2d 1208, certiorari denied 103 S.Ct. 1194, 459 U.S. 1206, 75 L.Ed.2d 439, certiorari denied 103 S.Ct. 1195, 459 U.S. 1206, 75 L.Ed.2d 439. Conspiracy ☞ 40.1

Defendants’ conspiracy convictions would not be reversed for failure to establish that defendants conspired to commit a crime requiring proof of mens rea, since defendants were charged with conspiring to violate this section not section 186(b) (1) of Title 29, and to the extent that conspiracy required proof of corrupt motive or intent, the charge gave defendants everything to which they were entitled. U. S. v. Romano, C.A.2 (N.Y.) 1982, 684 F.2d 1057, certiorari denied 103 S.Ct. 375, 459 U.S. 1016, 74 L.Ed.2d 509, certiorari denied 103 S.Ct. 376, 459 U.S. 1016, 74 L.Ed.2d 509. Criminal Law ☞ 1186.1

Without evidence that defendant knew something about his codefendants’ related activities which made enterprise, he could not be convicted of conspiring to engage in pattern of racketeering as defined by this chapter. U. S. v. Diecidue, C.A.5 (Fla.) 1979, 603 F.2d 535, certiorari denied 100 S.Ct. 1345, 445 U.S. 946, 63 L.Ed.2d 781, certiorari denied 100 S.Ct. 1842, 446 U.S. 912, 64 L.Ed.2d 266. Conspiracy ☞ 28(3)

Investor’s allegation that financial services firm and affiliated bank became involved in their client’s Ponzi scheme in order to preserve fees and deposits they derived from providing general banking services to client after firm determined that client’s reported returns were false and illegitimate and had liquidated its holdings in client’s fund was insufficiently particular to plead scienter required to support investor’s conspiracy claim against firm and bank under Racketeer Influenced and Corrupt Organizations Act (RICO), where there was no evidence that firm or bank was actually aware that client was committing fraud. MLSMK Inv. Co. v. JP Morgan Chase & Co., S.D.N.Y.2010, 737 F.Supp.2d 137, affirmed in part 431 Fed.Appx. 17, 2011 WL 2176152, affirmed 651 F.3d 268. Federal Civil Procedure ☞ 636

Physician knowingly and willfully participated in scheme to defraud insurers, as element of insurers’ claims against physician for violations of Racketeer Influenced and Corrupt Organizations Act (RICO) and Pennsylvania’s Insurance Fraud Act and for common law fraud; physician wrote prescriptions for patients that he did not personally examine as part of “kickback arrangement” with second physician and pharmacist, physician allowed others to use his prescription pad to write prescriptions in his name, and physician performed unnecessary testing on patients who had been referred by third physician. State Farm Mut. Auto. Ins. Co. v. Linco, E.D.Pa.2010, 715 F.Supp.2d 617, affirmed 444 Fed.Appx. 617, 2011 WL 4342715. Insurance ☞ 3182; Racketeer Influenced And Corrupt Organizations ☞ 10

Franchise operators’ allegations that company that provided equipment leasing and financing services agreed to send fraudulent invoices to three leasee-operators were sufficient to plead the requisite mens rea comprising

knowing furtherance of the enterprises' affairs in furtherance of racketeering activity under Racketeer Influenced and Corrupt Organizations Act (RICO), for purposes of RICO conspiracy claim; while franchise operators' alleged that they received a very large number of allegedly fraudulent invoices, they did identify multiple specific instances which they claimed are reflective of company's allegedly fraudulent billing practices. HT of Highlands Ranch, Inc. v. Hollywood Tanning Systems, Inc., D.N.J.2008, 590 F.Supp.2d 677. Conspiracy ✡ 18

Palestinian residents of West Bank failed to allege conspiracy, as required to state cause of action under Racketeering Influenced and Corrupt Organizations Act (RICO) against United States congregation that allegedly raised funds to support settlement movement in West Bank, in that residents provided no specific facts to suggest that congregation knew that alleged predicate acts were occurring, that exact settlers receiving their donations were committing those acts, or that their contributions might be used to commit those acts. Doe I v. State of Israel, D.D.C.2005, 400 F.Supp.2d 86. Conspiracy ✡ 18

Pharmaceutical companies and publishers of companies' average wholesale prices (AWP) for prescription drugs were not engaged in association-in-fact enterprises, as required to support claim by employee health-benefit plans that alleged publication of fraudulently overstated AWPs violated Racketeer Influenced and Corrupt Organizations Act (RICO); companies and publishers did not share common purpose more specific than reaping profit, and there was no evidence that publishers knew of fraudulent nature of AWPs they published. In re Pharmaceutical Indust. Average Wholesale Price Litigation, D.Mass.2004, 307 F.Supp.2d 196. Racketeer Influenced And Corrupt Organizations ✡ 36

Accounting firm which had provided services to limited partnerships offering tax shelter securities did not conspire to violate Racketeer Influenced and Corrupt Organizations Act (RICO) through creation of false records; fact that accountants knew limited partnerships were entering into agreement with broker to eliminate market risk of investments, in connection with which false records were allegedly prepared, was insufficient as knowledge without participation did not establish conspiracy membership. Hayden v. Paul, Weiss, Rifkind, Wharton & Garrison, S.D.N.Y.1997, 955 F.Supp. 248. Conspiracy ✡ 9

Conspiracy to violate Racketeer Influenced and Corrupt Organizations Act (RICO) requires showing that defendant was aware of essential nature and scope of enterprise and intended to participate in it; RICO conspiracy requires assent of each defendant charged, although it is not necessary that each conspirator knows all of details of plan or conspiracy. Pedrina v. Chun, D.Hawai'i 1995, 906 F.Supp. 1377, affirmed 97 F.3d 1296, certiorari denied 117 S.Ct. 2441, 520 U.S. 1268, 138 L.Ed.2d 201. Conspiracy ✡ 1.1; Conspiracy ✡ 2

To convict defendant of Racketeer Influenced and Corrupt Organizations Act (RICO) and narcotics conspiracies, it was not necessary to show that defendant himself engaged in each racketeering act; government only needed to show that conspirators knew or must have known of existence of other conspirators and their participation in larger project. U.S. v. Conesa, S.D.N.Y.1995, 899 F.Supp. 172. Conspiracy ✡ 23.1; Conspiracy ✡ 24.5; Racketeer Influenced And Corrupt Organizations ✡ 50

Complaint alleging that auditors aided and abetted conspiracy to loot life insurance company's assets stated claim of auditors' liability under Racketeer Influenced and Corrupt Organizations Act (RICO), because com-
plaint alleged sufficient participation in operation of RICO enterprise; complaint alleged that auditors knowingly concealed RICO violations of other defendants who exercised day-to-day control over company from state insurance regulators. Clark v. Milam, S.D.W.Va.1994, 847 F.Supp. 409, reconsideration denied 872 F.Supp. 307, affirmed 139 F.3d 888. Racketeer Influenced And Corrupt Organizations

“Conspiracy” needed to establish violation of Racketeer Influenced and Corrupt Organization Act requires showing that: defendant agreed to commit substantive racketeering offense through agreeing to participate in two racketeering acts; knew general nature of conspiracy; and knew that conspiracy extended beyond defendant's individual role. U.S. v. Delano, W.D.N.Y.1993, 825 F.Supp. 534, affirmed in part, reversed in part 55 F.3d 720. Conspiracy

To establish Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy, there must be evidence of agreement to violate substantive provision of statute; conspirator need not have full knowledge of every detail regarding conspiracy, as it is sufficient if one knows of essential nature of plan. Colonial Penn Ins. Co. v. Value Rent-A-Car Inc., S.D.Fla.1992, 814 F.Supp. 1084. Conspiracy

To convict defendant of conspiracy to violate Racketeer Influenced and Corrupt Organizations Act, jury must find unanimously and beyond a reasonable doubt that each defendant knowingly and willfully agreed to join conspiracy with knowledge of its goals and knowledge that at least two acts of racketeering of type described in indictment would be performed by some member of conspiracy. U.S. v. Harris, E.D.Pa.1988, 700 F.Supp. 226, affirmed 874 F.2d 123, rehearing denied. Conspiracy

A defendant charged with substantive violation of RICO must be shown to have been aware of at least the general existence of the enterprise named in the indictment. U.S. v. Castellano, S.D.N.Y.1985, 610 F.Supp. 1359. Racketeer Influenced And Corrupt Organizations

For purposes of establishing an “enterprise” conspiracy under this chapter, proof of a state of mind apart from that required for commission of predicate offenses must be demonstrated for each alleged conspirator. U.S. v. Local 560, Intern. Broth. of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, D.C.N.J.1984, 581 F.Supp. 279, affirmed 780 F.2d 267, certiorari denied 106 S.Ct. 2247, 476 U.S. 1140, 90 L.Ed.2d 693. Conspiracy

155. Presence with conspirators, conspiracy

Presence of alleged organized crime underboss during discussions of crimes supported convictions of conspiracy violations of Racketeer Influenced Corrupt Organizations Act (RICO), even if underboss did not personally discuss many of those crimes, where evidence indicated that underboss was present to help evaluate plans presented to boss and give advice as needed; jury was entitled to consider whether it was likely that underboss would have been present during conversations if he were not participant. U.S. v. Locascio, C.A.2 (N.Y.) 1993, 6 F.3d 924, 127 A.L.R. Fed. 599, certiorari denied 114 S.Ct. 1645, 511 U.S. 1070, 128 L.Ed.2d 365, certiorari denied 114 S.Ct. 1646, 511 U.S. 1070, 128 L.Ed.2d 365, post-conviction relief denied 267 F.Supp.2d 306. Conspiracy

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156. Association with conspirators, conspiracy

District court did not abuse its discretion in declining to sever trial of defendant charged with conspiracy in violation of Racketeer Influenced and Corrupt Organizations Act (RICO) from trials of two alleged co-conspirators, notwithstanding that trial was long and complex; conspiracy did exist, and fact that jurors found defendant not guilty on ten counts and acquitted co-defendants on other counts was some indication that jury was able to sort out issues and follow court's instructions with respect to each defendant separately. U.S. v. Tocco, C.A.6 (Mich.) 2000, 200 F.3d 401, rehearing denied 209 F.3d 935. Criminal Law $\Rightarrow$ 622.7(4); Criminal Law $\Rightarrow$ 622.7(8)

Investor in partnership units of real estate partnerships satisfied requirement for stating cause of action under RICO, that each defendant be involved in operation and management of enterprise, even though specifics were not set forth for each defendant; investor had alleged that each defendant “conducted and participated in the conduct of the affairs of” various enterprises named in each count, and that was sufficient for initial pleading purposes. Perlman v. Zell, N.D.Ill.1996, 938 F.Supp. 1327, affirmed 185 F.3d 850, rehearing and rehearing en banc denied. Racketeer Influenced And Corrupt Organizations $\Rightarrow$ 74

