Civil RICO—Is It the Time of Reckoning?

By Sofia Adrogue
Epstein Becker Green Wickliff & Hall, P.C., Houston, TX

RICO is very possibly the single worst piece of legislation on the books.¹

RICO’s Mantra & Appeal

As originally drafted, the RICO statute² was designed to eliminate organized criminal conduct. The initial Senate bill limited civil remedies to injunctive actions brought by the United States, but the House added a treble-damages remedy modeled on section 4 of the Clayton Act. The result of this eleventh-hour addition of a civil remedy has resulted in an exponential growth in the number of civil RICO suits since the 1980s.³ Thus, a statute originally created to combat organized criminal conduct has become a scorched earth weapon of choice for litigants in civil cases seeking to reap the benefits of its treble damages and attorneys’ fees provisions.

The seminal U.S. Supreme Court RICO case may have fueled this furor. Nearly 20 years ago, Justice Marshall, dissenting in Sedima S.P.R.L. v. Imrex Co.,⁴ warned of the dangers of abandoning traditional state law and common law fraud remedies. The 5-4 Sedima decision, in which the Court rejected the racketeering injury requirement and vastly expanded the scope of civil RICO, deserves scrutiny and is discussed below.⁵

A civil plaintiff invoking RICO derives numerous procedural advantages:

1) the ability to reach beyond the actual actors to the supporting network and organizers;
2) federal jurisdiction with its corresponding national service of process;
3) enhanced discovery (particularly benefiting from mandatory disclosure rules);
4) liability for the criminal conduct based on only a preponderance of the evidence rather than proof beyond a reasonable doubt;
5) expanded remedies such as federal court orders restraining further violations, civil proceedings by the Attorney General; and,
6) the recovery of treble damages and attorneys’ fees.

This last factor, specifically the potential for multiple damages, is a driving force behind the

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surfeit of RICO suits. The “road to riches” has not proved entirely smooth, however. “Courts presently tend to scrutinize civil RICO claims with far more skepticism than they scrutinize criminal RICO charges.” The consequence is clear: plaintiffs face far more formidable barriers advancing RICO claims then they do with traditional causes of action based on state law and common law fraud. In addition to the usual procedures under Federal Rules of Civil Procedure 9(b), 12(b) and 56, further elaborated below, judges have used the following methods to terminate RICO complaints at an early stage:

- Utilizing RICO’s reliance element to dismiss class actions;
- Utilizing RICO’s “continuity” factor to dismiss cases that do not impose a threat of continuing racketeering activity;
- Dismissing cases based on standing; and
- Dismissing cases because the plaintiff has not shown the separateness between a person and the enterprise with which the person is alleged to have conspired.

Sedima S.P.R.L. v. Irmex Co. and Its Progeny

In Sedima, the U.S. Supreme Court reversed the dismissal of a RICO claim and rejected the Secondary Circuit standing requirement that a plaintiff show both that the defendant was convicted of a RICO predicate and that it has suffered a “racketeering injury.” The Court found these standing requirements unsupported by statutory language, and explained that they “were a form of ‘statutory amendment’ not within the court’s power to create.”

In addition to the above, the Sedima Court interpreted RICO to be a private right of action provided only to those who have been “injured” as a result of the racketeering activity. Moreover, the Court held that the plaintiff must have suffered “substantial and immediate” injury to the plaintiff’s “business or property.”

The Court held as follows: “If the defendant engages in a pattern of racketeering activity in a manner forbidden by [the statute], and the racketeering activities injure the plaintiff in his business or property, the plaintiff has a claim.” In rejecting the racketeering injury concept, the Sedima Court greatly expanded the use of RICO causes of action in business litigation, thereby introducing a new era of civil jurisprudence. In his dissent, Justice Marshall prophetically stated that the majority’s interpretation of the civil RICO statute “quite simply revolutionizes private litigation.” The majority’s reading of the statute, in Justice Marshall’s opinion, was a distortion of the statutory language, unsupported by the legislative history.

The majority’s interpretation than provided by the majority. Justice Marshall understood that the Sedima holding, with the treble damages provision and attorneys’ fees allowance, would likely create a flood of litigation and would dramatically change the law governing commercial disputes.

