

## RICO CLAIMS IN BUSINESS LITIGATION

By

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The Racketeer Influenced and Corrupt Organizations Act ("RICO") was signed into law by President Nixon on October 15, 1970 as Title IX of the 1970 Organized Crime Control Act.<sup>ii</sup> RICO contains both civil and criminal provisions. Civil RICO creates a cause of action which has been described by the American Bar Association as the "ultimate remedy in business and commercial litigation."<sup>iii</sup> This ultimate remedy includes *treble damages* (three times the actual loss) plus cost of suit including reasonable *attorneys' fees*.

### Civil and Criminal RICO

In general, there is no substantive difference between criminal and civil RICO. Both apply to the same conduct. There are exceptions to this rule, but these distinctions are based on the differences between civil and criminal law generally, and are not specific to RICO.

For example, civil RICO conspiracy, like all civil conspiracy claims, requires proof of an "overt act" committed in furtherance of the conspiracy. Criminal RICO conspiracy does not require proof of an overt act—but in view of RICO's predicate act requirement, this amounts to a "distinction" without a "difference."

As another example, in a criminal RICO case, it generally is not necessary to prove that the criminal scheme was successful and that someone was injured as a result. In a civil RICO case, as in all civil actions, injury to the plaintiff is an essential element of the cause of action.

The primary differences between civil and criminal RICO are procedural. Civil RICO is litigated like other civil cases, with pleadings, discovery, motions *etc.*, and at trial, the preponderance of evidence standard applies.<sup>iv</sup> In a criminal RICO case, the accused is entitled to the available constitutional and statutory protections, and at trial, the reasonable doubt standard is applicable. In *Sedima, S.P.L.R. v. Imrex Co.*, the United States Supreme Court held that a civil RICO claim may be maintained in the absence of a prior criminal conviction under RICO or under the specific statutes which outlaw the various defined acts of racketeering activity.<sup>v</sup>

## The Purpose of RICO

RICO does not prohibit any conduct which is not already illegal. In enacting RICO, Congress intended to combat the perceived infiltration of organized crime into legitimate business. To achieve this goal, RICO provides enhanced criminal sanctions and civil liability for specified conduct (the *predicate acts of racketeering activity*) which are already prohibited by other state or federal criminal laws—where the conduct amounts to a *pattern of racketeering activity* in relation to an *enterprise*.

## RICO and "Legitimate" Business

Although RICO was enacted to combat organized crime, the Supreme Court has repeatedly held that Congress intended for the statute to be fully applicable to so-called legitimate businesses that violate the statute. In *United States v. Turkette*, the Court held that:

[I]t was the declared purpose of Congress "to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime." ... Considering this statement of the Act's broad purposes, [a narrow] construction of RICO ... is unacceptable. Whole areas of organized criminal activity would be placed beyond the substantive reach of the enactment.<sup>vi</sup>...

In *Sedima*, the Court confirmed that:

It is true that private civil actions under [RICO] are being brought almost solely against ["respected and legitimate enterprises"], rather than the arche-typal, intimi-dating mobster. Yet this defect—if defect it is—is inherent in the statute as written, and its correction must lie with Congress.<sup>vii</sup>

## RICO and Rule 11

Federal Rule of Civil Procedure 11 ("Rule 11") provides sanctions against attorneys who file claims that do not have a reasonable basis in fact or law. In *Brandt v. Schal Associates, Inc.*, the federal district court (Judge Shadur) imposed substantial monetary sanctions against an attorney who filed a RICO claim against a construction management firm, where it was established that the plaintiff did not have a reasonable basis in fact to allege that the defendant had perpetrated the alleged fraudulent scheme.<sup>viii</sup> The Court of Appeals affirmed.<sup>ix</sup>

However, recent amendments to Rule 11 decrease the likelihood that future defendants will be able to obtain substantial monetary sanctions against plaintiffs who file frivolous RICO claims. Under the amended Rule 11, monetary sanctions are more likely to be paid into the court.

