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RICO: The Controversial Congressional Definition of "Racketeer"

by R. Delacy Peters, Jr.

When people think of racketeers they tend to think of persons involved in an organized illegal activity such as murder, arson, bribery, or extortion. An imaginative person might conjure up clandestine schemes such as white slave trafficking or smuggling contraband cigarettes. But since the early 1980's the list of persons being labeled racketeers does not include so much the average Al Capone and John Dillinger types, or criminal cartels and "Mafia" organizations. In stark contrast, prominent and respected accountants,[1] attorneys,[2] investment bankers[3] and other professionals are being charged with "racketeering activity."[4] Rather than La Cosa Nostra or the Black Hand, the list of "racketeering enterprises"[5] defending suits under the Racketeer Influenced and Corrupt Organizations Act (RICO)[6] is made up of highly reputable businesses like Deloitte Haskins & Sells, Lloyd's of London and Shearson/American Express.[7]

RICO was passed by Congress in 1970. The principle purpose of the statute was to halt and prevent the "infiltration of organized crime and racketeering into legitimate commerce."[9] Congress felt it could effectively fight organized crime by stripping the "Mafia" of the profits it derived from infiltrating legitimate businesses.[9]

For many years "gangsters" have controlled legitimate businesses using their racketeering reputation and skills to earn high rates of return on their investment of time and capital.[10] A racketeer might acquire an interest in a legitimate business for many reasons. Generally racketeers seek to diversify their activities and increase their assets using legitimate enterprises to launder their money and protect their wealth.

The economic principals of the criminal enterprises are sound, although the methods suggest a few antitrust violation issues. In some instances they would create monopolies, at other times cartels, or the racketeers would simply make the legitimate entrepreneurs in a particular industry an offer they could not refuse. RICO armed the government with new and controversial legal avenues to pursue criminal and civil convictions for this type of illegal activity.

However, today when this "four letter" acronym is invoked in litigation it introduces a staggering level of anxiety into the highest courts, the largest law firms and the most prestigious boardrooms in the country. The big business anxiety levels are not as a result of ties or links to organized crime and criminal activity, but rather are related to the civil remedies.

Section 1964(c) of the Act provides civil remedies, separate and distinct from the criminal remedies under RICO, for individuals injured in their businesses.[11] To invoke the civil provisions of the RICO statute, a plaintiff must allege that the (1) person (2) employed by or associated with an enterprise engaging in interstate commerce (3) conducts or participates in the conduct of the affairs of the enterprise (4) through a pattern (5) of racketeering activity.[12] The definition of "racketeering activity" under the statute includes not only murder, kidnapping, gambling, arson and numerous other crimes, but also, mail fraud and wire fraud.[13] Furthermore, a "pattern of racketeering activity" is defined as two or more acts of racketeering activity committed within ten years of each other.[14] If an individual is successful in a civil RICO suit, that individual may recover treble damages and the cost of the suit, including reasonable attorneys fees.[15] Many RICO commentators feel this type of recovery, not normally available in similar causes of action, represented "the dangling carrot" that sparked most of the controversial litigation in areas far afield from the perceived domain of the racketeer.

What essentially has happened is that "garden variety type"[16] business disputes have been converted to RICO claims by alleging two or more counts of mail and/or wire fraud. The scope of mail and wire fraud is so broad that literally any commercial business transaction may fall into this dubious category. All that need be alleged is the use of the mails or telephones to execute or further a scheme to defraud.[17]

The defendant does not even have to actually mail or wire anything if it is foreseeable that mailing or wiring may be used.[18] Additionally, the "fraudulent scheme" does not have to involve money or property, but need only be a departure from the ever elusive "good faith business dealings" standard – "a departure from 'fundamental honesty' or 'fair play and candid dealings.'"[19]

A 1985 American Bar Association study on civil RICO actions reported that the predicate acts of mail and wire fraud accounted for approximately seventy-five percent of all the civil RICO actions pending at that time.[20] Many studies as well as the courts have recognized the potential for abuse under the mail and wire fraud provision of the statute.[21] On the other hand, as was stated by the Second Circuit in *Furman v. Cirrito*,[22] "[f]raud is fraud, whether it is committed by a hit man for organized crime or by the president of a Wall Street brokerage firm."[23]

