

PUBLICATION UPDATE

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Civil RICO

Publication 527

Release 70

October 2023

HIGHLIGHTS

Recent Case Law

- Release 70 discusses numerous important new cases related to the RICO statute.

Recent developments discussed in Release 70 include:

In *Bridge*, the Court held that first-party reliance is not an element of civil RICO claim, and that reliance did not become an element through the “backdoor” of proximate cause. Nonetheless, post-*Bridge* some courts still consider individual reliance an obstacle to class certification. See Chapter 6, *Instituting a Civil Rico Action*, ¶ 6.05[2].

In *Ahern Rentals, Inc. v. Equipmentshare.com, Inc.*, in the information and belief pleadings as “expressly contemplated by the Federal Rules of Civil Procedure,” the Eighth Circuit adopted what is classified as the prevailing standard for using in-

formation and belief pleadings “to satisfy *Twombly*’s plausibility requirement.” Citing authority from the First, Second, Third, Fifth, Seventh, and D.C. Circuit, the Eighth Circuit held that: “allegations pled on information and belief are not categorically insufficient to state a claim for relief where the proof supporting the allegation is within the sole possession and control of the defendant or where the belief is based on sufficient factual material that makes the inference of culpability plausible.” See Chapter 7, *Pretrial Proceedings*, ¶ 7.02[4].

In *Heck v. Humphrey*, the Supreme Court has generally held that litigants cannot challenge criminal convictions unless they have been invalidated on appeal or by some other means. Courts have extended this prohibition to bar the use of civil RICO claims to invalidate prior criminal convictions. See Chapter 9, *Defenses*, ¶ 9.08[6].

In *United Realty Advisors LP v. Verschleiser*, in discussion about RICO, like its antitrust precursors, provides for attorney fees without requiring a finding of prevailing party status (unlike the civil rights statutes), courts hold that any proven injury or nominal damages is sufficient to recover reasonable attorney's fees. Because of the mandatory nature of RICO fee awards, courts reject arguments based upon the Supreme Court holding in *Farrar v. Hobby* that nominal damages will not

support awards under civil rights discretionary fee provisions. Indeed, the Fifth Circuit has held that RICO fees are mandatory even in the absence of any damages. Attorney fee awards are asymmetrical—federal RICO only authorizes awards to plaintiffs. Some state RICO statutes, however, permit fee awards to prevailing defendants. The recovery of treble damages is not a defense against imposition of an additional statutory award. See Chapter 10, *Remedies*, ¶ 10.08[1].

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