Safeguarding via RICO Case Statements, the Rules, and the Like

Precision Pleading Needed

While an “imaginative plaintiff” can utilize “illegal occurrences” and advance a civil RICO claim, a trial judge is not “obligated to construct a cause of action from allegations in a complaint filed by a party who was unwilling or unable to plead the cause of action himself.” Many federal courts have “institutionalized” their desire for precision in civil RICO cases by requiring plaintiffs to file RICO case statements. Such statements, designed to amplify and clarify a pleading’s allegations, assist in identifying and narrowing factual and legal issues. At least 15 different district courts in nine federal Circuits have issued standing orders that require all parties pleading RICO claims to file RICO case statements.

In NOW v. Scheidler, the Supreme Court noted the use of a “RICO Case Statement” without criticism. Despite the widespread use of RICO standing orders, however, less than half of the circuits have considered whether such orders comply with the notice pleading requirements.
For instance, in Figuerroa-Ruiz v. Algeria, the First Circuit affirmed the dismissal of a RICO claim for failure to comply with its standing order, stating the courts should “strive to flush out frivolous RICO allegations at an early stage of the litigation.” Similarly advocating such orders, the Fifth Circuit has upheld the use of RICO standing orders on at least three occasions.

The Second Circuit has followed a different path, however. In Commercial Cleaning Servs., LLC v. Colin Serv. Sys., Inc., the district court had dismissed a claim for violating its standing order. The court of appeals reversed and held that the order called for information far in excess of the elements of a RICO claim, and that the plaintiffs should not be foreclosed by its inability to produce such information, especially prior to discovery. In Wagh v. Metris Direct, Inc., the Ninth Circuit followed the Second Circuit’s lead: “We find the reasoning of the Second Circuit persuasive. The use of RICO Standing Orders to compel plaintiffs to produce detailed RICO Case Statements which are then treated by the district court as part of that party’s pleadings, can in certain circumstances require far more information from plaintiffs than is required under either Rule 8(a) or 9(b) of the Federal Rules.”

Thus, the impact of RICO standing orders is clear. Those circuits in which the standing orders have been upheld represent an expansion of the familiar fraud pleading requirement of certainty at the outset of the litigation. Even in the absence of standing orders, judges often require filing of RICO case statements in individual actions, often in response to or in conjunction with defense motions to dismiss pursuant to Rule 9(b) or 12(b)(6) or motions for a more definite statement pursuant to Rule 12(e).

**Dismissals Pursuant to FED. R. CIV. P. 9(b), 12(b)(6) & 56**

In practice, fraud claims are usually the predicate acts alleged in civil RICO complaints. This traditionally occurs under sections 1962(a), (b), and (c) because the most commonly alleged predicate acts—securities fraud, mail fraud, and wire fraud—are subject to the particularity requirements of Rule 9(b). To plead mail and wire fraud violations within Rule 9(b), the plaintiff must allege 1) the existence of a scheme to defraud; 2) the use of the mail in furtherance of the fraudulent scheme; and 3) culpable participation by the defendant. Courts will dismiss a civil RICO claim for failure to plead predicate acts with particularity.

Moreover, pursuant to Rule 12(b)(6), any person against whom a claim is asserted has the option to move for a dismissal if the pleading “fail[s] to state a claim upon which relief can be granted.” The requirements of Rules 9(b) and 12(b)(6) tend to merge in the civil RICO area, and defendants often make such motions in tandem. To avoid dismissal under Rule 12(b)(6), the RICO plaintiff must allege the substantive components of an “enterprise” and “pattern.” Courts have not hesitated to dismiss complaints alleging RICO violations when the alleged facts, even assuming their truth, fail to establish a pattern of racketeering activity, an enterprise, or any other prerequisite to the claim. Additionally, under Rule 56, federal courts have routinely entered summary judgment on RICO claims in the absence of genuine issues of material fact. Conversely, if a genuine issue of material fact exists as to any material RICO element, summary judgment is inappropriate.