Supporters of the civil RICO provisions say consumers are often legally impotent victims of increasing business fraud and bad faith dealings.[24] Consumer groups applaud the opportunity to turn a civil cause of action that was traditionally an uphill battle at the state level into a powerful federal case under RICO.[25] Critics of RICO say disappointed or angered clientele, and

jealous or unscrupulous competitors are the civil RICO plaintiffs.[26] There seems to be a thinning line of demarcation between "good ole" business practices of closing a "sweet deal" or driving a hard bargain and claims of fraud, misrepresentation, and manipulation under RICO.

Corporate officers worry that the normal activities of a successful enterprise—increased earnings and expansion through smooth sales representatives, enthusiastic brokers, polished marketers and active acquisition departments—can bring RICO litigation down on an unsuspecting business without justification. Public interest groups argue that the only way to cease fraudulent business activities is to present big business with the threat of treble damages under a civil RICO suit.[27]

The business community criticizes RICO arguing that a civil conviction carries the criminal stigma of a conviction for "racketeering," thereby causing prudent business persons defending such suits to settle a case with no merit to avoid this stigma or ruinous media exposure.[28] Ironically, the RICO plaintiff is said to have extortive purposes of simply wrestling large *in terrorem* settlements out of the deepest pockets they can find.[29]

The business community claims the label of racketeer raises many questions and poses significant problems for business.[30] One issue that concerns the business community is whether the government would use this label of "racketeer" as a basis for surveillance or to set up information gathering grand jury investigations. There is also concern that corporate officers and principals of particular industries would be branded with the label of "racketeers." Another issue is whether legitimate business people would wish to avoid acquiring an unsavory reputation that might come from being associated with an industry tainted by "racketeering activity."[31] CEO's suggest that the label racketeer hampers a company's ability to carry on business, in that it creates a lack of desire for financial institutions, accounting and law firms to extend their services for fear of doing business with wrongdoers.[32]

On the other hand, consumer groups argue that business fraud is rampant and ". . . civil RICO is an 'indispensable consumer protection statute,'" providing "relief from financial muggings and white collar criminals."[33] Public interest groups and state and federal prosecutors point out that, "[l]ack of vigorous enforcement against 'white collar' crime shakes the public's faith in the efficacy and fairness of our criminal justice system."[34] Robert Blakey, a Notre Dame law professor and Chief Counsel to the Senate Subcommittee that proposed RICO, noted that "the business community criticized the Securities Act of 1933 and the antitrust laws, charging that the statutes would halt capital formation, prolong the Depression, and ruin business, in much the same way it now criticizes RICO."[35]

The recent wave of civil RICO suits started in 1980. Of the cases decided before 1985, three percent were decided between 1970 and 1980. Conversely, two percent were decided in 1980, seven percent in 1981, thirteen percent in 1982, thirty-three percent in 1983, and forty-three percent in 1984.[36] By 1984 civil RICO suits had been filed in nearly every area of the law, including securities law, both sides of labor union disputes, class action torts, and even domestic disputes.[37]

The ABA RICO Report revealed that out of 270 cases, twenty had been filed against attorneys and accountants, with another forty cases concerning securities brokers. The ABA RICO Report also noted that of the 270 cases, forty percent involved securities fraud and thirty-seven percent common law fraud in a commercial or business setting.[38]

Attorneys have been named as defendants in RICO litigation primarily for rendering routine professional advice in stock transactions or partnership offerings.[39] Some people believe it is aggressive plaintiff attorneys searching out new causes of action who are responsible for this onslaught of civil RICO claims. Senator Strom Thurmond, Chairman of the Senate Judiciary Committee stated, "[RICO has been] . . . perverted by fertile legal minds." While this writer would not hold plaintiff attorneys totally responsible, they have been under fire and many judges have not exactly welcomed the RICO plaintiff's creativity.

