

PUBLICATION UPDATE

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Civil RICO

Publication 527 Release 54

October 2015

HIGHLIGHTS

Recent Case Law

- Release 54 discusses numerous important new cases related to the RICO statute.

Recent developments discussed in Release 54 include:

In *Burgese v. Starwood Hotels & Resorts Worldwide, Inc.*, 2015 U.S. Dist. LEXIS 48707 (D.N.J. Apr. 14, 2015), a district court rejected a contention that a plaintiff who had invoked Florida’s civil RICO statute to bring suit over being assaulted by alleged prostitutes whose activities were being promoted by a hotel lacked a sufficient injury to bring a Florida RICO claim. The court held that the plain language of Florida’s civil RICO statute, Fla. Stat. § 722.104, does not restrict injuries to business or property injuries, thereby permitting claims based upon personal injuries. See Chapter 6, *Instituting a Civil RICO Action*, ¶ 6.04[5][b].

In *In re Celexa & Lexapro Marketing & Sales Practices Litigation*, 2015 U.S. Dist. LEXIS 77698 (D. Mass. June 15, 2015), a

district court confronted the issue whether consumer RICO plaintiffs would be held to the same accrual date for RICO injuries from an allegedly ineffective teen depression drug as the court had previously determined applied to the third-party payors (TPP) for this drug treatment. The drug manufacturer contended that the claims of the consumer RICO plaintiffs should accrue no later than the date the court had previously used for TPPs—the date of the filing of a nationwide class action by TPPs following the unsealing of a government qui tam action. In rejecting this contention for purposes of a motion to dismiss, the court held that consumers are less sophisticated than TPPs regarding pharmaceuticals. The court declined to extend its ruling as to the TPP actual date to the consumer plaintiffs. See Chapter 9, *Defenses*, ¶ 9.01[5][b][vi].

In *Iqbal v. Patel*, 780 F.3d 728, 730 (7th Cir. 2015), the Seventh Circuit held that, “if a plaintiff contends that out-of-court events have caused injury that the state judiciary failed to detect and repair, then a district court has jurisdiction—but only to the extent of dealing with that injury.” See Chap-

ter 9, *Defenses*, ¶ 9.08[4].

In *United States v. Philip Morris USA Inc.*, 786 F.3d 1014 (D.C. Cir. 2015), the D.C. Circuit confronted a defense challenge to the language of a trial court’s injunction requiring the defendant tobacco companies to make public admissions as to their prior deceptive conduct. The D.C. Circuit reaffirmed its prior opinion upholding the authority of the district court to order corrective statements that would prevent and restrain future violations by the defendants as the law of the case, binding on the panel, and the subject of prior defense waivers as to the topics addressed. However, the D.C. Circuit held that the new corrective language required by the trial court—requiring disclosures that a federal court had ruled the defendants had deliberately deceived the American public—went beyond the trial court’s authority to prevent and restrain future RICO violations. While acknowledging that compelling disclosure as to the defendants’ prior misconduct might have a general deterrent effect, the D.C. Circuit held that general deterrence is not a

permissible basis for a RICO injunction, which must instead be limited to preventing future violations. *See* Chapter 10, *Remedies* ¶ 10.02.

In *Mayfield v. Asta Funding Group*, 2015 U.S. Dist. LEXIS 43236 (S.D.N.Y. Mar. 31, 2015), a district court rejected a motion to dismiss the class claims of consumers who had been victims of false lawsuits and debt collection activities by a debt-buying company that allegedly purchased the delinquent customer debts of AT& T Wireless and then filed state lawsuits using “sewer service” to secure default judgments. The district court noted that the Second Circuit had upheld criminal RICO convictions for fraudulent pleadings, and “given this precedent, the Court decline[d] to fashion a judge-made exception to RICO liability for litigation activities.” Other courts agree that fraudulent litigation activity can be the subject of a RICO claim and that legal and other costs associated with litigation can be the subject of damages under RICO. *See* Chapter 10, *Remedies* ¶ 10.04[2].

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