For purposes of conspiracy claim under Racketeer Influenced and Corrupt Organizations Act (RICO), mere association with conspirators, even with knowledge of their involvement in crime, is insufficient to prove participation in conspiracy. Brooks v. Bank of Boulder, D.Colo.1995, 891 F.Supp. 1469. Conspiracy $\Rightarrow$ 13

157. Number of objectives, conspiracy

Defendant could be guilty of participating in a conspiracy under this section even though the conspiracy had the single objective of importing one load of marijuana as long as he committed or agreed to commit at least two separate crimes in furtherance of that conspiracy's single objective. U. S. v. Phillips, C.A.5 (Fla.) 1981, 664 F.2d 971, certiorari denied 102 S.Ct. 2965, 457 U.S. 1136, 73 L.Ed.2d 1354, certiorari denied 103 S.Ct. 208, 459 U.S. 906, 74 L.Ed.2d 166. Conspiracy $\Rightarrow$ 28(3)

Federal Racketeer Influenced and Corrupt Organizations Act (RICO) claim does not require proof of multiple schemes. Elliott v. First Sec. Bank, Neb.1996, 544 N.W.2d 823, 249 Neb. 597. Racketeer Influenced And Corrupt Organizations $\Rightarrow$ 27

158. Overt acts, conspiracy


Government is not required to prove an overt act for either a drug conspiracy or a Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy. U.S. v. Harriston, C.A.11 (Ga.) 2003, 329 F.3d 779. Conspiracy $\Rightarrow$ 27

Any error in jury instructions that failed to distinguish between predicate and nonpredicate overt acts as basis for
civil standing to recover for RICO conspiracy violations was harmless, where attempted extortions proximately caused injuries that were inflicted upon contractor bringing action; attempted extortions were directed specifically at contractor and they were accompanied by threat that retaliation would follow if contractor did not succumb. Terminate Control Corp. v. Horowitz, C.A.2 (N.Y.) 1994, 28 F.3d 1335. Federal Courts

Because no overt acts are required to be proved in a RICO conspiracy case, the conspiracy continues as long as its purposes have neither been abandoned nor accomplished. U.S. v. Torres Lopez, C.A.1 (Puerto Rico) 1988, 851 F.2d 520, rehearing denied, certiorari denied 109 S.Ct. 1144, 1021, 103 L.Ed.2d 204, habeas corpus denied 857 F.Supp. 1000, affirmed 47 F.3d 1156. Conspiracy

Evidence that defendant, who had been judge, had accepted bribes at unidentified times while serving on traffic court was pertinent to counts charging conspiracy under the Racketeer Influenced and Corrupt Organizations Act [18 U.S.C.A. § 1962(d)], as establishing overt acts of conspiracy, in that all substantive charges in indictment charged bribes paid on identified dates to identified people; therefore, it was immaterial that defendant could not, because of lack of notice of date, defend against particular allegation of bribery during traffic court years, because he was not on trial for such offenses. U.S. v. Murphy, C.A.7 (Ill.) 1985, 768 F.2d 1518, certiorari denied 106 S.Ct. 1188, 475 U.S. 1012, 89 L.Ed.2d 304. Conspiracy

Overt-act requirement and elements of agreement to violate this chapter are conceptually distinct, i.e., it is possible that agreement made criminal by this chapter consists of defendant's agreement to personally commit two predicate acts without requiring any acts in furtherance of this agreement. U.S. v. Carter, C.A.11 (Ga.) 1984, 721 F.2d 1514, certiorari denied 105 S.Ct. 89, 469 U.S. 819, 83 L.Ed.2d 36, vacated in part 886 F.2d 304. Conspiracy

In prosecution for conspiracy to violate this chapter, government was not required to prove that substantive crime was actually committed but only that some "overt act" was taken in furtherance of conspiracy to commit substantive crime, and, in particular, was required to show that at least one conspirator committed at least one overt act in furtherance of the conspiracy, which overt act was not required to constitute substantive crime and, even if act was seemingly innocent in itself, it was sufficient to support conspiracy conviction if taken in furtherance of the conspiracy. U. S. v. Sutherland, C.A.5 (Tex.) 1981, 656 F.2d 1181, rehearing denied 663 F.2d 101, certiorari denied 102 S.Ct. 1451, 455 U.S. 949, 71 L.Ed.2d 663, certiorari denied 102 S.Ct. 1617, 455 U.S. 991, 71 L.Ed.2d 852. Conspiracy

In prosecution for receipt of kickbacks and other illegitimate benefits by persons associated with employee benefit plans, transactions from treasury fund were admissible as overt acts in furtherance of conspiracy even though those overt acts themselves were not necessarily illegal. U.S. v. Palmeri, C.A.3 (N.J.) 1980, 630 F.2d 192, certiorari denied 101 S.Ct. 1484, 450 U.S. 967, 67 L.Ed.2d 616, certiorari denied 101 S.Ct. 1520, 450 U.S. 983, 67 L.Ed.2d 819. Conspiracy

Commercial vehicle insurer’s allegations, including that insurance broker and others engaged in overt acts in furtherance of conspiracy to defraud insurer by purposefully and knowingly discussing and implementing plan to obtain insurance at otherwise unavailable premiums, by plotting to create false and fraudulent documents, and
by using interstate wires to further scheme and plan, were sufficient to assert Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy claim against broker. United States Fire Ins. Co. v. United Limousine Service, Inc., S.D.N.Y.2004, 303 F.Supp.2d 432. Conspiracy


That New York law conditions convictions for conspiracy on pleading and proof of an overt act did not render insufficient indictment alleging, as racketeering acts under Racketeer Influenced and Corrupt Organizations Act [18 U.S.C.A. § 1962], conspiracy to murder without alleging an overt act in furtherance of the conspiracies; even if proof of an overt act was required, the RICO statute does not incorporate state rules of pleading. U.S. v. Dellacroce, E.D.N.Y.1986, 625 F.Supp. 1387. Racketeer Influenced And Corrupt Organizations

Evidence that defendant was part of qualifying criminal enterprise at time he participated in overt act of selling cocaine was sufficient to support conviction under Racketeer Influenced and Corrupt Organizations Act (RICO), despite defendant's contention that buyer had testified that defendant was not member of criminal enterprise, where buyer testified that defendant was “associated” with criminal enterprise, multiple witnesses testified that defendant was in fact member of criminal enterprise, other evidence established defendant's membership in criminal enterprise, and overt act occurred in area controlled by criminal enterprise. U.S. v. Williams, C.A.11 (Ga.) 2006, 203 Fed.Appx. 976, 2006 WL 3083968, Unreported, certiorari denied 127 S.Ct. 1498, 549 U.S. 1270, 167 L.Ed.2d 238, post-conviction relief dismissed 2012 WL 86748, certificate of appealability denied. Racketeer Influenced And Corrupt Organizations

159. Number of predicate offenses, conspiracy

To prove single conspiracy amongst traders and brokers of futures contracts for RICO purposes, government needed only to show that any particular defendant agreed to conduct affairs of enterprise (i.e., Chicago Board of Trade) through commission of two predicate acts of mail or wire fraud. U.S. v. Ashman, C.A.7 (Ill.) 1992, 979 F.2d 469, rehearing denied, certiorari denied 114 S.Ct. 62, 510 U.S. 814, 126 L.Ed.2d 32. Conspiracy

Defendant charged with Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy need only agree to commission of two predicate acts on behalf of conspiracy; agreement that acts will be committed by any of the coconspirators on behalf of conspiracy is sufficient. U.S. v. Campione, C.A.7 (Ill.) 1991, 942 F.2d 429. Conspiracy
Defendant had agreed to participate in conduct of affairs of drug smuggling enterprise generally, so as to preclude necessity of establishing his agreement to commit two predicate acts required for Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy conviction, even though defendant asserted that he had joined conspiracy for purpose of achieving single object of completing a particular drug smuggling transaction; defendant was admitted participant in organization which was regular customer of smugglers and he had performed other services for leader of smuggling ring. U.S. v. Gonzalez, C.A.11 (Ala.) 1991, 921 F.2d 1530, certiorari denied 112 S.Ct. 178, 502 U.S. 860, 116 L.Ed.2d 140, certiorari denied 112 S.Ct. 96, 502 U.S. 827, 116 L.Ed.2d 68. Conspiracy  28(3)

Conspiracy to violate Racketeer Influenced and Corrupt Organizations Act requires only agreement that members of conspiracy will violate RICO, and not that defendant agreed personally to commit two predicate acts; declining to follow U.S. v. Ruggiero, 726 F.2d 913 (2nd Cir.) and U.S. v. Winter, 663 F.2d 1120 (1st Cir.). U.S. v. Neapolitan, C.A.7 (Ill.) 1986, 791 F.2d 489, certiorari denied 107 S.Ct. 421, 479 U.S. 939, 93 L.Ed.2d 371, certiorari denied 107 S.Ct. 422, 479 U.S. 940, 93 L.Ed.2d 372. Conspiracy  28(3)

Where government's evidence establishes that defendant agreed to participate in conspiracy with single objective, requisite pattern of racketeering necessary to objective of conspiracy under this section is lacking and only by demonstrating that defendant agreed to commit two or more predicate acts is this lack cured; when, however, defendant agreed to participate in conduct of enterprise's affairs with objective of violating this section, it is not necessary that defendant agree to personally commit two predicate acts for required pattern of racketeering activity, as it is enough that defendant agreed to commission of two predicate acts. U.S. v. Carter, C.A.11 (Ga.) 1984, 721 F.2d 1514, certiorari denied 105 S.Ct. 89, 469 U.S. 819, 83 L.Ed.2d 36, vacated in part 886 F.2d 304. Conspiracy  28(3)

Although at least two acts of racketeering are necessary to convict defendant of substantive offense under this section, it is unnecessary in conspiracy to commit offense under this section to show that particular defendant first committed any act of racketeering, and thus conviction of one defendant on conspiracy count had to be affirmed regardless of whether he personally committed any act of racketeering. U. S. v. Brooklier, C.A.9 (Cal.) 1982, 685 F.2d 1208, certiorari denied 103 S.Ct. 1194, 459 U.S. 1206, 75 L.Ed.2d 439, certiorari denied 103 S.Ct. 1195, 459 U.S. 1206, 75 L.Ed.2d 439. Conspiracy  40.1

A conspiracy count under this section must charge as minimum that each defendant agreed to commit two or more specified predicate crimes in addition to charging an agreement to participate in conduct of an "enterprise's" affairs through a "pattern of racketeering activity." U. S. v. Winter, C.A.1 (Mass.) 1981, 663 F.2d 1120, certiorari denied 103 S.Ct. 1249, 460 U.S. 1011, 75 L.Ed.2d 479, certiorari denied 103 S.Ct. 1250, 460 U.S. 1011, 75 L.Ed.2d 479. Conspiracy  43(6)