**Sample Areas of Restriction**

**Class Actions**

RICO requires a plaintiff to show reliance. In Patterson v. Mobil Oil Corp., the Fifth Circuit reiterated that class actions might not be sustained under RICO. “Claims for money damages in which individual reliance is an element are poor candidates for class treatment, at best.” To determine reliance for each class member would defeat the efficiency of the class action device was promulgated to promote. In Andrews v. AT&T et al., the Eleventh Circuit agreed that individual reliance prevented the class from pursuing their RICO claims, stating “manageability problems ... defeat the Rule’s underlying purposes and render these claims inappropriate for class treatment.”

**Continuity**

One of the pleading requirements of RICO is that the plaintiff shows a pattern of violative activity. This pattern is sufficiently alleged if there is “continuity plus [a] relationship” between the predicate violative acts. The relationship factor and the predicate acts must be connected to each other. The continuity factor requires that the predicate acts constitute at least a threat of continuing racketeering activity. The continuity requirement has proven challenging to many RICO plaintiffs.

**Standing**

An area of significant restriction on the availability of private civil RICO claims is standing. A civil RICO plaintiff must show: 1) a violation of section 1962(a), (b), (c), or (d); 2) an injury to business or property; and 3) a violation causing the injury. Moreover, pursuant to section 1962(a), a plaintiff must show that the income was received from a pattern of racketeering activity and used or invested in an enterprise.

A majority of circuits have held that the injury must flow from this use or investment, not merely from predicate acts. For example, in St. Paul Mercury Ins. Co. v. Williamson, the Fifth Circuit held that the injury must be an “investment injury.” The court defined such term as “an injury from the use or investment of racketeering income in a RICO enterprise,” not just from the predicate acts themselves. Further, in Wagh v. Metris Direct et al., the Ninth Circuit held that a plaintiff seeking civil damages for a violation of section 1962(a) must allege facts tending to show that it was injured by the use or investment of racketeering income.

In contrast, it appears that the Fourth Circuit has not placed this restriction on the standing requirements of a plaintiff. In Busby v. Crown Supply, Inc., the court held that a plaintiff need not show the damages flowed from the use or investment of the racketeering income, only that damages flowed from racketeering activity itself.
Statute of Limitations

Although RICO does not contain any specific limitations period, in Agency Holding Corp. v. Malley-Duff Assocs., Inc., the Supreme Court imposed a limitations period of four years on civil RICO claims. The limitations period begins to run when the plaintiff knew or should have known of the injury underlying the cause of action. The plaintiff need not have actual knowledge that the injury is part of a pattern of racketeering for the limitations period to begin. Nonetheless, providing some reiteration within this “injury discovery” rule is a “separate accrual” rule, which provides that a new claim, and, therefore, a new four-year limitations period, accrues each time an independent injury is suffered due to the RICO violation. Thus, if a RICO defendant continues its violates conduct after the limitations period begins, a plaintiff might be provided with a new claim, and a new statute of limitations period, after the pattern requirement is satisfied.

The Person versus the Enterprise

Under section 1962(c), a plaintiff attempting to establish liability must show the existence of a person and an enterprise distinct from the person. RICO’s conspiracy provision, section 1962(d), has spawned one area of disagreement among the federal circuits. The debate focuses on the interaction between that section and section 1962(c)—RICO’s participation provision. The split among the circuits concerns liability for continued participation in a RICO enterprise. Two main issues emerge: 1) the level of participation by the defendant; and 2) whether the standard contained in general conspiracy law or civil conspiracy law governs the civil RICO statute.

The Fifth Circuit recently addressed this civil RICO component and concluded that the enterprise may be any legal entity or group of individuals “associated in fact.” The court further held that the association-in-fact must not be based on a pattern of racketeering activity alone, but must exist independently of such pattern. Moreover, for purposes of the prohibition against conducting an enterprise’s affairs through such a pattern, a RICO plaintiff must show both that the association-in-fact is separate from the predicate acts that constitute the racketeering activity, and that the person committing the acts is distinct from the enterprise. Thus, it is not enough that the employees of a corporation, in the course and scope of their employment, associate to commit the predicate acts. According to the court, such activity does not establish an association-in-fact distinct from the corporation.

