

PUBLICATION UPDATE

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Civil RICO

Publication 527

Release 68

October 2022

HIGHLIGHTS

Recent Case Law

- Release 68 discusses numerous important new cases related to the RICO statute.

Recent developments discussed in Release 68 include:

The Second Circuit has approved a section 1962(b) claim based on allegations that defendants plundered a probate estate in which the plaintiff was a beneficiary. In *D’Addario v. D’Addario*, a plaintiff alleged that she incurred legal expenses in responding to the executor’s control and maintenance of the probate estate through a pattern of racketeering activity. It was sufficient to allege that the executor “maintained” his position—and control of the estate—through the alleged scheme. See Chapter 3, *The Enterprise Element* ¶ 3.01 and Chapter 5, *Section 1962* ¶ 5.03.

In *Peters Broadcasting Engineering, Inc. v. 24 Capital, LLC*, the Sixth Circuit noted the thirty-year circuit split on this issue, and held that “subsection (b) of § 1965, rather than subsection (d), gives RICO its nationwide jurisdictional reach.” But the Sixth Circuit rejected the views of other forum contact courts that subsections (a) or (d) were jurisdictional provisions, characterizing subsection (a) instead as a venue provision. For jurisdictional authority, the Sixth Circuit looked outside of RICO to Rule 4(k) of the Federal Rules of Civil Procedure and the relevant state’s long-arm authority. See Chapter 6, *Instituting a Civil RICO Action* ¶ 6.02[2][a].

In *Dealers Supply Co. v. Cheil Indus., Inc.*, courts have been quick to reject pleadings in which multiple defendants are lumped together and in which no defendant can determine from the complaint which of the alleged representations it is specifically

charged with having made, nor the identity of the individual by whom and to whom the statements were given. *See* Chapter 7, *Pretrial Proceedings* ¶ 7.02[2].

Even courts which recognize the assignability of RICO claims require sufficient evidence of actual assignment. In *Mid-Town Surgical Center, LLP v. Humana Health Plan of Texas, Inc.*, for example, a district court scrutinized written assignments and concluded that none were legally

effective to assign any existing RICO claim. In general, assignments of RICO claims must be “express.” *See* Chapter 9, *Defenses* ¶ 9.11.

Fleetwood Services LLC v. Ram Capital Funding, LLC, points out that generally speaking, RICO damages should be “‘sufficient to place the plaintiff in the same financial position [it] would have occupied absent the illegal conduct.’” *See* Chapter 10, *Remedies* ¶ 10.04[3].

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