To convict for conspiracy to violate person objectively manifested, through this chapter, government must prove that words or actions, agreement to participate in conduct of affairs of enterprise through commission of two or more predicate crimes. U. S. v. Martino, C.A.5 (Fla.) 1981, 648 F.2d 367, on reconsideration in part 650 F.2d 651, certiorari denied 102 S.Ct. 2006, 456 U.S. 943, 72 L.Ed.2d 465, certiorari denied 102 S.Ct. 2007, 456 U.S. 943, 72 L.Ed.2d 465, certiorari denied 102 S.Ct. 2020, 456 U.S. 949, 72 L.Ed.2d 474, on rehearing 681 F.2d 952.
, certiorari granted 103 S.Ct. 721, 459 U.S. 1101, 74 L.Ed.2d 948, affirmed 104 S.Ct. 296, 464 U.S. 16, 78 L.Ed.2d 17. Conspiracy C\(\Rightarrow\) 28(3)

Allegation of a solitary mailing by a lone defendant as part of a fraudulent scheme was not sufficient to trigger liability and federal jurisdiction under Racketeer Influenced and Corrupt Organizations Act (RICO) provision that prohibited conducting the affairs of an enterprise through a pattern of racketeering activity. Hall v. Tressic, N.D.N.Y.2005, 381 F.Supp.2d 101. Racketeer Influenced And Corrupt Organizations C\(\Rightarrow\) 31

Bank did not commit two or more predicate acts of racketeering for Racketeer Influenced and Corrupt Organizations (RICO) purposes by closing plaintiff's checking account at her request and failing to give information to a check-clearing company upon plaintiff's request. Pennino v. Selig, W.D.Ark.2003, 258 F.Supp.2d 914. Racketeer Influenced And Corrupt Organizations C\(\Rightarrow\) 26

Minority shareholder's allegations that corporation's majority shareholder and bookkeeper conspired in scheme to defraud him, bank and bankruptcy court by mailing fraudulent tax returns to bank and bankruptcy court to obtain loans and to conceal corporation's true financial condition were sufficient to state claim under Racketeer Influenced and Corrupt Organization Act (RICO). Tyler v. O'Neill, E.D.Pa.1998, 994 F.Supp. 603, affirmed 189 F.3d 465, certiorari denied 120 S.Ct. 981, 528 U.S. 1137, 145 L.Ed.2d 932. Racketeer Influenced And Corrupt Organizations C\(\Rightarrow\) 10

Indirect evidence of agreement between two administrators for nonexistent employee groups and others to engage in substantive racketeering offense by committing at least two predicate acts of wire and mail fraud in concert was sufficient to establish conspiracy liability of administrators under civil Racketeer Influenced and Corrupt Organizations Act to fraudulently secure group health coverage. Empire Blue Cross and Blue Shield v. Finkelstein, E.D.N.Y.1995, 887 F.Supp. 473, remanded 101 F.3d 684, opinion after remand 111 F.3d 278. Conspiracy C\(\Rightarrow\) 19

Because each indictable mail fraud offense is act of racketeering activity under Racketeer Influenced and Corrupt Organization Act (RICO), requirement of agreement to commit at least two acts of racketeering activity would be satisfied by conscious adherence to fraudulent scheme pursuant to which two mailings in furtherance of scheme were foreseeable. Spira v. Nick, S.D.N.Y.1995, 876 F.Supp. 553. Racketeer Influenced And Corrupt Organizations C\(\Rightarrow\) 31


Plaintiff in civil Racketeer Influenced and Corrupt Organizations Act (RICO) action must have suffered injury from at least one predicate act before it can rely on racketeering acts of mail fraud allegedly committed by defendant against third party as evidence of pattern of racketeering activity. Asbeka Industries v. Travelers Indem. Co., E.D.N.Y.1993, 831 F.Supp. 74. Racketeer Influenced And Corrupt Organizations C\(\Rightarrow\) 10

Allegations that defendants defrauded bank in connection with financing of construction project did not state claim under the Racketeer Influenced and Corrupt Organizations (RICO) Act absent anything in record to show more than single instance of fraud or that there was threat of continuing criminal activity or any other victim than plaintiff bank. Constitution Bank v. DiMarco, E.D.Pa. 1993, 815 F.Supp. 154. Racketeer Influenced And Corrupt Organizations 31

Plaintiff asserting claim under Racketeer Influenced and Corrupt Organizations Act (RICO) section imposing liability for participation in affairs of enterprise through pattern of racketeering activity cannot rely upon conspiracy allegations to satisfy requirement of two predicate acts when alleged enterprise is something other than conspiracy, such as corporation. R.E. Davis Chemical Corp. v. Nalco Chemical Co., N.D.II.1990, 757 F.Supp. 1499. Racketeer Influenced And Corrupt Organizations 26

RICO conspiracy provision applies only to those defendants who conspire to further the activities of the enterprise through the commission of two racketeering acts. Northeast Women's Center, Inc. v. McMonagle, E.D.Pa. 1987, 670 F.Supp. 1300. Conspiracy 8

Purchasers of shares in two limited partnerships adequately alleged that a bank involved in the financing engaged in a “pattern of racketeering activity” in relation to both partnerships to state claims under section 1962(c); the bank allegedly participated in an illegal conspiracy to bail out a predecessor limited partnership by settling a lawsuit and resyndicating the predecessor of the current limited partnership, omitted to disclose material information about the partnership and made certain affirmative misrepresentations and attempted to cover up its role in any illegal activity by denying to purchasers and the Maryland Bank Commissioner that it had done anything wrong in relation to either partnership. Hill v. Equitable Bank, N.A., D.Del.1986, 642 F.Supp. 1013. Racketeer Influenced And Corrupt Organizations 25

In charging that vendor hired to perform work on plaintiffs' properties was part of conspiracy to convert funds and that members of that conspiracy committed at least two acts of mail and wire fraud, a pattern of racketeering activity under subsec. (c) of this section, plaintiffs adequately stated claim under this chapter against vendor. Rich-Taubman Associates v. Stamford Restaurant Operating Co., Inc., S.D.N.Y.1984, 587 F.Supp. 875. Racketeer Influenced And Corrupt Organizations 72

160. Continuity of racketeering, conspiracy

There was sufficient evidence for jury to determine that at least five predicate acts demonstrated a period of closed-ended continuity, as required to establish a pattern of racketeering activity and support defendant's conviction for a Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy; evidence indicated that all five crimes in question, including conspiracy to commit murder and attempted murder, conspiracy to commit arson and arson, and conspiracy to commit murder and murder, which were conducted upon defendant's direct or indirect orders, occurred over a period of approximately three years. U.S. v. Smith, C.A.10 (Utah) 2005, 413 F.3d 1253, certiorari denied 126 S.Ct. 1093, 546 U.S. 1120, 163 L.Ed.2d 908, post-conviction relief dismissed 2007 WL 1795743, certificate of appealability denied 283 Fed.Appx. 647, 2008 WL 2588697, certiorari denied 129 S.Ct. 316, 555 U.S. 932, 172 L.Ed.2d 229. Racketeer Influenced And Corrupt Organizations 29

Union pension fund administrator stated claim against contractor and its employees for civil conspiracy under Racketeer Influenced and Corrupt Organizations Act (RICO) by alleging general contours of a conspiracy to embezzle money from the pension funds through a continued scheme of bribing labor representatives in order to avoid making required contributions under collective bargaining agreement (CBA), and claimed that contractor's employees had paid bribes, at contractor's direction, so that it could profit by paying carpenters off-the-books to avoid making retirement contributions to fund. New York Dist. Council of Carpenters Pension Fund v. Forde, S.D.N.Y.2013, 2013 WL 1454954. Conspiracy

Public interest law firm, its director, and its officers did not engage in pattern of racketeering activity in conducting alleged cover-up of former employee’s fraudulent claim that he was attorney when he was not one and failure to perform paid-for legal services, and thus former clients failed to satisfy closed-ended continuity requirement to establish standing to bring conspiracy action under Racketeer Influenced and Corrupt Organizations Act (RICO); alleged scheme spanned only about two years and involved only four identified victims. Lopez v. Council on American-Islamic Relations Action Network, Inc., D.D.C.2009, 657 F.Supp.2d 104, affirmed383 Fed.Appx. 1, 2010 WL 2689367. Racketeer Influenced And Corrupt Organizations

Racketeer Influenced and Corrupt Organizations Act (RICO) complaint by franchise operators against company that provided equipment leasing and financing services sufficiently alleged continuity, under closed-ended continuity analysis, as required to plead facts suggestive of a pattern of racketeering activity, through repeated mailing of allegedly fraudulent invoices to multiple franchisees over course of at least 15 months. HT of Highlands Ranch, Inc. v. Hollywood Tanning Systems, Inc., D.N.J.2008, 590 F.Supp.2d 677. Racketeer Influenced And Corrupt Organizations

Alleged acts of Louisiana State Board of Private Security Examiners (LSBPSE) and its executive secretary in improperly issuing Louisiana security company cease-and-desist order, and out-of-state security companies’ alleged acts of operating in-state without proper licensing and insurance, constituted one-time acts, and not an ongoing relationship, and thus were insufficient to demonstrate a continuing unit under definition of enterprise in Racketeer Influenced and Corrupt Organizations Act (RICO) section prohibiting the conduct of an enterprise's affairs through a pattern of racketeering activity. Able Security and Patrol, LLC. v. Louisiana, E.D.La.2008, 569 F.Supp.2d 617. Racketeer Influenced And Corrupt Organizations

Complaint supported claim against debtor for civil conspiracy in violation of Racketeer Influenced and Corrupt Organizations Act (RICO) when it alleged that debtor and others willfully and knowingly committed various acts over period of time to defraud debtor's creditors, that debtor's acts constituted pattern of racketeering activ-
ity, and that debtor was the lead conspirator in entire scheme and that he and others agreed to shield his assets. Cadle, Co. v. Flanagan, D.Conn.2003, 271 F.Supp.2d 379. Conspiracy 18

Alleged predicate acts of law firm and its principals in connection with falsification of affidavits filed in clients' actions against asbestos manufacturer established sufficient threat of on-going criminal activity, beyond period in which predicate acts were committed, to adequately plead open-ended continuity as required to show pattern of racketeering activity in manufacturer's action against firm and principals alleging mail and wire fraud under Racketeer Influenced and Corrupt Organizations Act (RICO), in view of large-scale scope of alleged fraud, involvement of management in the alleged fraud, and nature of scheme, which was not inherently terminable, despite claim that all asbestos-injury defendants would ultimately be driven out of business. G-I Holdings, Inc. v. Baron & Budd, S.D.N.Y.2002, 238 F.Supp.2d 521. Racketeer Influenced And Corrupt Organizations 72

Alleged conduct by union officers of witness tampering and attempted extortion, though racketeering acts under the Racketeer Influenced and Corrupt Organizations Act (RICO), were insufficient to establish of a claim by union member under the conspiracy provision of RICO, given that union member failed to satisfy continuity requirement for showing a pattern of racketeering. Breslin v. Brainard, E.D.Pa.2003, 2003 WL 22351297, Unreported, reconsideration denied 2004 WL 1053011, affirmed 128 Fed.Appx. 237, 2005 WL 775846. Racketeer Influenced And Corrupt Organizations 15