A number of judges have recognized the potential for abuse apparent within the statute. As a result courts have begun to judicially constrict the RICO provisions. Some courts read into the statute that the plaintiff must allege a separate and distinct "racketeering injury" aside from one of the predicate acts enumerated under the statute.[40] Other courts required that the defendant must have been convicted of a previous RICO violation.[41] Still other courts have held that neither the previous conviction or separate injury were requirements.[42] The inconsistent holdings created serious difficulties for defense attorneys trying to advise their clients on how to avoid or respond to civil RICO litigation.

The Litigation Section of the American Bar Association and the Corporation and Business Section combined their resources polling their memberships of about 100,000, seeking the opinions of RICO litigators on the expansion of the field and any legislative changes that should be sought.[43] The Bureau of National Affairs (BNA) began to publish a Civil RICO Reporter; Commerce Clearing House (CCH) published a RICO Business Disputes Guide; and the U.S. Department of Justice published a RICO manual for federal prosecutors.

In the midst of the confusion and controversy surrounding RICO and the split among the United States courts of appeals, the Supreme Court stepped in. The U.S. Supreme Court endorsed the civil RICO cause of action with its holding in *Sedima, S.P.R.L. v. Imrex Co.*[44] *Sedima* was decided by the Court to resolve conflicting decisions among the courts of appeals and to clarify the congressional intent of RICO. Sedima, a Belgian corporation, had entered into a joint venture with Imrex, an American corporation. Sedima took orders from Belgian companies for electronic components. Imrex would then obtain the components in America and ship them to Sedima in Europe. The two companies agreed to split the profits. As the venture proceeded Sedima became convinced that Imrex was presenting inflated bills and declaring nonexistent expenses, thus siphoning off the profits. Sedima filed suit in New York, alleging breach of contract, unjust enrichment and RICO violations based on mail and wire fraud.

The district court dismissed Sedima's RICO claims for failure to allege a distinct "racketeering type injury." The Court of Appeals for the Second Circuit affirmed based on the failure to allege a "racketeering injury," and additionally, found the complaint defective for not alleging that the defendants had already been convicted of a RICO violation.[45]

In a 5-4 ruling, the Supreme Court held that: "(1) there is no requirement that a plaintiff in a private action establish a "racketeering injury", as opposed to an injury resulting from the predicate acts of the statute; and (2) there is no requirement that a private action can proceed only against a defendant who has already been convicted of a predicate act or of a RICO violation."[46] The Court was not impressed by the concern that "legitimate" persons and businesses were being attacked under the statute.[47]

After determining Congress intended to reach "legitimate" and "illegitimate" enterprises when it passed RICO, Justice White said, "[legitimate businesses] . . . enjoy neither an inherent incapacity for criminal activity nor immunity from its consequences."[48] Justice White stated further,

It is true that private civil actions under the statute are being brought almost solely against such defendants, rather than against archetypal, intimidating mobster. Yet this defect – if defect it is – is inherent in the statute as written, and its correction must lie with Congress. It is not for the judiciary to eliminate the private action in situations where Congress has provided it. . . .[49]

The Supreme Court accepted the idea that Congress had created a "Frankenstein" in civil RICO saying ". . . RICO is evolving into something quite different from the original conception of its enactors."[50] The Court also charted a new course for the lower courts to take, suggesting that the appropriate judicial action is the development of a ". . . meaningful concept of pattern."[51] In *Sedima's* famous "footnote 14" the Court acknowledged that "the definition of a 'pattern of racketeering activity' differs from other provisions in section 1961 in that it states that a pattern 'requires at least two acts of racketeering activity.'"[52] The Court then implied that the two acts necessary to satisfy the statute may not be sufficient by stating ". . . in common parlance two of anything do not generally form a 'pattern.'"[53]

The distinct message from the Supreme Court, as per footnote fourteen, is "[t]he legislative history supports the view that two isolated acts of racketeering activity do not constitute a pattern."[54] Many of the legitimate businesses caught in the RICO web have been subject to pleadings that cite two isolated acts of racketeering stemming from one event or transaction.[55] With the holding in *Sedima*, the RICO defense counsel can use the pattern requirement as a new battleground.