Litigation Trends in the Use of Civil RICO—A Sampling Family Law

One innovative use of civil RICO has emerged in family law. Most popular has been the claim by one spouse that the other has engaged in a RICO conspiracy, generally with an accountant, to prevent the court from receiving an accurate reflection of income. Such a case arose in Pennsylvania, where a wife alleged that her ex-husband and his accountant had participated in a fraudulent scheme to conceal the ex-husband’s income. The claim twice survived summary judgment, but ultimately the court dismissed the case, holding that the plaintiff had failed to carry her burden of proof by showing that the defendants had committed the alleged predicate acts. Similarly, in a recent Tenth Circuit case, the court determined that a wife’s income concealment complaint failed to allege the requisite RICO elements, and affirmed the district court’s dismissal. Thus, as with other civil RICO claims, the courts examine family law cases with exacting scrutiny.

Health Care/Insurance

In Humana, Inc. v. Forsyth, the Supreme Court held that the beneficiaries of a managed care organization could sue pursuant to civil RICO for the organization’s failure to pass on to its customers discounts it received from area hospitals. In the aftermath of Humana, other litigation ensued, but with less success. In Maio v. Aetna, Inc., insurers filed a civil RICO action against their health maintenance organization for false advertising designed to encourage enrollment. The insureds claimed the organization falsely represented that they would receive high quality health care; in reality, according to the plaintiffs, the plan restricted a physician’s ability to provide such care. The Third Circuit held that plaintiffs failed to establish a RICO injury under section 1964(c) because they had not shown that they received inadequate care or were denied benefits.

Similarly, in 2000, the Seventh Circuit dismissed a civil RICO action alleging a conspiracy among health care insurance companies to defraud plan beneficiaries. The litigation alleged that the defendants had violated section 1962(a) by denying claims on fraudulent grounds and investing the proceeds from those claims in a scheme to eliminate outside providers. The Seventh Circuit ruled that the plaintiff could not show an injury to himself and, therefore, failed to plead a claim cognizable under section 1962(a). Thus, it appears that a pattern may be developing to deny the benefit of civil RICO claims in the health care and insurance arena.

Protest

Under NOW v. Scheidler and its progeny, the Supreme Court has enabled plaintiffs to utilize civil RICO against antiabortion groups seeking to close abortion clinics. Such an outcome has created a debate as to whether this use of RICO circumvents the protections contained within the First Amendment. In Thompson v. Cyr, for instance, the Fifth Circuit held that a physician successfully stated a RICO claim against abortion protestors who had tried to stop doctors, including the plaintiff, from performing abortions through harassment and threatening their families with violence. RICO claims have been upheld not only against abortion protests, but against other activist groups as well. Thus, in
Huntingdon Life Sciences, Inc. v. Rokke, the defendant, a member of the environmental group People for the Ethical Treatment of Animals, fraudulently gained employment at the plaintiff's laboratory, and used information gained there to launch a negative public relations campaign against the plaintiff. The federal district court in Virginia held that the plaintiff stated a valid RICO claim. Unlike the attempts in the family law arena, the courts appear more hospitable to the use of civil RICO against protest groups in the area of harassment.

Tobacco

Another new and inventive way in which civil litigants have used RICO as a weapon involves the tobacco industry. Civil RICO claims have emerged in the tobacco arena as plaintiffs attempt to recover for tobacco-related illness. However, courts have raised standing as an impediment, holding that union health funds have no right to sue tobacco companies under the RICO statute for the costs of providing health care to members and their beneficiaries with illnesses caused by tobacco. Plaintiffs have also failed to show that their injuries were proximately caused by the alleged conspiracy by defendants to mislead the public as to the health risks associated with cigarette smoking. Similar reasoning has been extended to claims by health care providers for the costs associated with treating patients with tobacco-related illnesses. Finally, providing yet another hurdle for the RICO proponent in tobacco cases, the Fifth Circuit has upheld the dismissal of a RICO class action against a tobacco trade association by reiterating that the phrase "injury to business or property" in RICO excludes personal injuries.

Four Decades and Still Litigating

With Sedima, civil RICO enlarged the business litigant's arsenal for rectifying seemingly fraudulent conduct. The dissenting Justices accurately predicted what has transpired during the last two decades. The Court's conclusion "authorize[d] the types of private civil actions now being brought frequently against respected businesses to redress ordinary fraud and breach-of-contract cases" with civil RICO as the chief weapon.

