

PUBLICATION UPDATE

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Civil RICO

Publication 527

Release 69

May 2023

HIGHLIGHTS

Recent Case Law

- Release 69 discusses numerous important new cases related to the RICO statute.

Recent developments discussed in Release 69 include:

In *Galloway v. Martorello*, in the question of venue and jurisdiction upon a RICO statutory provision, the court states that in order to be colorable, a RICO complaint must not be “implausible, insubstantial, or frivolous.” A complaint that states a RICO claim suffices, including because the Rule 12(b)(6) sufficiency standard is higher than that applicable to Rule 12(b)(2). See Chapter 6, *Instituting a Civil Rico Action*, ¶ 6.01[1].

In *Lateral Recovery LLC v. Capital Merchant Services, LLC*, in the issue of “unlawful debt” the court held that an alleged agreement to sell future receivables constituted a loan under

New York law, and therefore qualified as a debt for purposes of a RICO claim. See Chapter 7, *Pretrial Proceedings*, ¶ 7.02[7][a][viii].

In *White v. Symetra Assigned Benefits Service Company*, a district court concluded that class-wide reliance could be inferred from the nature of the relations between the parties in their negotiations for cashing structured settlements. The White opinion followed what it characterized as the precedent from four circuits (the Second, Fifth, Tenth, and Eleventh Circuits) to conclude “that a common sense inference of reliance applies to Defendants’ misrepresentations and omissions.” See Chapter 9, *Defenses*, ¶ 9.05[3][c].

In *Josephs v. Alberto Jose Marzan and Press Media Group*, the district court has interpreted the general grant of equitable authority in subsection 1964(a), when contrasted with the narrower language of subsection 1964(b) authorizing only the

government to seek equitable remedies pending litigation, as necessarily granting permanent equitable

remedies to private parties. See Chapter 10, *Remedies*, ¶ 10.03[1].

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