While Congress has yet to act and the courts, after *Sedima*, are now beginning a slow process of adding judicial gloss to RICO, many states have taken it upon themselves to pass state RICO statutes. These state statutes, twenty-four to date, vary immensely in scope and applicability. Some of the statutes have eliminated a private right of action while others have added provisions for injunctive relief and punitive damages. The states that have enacted RICO statutes are Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Louisiana, Mississippi, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Oregon, Pennsylvania, Puerto Rico, Rhode Island, Utah, Washington, and Wisconsin.[56]

A RICO bill was introduced in the Maryland House of Delegates in January 1986, but was killed by the Maryland House Judiciary Committee.[57] The proposed bill had a purpose of increasing the Attorney General's ability to prosecute large scale criminals. It would have given the state the ability to seize all profits from activity defined as "racketeering" under the law.[58] Under the proposed bill, a pattern of racketeering would have been established by at least two occurrences of racketeering that have the same or similar circumstances within a five year period.[59] The Maryland proposal actually broadened the civil side of the statute hoping to restore any lost consumer and investor confidence as a result of the impact of the savings and loan crisis.[60]

The Maryland House Judiciary Committee thought the Maryland RICO bill was too broad and encompassing.[61] The committee declined the invitation from Maryland RICO sponsors to use the bill as a menu and choose the provisions it approved of. Instead the committee killed the RICO bill and declared that the committee would review the sections of the Maryland code that deal with forfeiture provisions to develop a bill that served the same purpose.[62]

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The sponsors of the Maryland RICO bill, that was modeled after federal RICO, had hoped that the committee would amend and revise the bill to conform to Maryland's needs. However this task is easier said than done. Aside from the attractive remedies and broad categories of activities prohibited, the federal RICO statute is laden with ambiguities. The most glaring ambiguities concern the procedural issues presented within the statute.

With respect to personal jurisidiction, section 1965 of the Act allows nationwide service of process wherever the person "resides, is found, has an agent, or transacts his affairs."[63] Some courts have held that with nationwide service of process, due process for the defendant requires only that a defendant have minimum contacts with the United States.[64] Conversely, some courts have held the RICO provision to mean due process for the defendant requires minimum contacts with the forum state.[65]

Section 1965(b) provides a "co-conspiracy" theory of venue, allowing assertion of venue over "other parties" if venue is already established over at least one defendant. This section has been used by courts to serve and join parties over whom venue would ordinarily be improper, if ". . . the ends of justice so require. . . ."[66] For actions brought by the United States, section 1965(c) allows witnesses to be served with subpoenas in any judicial district.

For criminal violations of RICO the burden of proof is beyond a reasonable doubt.[67] However, the civil RICO claim raises a question as to whether the ordinary civil burden of proof, a preponderance of the evidence, standard applies. Most courts have followed the preponderance of the evidence standard, but the ABA and others have suggested that in light of the heavy penalties for civil violations a higher burden of proof should be applicable.[68] The alternatives suggested by the ABA are adopting a beyond a reasonable doubt or clear and convincing evidence standard.[69] In dicta, the Supreme Court in *Sedima* indicated a "preponderance standard" seemed proper.[70]

RICO provides a five year statute of limitations on the criminal side, but there is no statute of limitations for civil actions provided in RICO. Courts have applied several approaches toward determining whether a civil RICO claim should be barred by the statute of limitations. Most courts look to the most closely analogous state statute of limitations with respect to the offense involved.[71] However, choice of law questions, concerning which state law to supply still cloud the issue. Other courts look to the pseudo statute of limitations in section 1961(5) that requires two acts of racketeering activity, ". . . one of which occurred after the effective date of this chapter and the last of which occurred within ten years . . . after the commission of a prior act of racketeering activity."[72]

Rule 9(b) of the Federal Rules of Civil Procedure has been called the RICO plaintiff's pitfall. Strict interpretations of the rule have put the burden on the plaintiff

to plead with particularity alleging time, place, specific content of fraud, the identity of persons making alleged misrepresentations and the consequences of the scheme. Some courts have given a more liberal construction to Rule 9(b).[73] An Illinois district court held a skeleton RICO complaint as sufficient that pleaded ". . . the bare bones of the fraudulent scheme. . . ."[74] The Illinois court also noted that the amended complaint "will never be accepted as a model pleading" under RICO.[75]