Although RICO claims are increasingly "difficult to successfully plead," the tremendous lure of the statute continues to promote innovation. In yet another example of the intersection between law and professional sports, the owners of the Montreal Expos filed a RICO suit against the Commissioner of Major League Baseball in 2002, alleging that he and his co-defendants had conspired to eliminate baseball in Montreal. That same year, in a dramatically different venue, an attorney in Missouri filed a RICO suit on behalf of a man who alleged he was molested as a child by a Catholic priest, naming every bishop in the United States as an unnamed co-conspirator under RICO. However, despite the creative attempts by civil RICO litigants to explore avenues for its use, courts have ratcheted up their scrutiny to rein in RICO's turbulent jurisprudence. In RICO's fourth decade, the question might finally be asked and answered: Is it the time of reckoning for civil RICO litigants and their business arsenal of choice?

Sofia Adrogué is a partner with Epstein Becker Green Wickliff & Hall, P.C., in Houston. She is a frequent CLE speaker on topics such as business torts, managing complex litigation, experts, and joint ventures in litigation.

Endnotes

6. Profitt, supra note 1, at 49.
8. Matthews, supra note 3, at 1-26 ([T]he consequence of this hostility is that civil RICO plaintiffs can count on heightened scrutiny of their claims.). Note, however, that 32 states and territories have enacted statutes that track the federal RICO statute. See Teresa Bryan et al., Racketeer Influenced and Corrupt Organizations, 40 Am. Crim. L. Rev. 987, 988 n.1 (2003).
9. Sedima S.P.R.L. v. Irmex Co., 473 U.S. 479, 500 (1985). The Second Circuit dismissed the claim because the defendants had not previously been convicted of a RICO violation and for failure to establish a 'racketeering injury.' Id.
12. Sedima, 473 U.S. at 495. A section 1962(e) violation "requires (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." Id. at 496. If the plaintiff alleges all elements of section 1962(e) and shows he was injured in his business or property by the conduct constituting a violation, the injury is the harm caused by the predicate acts sufficiently related as to constitute a pattern. Id. at 497.
13. Id. at 501.
14. Id. at 507.
15. Id. at 503-06; see also Lee Applebaum, Is There a Good Faith Claim for the RICO Enterprise Plaintiff?, 27 Del. J. Corp. L. 519, 534 n.73 (2002).
17. Federal Rules of Civil Procedure 11, 12(e), 16, and 83 provide the requisite authority for judges to order parties to file RICO case...
statements. Moreover, the substance of RICO case statements may be considered on motions to dismiss because they are viewed as elaborations on pleadings. See, e.g., Dennis v. General Imaging, Inc., 918 F.2d 496, 511 (5th Cir. 1990) (considering complaint, amended complaint, and RICO case statement on motion to dismiss); Sil-Flo Inc. v. SFHC, Inc., 917 F.2d 1507, 1516 (10th Cir. 1990) (same); Glessner v. Kenny, 952 F.2d 702, 712 n.9 (3d Cir. 1991) ("Courts may consider the RICO case statement in assessing whether plaintiffs' RICO claims should be dismissed").


20. 896 F.2d 645, 650 (1st Cir. 1990).

21. See Old Time Enters. Inc. v. Int'l Coffee Corp., 862 F.2d 1213 (5th Cir. 1989); Elliott v. Foustas, 867 F.2d 877 (5th Cir. 1989); Marriot Bros. v. Gage, 911 F.2d 1105 (5th Cir. 1990).

22. 271 F.3d 374, 385 (2d Cir. 2001).

23. Id. at 386.


26. See, e.g., Feinstein v. Resolution Trust Corp., 942 F.2d 34, 42 (1st Cir. 1991) ("the pleader is required to go beyond a showing of fraud and state the time, place and content of the alleged mail and wire communications perpetrating that fraud").