161. Relationship of predicate acts, conspiracy

There was sufficient evidence for jury to determine that at least five predicate acts were “related,” as required to establish a “pattern of racketeering activity” and support defendant's conviction for a Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy; evidence indicated that all five crimes in question, including conspiracy to commit murder and attempted murder, conspiracy to commit arson and arson, and conspiracy to commit murder and murder, were violent acts of retaliation committed by members of defendant's gang against rival gangs or people believed to be members of rival gangs for the purpose of maintaining the gang's reputation, which were conducted upon defendant's direct or indirect orders. U.S. v. Smith, C.A.10 (Utah) 2005, 413 F.3d 1253, certiorari denied 126 S.Ct. 1093, 519 U.S. 927, 136 L.Ed.2d 908, post-conviction relief dismissed 2007 WL 1795743, certificate of appealability denied 283 Fed.Appx. 647, 2008 WL 2588697, certiorari denied 129 S.Ct. 316, 555 U.S. 932, 172 L.Ed.2d 229. Racketeer Influenced And Corrupt Organizations 28

In criminal RICO case against county judge, fact that bribery which occurred in one criminal case before county judge involved some individuals who did not participate in briberies in other criminal cases before county judge did not compel finding that first bribery could not be included in RICO conspiracy; common element in each predicate act was involvement of county judge in his capacity as judicial officer, and desire of all participants to effect corruption of that office. U.S. v. Maloney, C.A.7 (Ill.) 1995, 71 F.3d 645, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 295, 519 U.S. 927, 136 L.Ed.2d 214. Conspiracy 34

Evidence was sufficient to establish that defendant's involvement in victim's murder and in gambling operation related to activities of criminal enterprise, as required to support Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy convictions; murder was committed to further enterprise's affairs, and other members of enterprise were involved in gambling operation. U.S. v. Minicone, C.A.2 (N.Y.) 1992, 960 F.2d 1099,
certiorari denied 112 S.Ct. 1511, 503 U.S. 950, 117 L.Ed.2d 648, amended on rehearing in part, certiorari denied
113 S.Ct. 199, 506 U.S. 869, 121 L.Ed.2d 142, post-conviction relief denied , affirmed 40 F.3d 1237. Conspiracy 47(3.1)

Alleged murder conspiracy by “captain” in organized crime enterprise was related to gambling and attempted
extortion predicates charged against “captain” and his subordinates, and, therefore, satisfied relationship prong
of RICO test for pattern of racketeering activity; murder conspiracy and gambling and attempted extortion pre-
dicates were all undertaken to further diverse purposes of enterprise, and each predicate act was carried out by
“captain” and members of his crew pursuant to orders of key members of the enterprise. U.S. v. Eufrasio, C.A.3
(Pa.) 1991, 935 F.2d 553, rehearing denied, certiorari denied 112 S.Ct. 340, 502 U.S. 925, 116 L.Ed.2d 280,
denial of post-conviction relief affirmed 38 F.3d 693. Racketeer Influenced And Corrupt Organizations 28

Attorney alleging conspiracy to defame him did not establish sufficiently discrete series of predicate acts ex-
tending over substantial period of time to constitute closed-ended continuity, and thus to allege pattern of rackete-
eering activity which allow attorney to bring action under Civil Racketeer Influenced and Corrupt Organizations
Act, where the two newspapers articles of which attorney complained were published on same day, and research
and gathering of information to write articles was close in time and function. Phelps v. Wichita Eagle-Beacon,
C.A.10 (Kan.) 1989, 886 F.2d 1262. Racketeer Influenced And Corrupt Organizations 26

If agent of State Alcoholic Beverage Commission who was believed by the defendants to be participating in the
conspiracy did fail to turn over proceeds of confiscated contraband sold to liquor store at reduced price, and if
Kentucky statute [KRS 514.070(1)(a) ] was thereby violated, such conduct was only collateral to actual conspiracy,
the violation being unconnected to the acts with which the defendants were charged in the case, and thus
defendants' convictions were not precluded by such alleged commission of offense by agent. U.S. v. Robinson,
C.A.6 (Ky.) 1985, 763 F.2d 778. Criminal Law 36.6

For purposes of establishing conspiracy under subsec. (d) of this section, it is unnecessary that underlying pre-
dicate acts be interrelated, as long as those acts are connected to affairs of the enterprise; moreover, defendant's
participation in enterprise may take place through offense of various crimes unrelated to one another, as long as
those crimes are in some way intended to further enterprise's affairs. U.S. v. Sinito, C.A.6 (Ohio) 1983, 723 F.2d
1250, certiorari denied 105 S.Ct. 86, 83 L.Ed.2d 33. Conspiracy 28(3)

162. Time of offense, conspiracy

Pension fund was “enterprise” separate from employer, for purposes of holding employer in violation of section
of Racketeer Influenced and Corrupt Organizations (RICO) Act which prohibits any “person” associated with
any “enterprise” engaged in interstate or foreign commerce from participating in conduct of enterprise’s affairs
through pattern of racketeering activity; pension fund had separate corporate existence and its own governance.
Cox v. Administrator U.S. Steel & Carnegie, C.A.11 (Ala.) 1994, 30 F.3d 1347, certiorari denied 115 S.Ct. 900,
513 U.S. 1110, 130 L.Ed.2d 784. Racketeer Influenced And Corrupt Organizations 43

Even assuming that plaintiff pled legally cognizable predicate act by his wife and her attorney, he failed to al-
lege that predicate acts amounted to or posed threat of continued criminal activity, as required to state civil Racketeer Influenced and Corrupt Organizations Act (RICO) claim, where neither plaintiff's complaint nor his RICO case statement mentioned any time frame with regard to defendants' allegedly unlawful acts. Harvey v. Harvey, D.Conn.1996, 931 F.Supp. 127, affirmed 108 F.3d 329. Racketeer Influenced And Corrupt Organizations [72]

Predicate act for alleged RICO violation of mail fraud, by sending proxy statement urging shareholders to approve merger between corporation and another company, “accrued” for purposes of limitations period at time of subsequent injury when merger was approved by shareholders, since directors did not control enough voting stock to approve merger on their own. Pinnacle Consultants, Ltd. on Behalf of Shareholders of Leucadia Nat. Corp. v. Leucadia Nat. Corp., S.D.N.Y.1995, 923 F.Supp. 439, affirmed 101 F.3d 900. Limitation Of Actions [58(1)]

Claim under Racketeer Influenced and Corrupt Organizations Act (RICO), asserted against alleged theocratic enterprise by committee established by that enterprise, accrued at time of only injury of which committee complained, enterprise's disbursement of committee funds to pay for brochure urging presidential pardon for enterprise leader, absent any claim of affirmative concealment of committee's operations from director involved in commencement of present action. Committee to Defend U.S. Constitution v. Moon, D.D.C.1991, 776 F.Supp. 568. Limitation Of Actions [58(1)]

In Racketeer Influenced and Corrupt Organizations Act (RICO) action by allegedly defrauded purchasers of interests in gas wells/leases, predicate acts of which defendants were accused, i.e., fraudulent conveyances which investors believed would place assets beyond their reach, all occurred after alleged fraudulent sale of gas leases, and thus, investors lacked standing with respect to those defendants. Martin v. Brown, W.D.Pa.1990, 758 F.Supp. 313. Racketeer Influenced And Corrupt Organizations [62]

Time is not an essential element of the crimes of conspiracy to participate in the conduct of the affairs of a police department through a pattern of racketeering activity or conspiracy to obstruct law enforcement with the intent to facilitate illegal gambling business. U. S. v. Feliziani, E.D.Pa.1979, 472 F.Supp. 1037, affirmed 622 F.2d 580. Conspiracy [28(3)]

Having asserted in prior statements and testimony that he was driven out of business by alleged anticompetitive conduct of competing stamp dealers and auction houses, former operator of collectible stamp dealership and auction house could not rely on self-serving statement, made in opposition to summary judgment, that he was still operating as stamp dealer and auctioneer within four-year limitations period to avoid summary judgment, on limitations grounds, on claims for alleged violations of state and federal antitrust laws and Racketeer Influenced and Corrupt Organizations Act (RICO) that were asserted more than four years after dealership went out of business. Stolow v. Greg Manning Auctions Inc., C.A.2 (N.Y.) 2003, 80 Fed.Appx. 722, 2003 WL 22717684, Unreported. Federal Civil Procedure [2484]

163. Wharton's rule, conspiracy
Where defendants formed an enterprise to commit various acts of extortion, and where, in association with and in the conduct of that enterprise, they conspired together to commit, and did commit, three murders, there was nothing in “Wharton's Rule” to prohibit their conviction and consecutive sentences for the substantive charge and conspiracy charge under this section. U. S. v. Rone, C.A.9 (Cal.) 1979, 598 F.2d 564, certiorari denied 100 S.Ct. 1345, 445 U.S. 946, 63 L.Ed.2d 780. Conspiracy 28(1)

Whereas classic examples of “Wharton’s Rule” cases are such crimes as adultery, incest, bigamy and dueling, the plain language of this section sets it apart from those types of crimes and clearly imports that a violation may be committed by an individual acting alone, which fact in itself takes that statute out of the scope of “Wharton’s Rule”. U. S. v. Ohlson, C.A.9 (Cal.) 1977, 552 F.2d 1347. Conspiracy 28(3)

Conviction under subsec. (d) of this section does not merge with conviction under subsec. (c) of this section so as to preclude imposition of consecutive sentences for those convictions, as subsec. (c) of this section is not within scope of Wharton’s Rule, which states that an agreement between two people to a particular crime cannot be prosecuted as a conspiracy if crime is of type that necessarily requires participation of two persons for its commission. U. S. v. Hawkins, M.D.Ga.1981, 516 F.Supp. 1204. Conspiracy 37; Sentencing And Punishment 559(3)

Wharton's rule did not bar maintenance of counts charging conspiracy under this section and substantive violation of this section. U. S. v. Boffa, D.C.Del.1980, 513 F.Supp. 444. Conspiracy 28(3)

164. Single or multiple conspiracies, conspiracy

Defendants charged with RICO conspiracy in which predicate acts consisted of Hobbs Act offenses involving making of extortionate loans or collection by extortionate means were not entitled to acquittal should jury find that two or more charged conspiracies were really the same offense. U.S. v. Oreto, C.A.1 (Mass.) 1994, 37 F.3d 739, certiorari denied 115 S.Ct. 1161, 513 U.S. 1177, 130 L.Ed.2d 1116, 91 L.Ed.2d 549. Conspiracy 48.1(2.1)

Crimes involved in police officer's supplying sign owner with names of policemen who he said had performed security work in keeping fans from climbing on billboard during baseball game, and in officer's forging endorsements on checks received from owner of billboard, constituted a separate conspiracy from RICO conspiracy by several police officers involving receipt of things of value in exchange for providing services to restaurant or nightclub owners, and thus there was a variance from indictment charging a single conspiracy, even though all defendants used their official positions illegally to gain things of value. U.S. v. Boylan, C.A.1 (Mass.) 1990, 898 F.2d 230, certiorari denied 111 S.Ct. 139, 498 U.S. 849, 112 L.Ed.2d 106. Conspiracy 24(2)