As far as discovery goes, one court noted "[a]mong other things, a defendant may be exposed to pretrial discovery of every aspect of its business for a ten-year period."[76]

Another consideration under RICO is collateral estoppel. A defendant in a criminal or administrative action must consider the legal effect of a judgment or settlement of those claims on subsequent civil RICO claims. Pursuant to section 1964(d) a final RICO judgment or decree in favor of the U.S. in a criminal proceeding ". . . shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States."[77] It is likely that where a successful government action is followed by a private RICO claim, the unsuccessful defendant will be subject to an offensive use of collateral estoppel. Thus, a defendant may be barred from relitigating the same issue in the private action.[78]

Collateral estoppel has been used defensively in RICO cases as well. Previous civil litigation has precluded relitigation of issues in a RICO case where an investor's RICO claim failed because it involved the same transactions and issues of fraud involved in a previous securities fraud claim that had been adjudicated adversely to the claimant.[79]

There are other questions not resolved under RICO pertaining to equitable relief and arbitration. Section 1964(a) gives federal courts the authority to grant equitable relief, but Congress was silent with respect to private actions.[80] Section 1964(b) categorically empowers the Attorney General with the ability to obtain injunctive relief, but again Congress made no reference to private plaintiffs.[81]

There have been split decisions in RICO cases concerning securities and commodities fraud where there are arbitration clauses present in the contracts involved.[82] The recent judicial trend is to rule that RICO cases are arbitrable. In jurisdictions where the RICO cases are not arbitrable, courts are tending to stay litigation of the non-arbitrable claims for reasons of judicial economy pending the arbitration of the other claims that were asserted. In earlier decisions the courts reasoned that RICO claims could not be arbitrated because of the important federal interest in enforcing RICO.[83]

Congress is well aware that it is time for a change in RICO. There are currently several bills in the House and Senate.[84] The bills address a myriad of subjects including, requiring a prior criminal conviction of a predicate act, modifying the predicate acts requirement relating to mail and wire fraud, adding penalties for frivolous RICO claims, defining "pattern" more precisely, redefining "enterprise", adding a new substantive offense relating to organizing, financing, controlling or participating in a "criminal syndicate", changing the name of the act, providing a statute of limitations, applying a higher standard for burden of proof in civil actions, and providing equitable relief in private civil actions.[85]

Support for amendments to civil RICO has come from, inter alia, the ABA, the criminal defense bar, accountants, bankers, securities professionals, the Securities and Exchange Commission, the Senate Judiciary Committee, insurance companies and other businessmen. The opposition has been led by state attorney generals, public interest groups, district attorneys, state securities administrators, the FDIC, some of the original proponents of the bill, and until recently the Justice Department. As this article was being written the Justice Department reversed their position on RICO. Although the Justice Department was originally opposed to any amendments to the statute, their new position is in favor of amending the statute.[86]

At the request of Congressman John Conyers (D-Mich), Chairman of the House Judiciary Subcommittee on Criminal Justice, business coalitions and public interest groups held meetings and attended hearings in an effort to reach a compromise. As this article goes to press the House Judiciary Subcommittee on Criminal Justice passed a compromise bill that would amend RICO.[87]

The bill would change the name of the statute from "RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT" to "PATTERN OF ILLICIT ACTIVITY ACT". The terms "illicit" or "criminal" would be substituted in provisions of the act where "racketeering" now appears. Section 1964(c) which currently provides for a civil action with recovery of treble damages and the cost of the suit, including reasonable attorney's fee for any violation of section 1962 would be subject to the most changes.

The new section 1964(c) would have six provisions. Subsection (1) would only allow a civil action against an individual who knowingly violates section 1962 and limit the recovery to actual damages. Subsection (2) would allow the federal and state governments or any agency or corporation thereof to bring a civil action against an individual who knowingly violates section 1962 and recover treble damages for the injury the government sustained. Subsection (3) pertains to corporations, and provides corporate liability if an officer, director, partner, or employee knowingly violates the statute within the scope of his duties and was authorized by an executive officer or ratified by the governing board of the corporation. Furthermore, the conduct in violation of the statute must have been intended to benefit and did benefit the corporation materially. Subsection (4) provides a three year statute of limitations. Subsection (5) addresses actions alleging a predicate act based on fraud, providing that the plaintiff must establish the existence of fraud by clear and convincing evidence. Finally, subsection (6) instructs the court to award a prevailing plaintiff a reasonable attorney's fee.[88] The proposed legislation is still far from adoption and therefore the current civil RICO provisions, with the endorsement of the Supreme Court, prevail.