## THE ELEMENTS OF A RICO CLAIM

RICO is codified in title 18, the United States Criminal Code, at sections 1961 through 1968. Reviewing this statute, the United States Court of Appeals for the Seventh Circuit observed that RICO “is construct-ed on the model of a treasure hunt”.<sup>x</sup>

### Summary of 18 U.S.C " 1961-1968

'1961      Definitions

(1)      **Racketeering Activity**    (the "**Predicate acts**"):

(A)      Any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; or

(B)      Any act which is indictable under any of the following provi-sions of title 18, United States Code:

bribery

sports bribery

counterfeiting

theft from interstate shipments (felony)

embezzlement from pension or welfare funds

extortionate credit transactions

transmission of gambling information

mail fraud

wire fraud

transactions in obscene matters

obstruction of justice

obstruction of criminal investigation

obstruction of State or local law enforce-ment

tampering with a witness, victim, or informant  
interference with commerce, robbery, or extortion  
racketeering (the Hobbs Act)  
interstate transportation of wage paraphernalia  
unlawful welfare fund payments  
illegal gambling businesses  
money laundering  
monetary transactions in property derived from specified unlawful  
activity  
interstate transportation of stolen motor vehicles  
interstate transportation of stolen property  
trafficking in certain motor vehicles or motor vehicle parts  
trafficking in contraband cigarettes  
white slave traffic; or  
(C) illegal payments and loans to labor organiza-tions  
em-bez-zle-ment of union funds; or  
(D) bankruptcy fraud  
securities fraud  
any felonious drug offense  
violations of the Currency and Foreign Transac-tions Act

**Comments:**

The most common types of predicate acts used in commercial cases are mail and wire fraud.

## **Mail And Wire Fraud**

Mail fraud is prohibited by 18 U.S.C '1341, and wire fraud is prohibited by 18 U.S.C. '1343. The fraud language in these two sections is identical, and the elements of these violations are (1) the existence of a scheme to defraud; (2) the defendant's knowing participation in that scheme; and (3) the use of the mail or wires in furtherance of that scheme.<sup>xi</sup>

## **The Scheme To Defraud**

"Fraud" as used in the mail and wire fraud statutes is broader, in criminal prosecutions, than the common law definition of fraud.<sup>xii</sup> In a criminal case, specific intent to defraud is required, but it is generally unnecessary to prove that the intended victim relied on the fraud and was injured. In civil RICO cases, the federal courts have required proof of common law fraud (plus the additional element of using the mails or wires) to establish these predicate acts. The elements of common law fraud are:

- (1) A false representation of material fact or material omission;
- (2) That the defendant knew or believed to be false;
- (3) That the defendant made the material misrepresentation or omission with the intent to induce the plaintiff to rely;
- (4) Action by the plaintiff in reliance on the misrepresentation or omission;
- (5) Injury to the plaintiff as a result of such reliance.<sup>xiii</sup>

## **Promissory Fraud**

Promissory fraud has been used to establish the predicate act of mail fraud under RICO.<sup>xiv</sup> In Illinois, a defendant that promises to perform an act in the future may be liable for fraud if at the time of making the promise, the defendant has no intention of ever performing the future act, but only if the false promise is the scheme or device used to accomplish an independent fraudulent scheme.<sup>xv</sup> Other jurisdictions, including California, have relaxed the requirements for establishing promissory fraud.

## **Securities Fraud**

Though securities fraud was long considered a racketeering activity under RICO, this is no longer the case since enactment of the Private Securities Litigation Reform Act of 1995.<sup>xvi</sup> This provision eliminated securities fraud from the definition of racketeering. Though seemingly eliminating RICO actions based on securities fraud, plaintiff's still may attempt to bring investment cases by invoking RICO on the basis of mail and wire fraud.

