

## PUBLICATION UPDATE

Route to:  \_\_\_\_\_  \_\_\_\_\_  \_\_\_\_\_  \_\_\_\_\_  
 \_\_\_\_\_  \_\_\_\_\_  \_\_\_\_\_  \_\_\_\_\_

---

# Civil RICO

Publication 527 Release 55

May 2016

## HIGHLIGHTS

### Recent Case Law

- Release 55 discusses numerous important new cases related to the RICO statute.

*Recent developments discussed in Release 55 include:*

In *Reyes v. Netdeposit, LLC*, 802 F.3d 469 (3d Cir. 2015), a well analyzed decision, the Third Circuit vacated an order denying class certification for a RICO action against defendants who allegedly conspired to conduct a fraudulent telemarketing scheme that caused unauthorized debits from bank accounts owned by the proposed class. The court ruled that a RICO claim could be certified under a “complete sham” theory, whereby the defendant’s fraudulent practices justified a finding of common injury by showing a “sham enterprise.” Under the “complete sham” theory, the reviewing court can focus its analysis of Federal Rule of Civil Procedure 23(b)(3)’s “predominance” requirement on the defendants’ conduct as a whole in order to find proof of elements that normally require

evidence about each plaintiff. The causation element of fraud can be satisfied through circumstantial evidence showing common damages on a class-wide basis. See Chapter 4, *The Pattern Element*, ¶ 4.04[4]; Chapter 6, *Instituting a Civil RICO Action*, ¶ 6.05[2].

In *Torres v. SGE Management, LLC*, 805 F.3d 145 (5th Cir. 2015), the court concluded that a RICO plaintiff may attempt to establish proximate causation by proving reliance, directly or by a third party, on fraudulent representations. In these circumstances, however, some courts decline to infer reliance merely from the existence of a fraudulent scheme. See Chapter 6, *Instituting a Civil RICO Action*, ¶ 6.04[7][e].

In *United Energy Trading, LLC v. Pacific Gas & Electric*, 2015 U.S. Dist. LEXIS 158060 (N.D. Cal. Nov. 20, 2015), a district court denied a motion to dismiss a RICO claim under the primary jurisdiction doctrine, because the regulatory body at issue was a state, not federal, agency. See Chapter 9, *Defenses*, ¶ 9.10[3].

In *Rothstein v. Balboa Insurance Co.*, 794 F.3d 256 (2d Cir. 2015), the Second Circuit considered and applied both filed

rate rationales to dismiss homeowner civil RICO claims based on claims that their mortgage loan servicer allegedly received rebates from a hazard insurance provider, which were not reflected in the insurance rates approved by the state insurance regulators. The Second Circuit held that the filed rate doctrine barred suit, even though the plaintiff homeowners were not the direct customers of the defendant insurer. The Second Circuit held that the violation of the nondiscrimination principle alone—that an award of damages would create preferential rates—was enough to justify dismissal. *See* Chapter 9, *Defenses*, ¶ 9.10[4].

In *Woolsey v. J.P. Morgan Ventures Energy Corp.*, 2015 U.S. Dist. LEXIS 145120 (S.D. Cal. Oct. 26, 2015), the court considered an exception to the filed rate doctrine when the rate at issue has been suspended or set aside by the responsible regulatory body and concluded that this exception is inapplicable if the controlling statute prohibits the agency from retroactively changing rates. The district court dismissed a civil RICO complaint predicated upon an alleged scheme to manipulate electrical power rates. After noting that the Federal Energy Regulatory Commission had exclusive authority over the rates at issue, the court dismissed the RICO claim, because it was wholly dependent on the violation of the Federal Power Act, 16 U.S.C. §§ 791a et seq. *See* Chapter 9, *Defenses*, ¶ 9.14.

In *Martinez v. MXI Corp.*, 2015 U.S. Dist. LEXIS 165032 (D. Nev. Dec. 8, 2015), a district court confronted a motion to stay discovery in a pyramid scheme civil RICO case based on the argument that the RICO claim could have been a securities action. Turning to the plain language of the Private Securities Litigation Reform Act,

15 U.S.C. §§ 77a et seq. (PSLRA), authorizing stays in a “private action arising under this chapter,” the *Martinez* opinion denied a discovery stay, because the action was not brought under the PSLRA. *See* Chapter 9, *Defenses*, ¶ 9.17.