In this writer's opinion the current civil RICO provisions must be changed. Legitimate businesses were not the intended subjects of civil RICO prosecution and should accordingly be absent from the defense tables in civil RICO litigation. I realize that by proffering this position proponents of civil RICO, who would uphold the current provisions, might consider me a cold and callous individual, who would cavalierly disregard the rights of victimized consumers in the furtherance of the interests and profits of white collar criminals. However, the majority of legitimate businesses prosecuted under RICO are just that – legitimate businesses, not white collar criminals. Furthermore, victimized consumers have many remedies in the courtroom without resort to civil RICO. I agree with Justice Marshall's dissent in *Sedima*, where he declared, in light of the fact that "[o]nly 9% of all civil RICO cases have involved allegations of criminal activity normally associated with professional criminals. . . . The central purpose that Congress sought to promote through civil RICO is now a mere footnote."[89]

Ironically, as Congress contemplates changes to civil RICO provisions federal prosecutors in New York are beginning two of the most significant trials in the history of organized crime in the United States. In 1985 the Justice Department handed down an unprecedented series of indictments affecting seventeen of the

twenty-four Mafia families in the U.S.[90] The Justice Department is pursuing its cases against the five New York crime families under the criminal provisions of RICO. Justice Department officials confess to using the civil provisions of RICO only ten times against organized crime figures, but vow to follow up recent convictions with private civil suits.[91]

In *Sedima*, Justice Marshall's dissent described the majority's interpretation of the civil RICO provisions as revolutionizing private litigation, saying ". . . [the Court] validates the federalization of broad areas of state common law of frauds, and it approves the displacement of well established federal remedial provisions."[92] This writer feels that the civil RICO provisions have revolutionized private litigation, not as a result of the Supreme Court's holding in *Sedima*, but rather a result of the enactment of RICO in 1970.

The underlying purpose of the civil RICO provisions was to strip the Mafia of its profits and to stop organized crime from infiltrating legitimate businesses.[93] The Mafia earned at least 26 billion in 1985 and today literally controls many unions and labor intensive industries such as building construction, restaurants, transportation, and clothing.[94] Time magazine published figures estimating that "[o]ut of a formal oath–taking national Mafia membership of some 1,700, at least half belong to the five New York clans, each of which is larger and more effective than those in any other city."[95]

To this writer it seems the civil RICO plaintiff with a fully equipped arsenal of treble damages, criminal stigma, media exposure and recovery of attorneys fees is waging war in New York. However the battles are not being fought in Mafia territory, at the loading docks on the waterfront or in the garment district or at unfinished construction sites, instead somehow the civil RICO plaintiff missed the target completely and ended up on Wall Street.

