PUBLICATION UPDATE

Route to: ☐ _____ ☐ _____ ☐ _____ ☐ _____
☐ _____ ☐ _____ ☐ _____ ☐ _____

Civil RICO

Publication 527 Release 53 May 2015

HIGHLIGHTS

Recent Case Law

- Release 53 discusses numerous important new cases related to the RICO statute.

Recent developments discussed in Release 53 include:

In *Dart Cherokee Basin Operating Co. v. Owens*, ___ U.S. ___, 135 S. Ct. 547, 190 L. Ed. 2d 495 (2014), the Supreme Court clarified that when a state court case is removed from state court to federal court by notice pursuant to 28 U.S.C. § 1446(a), the notice of removal can simply assert a "plausible" basis for federal jurisdiction, and it need not provide evidentiary detail to support the existence of federal jurisdiction. Once jurisdiction is challenged in federal court, however, the burden falls on the removing defendant to establish federal jurisdiction by a preponderance of the evidence. *See* Chapter 6, *Instituting a Civil RICO Action*, ¶ 6.03[3].

In *Tymoshenko v. Firtash*, 2014 U.S. Dist. LEXIS 139266 (S.D.N.Y. Sept. 30, 2014), the district court applied a target analysis to hold that a RICO plaintiff failed to establish proximate cause. The court said that, to establish proximate causation, plaintiffs must plead that they were "the targets, competitors [or] intended victims" of a marketing scheme. *See* Chapter 6, *Instituting a Civil RICO Action*, ¶ 6.04[5][a][iii].

In *CGC Holding Co. v. Hutchens*, 773 F.3d 1076 (10th Cir. 2014), the Tenth Circuit held that while reliance is not an element of a fraud-based RICO claim, causation is an element, and in cases that arise from fraud, a plaintiff's ability to show a causal connection between the defendant's misrepresentation and his or her injury will be predicated on the plaintiff's alleged reliance on that misrepresentation. The Tenth Circuit went on to reject application of the securities law presumption of reliance (the "fraud on the market" doctrine) to RICO cases. *See* Chapter 6, *Instituting a Civil RICO Action*, ¶ 6.05[2].

In *Angermeir v. Cohen*, 14 F. Supp. 3d 134, 145 (S.D.N.Y. 2014), a district court refused to subject non-fraud predicate offense allegations such as extortion, and RICO conspiracy allegations, to the par-

ticularity requirement of Rule 9(b). Further, the *Angermeir* opinion followed precedent from other courts within the Second Circuit holding that some aspects of federal fraud claims, such as the mailing element of mail fraud, may not be subject to Rule 9(b). *See* Chapter 7, *Pretrial Proceedings*, ¶ 7.02[2].

In *Republic of Iraq v. ABB AG*, 768 F.3d 145 (2d Cir. 2014), the Second Circuit held that the common-law *in pari delicto* defense barred the Republic of Iraq from bringing civil RICO claims against associates of Saddam Hussein who allegedly defrauded Iraq out of monies from the United Nations Oil for Food Program. Because the diversion of monies was designed by the Saddam Hussein regime, the Second Circuit concluded that both elements of the defense were established—Iraq shared equal or greater responsibility for the RICO violations with the defendants, and recognizing the defense would not violate any policy underlying enforcement of RICO. *See* Chapter 9, *Defenses*, ¶ 9.06.

In *United Bhd. of Carpenters & Joiners of Am. v. Bldg. & Constr. Trades Dep't*, 770 F.3d 834 (9th Cir. 2014), the Ninth Circuit held that use of the fear of economic loss did not constitute extortion in a dispute by one labor organization claiming it was being pressured into accepting the unwanted services of the defendant labor organization. *See* Chapter 9, *Defenses*, ¶ 9.18.

In *Chesapeake Employers' Ins. Co. v. Eades*, 2015 U.S. Dist. LEXIS 197 (N.D. Ga. Jan. 5, 2015), a district court considered, but declined to accept, the defense that "benefit of the bargain" damages are unavailable under RICO. The court held that the plaintiff's loss of premium revenue was a sufficiently tangible injury to support a RICO claim, and the fact that an additional uncertain insurance risk was assumed did not diminish the concrete nature of the lost premiums. *See* Chapter 10, *Remedies* ¶ 10.04[1].

FILING INSTRUCTIONS

Civil RICO

Publication 527 Release 53 May 2015

Check As Done

- ☐ 1. Check the Title page in the front of your present Volume 1. It should indicate that your set is filed through Release Number 52. If the set is current, proceed with the filing of this release. If your set is not filed through Release Number 52, DO NOT file this release. Please call Customer Services at 1-800-833-9844 for assistance in bringing your set up to date.
- ☐ 2. This Release Number 53 contains only White Revision pages.
- ☐ 3. Circulate the "Publication Update" among those individuals interested in the contents of this release.

Check As Done	*Remove Old Pages Numbered*	*Insert New Pages Numbered*

For faster and easier filing, all references are to right-hand pages only.

VOLUME 1

Revision		
☐	Title page	Title page
☐	2-5 thru 2-7	2-5 thru 2-8.1
☐	2-33 thru 3-4.1	2-33 thru 3-4.1
☐	3-83 thru 3-85	3-83 thru 3-86.1
☐	4-7	4-7 thru 4-8.1
☐	4-26.1 thru 4-27	4-27 thru 4-28.1
☐	4-77 thru 4-78.1	4-77 thru 4-78.1
☐	5-46.1 thru 5-46.11	5-46.1 thru 5-46.13
☐	6-1	6-1 thru 6-2.1
☐	6-65 thru 6-72.1	6-65 thru 6-72.3
☐	6-90.9 thru 6-98.1	6-91 thru 6-98.9
☐	6-115	6-115 thru 6-116.1
☐	6-129	6-129 thru 6-130.1
☐	6-187	6-187 thru 6-188.1
☐	7-1 thru 7-9	7-1 thru 7-10.1
☐	7-27	7-27 thru 7-28.1
☐	7-30.10(1) thru 7-30.11	7-30.11 thru 7-30.12(1)
☐	9-5 thru 9-6.1	9-5 thru 9-6.1
☐	9-64.13 thru 9-64.17	9-64.13 thru 9-64.19
☐	9-93 thru 9-94.1	9-93 thru 9-94.1
☐	9-100.6(1) thru 9-100.11	9-100.7 thru 9-100.13
☐	9-112.1 thru 9-113	9-113 thru 9-114.13
☐	10-21 thru 10-28.3	10-21 thru 10-28.3
☐	TC-1 thru I-25	TC-1 thru I-25

FILE IN THE FRONT OF THE FIRST VOLUME
OF YOUR SET

To order missing pages log on to our self service center, www.lexisnexis.com/printcdsc or call Customer Services at 1 (800) 833-9844 and have the following information ready:

(1) the publication title;
(2) specific volume, chapter and page numbers; and
(3) your name, phone number, and Matthew Bender account number.

Please recycle removed pages.

MISSING FILING INSTRUCTIONS?
FIND THEM AT www.lexisnexis.com/printcdsc

Use the search tool provided to find and download missing filing instructions, or sign on to the Print & CD Service Center to order missing pages or replacement materials. Visit us soon to see what else the Print & CD Service Center can do for you!

www.lexis.com

Publication 527, Release 53, May 2015