### **PATTERN OF RACKETEERING ACTIVITY**

'1961(5) "pattern of racketeering activity" requires at least two acts of racketeering activity ... and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

### **Continuity plus Relationship**

In *Sedima*, the Supreme Court noted:

[T]wo isolated acts of racketeering activity do not constitute a pattern. As the Senate Report explained: The target of [RICO] is thus not sporadic activity. The infiltration of legitimate business normally requires more than one 'racketeering activity' and the threat of continuing activity to be effective. It is this factor of *continuity plus relationship* which combines to form a pattern.<sup>xvii</sup>

In 1989, the Supreme Court attempted to clarify the "continuity plus relationship" test:

#### **Relationship**

Criminal conduct forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated events.<sup>xviii</sup>

#### **Continuity**

"Continuity" is both a closed and open-ended concept, referring to either a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition. ...

Predicate acts extending over a few weeks or months and threaten-ing no future criminal conduct do not satisfy this requirement.<sup>xix</sup>

#### **PERSON**

'1961(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property.

#### **Comment:**

Only persons can be defendants under RICO. The "persons" who commit the predicate offenses cannot simultaneously be the "enterprise."<sup>xx</sup>

#### **ENTERPRISE**

'1961(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.

**Comment:**

The "individuals associated in fact" aspect of RICO enterprise has created confusion:

< An enterprise is present even if the individuals are associated for a purely criminal purpose.<sup>xxi</sup>

< The enterprise and the pattern of racketeering activity remain separate elements. Proof that the defendants committed the predicate acts, and that the defendants formed an enterprise, may be co-extensive, but each element must be established separately.<sup>xxii</sup>

< The Seventh Circuit has approved the "liberal" theory of enterprise, whereby "there is no distinction between a duly formed corporation that elects officers and holds annual meetings and an amoeba-like infrastructure that controls a secret criminal network."<sup>xxiii</sup>

**THE OPERATIVE SECTIONS OF RICO**

18 U.S.C. "1962(a) through (d) prohibit four types of relationships between a pattern of racketeering activity and an enterprise.

**'1962(a)**

It shall be unlawful for any person who has received income, directly or indirectly, from a pattern of racketeering activity or to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in the acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, inter-state or foreign commerce.

**Comments**

Section 1962(a) requires a nexus between the income or proceeds from the underlying criminal activity and the enterprise, for the essence of the violation is the use of the illegal income in the enterprise. The courts generally do not require strict tracing requirements which would render RICO ineffective against "surreptitious accounting techniques" designed to frustrate tracing.<sup>xxiv</sup> A sufficient nexus between the illicit income and the enterprise has been established where:

< the deposit of income in one of the defendant's companies (in the form of bank loan proceeds which were obtained by fraud) coincided with a comparable amount earned in the enterprise.<sup>xxv</sup>

< substantial deposits of income in the enterprise were being made at the same time that defendant was engaged in illicit activity.<sup>xxvi</sup>

### **'1962 (b)**

It shall be unlawful for any person through a pattern of racketeer-ing activity ... 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, inter-state or foreign commerce.

### **Comments:**

The majority of courts require a proprietary interest, such as ownership of stock, to establish an "interest" in an enterprise under Section 1962(b).<sup>xxvii</sup> On the question of "control", the majority of courts reject the contention that formal control, *eg.*, a majority of stock, is required:

< A minority of stock was sufficient "control" where the minority was able to affect the selection of the board of directors.<sup>xxviii</sup>

< Defendant who was serving as leasing agent and was a partner in a real estate venture defrauded his partners by misman-ag-ing partner-ship property, allowing a co-defendant to acquire an interest in the partnership inexpensively. The court rejected the '1962(a) claim because the "use of proceeds" element was missing, but upheld the claim under '1962(b) because the co-defendant promised that the defendant would remain as leasing agent once the co-defendant acquired the property—giving the defendant a sufficient "interest" in the enterprise. **Note:** This case takes an expansive view of "interest."<sup>xxix</sup>

< '1962(b) liability was rejected in a churning case where the customer always retained the power to terminate the broker.<sup>xxx</sup>

< '1962(b) liability was upheld where an oil company injured its competitor by using undue influence to obtain oil at below market prices.<sup>xxxi</sup>

< Creditors who exercise their rights under loan or security agree-ments are not generally liable under '1962(b). The determination of whether a creditor has exercised "control" is fact-specific.