Notes

[1]*Crocker Nat'l Bank v. Rockwell Int'l Corp.*, 555 F.Supp. 47 (N.D. Cal. 1982) (attorney participating in computer lease agreement).
[2]*Schacht v. Brown*, 711 F.2d 1343 (7th Cir. 1983) (accounting firm's advise to parent company resulted in subsidiary suffering losses).
[3]*Nordberg v. Lord, Day & Lord*, No. 84 Civ. 3045 (S.D.N.Y. Oct. 1, 1985).
[4]As defined by 18 U.S.C. § 1961(1) (1982).
[5]As defined by 18 U.S.C. § 1961(4) (1982).
[6]18 U.S.C. § 1961-1968 (1982).
[7]*Reingold v. Deloitte, Haskins & Sells*, 599 F. Supp. 1241, 1269 (S.D.N.Y. 1984); *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 741 F.2d 483, 487 n. 7. (2d Cir. 1984), *rev'd on other grounds*, 105 S.Ct. 3275 (1985).
[8]S. Rep. No. 617, 91st Cong., 1st Sess. 76 (1969).
[9]*Id.*
[10]U.S. Dept. of Justice, Nat'l Inst. of Justice, Reuter, Rubinstein & Wynn, Racketeering in Legitimate Industries: Two Case Studies at 5 (1983) [hereinafter cited as Justice Dept. Executive Summary].
[11]18 U.S.C. § 1964(c) (1982).
[12]Schellie, *Racketeer Influenced and Corrupt Organizations Act (RICO)*, 41 Bus. Law. 1023, 1023-1028 (1986).
[13]18 U.S.C. § 1961(1) (1982).
[14]18 U.S.C. § 1961(5) (1982).
[15]18 U.S.C. § 1964(c) (1982).
[16]Skadden, Arps, Slate, Meagher & Flom, *Guide to RICO* at 27 (BNA, Corporate Practice Series) (1986) [hereinafter cited as Guide to RICO] ("The expression 'garden-variety fraud' as used in RICO cases refers to 'fraudulent' conduct in the marketplace that, without reliance upon RICO, is regularly subjected to regulation pursuant to statutory schemes or traditional common law doctrines.").
[17]18 U.S.C. § 1341, 1343 (1982).
[18]J. McArthur & W. White, *Civil RICO After Sedima: The New Weapon Against Business Fraud*, 23 Hous. L. Rev. 749 (1986).
[19]*Id.*
[20]Stewart, *Supreme Court Report: Not the End of Civil RICO*, 71 A.B.A. J. 92, 98 (1985).
[21]Report of the Ad Hoc Civil RICO Task Force, 1985 A.B.A. Sec. Corp. Banking & Bus. L. Rep. [hereinafter cited as ABA RICO Report]; *American National Bank & Trust Co. v. Haroco, Inc.*, 105 S.Ct. 3291 (1985); *American Savings Assn. v. Sierra Federal Savings & Loan Assn.*, 586 F. Supp. 888 (D. Colo. 1984).
[22]741 F.2d 524 (2d Cir. 1984).
[23]*Id.* at 529.
[24]*Cf.* Civ. RICO Rep. (BNA) Vol. 1 No. 21, at 2 (Oct. 30, 1985).
[25]*Id.*
[26]*Hearings on RICO Amendments, Before Subcomm. on Criminal Justice of the House Judiciary*, 99th Cong. 2d Sess. (1986).
[27]*See*, Civ. RICO Rep. (BNA) Vol. 1 No. 21, at 2 (Oct. 30, 1985).
[28]*See generally*, ABA RICO Report; *see also, Sedima*, 105 S.Ct. 3295.
[29]105 S.Ct. 3295 (1985).
[30]*See*, Justice Dept. Executive Summary at 6,7.
[31]*Id.*
[32]*Id.*
[33]Civ. RICO Rep. (BNA) Vol. 1 No. 21, at 2 (Oct. 30, 1985).
[34]*Id.*
[35]Civ. RICO Rep. (BNA) Vol. 1 No. 41, at 5 (Mar. 26, 1986).
[36]ABA RICO Report at 55.
[37]*See*, RICO Business Disputes Guide (CCH) at 751, 752 (1985).
[38]ABA RICO Report at 30.
[39]J. Smith & T. Metzloff, *RICO and the Professionals*, 37 Mercer L. Rev. 629 (1986).
[40]*Bruns v. Ledbetter*, 583 F. Supp. 1050, 1056 (S.D. Cal. 1984).
[41]*Sedima v. Imrex Co.*, 741 F.2d 482 (2d Cir. 1984), *rev'd on other grounds*, 105 S.Ct. 3275 (1985).