There was only a single RICO conspiracy, as charged in indictment, rather than multiple conspiracies, as contended by defendants, where there was similarity of time, persons, offenses, places, and overt acts among shipments of marijuana, and most of the defendants were aware of and in fact participated with other defendants at some point in many transactions that took place in two-year period. U.S. v. Mitchell, C.A.5 (Tex.) 1985, 777 F.2d 248, certiorari denied 106 S.Ct. 1493, 475 U.S. 1096, 89 L.Ed.2d 895, certiorari denied 106 S.Ct. 2921, 476 U.S. 1184, 91 L.Ed.2d 549. Conspiracy 24(3)
Even if jury in acquitting defendants on conspiracy count concluded that they were not members of the enterprise, same did not preclude subsequent conspiracy conviction, if two conspiracies were distinct criminal schemes. U.S. v. Russotti, C.A.2 (N.Y.) 1983, 717 F.2d 27, certiorari denied 104 S.Ct. 1273, 465 U.S. 1022, 79 L.Ed.2d 678. Double Jeopardy \(\Rightarrow\) 151(2)

Brief cessation of arson activity did not divide arson-insurance fraud enterprise into two conspiracies so long as there was an overlap in method and personnel between the two stages of the group's operations. U. S. v. Lemm, C.A.8 (Neb.) 1982, 680 F.2d 1193, certiorari denied 103 S.Ct. 739, 459 U.S. 1110, 74 L.Ed.2d 960. Conspiracy \(\Rightarrow\) 24(2)

Because indictment charging defendants with violating this section properly defined the enterprise as Florida's Third Judicial Circuit, and properly alleged a single pattern of racketeering activity, the indictment properly charged a single conspiracy. U. S. v. Stratton, C.A.5 (La.) 1981, 649 F.2d 1066. Conspiracy \(\Rightarrow\) 43(2)

Evidence demonstrated single conspiracy making proper joinder of defendants in indictment charging violation of this section and conspiracy to commit that offense. U. S. v. Clemente, S.D.N.Y.1980, 494 F.Supp. 1310. Indictment And Information \(\Rightarrow\) 124(4)

165. Termination of conspiracy

Fact that some conspirators withdraw or that methods used to perpetuate the scheme change slightly does not indicate that one conspiracy has ended and that another has begun or that a fatal variance exists when the indictment alleges a single conspiracy. U.S. v. Lynch, C.A.7 (Ill.) 1982, 699 F.2d 839. Conspiracy \(\Rightarrow\) 24(2); Conspiracy \(\Rightarrow\) 43(12)

Defendant could not merely rely on his physical distance from, rather than his repudiation of, the actions of his co-conspirators in order to establish withdrawal from Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy. U.S. v. Battle, S.D.Fla.2006, 473 F.Supp.2d 1185. Conspiracy \(\Rightarrow\) 40.4

166. Liability of conspirators, conspiracy

District court's failure to instruct jury about defendant's liability for substantive offenses committed by coconspirators did not preclude defendant's conviction for conspiracy to make extortionate extensions of credit and collect extensions of credit through extortionate means, in violation of Racketeer Influenced and Corrupt Organizations Act (RICO), where jury was charged extensively about law of conspiracy permitting it to consider, as part of charged conspiracy, acts committed by co-conspirators, regardless of whether defendant committed or agreed to commit such acts. U.S. v. Yannotti, S.D.N.Y.2006, 457 F.Supp.2d 385. Conspiracy \(\Rightarrow\) 48.2(2)

Non bis in idem clause of extradition treaty between the United States and Italy did not preclude deportation to face charges of criminal association and illegal trafficking in narcotic and psychotropic substances, even though some drug shipments alleged in defendant's Racketeer Influenced and Corrupt Organizations Act (RICO) narcotics conspiracy conviction in the United States coincided; alleged conspiracies differed as to time period, places,
displays, and conspirators involved, and dismissed counts did not involve same facts or acts alleged in extradition request. In re Gambino, D.Mass.2006, 421 F.Supp.2d 283. Extradition And Detainers 5

Domestic bank could not be held vicariously liable for conspiracy under Racketeer Influenced and Corrupt Organizations Act (RICO) for alleged acts of its loan officers in participating in customer's money-laundering scheme, absent allegations that bank was a central figure with respect to scheme. Dubai Islamic Bank v. Citibank, N.A., S.D.N.Y.2003, 256 F.Supp.2d 158. Racketeer Influenced And Corrupt Organizations 50

Evidence supported determination that predecessor of former union officer and others were aware of, and agreed to facilitate, corruption at union, and thus such co-conspirators' liability for damages caused by conspiracy would be considered in calculating officer's share of costs of union monitorship, under Racketeer Influenced and Corrupt Organizations Act (RICO); officer's predecessors, union members who were also associates or members of organized crime, and owners of certain corporations that had collective bargaining agreements (CBA) served to knowingly facilitate criminal enterprise. U.S. v. Sasso, E.D.N.Y.2001, 230 F.Supp.2d 275. Conspiracy 19

Upon joining fraudulent conspiracy, each Racketeer Influenced and Corrupt Organizations Act (RICO) defendant becomes liable for prior conduct of earlier conspirators and remains liable for subsequent conduct of other conspirators. Cadle Co. v. Schultz, N.D.Tex.1991, 779 F.Supp. 392. Conspiracy 40.3; Conspiracy 41

167. Pleading, conspiracy

Employee terminated after reporting an alleged tax fraud scheme to federal law enforcement agencies adequately alleged an agreement to state a conspiracy claim under the Racketeer Influenced and Corrupt Organizations Act (RICO) against officers of his employer; the employee alleged that all of the officers had knowledge of illegal acts, discussed those acts, and facilitated commission of those acts such that it could be inferred that there was an agreement among all of them. DeGuelle v. Camilli, C.A.7 (Wis.) 2011, 664 F.3d 192, on remand 2012 WL 1933743. Conspiracy 18

Accusations made by, and on behalf of, litigation adversary, and general reports of public corruption in Grenada, were insufficient to establish plausible inference, on claim of bribery-racketeering conspiracy under Racketeer Influenced and Corrupt Organizations Act (RICO), that law firm that represented nation of Grenada in international arbitration against adversary was aware of anything corrupt relevant to its provision of legal services. RSM Production Corp. v. Freshfields Bruckhaus Deringer U.S. LLP, C.A.D.C.2012, 682 F.3d 1043, 401 U.S.App.D.C. 238, rehearing en banc denied , certiorari denied 133 S.Ct. 870, 184 L.Ed.2d 659. Conspiracy 8

Racketeer Influenced and Corrupt Organizations Act (RICO) complaint did not allege use of enterprise to engage in pattern of racketeering activity; enterprise alleged was conspiracy led by executor for estate, and defendants did not use that conspiracy, rather, they were the conspiracy. Jay E. Hayden Foundation v. First Neighbor Bank, N.A., C.A.7 (Ill.) 2010, 610 F.3d 382. Racketeer Influenced And Corrupt Organizations 73
Union pension fund administrator stated claim against former trustee for civil conspiracy under Racketeer Influenced and Corrupt Organizations Act (RICO) by alleging that he knew contractor had been circumventing collective bargaining agreement (CBA) by paying bribes to labor representatives, that he assisted contractor's embezzlement of pension funds by concealing it, making loan to contractor from pension funds, helping him evade an investigation, and obtaining withdrawal of stop order issued against contractor, and that he had been convicted of perjury in his attempts to cover up his relationship with contractor. New York Dist. Council of Carpenters Pension Fund v. Forde, S.D.N.Y.2013, 2013 WL 1454954. Conspiracy 

Shipper failed to plausibly allege an agreement to commit at least two predicate acts, as required to state a Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy claim against carrier, its parent corporation, and its sister subsidiary, where it did not provide facts supporting its conclusory allegation that carrier’s competitor agreed to upweight packages to increase pricing. U1IT4less, Inc. v. FedEx Corp., S.D.N.Y.2012, 896 F.Supp.2d 275. Conspiracy

Client failed to state Racketeer Influenced and Corrupt Organizations Act (RICO) violation based on alleged conspiracy to defraud her of assets between her former boyfriend and attorney she retained to help her obtain employment visa, as would warrant entry of default judgment against defendants, where client had not sufficiently alleged existence of enterprise, that predicate acts of criminal activity had continued over significant period of time, or that defendants had actually joined enterprise or agreed to commit two or more predicate acts. Vazquez-Baldonado v. Domenech, D.Puerto Rico 2012, 847 F.Supp.2d 281. Racketeer Influenced and Corrupt Organizations

Allegations that individual defendants agreed to participate in a scheme to bloat the circulation numbers of two newspapers, whose ultimate objective must have been known to its participants, were sufficient to state a claim of Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy. Crabhouse of Douglaston Inc. v. Newsday Inc., E.D.N.Y.2011, 801 F.Supp.2d 64. Conspiracy

Poultry processing company's legally authorized workers failed to state facts sufficient to present a plausible Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy claim against company's officers and hiring managers, based on officers' and managers' alleged scheme of hiring and falsely attesting to work authorization of large numbers of illegal immigrants; workers did not provide any facts indicative of an agreement, including when or where the agreement took place, or specific substance of any communications between officers and managers regarding hiring policy, or identify a single worker specifically known to be an illegal alien. Walters v. McMahon, D.Md.2011, 795 F.Supp.2d 350, affirmed 684 F.3d 435, certiorari denied 133 S.Ct. 1493, 185 L.Ed.2d 548. Conspiracy

Buyer of overpriced artwork adequately stated claims for Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy and substantive RICO violations based on mail and wire fraud predicates; complaint alleged that art dealer and the cruise lines participated in an on-going association designed to funnel cruise line passengers to dealer’s auctions for the purpose of selling overpriced or overvalued artwork, and that he would not have bid on or purchased artwork from dealer had it not misrepresented its investment and appraisal value. In re Park

Conclusory allegations that defendants were associated with enterprises and were aware of the alleged Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy and intended to facilitate or otherwise participate in it, which were not supported by any additional, factual allegations, were insufficient to state a claim of RICO conspiracy. Natomas Gardens Inv. Group, LLC v. Sinadinos, E.D.Cal.2010, 710 F.Supp.2d 1008. Conspiracy 18

Racketeer Influenced and Corrupt Organizations Act (RICO) complaint by franchise operators against company that provided equipment leasing and financing services identifying numerous dates on which some of the allegedly fraudulent invoices were received and identifying particular pieces of equipment for which they were charged but never received was sufficient to put company on notice of the precise misconduct surrounding the allegation of fraud asserted against it and to guard against spurious charges of immoral or fraudulent behavior, and was sufficiently specific to address fraud pleading rule's heightened particularity concern over the in terror-em risk of nonspecific fraud claims. HT of Highlands Ranch, Inc. v. Hollywood Tanning Systems, Inc., D.N.J.2008, 590 F.Supp.2d 677. Federal Civil Procedure 636