### **'1962(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 com-merce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity ... .



### **Comments:**

'1962(c) focuses on the conduct of the defendant, not the enterprise. Mere membership in a criminal enterprise does not constitute "conduct or participation" absent other behavior.<sup>xxxii</sup> The defendant's conduct need not advance or benefit the enterprise to establish liability.<sup>xxxiii</sup>

In *Reves v. Ernst & Young*, the Supreme Court held that participation in the conduct of an enterprise requires an element of direction over the affairs of the enterprise.<sup>xxxiv</sup> Formal control or responsibility is not required—the test of whether a defendant exercised sufficient "managerial or operational control" for liability under this section is factual. In *Reves*, an accounting firm did not participate in the conduct of an enterprise by auditing the company's financial statements.

### **RICO Conspiracy**

#### **'1962(d)**

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

### **Comments:**

< A RICO conspiracy is composed of two agreements:

(1) an agreement to commit at least two predicate acts which form the pattern of racketeering activity; and

(2) an agreement to the conduct which violates subsection (a), (b) or (c) of '1962, *eg.* an agreement to conduct or participate in the affairs of an enterprise (sub-section(c)).<sup>xxxv</sup>

< A RICO conspiracy generally involves two groups of people —the conspirators and the enterprise.

< Under agency law, a corporation cannot conspire with its officers or employees.

< An overt act in furtherance of the conspiracy is required in civil cases. This requirement is distinct from the predicate act requirement, although the predicate act may satisfy the overt act requirement.

### **Aiding and Abetting**

Aiding and abetting liability has been imposed where, for each alleged predicate act, the defendant was associated with the wrongful conduct, participated with the intent to bring it about, and sought by his actions to make it succeed.<sup>xxxvi</sup>

## THE CIVIL CAUSE OF ACTION

### '1964(c)

Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefore in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of suit, including a reasonable attorneys' fee.

### Comments :

The Supreme Court has held that state courts enjoy concurrent jurisdiction over civil RICO claims under '1964(c).<sup>xxxvii</sup> The Court has also ruled that civil RICO claims are arbitrable.<sup>xxxviii</sup>

### The Commerce Requirement

As a basis for federal jurisdiction, RICO requires that the enterprise affect interstate or foreign commerce. Historically, the commerce requirement has fueled very little litigation. Drawing on the Supreme Court's broad interpretation of the Commerce Clause in the U.S. Constitution, courts have held that virtually any business activity which involves the flow of goods or services in "commerce" affects interstate commerce.

In 1995 the Supreme Court handed down a major decision with respect the RICO commerce requirement. In *U.S. v. Robertson*<sup>xxxix</sup> the Court reviewed whether the commerce requirement had been met where the defendant was charged under '1962(a) with investing the proceeds of cocaine sales into a gold mine in Alaska. The question was whether the Alaskan gold mine—the enterprise—affected interstate commerce. The Ninth Circuit, below, in reversing the RICO conviction, held that the enterprise did not affect interstate commerce.<sup>xl</sup> The Supreme Court however, in a brief opinion, reversed, holding that the enterprise sufficiently affected interstate commerce.<sup>xli</sup>

### The Direct Causation Requirement

'1964(c) requires that the injury to business or property occur "by reason of" the RICO violation. In *Holmes v. Securities Investors Protection Corp.*, the Supreme Court held that this "proximate causation" requirement is narrower than the traditional "but for" standard in tort law.<sup>xlii</sup> In *Holmes*, the Securities Investor Protection Corporation (SIPC) alleged that the defendant conspired in a stock-manipulation scheme, causing two broker dealers to default on their obligations to customers, and thereby triggering SIPC's duty to advance funds to reimburse the customers. The Court characterized SIPC's injury as a "secondary injury" which was not *directly caused* by the defendant's conduct.