30. See, e.g., Wagh v. Metris Direct, et al., No. 02-15580, 2003 U.S. App. LEXIS 25242, *22 (9th Cir. Nov. 7, 2003) ("Plaintiff has failed to meet the enterprise requirements established by the Ninth Circuit in presenting this theory of enterprise. Plaintiff has not alleged that Defendants ... have established a system of making decisions in furtherance of their alleged criminal activities, independent from their respective regular business practices. Nor has Plaintiff alleged that an independent system of distributing the proceeds of money obtained from persons like Wagh exists between the Defendants. ... [Plaintiff has therefore failed to allege the elements of a violation of § 1962(c), and the dismissal of this claim was correct.""); Anderson v. Smithfield Foods Inc., No. 02-14089, 2003 U.S. App. LEXIS 25447, *3 (11th Cir. Dec. 17, 2003) (dismissing plaintiff's claim because "the facts they alleged were too vague to show the enterprise required for RICO liability, and ... they failed to allege the harm required by RICO").


32. See, e.g., Federal Ins. Co. v. Ayers, 727 F. Supp. 1503, 1508 (E.D. Pa. 1991) (denying summary judgment "because there are genuine issues of material fact regarding the commission of the alleged predicate acts").

33. 241 F.3d 417, 418-19 (5th Cir. 2001) (citations omitted).

34. Id. at 419.

35. Id. The Fifth Circuit similarly concluded as such in Sandwich Chef of Texas, Inc. v. Reliance National Indemnity Insurance Co. et al., 319 F.3d 205 (5th Cir. 2003). The court held that the lower court had abused its discretion in certifying a class in a RICO class action because individual issues of reliance as well as causation defeated the predominance component required by Fed. R. Civ. P. 23(b).

36. 95 F.3d 1014, 1025 (11th Cir. 1996). See also Deborah M. Russell and Robert L. Hodges, Emerging Issues in Nonjury Class Litigation Targeting Product Lines, 39 Tort & Ins. L.J. 137, 153 (2003) (discussing Summit Properties, Inc. v. Hoechst Celanese Corp., 214 F.3d 556, 562 (5th Cir. 2000), in which the Fifth Circuit rejected a RICO claim, finding that general reliance, as opposed to individual reliance, precluded a finding that RICO's proximate cause requirement was satisfied).


38. See id. at 36. See also Edmondson & Gallagher v. Alban Towers Tenants Ass'n, 48 F.3d 1260, 1264-65 (D.C. Cir. 1995) (dismissing claims for showing only a single scheme designed to frustrate one project); Whelan v. Winchester Production Co. et al., 319 F.3d 225, 230 (5th Cir. 2003) (holding that "[a]n enterprise that 'briefly flourished and faded' will not suffice; [the RICO plaintiff] must adduce evidence showing the enterprise functioned as a continuing unit") (quoting Landry v. Air Line Pilots Ass’n Int’l AFL-CIO, 901 F.2d 404, 433 (5th Cir. 1990)).

39. Bryan, supra note 8, at 1030.

40. 224 F.3d 425 (5th Cir. 2000).

41. St. Paul, at 442. Similarly, the First Circuit explained in Compagnie de Reassurance d’Ile de France et al. v. New England Reinsurance Corp. et al., 57 F.3d 56, 91 (1st Cir. 1995), that in proving a right to recover for a RICO violation under section 1962(a), a plaintiff must show that it was injured by the defendant’s use or investment of income received from a pattern of racketeering activity in some enterprise. See also Discon, Inc. v. NYNEX Corp. et al., No. 95-7673, 1996 U.S. App. LEXIS 28747, *23 (2d Cir. Mar. 25, 1996) (holding that in order to state a cause of action under section 1962(b), a plaintiff must allege what is referred to as an “acquisition
injury," analogous to the use or investment injury required under section 1962(a) to show injury under section 1962(b); Advocacy Or. for Patients and Providers v. Auto Club Ins. Ass'n, 176 F.3d 315, 330 (6th Cir. 1999) (dismissing a civil RICO complaint because the plaintiffs failed to allege they suffered an injury by reason of the use and investment of racketeering income).

42. No. 02-15580, 2003 U.S. App. LEXIS 25242, *13-14 (9th Cir. Nov. 7, 2003). However, what makes the Wagh case of particular interest is that the plaintiff argued that the use or investment of the income causing the injury need not be money taken from him, but that the income in question may have been funds previously obtained from others in violation of RICO. The Ninth Circuit disagreed, stating that such an argument eliminates the causal connection between the defendant’s violation and the plaintiff’s injury. Id. at *14-15.


