

PUBLICATION UPDATE

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Civil RICO

Publication 527 Release 71

May 2024

HIGHLIGHTS

Recent Case Law

- Release 71 discusses numerous important new cases related to the RICO statute.

Recent developments discussed in Release 71 include:

The Second Circuit carefully analyzed whether a loss of employment, and related earning losses, can constitute a direct injury to “business or property” for purposes of prosecuting a RICO claim. In *Horn v. Medical Marijuana, Inc.*, the Second Circuit held that employment injury can qualify as business or property injury, and rejected the “antecedent-personal-injury bar” that some courts had adopted to bar RICO claims that are derived from prior personal injuries. See Chapter 6, *Instituting a Civil RICO Action*, ¶ 6.04[7].

In *United States ex rel. Bookwalter v. UPMC*, the court has summarized

the pleading mandated by Rule 9(b) as requiring “plaintiff to allege ‘all of the essential factual background that would accompany the first paragraph of any newspaper story—that is, the who, what, when, where, and how of the events at issue.’” See Chapter 7, *Pretrial Proceedings*, ¶ 7.02[2].

The Sixth Circuit examined *Rotella* in *Baltrusaitis v. UAW*, and clarified that it unambiguously eliminated the “injury and pattern discovery rule” in favor of the injury-discovery rule. Under the injury discovery rule, a RICO claim accrues when a plaintiff knows or should have known of their injury. The Sixth Circuit acknowledged that *Rotella* left open the possibility of an injury occurrence accrual rule, under which discovery of the injury would be irrelevant. See Chapter 9, *Defenses*, ¶ 9.01[5].

In *Shin Da Enterprises Inc. v. Yong*, a court granted a fee upon fee petition in a civil RICO case, noting that court had authorized fee on fee

awards. The court considered the reasonableness of such a fee based upon three factors: “(1) the proportion of the work spent by associates and

paralegals; (2) the length and complexity of the case; and (3) the quality of the petition itself.” *See* Chapter 10, *Remedies*, ¶ 10.08[2].

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