## **Statute Of Limitations**

RICO does not contain a statute of limitations. In the interests of uniformity, the Supreme Court has imposed a four (4) year statute of limitations on all civil RICO claims.<sup>xliii</sup>

### **Problem One**

#### **The Racketeering Restaurateur**

Ms. Wealthy was asked by Mr. Slick to invest in a new restaurant that Mr. Slick would operate. Mr. Slick promises to form a corporation to own and operate the restaurant. Ms. Wealthy will receive 50% of the stock in exchange for her \$100,000 investment. Mr. Slick will receive 50% of the stock in exchange for his services in developing and running the restaurant.

Mr. Slick also represents that he has entered into a purchase contract for the real estate where the new restaurant will be located. He promises to transfer this contract to a new partnership between himself and Mrs. Wealthy. Mr. Slick makes all of these representations in a series of letters which are delivered by the mail and on the telephone. Ms. Wealthy invests, believing that her \$100,000 has bought her 50% of both the corporation and real estate partnership.

The restaurant opens and, at first, appears successful. But after a few months, Mr. Slick begins to report operating losses which he can't explain. Ms. Wealthy suspects skimming but she can't prove it. Mr. Slick tells Ms. Wealthy that because of the operating losses, he can't make the payments on the real estate purchase contract, and that Ms. Wealthy has to put more money into the restaurant or they will lose everything. She refuses.

Then Ms. Wealthy gets a letter in the mail from a man named Flunky who just happens to be a business associate of Mr. Slick in another restaurant. Flunky claims that he is holding an assignment of the real estate contract for the restaurant property, that he has made a \$15,000 payment to the seller on that contract, and that unless the restaurant reimburses his \$15,000 and makes the next payment on the contract, he will evict the restaurant. Ms. Wealthy checks and finds that Mr. Slick never transferred the real estate contract to the new partnership -- instead he assigned the contract to Flunky on the same day that Flunky wrote the eviction letter. Mr. Slick calls Ms. Wealthy on the telephone and tells her to pay Flunky. He repeats that she will lose every-thing if she doesn't pay.

Ms. Wealthy refuses to pay Flunky, and the seller under the real estate contract files an eviction claim, causing the restaurant to close. Ms. Wealthy has lost her \$100,000.

**Could Ms. Wealthy bring a RICO claim against Mr. Slick?**

**How about against Flunky?**

## **Problem Two**

Same facts as problem one, plus these additional facts:

When Flunky needed \$15,000 to make a payment on the real estate contract, he and Mr. Slick asked their friend, Chumpy, for the money. They told Chumpy that they were close to driving Ms. Wealthy out of the business, and as soon as she was gone, they would form a new business that would own the restaurant and real estate, and that each of them -- Slick, Flunky and Chumpy -- would own 1/3 of the venture. Believing that this deal was too good to be true, Chumpy gave Slick and Flunky the \$15,000.

The meeting among Slick, Flunky and Chumpy was held at the offices of Slick's lawyer, who sat in on the meeting and drafted a "partnership agree-ment" for Slick, Flunky and Chumpy to sign.

**Now can Ms. Wealthy bring a RICO claim against Mr. Slick?**

**Against Flunky?**

**Against Chumpy?**

**Against Mr. Slick's lawyer?**

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ENDNOTES:

- <sup>i</sup> Carmen D. Caruso is a principal of Schwartz, Cooper, Greenberger & Krauss, Chtd. This article represents the author's opinions only and should not be considered legal advice.
- <sup>ii</sup> Public L. No. 91-452, 84 Stat. 922, 941 (Act of October 15, 1970). RICO is codified at 18 U.S.C. " 1961-1968.
- <sup>iii</sup> See "*RICO: The Ultimate Weapon in Business And Commercial Litigation*", published by ABA Section on Litigation National Institute, November, 1983.
- <sup>iv</sup> *Fireman's Fund Ins. Co. v. Sites*, 258 F.3d 1016, 1023 (9th Cir. 2001) ("a civil RICO plaintiff must prove his case only by a preponderance of the evidence").
- <sup>v</sup> 473 U.S. 479 (1985). See *Attorney General of Canada v. R..J. Reynolds Tobacco*, 268 F.3d 103, 139 n.6 (2d Cir. 2001) (noting *Sedima's* rejection of requiring as a criminal conviction a prerequisite for a civil RICO suit).
- <sup>vi</sup> 452 U.S. 576 (1981). See *U.S. v. Rogers* 59 F.3d 1326 (7<sup>th</sup> Cir. 1996) ([RICO] is to be read broadly and liberally construed to effectuate its remedial purposes).
- <sup>vii</sup> 473 U.S. at 499.
- <sup>viii</sup> 131 F.R.D. 512 (N.D. Ill. 1990).
- <sup>ix</sup> 960 F.2d 640 (7<sup>th</sup> Cir. 1990).
- <sup>x</sup> *Haroco Inc. v. American Nat. Bank and Trust of Chicago*, 747 F.2d 384, 386 (7<sup>th</sup> Cir. 1984); *PMC, Inc. v. Ferro Corp.*, 131 F.R.D. 184 (C.D. Cal. 1990).
- <sup>xi</sup> *South Atlantic Ltd. v. Riese*, 284 F.3d 518 (4th Cir. 2002).
- <sup>xii</sup> *Regency Communications, Inc. v. Cleartel Communications Inc.*, 160 F.Supp.2d 36, 44 (D.D.C. 2001); *McEvoy Travel Bureau, Inc. v. Heritage Travel, Inc.*, 904 F.2d 786 (1st Cir. 1990), *cert. den.* 111 S.Ct. 536.
- <sup>xiii</sup> *Athey Products Corp. v. Harris Bank Roselle*, 89 F.3d 430 (7th Cir. 1996); *Indemnified Capital Investments, SA v. R.J. O'Brien & Assoc.*, 12 F.3d 1406 (7th Cir. 1993).
- <sup>xiv</sup> See, *PMC, Inc. v. Ferro Corp.*, 131 F.R.D. 184 (C.D. Cal. 1990). *Bankcard America, Inc. v. Elliott*, 1994 WL 49843 (N.D. Ill. Sept. 8, 1994).
- <sup>xv</sup> See *Weeks v. Samsung Heavy Industries Co.*, 126 F.3d 926, 942 (7th Cir. 1997) (holding promissory fraud is actionable "only if it either is particularly egregious or, what may amount to the same thing, it is embedded in a larger pattern of deceptions or enticements that reasonably induces reliance and against which the law ought to provide a remedy").
- <sup>xvi</sup> Pub. L. 104-67, tit. I, §107, 109 Stat. 758 (1995) (codified at 18 U.S.C. § 1964 (c)).
- <sup>xvii</sup> 473 U.S. 479, 496, n. 14 (1986), citing S.Rep. No. 91-917, p. 158 (1969).
- <sup>xviii</sup> *H.J., Inc. v. Northwestern Bell Telephone Co.*, 109 S.Ct 2983, (1989) ("borrowing" a definition of "relationship" set forth in Title X of the Organized Crime Control Act of 1970).
- <sup>xix</sup> *Id.* at 2902.
- <sup>xx</sup> *Business Torts*, p. 24-34.
- <sup>xxi</sup> *Turkette*, 452 U.S. at 576; *U.S. v. Goldin Indust.*, 219 F.3d 1271 (11th Cir. 2000) (a RICO enterprise need not possess an "ascertainable structure" distinct from the associations necessary to conduct the pattern of racketeering activity).
- <sup>xxii</sup> *Turkette*, 452 U.S. at 576.
- <sup>xxiii</sup> *United States v. Elliott*, 571 F.2d 880, 898 (5<sup>th</sup> Cir. 1978) cited with approval in *United States v. Aleman*, 609 F.2d 298, 305 (7<sup>th</sup> Cir. 1979), *overruled on other grounds.* See *Gross v. State* 735 So. 2d 39 (Fla. 2000) ("The Eleventh Circuit has interpreted RICO to reach any group of individuals "whose association, however loose or informal, furnishes a vehicle for the commission of two or more predicate crimes.") (citing *United States v. Cagnina*, 697 F.2d 915, 920 (11<sup>th</sup> Cir. 1983)