Practitioners in several unrelated fields not requiring MD degree failed to adequately plead conspiracy required to establish their claim that affiliated insurers conspired to systemically reduce, delay, and deny payments, in vi- olation of Racketeer Influenced and Corrupt Organizations Act (RICO), even though practitioners identified en-tities within enterprise that formed agreement, where complaint contained no date when agreement took place, did not elaborate how those entities formed agreement to violate RICO, and did not identify who made agree- ment. Solomon v. Blue Cross and Blue Shield Ass'n, S.D.Fla.2008, 574 F.Supp.2d 1288. Conspiracy 18

Tenants council, which represented subsidized housing project tenants, failed to plead the predicate acts of mail fraud with sufficient specificity to state a claim under Racketeer Influenced and Corrupt Organizations Act (RICO) against project's majority owner, managing agent, property manager, and other defendants; council failed to alleged when checks drawn on its account by defendant's agent were mailed, nor a factual basis for its assertion that the checks exceeded the true cost of any services that may have been rendered. The Roxbury/ South End Tenants' Council, Inc. v. Cornerstone Corp., D.Mass.2008, 573 F.Supp.2d 359. Federal Civil Procedure 636

For purposes of pleading Racketeer Influenced and Corrupt Organizations Act (RICO) predicate acts of mail and wire fraud, shipping company sufficiently alleged that Kuwaiti defendant “caused” New York shippers' fraudu- lent mailings and wire communications, particularly through their well-pleaded allegations of defendant's parti-cipation in a common law conspiracy to commit fraud, as either a principal or co-conspirator of the New York shippers. Maersk, Inc. v. Neewra, Inc., S.D.N.Y.2008, 554 F.Supp.2d 424. Fraud 43; Telecommunications 1014(12)

Chiropractic patients, who alleged a conspiracy between organization and chiropractor members to teach and learn unethical methods to dramatically increase the number of patients seeking chiropractic care, failed to plead
the commission of either mail or wire fraud with the required degree of specificity, and therefore failed to state a
claim that defendants engaged in or conspired to commit a pattern of racketeering; patients did not specifically
accuse defendants with communicating over the phone or through the mail, when those communications oc-
curred, or what they believed the substance of those communications were. Brown v. Kerkhoff, S.D.Iowa 2007,
504 F.Supp.2d 464. Federal Civil Procedure ☞ 636

Complaint did not state claim for conspiracy to violate the Racketeer Influenced and Corrupt Organizations
Act (RICO), where no substantive RICO violations had been adequately pleaded. Crab House of Douglaston, Inc. v.

County, which brought action against pharmaceutical companies alleging that they fraudulently overstated pub-
lished average wholesale prices (AWP) of prescription drugs, resulting in inflated payments by county, which
was billed for twenty-five percent of the state's Medicaid expenditures, failed to adequately plead that each de-
fendant engaged in association-in-fact enterprises, as required to support Racketeer Influenced and Corrupt Or-
ganizations Act (RICO) claim. In re Pharmaceutical Industry Average Wholesale Price Litigation, D.Mass.2004,
339 F.Supp.2d 165. Racketeer Influenced And Corrupt Organizations ☞ 73

Racketeer Influenced and Corrupt Organizations (RICO) conspiracy claim was not established against bank be-
cause the non-conclusory allegations did not show that bank entered into an express or tacit understanding with

Allegations that paralegals for law firm “fixed” affidavits of clients, who were plaintiffs in asbestos litigation,
by adding omitted product identification information and false signatures to affidavits, and that such affidavits
were then filed in asbestos litigation against manufacturer and others, were adequately specific for manufacturer
to plead mail and wire fraud claims against law firm and its principals under the Racketeer Influenced and Cor-
rupt Organizations Act (RICO); firm and principals had notice of when behavior allegedly took place, fraud was
alleged to occur under aegis of particular supervisor, and manufacturer narrowed down sea of potential cases to
a smaller group of cases in which such fraud was probably involved. G-I Holdings, Inc. v. Baron & Budd,
S.D.N.Y.2002, 238 F.Supp.2d 521. Fraud ☞ 43; Telecommunications ☞ 1014(12)

Factual allegations supporting substantive Racketeer Influenced and Corrupt Organizations Act (RICO) claims
in connection with fraudulent invoicing scheme to loot company adequately alleged factual basis for finding of
conscious agreement among company's officers to commit at least two predicate acts of mail fraud, so as to sup-
port Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy claim asserted by company’s vice

Litigant failed to state claim upon which relief could be granted for conspiracy to violate section of Racketeer
Influenced and Corrupt Organizations Act (RICO) which prohibits acquisition of interest in enterprise engaged
in interstate or foreign commerce through pattern of racketeering activity or collection of unlawful debt, based
on acts relating to lawsuit over ownership of certain real estate; litigant failed to allege defendants acquired in-
terest in or control of enterprise or that defendants entered into agreement to acquire interest in or control of en-
1308, certiorari denied 117 S.Ct. 1440, 520 U.S. 1172, 137 L.Ed.2d 546. Conspiracy 


Grandchildren failed to allege pattern element of civil Racketeer Influenced and Corrupt Organizations Act (RICO) claim against accountants who allegedly depleted grandmother's estate of assets that would have flowed through residuary clause of grandmother's will to inter vivos trust of which grandchildren were beneficiaries; grandchildren failed to allege how accountants were involved in or agreed to commission of any predicate acts, that accountants agreed to participate in affairs of enterprise or that accountants agreed to commission of at least two predicate acts. Firestone v. Galbreath, S.D.Ohio 1990, 747 F.Supp. 1556, affirmed in part 976 F.2d 279, rehearing denied , certified question answered 616 N.E.2d 202, 67 Ohio St.3d 87, answer to certified question conformed to 25 F.3d 323, on remand 895 F.Supp. 917. Racketeer Influenced And Corrupt Organizations

Proposed amended complaint in action alleging that defendants engaged in conspiracy to deprive plaintiffs of their business interests in Kazakhstan, in violation of Racketeer Influenced and Corrupt Organizations Act (RICO), alleged sufficient facts, beyond mere legal conclusion, supporting their claim that defendants engaged in series of related racketeering predicates against plaintiffs over extended period of time and that defendants' involvement directly led to injuries suffered by plaintiffs, and thus plaintiffs were not precluded on futility grounds from amending complaint, where proposed amended complaint narrowed scope of alleged RICO conspiracy and added facts constituting more than bare, conclusory assertions. Hourani v. Mirtchev, D.D.C.2012, 282 F.R.D. 278. Federal Civil Procedure

Inmate's allegation that fellow prisoners interrupted his mail and attempted to prevent him from prosecuting action against his former business competitors through verbal and physical threats was insufficient to establish enterprise necessary to support his claim that fellow prisoners participated in Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy against him, where there was no allegation that they had common or shared purpose with any other defendants or that defined structure with organizational pattern existed. Waldner v. North American Truck & Trailer, Inc., D.S.D.2011, 277 F.R.D. 401. Racketeer Influenced and Corrupt Organizations

168. Summary judgment, conspiracy

Genuine issues of material fact existed as to whether majority owner of general partnerships, managing agent, and other related defendants perpetrated a fraudulent scheme upon minority partners by providing false and misleading information, which concealed managing agent's fraudulent conduct in order to further the fraudulent scheme, and to create the impression that managing agent was properly managing the partnerships' affairs, thus


Genuine issues of material fact as to whether bank employee's husband participated with her in embezzling funds from bank precluded summary judgment on bank's RICO conspiracy claims against husband and employee, though bank proved that employee embezzled bank funds repeatedly over 12 years, that family spent more than its legal monthly income during that time, and husband must have been aware of wealth not accounted for by salaries; bank did not show that husband was aware of sources of his wealth or agreed in some way to illegitimacy of those sources, and wife could not be held to conspire without any accomplices. LaSalle Bank Lake View v. Seguban, N.D.Ill.1996, 937 F.Supp. 1309. Federal Civil Procedure 2509.5

Plaintiff corporation failed to raise genuine issue of fact as to essential element of RICO conspiracy claim against contractor, that contractor agreed to participate in pattern of racketeering activity, where it failed to proffer any proof that contractor knew that other contractors were paying bribes to plaintiff's corporate vice president or knew that they were submitting invoices to corporation containing overcharges which vice president then approved. Swig Weiler and Arnow Management Co., Inc. v. Stahl, S.D.N.Y.1993, 817 F.Supp. 400. Federal Civil Procedure 2509.5

169. Indictment, conspiracy

Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy indictment's pleading that a pattern consisted of specified predicate acts did not preclude a jury from considering those predicates in light of the totality of the evidence to determine whether they manifested a pattern of continuing criminal activity through which the conspirators agreed to conduct the enterprise's affairs and, accordingly, did not limit the temporal scope of the charged racketeering conspiracy to the time-frame of those predicates, for statute of limitations purposes. U.S. v. Pizzonia, C.A.2 (N.Y.) 2009, 577 F.3d 455, certiorari denied 130 S.Ct. 1088, 558 U.S. 1115, 175 L.Ed.2d 889. Criminal Law 150

There was no variance between the single Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy alleged in defendant's indictment and the government's evidence at trial; although the participants in the predicate acts varied from act to act, as did their motivation and the methods of the acts' commissions, there was no question that "interdependence" existed among the co-conspirators, as required for existence of a single, overarching conspiracy, since defendant, who was gang's leader, personally knew and worked in conjunction with the other gang members named as RICO co-conspirators, and the purpose of at least five of the predicate acts

Defendant's claim that the Government's charge of conspiracy to commit racketeering was insufficiently specific to apprise him of the charges against him because it alleged only a generic conspiracy to make extortionate extensions or collections of credit was waived where it was not raised prior to trial and defendant made no showing of cause for the failure or of any prejudice therefrom. U.S. v. Spero, C.A.2 (N.Y.) 2003, 331 F.3d 57, certiorari denied 124 S.Ct. 100, 540 U.S. 819, 157 L.Ed.2d 36. Criminal Law 1032(5)

Indictment alleging that union pension fund trustees and general counsel solicited and received kickbacks from mortgage company in exchange for helping mortgage company obtain $20 million in pension fund monies satisfied RICO conspiracy requirements by identifying mortgage company as “enterprise” and alleging that trustees and counsel were indirectly associated with enterprise. U.S. v. Zauber, C.A.3 (N.J.) 1988, 857 F.2d 137, rehearing denied, certiorari denied 109 S.Ct. 1340, 489 U.S. 1066, 103 L.Ed.2d 810. Conspiracy 43(6)

Where, on its face, indictment charging violation of subsec. (d) of this section satisfied the statute of limitations and dismissal was erroneously based on fact that an overt act was required to be committed within the limitations period, the indictment was ordered reinstated. U.S. v. Coia, C.A.11 (Fla.) 1983, 719 F.2d 1120, rehearing denied 724 F.2d 978, certiorari denied 104 S.Ct. 2349, 466 U.S. 973, 80 L.Ed.2d 822. Criminal Law 1181(1)

