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 _____ _____ _____ _____

CIVIL RICO

Publication 527 Release 58 September 2017

HIGHLIGHTS

Recent Case Law

- Release 58 discusses numerous important new cases related to the RICO statute.

Recent developments discussed in Release 58 include:

In *Safe Streets Alliance v. Hickenlooper*, 859 F.3d 865 (10th Cir. 2017), the Tenth Circuit reversed a district court decision dismissing a civil RICO complaint brought by two Colorado landowners against a host of individuals and entities affiliated with a marijuana growing enterprise adjacent to their property. The court of appeals held that these allegations plausibly stated the requisite pattern of predicate acts that presented a threat of continuing activity and that the pattern of illegal acts was the direct cause of the plausibly alleged injuries to their property. *See* Chapter 4, *The Pattern Element*, ¶ 4.04[5]; Chapter 6, *Instituting a Civil RICO Action*, ¶¶ 6.03[1], 6.04[5][b].

In *Blevins v. Aksut*, 849 F.3d 1016 (11th Cir. 2017), the Eleventh Circuit held that, in the context of unnecessary medical treat-

ment, payment for the treatment may constitute injury to property under RICO. Because the claim was for payments, it was not for expenses that flowed from personal injuries and stated a claim for RICO injury. *See* Chapter 6, *Instituting a Civil RICO Action*, ¶ 6.04[5][b].

In *Mortgage Resolution Servicing, LLC v. JPMorgan Chase Bank, N.A.*, 2017 U.S. Dist. LEXIS 20081 (S.D.N.Y. Feb. 13, 2017), a district court rejected a RICO enterprise pleading on the ground that it alleged neither open-ended continuity nor close-ended continuity. *See* Chapter 7, *Pretrial Proceedings*, ¶ 7.02[7][b][i].

In *Almanza v. United Airlines*, 851 F.3d 1060 (11th Cir. 2017), the Eleventh Circuit dismissed a RICO complaint by airline passengers over an industry-wide practice of imposing false airline charges on the basis that the complaint failed to allege sufficient relationships among defendants as associates and lacked the structure needed to be legally cognizable. *See* Chapter 7, *Pretrial Proceedings*, ¶ 7.02[7][b].

In *Inge v. McClelland*, 2017 U.S. Dist. LEXIS 98386 (D.N.M. June 26, 2017), a district court held that the “wrongful con-

duct” defense is an affirmative defense and applied it to dismiss a RICO claim. The plaintiff in *Inge* obtained opioids from the defendant pharmacist, but because their acquisition by the plaintiff was illegal, the court dismissed his RICO and other claims under the wrongful conduct defense. *See* Chapter 9, *Defenses*, ¶ 9.06.

Federal courts have recognized an exception to federal subject matters for suits seeking forms of relief associated with

domestic relations or probate cases. This exception is based on the notion that state courts have traditionally handled such matters and that federal court jurisdiction over such disputes was not included in Article III. In *Dillon v. Alan H. Shifrin & Assocs., LLC*, 2017 U.S. Dist. LEXIS 87944 (N.D. Ill. June 8, 2017), this exception was applied to deny jurisdiction over civil RICO claims. *See* Chapter 9, *Defenses*, ¶ 9.08[5].

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Publication 527 Release 58

September 2017

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<input type="checkbox"/>	Title page thru ix	Title page thru ix
<input type="checkbox"/>	2-7 thru 2-11	2-7 thru 2-12.1
<input type="checkbox"/>	2-33 thru 2-34.1.	2-33 thru 2-34.1
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<input type="checkbox"/>	3-30.1 thru 3-30.8(1)	3-30.1 thru 3-30.7
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<input type="checkbox"/>	5-31 thru 5-37	5-31 thru 5-38.1
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<input type="checkbox"/>	6-2.1 thru 6-3.	6-3 thru 6-4.1
<input type="checkbox"/>	6-65 thru 6-67	6-65 thru 6-68.1
<input type="checkbox"/>	6-138.1 thru 6-138.9.	6-138.1 thru 6-138.11
<input type="checkbox"/>	6-146.1 thru 6-146.5.	6-146.1 thru 6-146.5
<input type="checkbox"/>	6-183.	6-183 thru 6-184.1
<input type="checkbox"/>	7-7 thru 7-10.1	7-7 thru 7-10.3
<input type="checkbox"/>	7-30.1 thru 7-30.4(1)	7-30.1 thru 7-30.4(1)
<input type="checkbox"/>	7-30.20(7) thru 7-30.20(15)	7-30.20(7) thru 7-30.20(17)
<input type="checkbox"/>	8-17 thru 9-6.1	8-17 thru 9-6.3
<input type="checkbox"/>	9-27	9-27 thru 9-28.1
<input type="checkbox"/>	9-64.17 thru 9-64.19.	9-64.17 thru 9-64.19
<input type="checkbox"/>	9-83 thru 9-100.13	9-83 thru 9-100.19
<input type="checkbox"/>	TC-1 thru I-25	TC-1 thru I-25

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