In *Puerto Rico Medical Emergency Group, Inc. v. Iglesia Episcopal Puertorriqueña, Inc.*, 118 F. Supp. 3d 447 (D.P.R. 2015), a district court denied a “groundless” motion to dismiss for failure to comply with a RICO standing order because the District Court for Puerto Rico does not have a standing order for RICO cases. Conversely, in *Home Orthopedics Corp. v. Rodriguez*, 781 F.3d 521 (1st Cir. 2015), another judge from the same district court dismissed a civil RICO case, in part based on a RICO Case Statement filed by the plaintiff at the order of the court, and this dismissal was subsequently sustained by the First Circuit. *See* Chapter 9, *Defenses*, App. 9A.

In *Allstate Insurance Co. v. Plambeck*, 802 F.3d 665 (5th Cir. 2015), the Fifth Circuit upheld a district court’s denial of prejudgment interest to a successful RICO plaintiff notwithstanding the Fifth Circuit’s strong presumption in favor of awarding prejudgment interest. The Fifth Circuit upheld the district court’s proportionate reduction of a fee award based on the ratio of insurance damage claims upon which the plaintiff had prevailed. While recognizing that the Supreme Court had, for civil rights cases, disapproved a mathematical approach comparing the total number of issues in the case with those actually prevailed upon, the court held that the trial court’s use of the proportion between the number of disputed claims and the success on those claims was not an abuse of discretion. *See* Chapter 10, *Remedies* ¶¶ 10.07, 10.08.

---

Matthew Bender provides continuing customer support for all its products:

- Editorial assistance—please consult the “Questions About This Publication” directory printed on the copyright page;
- Customer Service—missing pages, shipments, billing or other customer service matters (1-800-833-9844).
- Outside the United States and Canada, (518) 487-3000, or fax (518) 487-3584;
- Toll-free ordering (1-800-223-1940).



[www.lexis.com](http://www.lexis.com)

---

---

Copyright © 2016 Matthew Bender & Company, Inc., a member of the LexisNexis Group.  
Publication 527, Release 55, May 2016

LexisNexis, the knowledge burst logo, and Michie are trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.



## FILING INSTRUCTIONS

# Civil RICO

Publication 527 Release 55

May 2016

**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 54. If the set is current, proceed with the filing of this release. If your set is not filed through Release Number 54, 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 55 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

<input type="checkbox"/>	Title page. . . . .	Title page
<input type="checkbox"/>	2-1 thru 2-3. . . . .	2-1 thru 2-3
<input type="checkbox"/>	3-3 thru 3-4.1. . . . .	3-3 thru 3-4.1
<input type="checkbox"/>	4-35 . . . . .	4-35 thru 4-36.1
<input type="checkbox"/>	4-45 thru 4-46.7. . . . .	4-45 thru 4-46.7
<input type="checkbox"/>	4-75 . . . . .	4-75 thru 4-76.1
<input type="checkbox"/>	4-83 thru 4-84.1. . . . .	4-83 thru 4-84.1
<input type="checkbox"/>	5-31 thru 5-33 . . . . .	5-31 thru 5-34.1
<input type="checkbox"/>	5-41 thru 5-43 . . . . .	5-41 thru 5-44.1
<input type="checkbox"/>	6-77 thru 6-80.1. . . . .	6-77 thru 6-80.1
<input type="checkbox"/>	6-90.7 . . . . .	6-90.7 thru 6-90.9
<input type="checkbox"/>	6-157. . . . .	6-157 thru 6-158.1
<input type="checkbox"/>	6-169 thru 6-172.1 . . . . .	6-169 thru 6-172.1
<input type="checkbox"/>	6-182.1 thru 6-188.1. . . . .	6-183 thru 6-188.3
<input type="checkbox"/>	7-30.1 thru 7-30.3. . . . .	7-30.1 thru 7-30.4(1)
<input type="checkbox"/>	9-51 . . . . .	9-51 thru 9-52.1
<input type="checkbox"/>	9-98.1 thru 9-100.4(3). . . . .	9-99 thru 9-100.4(5)
<input type="checkbox"/>	9-105 thru 9-114.13 . . . . .	9-105 thru 9-114.13
<input type="checkbox"/>	10-39 thru 10-42.1 . . . . .	10-39 thru 10-42.1
<input type="checkbox"/>	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](http://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](http://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](http://www.lexis.com)

---

---

**Copyright © 2016 Matthew Bender & Company, Inc., a member of the LexisNexis Group.  
Publication 527, Release 55, May 2016**

LexisNexis, the knowledge burst logo, and Michie are trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.