[42]*Haroco v. American Nat'l Bank & Trust Co.*, 747 F.2d 384 (7th Cir. 1984).
[43]H. Brown, *RICO Repercussions: Sedima and Haroco*, 21 Cal. W. L. Rev. 244 (1985).
[44]105 S.Ct. 3275 (1985).
[45]*Id.*
[46]*Id.* at 3275.
[47]*Id.* at 3287.
[48]*Id.*
[49]*Id.*
[50]*Id.*
[51]*Id.* at 3285 n.14.
[52]*Id.*
[53]*Id.*
[54]*Id.*
[55]ABA RICO Report at 56.
[56]Guide to RICO at 29.
[57]H.B. 1558, Md. Ann. Code art. 27, 756-764 added.
[58]*Testimony of Del. Ida G. Ruben before the Judiciary Committee of the Maryland House of Delegates on H.B. 1558*, February 28, 1986.
[59]*Id.*
[60]*Id.*
[61]Telephone inquiry to the Maryland House of Delegates Judiciary Committee offices. (August 22, 1986).
[62]*Id.*
[63]18 U.S.C. § 1965(a) (1982).
[64]*Clement v. Pehar*, 575 F. Supp. 436, 438 (N.D. Ga. 1983).
[65]*Van Schaick v. Church of Scientology, Inc.*, 535 F. Supp. 1125, 1132 (D. Mass. 1982).
[66]*Farmer's Bank of Delaware v. Bell Mortgage Corp.*, 577 F. Supp. 34, 35 (D. Del. 1978).
[67]*U.S. v. Amato*, 367 F. Supp. 547, 548 (S.D. N.Y. 1973).
[68]ABA RICO Report at 378 n.610.
[69]*Id.*
[70]105 S.Ct. at 3282.
[71]*Gilbert v. Bagley*, [1983-1984 Transfer Binder] FED. SEC. L. REP. (CCH) 99,483 (M.D.N.C. Sept. 17, 1982); *Morley v. Cohen*, 610 F.Supp. 798, 807 (D. Md. 1985).
[72]18 U.S.C. § 1961(5) (1982).
[73]*See, Morley v. Cohen*, 610 F. Supp. 798, 814 (D. Md. 1985).
[74]*Pozen v. Marks*, No. 85 C 0051, slip op. (N.D. Ill. Feb. 26, 1986).
[75]*Id.*
[76]*Spencer Companies v. Agency Rent-a-Car, Inc.*, [1981-1982 Transfer Binder] FED. SEC. L. REP. (CCH) 98,361 at 92,217. (D. Mass. Nov. 17, 1981).
[77]18 U.S.C. § 1964(d) (1982).
[78]*Cook County v. Lynch*, 560 F.Supp. 136 (N.D. Ill., E. D. 1982).
[79]*Berns v. O'Dell*, 726 F.2d 409 (8th Cir. 1984).
[80]18 U.S.C. § 1964(a) (1982).
[81]18 U.S.C. § 1964(b) (1982).
[82]*Jacobson v. Merrill Lynch Pierce Fenner & Smith, Inc.*, 602 F.Supp. 867 (W. D. Pa. 1984) (nonarbitrable); *Greenblatt v. Drexel Burnham Lambert, Inc.*, 763 F.2d 1352 (11th Cir. 1985) (arbitrable).
[83]*S.A. Mineracao da Trindade-Samitri v. Utah International Inc.*, 745 F.2d 190 (2d Cir. 1984).
[84]A partial listing includes: H.R. 2943, 99th Cong., 1st Sess., 131 CONG. REC. H5442 (1985); H.R. 2517, 99th Cong., 1st Sess., 131 CONG. REC. H3263 (1985); H.R. 3985, 99th Cong., 1st Sess., 131 CONG. REC. H12578 (1985); S. 1521, 99th Cong., 1st Sess., 131 CONG. REC. S10285 (1985).
[85]*Id.*
[86]*Proposed amendments to civil RICO provisions*, 1985: *Hearings on H. R. 3985 Before the Subcomm. on Criminal Justice*, 99th Cong., 1st Sess. 131 (1985) (testimony of John Keeney, Deputy Assistant Attorney General, Department of Justice); Daily Record, Aug. 6, 1986, at 1, col. 1.
[87]An amendment in the nature of a substitute to H.R. 5391 offered by Representative Boucher of Virginia.
[88]*Id.*
[89]105 S.Ct. 3292, 3295 (1985).
[90]*Hitting the Mafia*, Time, September 29, 1986 at 19.
[91]*Id.* at 22.
[92]105 S.Ct. 3292, 3293 (1985).
[93]S. Rep. No. 617, 91st Cong., 1st Sess. 76 (1969).
[94]*Hitting the Mafia*, Time, September 29, 1986 at 22.
[95]*Id.* at 19.

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