44. 483 U.S. 143, 156 (1987) ("[W]e conclude that there is a need for a uniform statute of limitations for civil RICO, that the Clayton Act clearly provides a far closer analogy than any available state statute, and that the federal policies that lie behind RICO and the practicalities of RICO litigation make the selection of the 4-year statute of limitations for Clayton Act actions ... the most appropriate limitations period for RICO actions.").

45. See, e.g., Grimmett v. Brown, 75 F.3d 506, 510 (9th Cir. 1996).

46. Id.

47. Bingham v. Zolt, 66 F.3d 553, 561 (2d Cir. 1995).

48. Cedric Kushner Promotions, Ltd. v. King, 533 U.S. 158 (2001) (holding that the person and the enterprise must at least be distinct legal entities, overruling the Second Circuit holding that an employee, acting within the course and scope of employment, is part of the enterprise).

49. See Profit, supra note 1, at 52.

50. Whelan v. Winchester Production Co. et al., 319 F.3d 225 (5th Cir. 2003).

51. Id. at 229.

52. Id. (citing Bishop v. Corbett Marine Ways, Inc., 802 F.2d 122 (5th Cir. 1987)).

53. Id.


59. 221 F.3d 472 (3d Cir. 2001).

60. Maio, 221 F.3d at 475.

61. Id. at 491-92. The plaintiffs had additionally argued that they suffered financial losses because they obtained a “health care product” with a lowered economic value. Id. at 493. The court disagreed. Id.


63. Id. at 1083. It was further alleged that the defendants violated sections 1962(c) and 1962(d) by conspiring to defraud the health care beneficiaries. Id. at 1084.

64. Id. at 1083. Additionally, the court determined that the plaintiff could not show that the insurance companies associated with an enterprise that engaged in racketeering activity as required by sections 1962(c) and 1962(d). Id. at 1084. See also Brown v. Protective Life Insurance Co., No. 03-30010, 2003 U.S. App. LEXIS 26393 (5th Cir. Dec. 30, 2003) (dismissing plaintiff’s claim because the injury to business or property did not exceed the $5,000 required for federal RICO standing); S-G Metals Indus. v. New England Life Ins. Co., 346 F.3d 218 (2d Cir. 2003) (dismissing plaintiff’s claim against life insurance company, finding fraudulent concealment did not toll the RICO four-year statute of limitations).

65. 510 U.S. 249 (1994); see also Bryan, supra note 8, at 1035 (citing NOW v. Scheidler, 510 U.S. 249 (1994)).


67. 202 F.3d 770, 787 (5th Cir. 2000).


69. Id.

70. Bryan, supra note 8, at 1034.


72. See, e.g., Allegheny General Hospital v. Phillip Morris, Inc., 228 F.3d 429, 445 (3d Cir. 2000) (holding hospitals lacked standing under RICO to sue to recover the cost of care provided to nonpaying patients with tobacco-related illnesses); see also Russell, supra note 37, at 154 (citing United Foods and Commercial Workers Unions, Employers’ Health & Welfare Fund v. Philip Morris, Inc., 223 F.3d 1271, 1274 (11th Cir. 2000) (“Tobacco-based RICO claims brought by secondary payors such as health insurers or pension funds have also been uniformly rejected in the federal courts on proximate cause grounds.”)).

73. Hughes v. Tobacco Institute, Inc., 278 F.3d 417, 422 (5th Cir. 2001).

74. Sedima S.P.R.L. v. Irmex Co., 473 U.S. 479, 523 (1985) (Powell, J., dissenting); see also id. at 502 (Marshall, J., dissenting) (explaining that the broad reading of civil RICO displaces important areas of federal law, citing the securities law arena as an example).

75. Walker, supra note 37, at 38.


77. See Lawrence Morahan, Use of Racketeer Statute to Sue Catholic Church Draws Fire, CNSNews.com at www.cnsnews.com/ Nation/Archive/200203/NAT20020325b.html.