Count of an indictment charging a Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy was not impermissibly vague, even though it charged that the alleged conspiracy from 1980 to 2009, an unusually long time period; the count provided certain details regarding the nature and structure of the charged enterprise, its purposes, means and methods, defendant's position in an alleged organized crime family, and described several instances of criminal activity by defendant that allegedly occurred as part of the charged conspiracy. U.S. v. D'Amico, S.D.N.Y.2010, 734 F.Supp.2d 321. Conspiracy 43(1)

Indictment sufficiently alleged existence of enterprise under Racketeer Influenced and Corrupt Organizations Act (RICO), as necessary to support RICO conspiracy charges against defendants; indictment identified each of defendants as members of enterprise and alleged their individual roles, alleged objects of conspiracy, and described substantial infrastructure, although not unrelated to predicate offenses, that existed apart from actual commission of predicate acts and was capable of being put to alternative legal and illegal uses separate from alleged pattern of racketeering. U.S. v. Lombardo, D.Utah 2007, 639 F.Supp.2d 1271. Conspiracy 43(6)

First-time home purchaser's allegations were sufficiently particularized to state Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy claims against title company defendants, as they addressed the period of the conspiracy, the object of the conspiracy, and certain actions of the alleged conspirators taken to achieve
that purpose; predicate acts included advertisements that used the United States mail and interstate wires, communications with purchaser through telephone wires, and communications with purchaser through facsimile transmittal through telephone wires, all done in furtherance of a scheme to defraud and which contained numerous false statements, the predicate acts, done for the purpose of selling homes at inflated values since at least 2001, were acts that purchaser alleged the defendants knew of and agreed to, and purchaser specifically alleged that defendants knew of the inflated valuation of the property and knew that it would lead to purchaser having to pay higher points on the mortgage. Meeks-Owens v. Indymac Bank, F.S.B., M.D.Pa.2008, 557 F.Supp.2d 566. Conspiracy 18

Government did not breach plea agreement dismissing racketeering conspiracy charge against defendant with prejudice by subsequently indicting defendant for racketeering conspiracy based in part on same conduct underlying prior indictment, where plea agreement specifically allowed subsequent racketeering conspiracy charges using at least some of same conduct alleged in prior indictment as predicate acts. U.S. v. Dionisio, E.D.N.Y.2006, 415 F.Supp.2d 191, affirmed 503 F.3d 78, certiorari denied 129 S.Ct. 158, 555 U.S. 825, 172 L.Ed.2d 41. Criminal Law 273.1(2)

By alleging that defendants charged $100 per week interest on a $2500 loan, when the maximum allowable interest under Connecticut law would have been $5.77 per week, indictment charging defendants with Racketeer Influenced and Corrupt Organizations Act (RICO) violations and RICO conspiracy by means of collecting an unlawful debt sufficiently charged that defendants collected an unlawful debt by demanding far in excess of twice the lawful rate of interest. U.S. v. Megale, D.Conn.2005, 363 F.Supp.2d 359. Usury 150

Indictment adequately set forth charges that defendant violated Racketeer Influenced and Corrupt Organizations Act (RICO) and conspired to violate RICO when RICO count alleged essential elements of offense and tracked statutory language in doing so, then described at length the alleged enterprise, defendants' roles in that enterprise, and alleged racketeering acts, and conspiracy count tracked statutory language in setting out essential elements of that offense, then incorporated sufficient description of the enterprise to inform defendant adequately of the charge. U.S. v. Cuong Gia Le, E.D.Va.2004, 310 F.Supp.2d 763. Conspiracy 43(6); Indictment And Information 110(10); Racketeer Influenced And Corrupt Organizations 91

Charges in indictment alleging that defendants and asbestos abatement business conspired to violate the Clean Air Act (CAA), Toxic Substances Control Act (TSCA), and state law by engaging laboratory to send clients falsified asbestos removal reports would not be stricken from indictment as prejudicial surplusage, even though defendants alleged that indictment improperly attempted to escalate conduct, that if proven would only violate state law, into federal conspiracy under Racketeer Influenced and Corrupt Organizations Act (RICO); indictment set forth standards at issue under CAA and TSCA and described conduct that defendants allegedly engaged in as part of their method of operation, allegations describing defendants' method of operation were intertwined with evidence regarding charged offenses, and charges describing means, manner, and overt acts at issue included conduct that enabled alleged federal conspiracy to succeed even if it resulted from state law violations. U.S. v. Salvagno, N.D.N.Y.2004, 306 F.Supp.2d 258. Indictment And Information 119

Paragraphs of indictment giving overview of organized crime family did not constitute surplusage, and thus
would not be stricken, where family was alleged to be “enterprise” that was object of counts of indictment charging violations of Racketeer Influenced and Corrupt Organizations Act (RICO). U.S. v. Bellomo, E.D.N.Y.2003, 263 F.Supp.2d 561. Indictment And Information ⬠ 119

Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy charge was not insufficient because it failed to allege any predicate acts; rather, indictment was sufficient since it charged that defendant agreed to participate in the conduct of the affairs of an identified enterprise though a pattern of racketeering activity. Castro v. U.S., S.D.Fla.2003, 248 F.Supp.2d 1170. Conspiracy ⬠ 43(1)

RICO conspiracy indictment did not impermissibly allege multiple conspiracies in single count, and fact that certain defendants were charged with substantially more conspiratorial activity than others did not justify dismissal of indictment or finding of misjoinder under criminal procedural rule, nor did fact that purported overt acts in furtherance of conspiracy were spread out over several years. U.S. v. Marcy, N.D.Ill.1991, 777 F.Supp. 1393, reconsideration denied 777 F.Supp. 1398. Indictment And Information ⬠ 124(1); Indictment And Information ⬠ 130

Racketeer Influenced and Corrupt Organizations Act (RICO) charge which encompassed multiple fraudulent schemes accurately alleged RICO conspiracy; count alleged that defendants agreed to conduct enterprise of non-profit corporation through commission of multiple acts of racketeering activity and alleged numerous instances where defendants cooperated in defrauding a company through vehicle of nonprofit corporation. U.S. v. Quintanilla, N.D.Ill.1991, 760 F.Supp. 687, affirmed 2 F.3d 1469. Conspiracy ⬠ 43(1)

RICO conspiracy indictment, which described enterprise as a group of individuals associated in fact which engaged in various criminal activities, which charged that defendants, being employed by and associated with the enterprise, conspired to participate in the affairs of the enterprise through a pattern of racketeering activity and collection of unlawful debt and which described the structure and purpose of the enterprise, defendants’ roles therein, and the acts of racketeering committed by each defendant through which he participated in the affairs of the enterprise, satisfied pleading requirements for a RICO conspiracy. U.S. v. Gambale, D.C.Mass.1985, 610 F.Supp. 1515. Conspiracy ⬠ 43(6)

Indictment charging conspiracy under this section did not allege multiple conspiracies but, rather, only single conspiracy to participate in activities of enterprise through pattern of racketeering encompassing 62 predicate acts of mail fraud; however, if evidence offered at trial presented variance in proof demonstrating multiple conspiracies, which affected substantial rights of defendants, they would be entitled to acquittal on conspiracy charge. U. S. v. Boffa, D.C.Del.1980, 513 F.Supp. 444. Conspiracy ⬠ 43(9)

District court did not constructively amend indictment charging defendant with conspiracy under Racketeer Influenced and Corrupt Organizations Act (RICO) by instructing jury to treat RICO predicate act same as separate count charging narcotics conspiracy, and thus imposition of life sentence for racketeering conspiracy did not violate Apprendi, despite indictment’s failure to specify drug amount in predicate act, where count charging narcotics conspiracy correctly charged drug amount, and was in every other respect identical to RICO predicate act. U.S. v. Lopez, C.A.2 (N.Y.) 2004, 100 Fed.Appx. 32, 2004 WL 1258021, Unreported, certiorari denied 126

Evidence was sufficient to show that a street gang, a subset of which defendant was a participating member, was an association-in-fact enterprise, thereby supporting defendant's conviction for Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy; gang's subsets had a common purpose of drug trafficking to make money for members, the subsets interacted and worked together regularly, through regular meetings and socializing, and the various subsets had been operating as parts of the gang for many years. U.S. v. Harris, C.A.10 (Kan.) 2012, 695 F.3d 1125. Racketeer Influenced and Corrupt Organizations 39

Evidence was sufficient to establish a Racketeer Influenced and Corrupt Organizations Act (RICO) enterprise in defendants' prosecution for RICO conspiracy; defendants' course of conduct, viewed in the light most favorable to the verdict, was neither independent nor lacking in coordination, and it showed that together the defendants operated three auto dealerships, sharing bank accounts, health insurance, and employees, and that the defendants transferred money back and forth with some frequency, referred customers to each other's lots, and sold vehicles to known drug dealers in exactly the same manner. U.S. v. Hosseini, C.A.7 (Ill.) 2012, 679 F.3d 544, rehearing and rehearing en banc denied, certiorari denied 133 S.Ct. 623, 184 L.Ed.2d 396, certiorari denied 133 S.Ct. 774, 184 L.Ed.2d 512. Racketeer Influenced and Corrupt Organizations 47

Evidence was sufficient to prove at least two predicate acts of robbery, in violation of Illinois law, as required to support Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy conviction; one victim testified that defendant and his accomplice, both corrupt police officers, entered his home without a warrant, handcuffed him and planted cocaine on him, and then, took his cash, and other victims testified that defendant and his accomplice pushed their way into a known drug house without a warrant and with guns drawn, and that they took money from suspects at the drug house. U.S. v. Shamah, C.A.7 (Ill.) 2010, 624 F.3d 449, certiorari denied 131 S.Ct. 1529, 179 L.Ed.2d 345, post-conviction relief denied 2013 WL 1343913. Racketeer Influenced And Corrupt Organizations 95

Evidence was sufficient to prove defendant's participation in racketeering conspiracy during the five-year statutory period prior to the filing of the indictment, as required to support conviction for Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy; evidence presented demonstrated that during the relevant time period, defendant held the rank of captain in organized crime family, and also during that period, he sat on a special committee that sought to increase family revenues from the organization's assorted criminal activities. U.S. v. Pizzonia, C.A.2 (N.Y.) 2009, 577 F.3d 455, certiorari denied 130 S.Ct. 1088, 558 U.S. 1115, 175 L.Ed.2d 889. Criminal Law 565

Evidence was sufficient to show that defendants were aware of the scope of, and intended to participate in, criminal gambling enterprise which used a nonprofit organization as a front for illegal bingo and pull-tab operations, so as to support conviction for Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy; evidence indicated that defendants had participated in the planning process before the enterprise was formed, one of...
the defendants having signed an application representing that he was a member of the charitable organization even though he was not, defendants, one of which acted as a de facto manager and the other which ultimately purchased the hall within which enterprise was operated, had access to the back room, the control center of the gambling operation, and both defendants had participated in shredding used pull-tabs and placing them in opaque bags. U.S. v. Useni, C.A.7 (Ill.) 2008, 516 F.3d 634, rehearing en banc denied. Conspiracy ε 47(7)

