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# Civil RICO

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Publication 527    Release 56

October 2016

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## HIGHLIGHTS

### Recent Case Law

- Release 56 discusses numerous important new cases related to the RICO statute.

*Recent developments discussed in Release 56 include:*

In *RJR Nabisco, Inc. v. European Community*, \_\_\_ U.S. \_\_\_, 136 S. Ct. 2090, 195 L. Ed. 2d 476 (June 20, 2016), the Court held that RICO criminal and civil cases prosecuted by the federal government can apply to extraterritorial conduct, but private civil RICO suits cannot, absent a domestic injury. See Chapter 6, *Instituting a Civil RICO Action*, ¶ 6.03[4].

In *United Energy Trading LLC v. Pacific Gas & Electric*, 2016 U.S. Dist. LEXIS 49888 (N.D. Cal. Apr. 13, 2016), the district court summarized three requirements for respondeat superior liability under RICO: (1) the employer must be distinct from the enterprise; (2) the employer must have benefitted from the employee's RICO violation; and (3) the employee's acts must have been committed within the course and

scope of employment. See Chapter 6, *Instituting a Civil RICO Action*, ¶ 6.04C.

In *Allstate Insurance Co. v. Benhamou*, 2016 U.S. Dist. LEXIS 72507 (S.D. Tex. June 2, 2016), the district court observed that, at least in the Fifth Circuit, a defendant must have some supervisory involvement in an enterprise in order to satisfy the conduct or participation requirement of 18 U.S.C. § 1962(c). See Chapter 7, *Pretrial Proceedings* ¶ 7.02[7][a][v].

In *Goldenstein v. Repossessors, Inc.*, 815 F.3d 142 (3rd Cir. 2016), a civil RICO claim by an automobile owner against the finance companies who repossessed his car based on failure to pay a \$1,000 car loan bearing 250% interest, the Third Circuit held that there was no legal distinction, for RICO purposes, between the collection of an unlawful debt and the collection of collateral for an unlawful debt. See Chapter 7, *Pretrial Proceedings* ¶ 7.02[7][a][viii].

In *Frydman v. Verschleiser*, 2016 U.S. Dist. LEXIS 37626 (S.D.N.Y. Mar. 22, 2016), the district court declined to abstain in a federal RICO suit because the pending state litigation was not "parallel," despite involving similar parties, because the na-

ture of the federal claims rendered them not parallel with those at issue in the state court proceeding, and they also involved different defendants. *See* Chapter 9, *Defenses*, ¶ 9.10[2].

New ¶ 9.20 discusses the defense of *forum non conveniens*. For RICO purposes, the majority view is that this defense is available in RICO actions notwithstanding that similar remedies are not available in the alternative foreign forum. *See* Chapter 9, *Defenses*, ¶ 9.20.

In *Uthe Technology Corp. v. Aetrium*, 808 F.3d 755 (9th Cir. 2015), the Ninth Circuit explained that application of the single satisfaction principle in RICO treble damage litigation presents a question of ordering—which principle applies first—and depending on the order in which the

two rules are applied, the one satisfaction rule could either offset part of the treble RICO damages or fully extinguish the claim to those damages. *See* Chapter 10, *Remedies* ¶ 10.04[4].

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