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- <sup>xxiv</sup> *United States v. Vogt*, 910 F.2d 118 (4<sup>th</sup> Cir. 1990) (requirement that the tainted income must be specifically and directly traced in proof from its original illegal receipt to its ultimately proscribed "use or investment" by the defendant).
- <sup>xxv</sup> *Bryn Mar. Ltd. v. Carlton Browne and Co., Inc.*, No. 82-0696-E (S.D. Cal. 1983).
- <sup>xxvi</sup> *United States v. Cauble*, 706 F.2d 1322 (5<sup>th</sup> Cir.), *cert den.*, 465 U.S. 1005 (1983)
- <sup>xxvii</sup> See *In re American Honda Motor Co., Inc. Dealerships Relations Litigation*, 941 F.Supp. 528, 555 (D. Md. 1996) (adopting *Moffat*'s reasoning that 1962(a) and (b) properly apply to activities in the nature of acquiring a proprietary stake in an enterprise, not simply obtaining some influence over discretionary activities); *Moffat Enterprises, Inc. v. Borden, Inc.* 763 F. Supp. 143 (W.D. Pa. 1990).
- <sup>xxviii</sup> *Id.*
- <sup>xxix</sup> *State v. Nine Sav. Accounts*, 553 So. 2d 823 (La. 1989); *Guerro v. Katzen*, 571 F. Supp. 714 (D.C. Cir. 1983).
- <sup>xxx</sup> *O'Brien v. Dean Witter Reynolds, Inc.* 1984 WL 608 (D. Ariz. 1984).
- <sup>xxxi</sup> *Sutliff, Inc. v. Donovan Companies, Inc.*, 727 F.2d 648 (7<sup>th</sup> Cir. 1984) (criticized on other grounds by *Rose v. Mony Life Ins.*, 82 F. Supp. 2d 920, 924 (N.D. Ill. 2000)).
- <sup>xxxii</sup> *U.S. v. Owens*, 167 F.3d 739 (1<sup>st</sup> Cir. 1999).
- <sup>xxxiii</sup> *U.S. v. Barber*, 668 F.2d 778 (4<sup>th</sup> Cir. 1982).
- <sup>xxxiv</sup> 113 S.Ct. 1163, 1170 (1993).
- <sup>xxxv</sup> *U.S. v. Campione*, 942 F.2d 429, 438 (7<sup>th</sup> Cir. 1991)
- <sup>xxxvi</sup> *In Re Sahlen & Assoc., Inc. Securities Litigation*, 773 F. Supp. 342 (S.D. Fla. 1991). See *Jaguar Cars, Inc. v. Royal Oaks Motor Car Co.*, 46 F.3d 258 (3<sup>d</sup> Cir. 1995) (holding that in order to prove aiding and abetting in predicate act party must show that the defendant alleged to have aided and abetted the act knew of the commission of the act and acted with intent to facilitate it).
- <sup>xxxvii</sup> *Tafflin v. Levitt*, 110 S.Ct. 792, 795 (1990). See *ErieNet, Inc. v. Velocity Net, Inc.*, 156 F.3d 513 (3<sup>d</sup> Cir. 1998)
- <sup>xxxviii</sup> *Shearson/American Express v. McMahon*, 107 S.Ct. 2332, 2345 (1987); *In re Managed Care Litigation*, 132 F.Supp.2d 989, 993 (S.D.Fla. 2000).
- <sup>xxxix</sup> 115 S.Ct. 1732 (per curiam).
- <sup>xl</sup> 15 F.3d 862, 868 (1994)
- <sup>xli</sup> *Robertson*, 115 S.Ct. at 1733 (stating that a corporation is generally "engaged 'in commerce'" when it is itself "directly engaged in the production, distribution, or acquisition of goods or services in interstate commerce).
- <sup>xlii</sup> 112 S.Ct. 1311 (1990). *Laborers Local 17 Health and Benefit Fund v. Philip Morris, Inc.*, 191 F.3d 229 (2<sup>d</sup> Cir. 1999)
- <sup>xliii</sup> *Rotella v. Wood*, 120 S.Ct. 1075, 528 U.S. 549 (2000)