In prosecution for racketeering conspiracy, conspiracy to distribute cocaine, attempted murder, and conspiracy to commit murder in aid of racketeering, record supported district court's ruling that government established by preponderance of evidence that defendant acted through coconspirator to murder potential witness, with intent to prevent witness from testifying against defendant, as required for admission of hearsay evidence of potential witness's statements; defendant's cousin testified defendant called him from jail and told him witness was an informer and an informer had to die, defendant's girlfriend testified she arranged untraceable calls between defendant and coconspirator who killed witness, and coconspirator told witness's brother witness would be shot if he testified. U.S. v. Stewart, C.A.2 (N.Y.) 2007, 485 F.3d 666. Criminal Law ε 427(5)

There was sufficient evidence that defendant knew about and agreed to facilitate the commission of five predicate acts, to support pattern of racketeering activity element of conviction of conspiracy to violate Racketeer Influenced and Corrupt Organizations Act (RICO); as to fifth predicate act, defendant, as leader of gang, admittedly ordered murder of individual who was mistakenly believed to be member of rival gang, and other evidence indicated that, as to first predicate act, a walk-up shooting, defendant ordered the shooting, chose its target, supplied the gun, and drove shooters to their target, as to second predicate act, an attempted murder of rival gang member, defendant expressly ordered that rival gang be driven from neighborhood, as to third predicate act, that defendant had tacit agreement with his gang that they would retaliate in response to attacks by other gangs, and as to fourth predicate act, an arson, that defendant expressly ordered retaliation. U.S. v. Smith, C.A.10 (Utah) 2005, 413 F.3d 1253, certiorari denied 126 S.Ct. 1093, 546 U.S. 1120, 163 L.Ed.2d 908, post-conviction relief dismissed 2007 WL 1795743, certificate of appealability denied 283 Fed.Appx. 647, 2008 WL 2588697, certiorari denied 129 S.Ct. 316, 555 U.S. 932, 172 L.Ed.2d 229. Conspiracy ε 47(3.1); Racketeer Influenced And Corrupt Organizations ε 26

Evidence established crime family associate's knowledge of and voluntary participation in racketeering conspiracy to operate companies that circumvented licensing requirements of Louisiana's Video Draw Poker Devices Control Law; associate's repeated and requested presence at meetings for discussing details of conspiracy confirmed that he knew of conspiracy and voluntarily joined it, vice president of licensee that allegedly was front for organized crime described how money from licensees was to be shifted into offshore banks for withdrawal by conspirators, including associate, and testimony by FBI agent concerning audiotaped conversations bolstered vice president's testimony. U.S. v. Salvatore, C.A.5 (La.) 1997, 110 F.3d 1131, rehearing and suggestion for rehearing en banc denied 117 F.3d 1419, certiorari denied 118 S.Ct. 441, 522 U.S. 981, 139 L.Ed.2d 378, post-conviction relief granted in part, denied in part 2001 WL 238213, post-conviction relief granted in part, denied in part 2001 WL 263112, affirmed 34 Fed.Appx. 963, 2002 WL 663764. Conspiracy ε 47(7)

Government established single RICO conspiracy by presenting testimony of judge that he informed attorneys that they would not only receive appointment as special assistant public defenders from him but also from another judge in the circuit court, that his secretary referred to the “preferred list” for appointments when asking attor-

Defendant’s conviction for conspiracy in violation of Racketeer Influenced and Corrupt Organizations Act (RICO) was supported by evidence that defendant, who was attorney, had agreed to overall objective of enterprise which sought to corruptly utilize circuit court system for profit by bribing judges to appoint attorneys as special assistant public defenders and had knowledge that others were conspiring to corruptly use system for profit. *U.S. v. Massey*, C.A.11 (Fla.) 1996, 89 F.3d 1433, rehearing and suggestion for rehearing en banc denied 98 F.3d 1355, certiorari denied 117 S.Ct. 983, 519 U.S. 1127, 136 L.Ed.2d 865. Conspiracy \( \equiv \) 47(13)

Evidence supported conclusion that defendant had personally committed two predicate acts, as required to establish conspiracy to violate Racketeer Influenced and Corrupt Organizations Act (RICO) where defendant had agreed to join conspiracy for single objective; defendant conceded participation in illegal importation of drugs on one occasion, and whole of evidence showed that defendant had traveled interstate to arrive at importation site in violation of the Travel Act. *U.S. v. Gonzalez*, C.A.11 (Ala.) 1991, 921 F.2d 1530, certiorari denied 112 S.Ct. 178, 502 U.S. 860, 116 L.Ed.2d 140, certiorari denied 112 S.Ct. 96, 502 U.S. 827, 116 L.Ed.2d 68. Conspiracy \( \equiv \) 47(3.1)

Evidence was sufficient to sustain defendants’ convictions of conspiracy to violate Racketeer Influenced and Corrupt Organizations Act arising out of scheme involving bribes paid to state court judge to influence decisions in cases pending before him or other judges; evidence showed not only knowledge but actual commission of four specific acts on part of one defendant and two on part of codefendant to make payoffs to state court judge in order to influence pending cases. *U.S. v. Phillips*, C.A.3 (Pa.) 1989, 874 F.2d 123, rehearing denied. Conspiracy \( \equiv \) 47(3.1)

In prosecution under Racketeer Influenced and Corrupt Organizations Act [18 U.S.C.A. § 1962(c, d)], evidence including tape recordings between codefendant and government agent who was believed to be furthering conspiracy, in which defendant referred to defendant’s participation in the conspiracy, and conduct of defendant consistent with statements of the coconspirators permitted reasonable jurors to conclude beyond reasonable doubt that defendant participated knowingly in the scheme. *U.S. v. Robinson*, C.A.6 (Ky.) 1985, 763 F.2d 778. Racketeer Influenced And Corrupt Organizations \( \equiv \) 95

Evidence established existence of single RICO [18 U.S.C.A. §§ 1961, 1962(c, d)] conspiracy enterprise of individuals associated in fact, functioning as a continuing unit, rather than separate and distinct conspiracies to import marijuana, given, inter alia, common purpose of the participants in the venture, together with ongoing nature of the organization, specifically, continuity of structure and personality within the organization, despite certain changes in personnel. *U.S. v. Tillett*, C.A.4 (Va.) 1985, 763 F.2d 628. Conspiracy \( \equiv \) 24(3)

Evidence that defendants were associated with criminal enterprise, if only temporarily, and that each particip-

Evidence of defendant's willful participation in conspiracies alleged as predicate offenses under this chapter, that predicate offenses constituted pattern of racketeering activity, and that defendant conspired to participate in affairs of crime family by engaging in predicate offenses, was sufficient to sustain conviction. U.S. v. Ruggiero, C.A.2 (N.Y.) 1984, 726 F.2d 913, certiorari denied 105 S.Ct. 118, 469 U.S. 831, 83 L.Ed.2d 60. Commerce

In prosecution under this chapter substantive and conspiracy offenses in connection with prostitution operation at motel owned by defendant, evidence was sufficient to show that defendant possessed active knowledge of racketeering operations conducted on the motel premises and involved himself in those activities, which included bribery of local officials, and did not merely lease the motel to another with knowledge that she intended to conduct prostitution operation on the premises. U.S. v. Tunnell, C.A.5 (Tex.) 1982, 667 F.2d 1182. Bribery

Evidence that health maintenance organizations (HMOs) independently manipulated software codes in claims submitted by physicians and reduced physicians' payments, that HMOs' representatives attended trade association meetings providing opportunity to conspire, that HMOs participated in advisory committees of dominant source for code editing software in healthcare industry, and that HMOs' executive officers received exorbitant compensation did not prove either parallel conduct or conspiratorial agreement by HMOs in support of physicians' class claim for civil conspiracy under Racketeer Influenced and Corrupt Organizations Act (RICO), which was based on alleged scheme to defraud physicians through manipulation of claims processing systems to underpay for services, given that HMOs and alleged coconspirators used different claims processing practices and dif-

There was sufficient evidence to support defendants' convictions of conspiracy charge under Racketeer Influenced and Corrupt Organizations Act (RICO), based upon evidence of agreement by defendants to commit substantive RICO offense by committing at least two racketeering acts with which they were charged and by participating in affairs of racketeering enterprise through pattern of racketeering activity. U.S. v. Paccione, S.D.N.Y.1990, 749 F.Supp. 478. Conspiracy ☞ 47(3.1)


Evidence in RICO action by landowner and investor against person who was both officer of bank and director of real estate development firm failed to establish that defendant engaged or conspired to engage in pattern of racketeering activity in connection with loans that developer received from bank; there was no evidence that defendant was involved in making or approving loans to developer, that portion of loans directly benefitted defendant or that plaintiffs were defrauded by defendant's use of mails to conduct transactions for bank. Schrag v. Dinges, D.Kan.1993, 150 F.R.D. 664, affirmed 73 F.3d 374, on remand 1996 WL 473874, on remand 1996 WL 590915. Conspiracy ☞ 19; Racketeer Influenced And Corrupt Organizations ☞ 79

Evidence, including fact that defendant hired associate of organized crime enterprise known as “big earner” who did murders for organization, for “credit consultant” job that appeared to have little to do with actual credit consulting, was sufficient to establish that defendant conspired to participate in enterprise's affairs, as required to support conviction for racketeering conspiracy. U.S. v. Persing, C.A.2 (N.Y.) 2011, 436 Fed.Appx. 13, 2011 WL 3792359, Unreported. Conspiracy ☞ 28(3)

Conviction for conspiracy to violate Racketeer Influenced and Corrupt Organizations Act (RICO) was supported by evidence that defendant repeatedly received narcotics from and distributed them to various individuals, including other members of his gang, and that defendant was involved in the sale of a fraudulently obtained motorcycle, which was connected to the affairs of the gang's enterprise. U.S. v. Garland, C.A.6 (Ohio) 2008, 320 Fed.Appx. 295, 2008 WL 2939507, Unreported. Conspiracy ☞ 47(4); Conspiracy ☞ 47(12)

Evidence of defendant's involvement in robbery of drug dealer, with which he was charged both as overt act related to charge under Racketeer Influenced and Corrupt Organizations Act (RICO) and in independent counts of indictment, was sufficient to support convictions, where discrepancies in testimony of two witnesses who testified concerning defendant's involvement in robbery were not material. U.S. v. Williams, C.A.11 (Ga.) 2006, 203 Fed.Appx. 976, 2006 WL 3083968. Unreported, certiorari denied 127 S.Ct. 1498, 549 U.S. 1270, 167 L.Ed.2d 238, post-conviction relief dismissed 2012 WL 86748, certificate of appealability denied. Racketeer Influenced And Corrupt Organizations ☞ 95