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CIVIL RICO

Publication 527 Release 60 October 2018

HIGHLIGHTS

Recent Case Law

- Release 60 discusses numerous important new cases related to the RICO statute.

Recent developments discussed in Release 60 include:

In *Hengle v. Curry*, 2018 U.S. Dist. LEXIS 100939 (E.D. Va. June 15, 2018), the district court held that 18 U.S.C. § 1965(a) was not relevant to a determination of which court division within a district venue would lie. Federal Rule of Civil Procedure 4(k)(1)(C), when combined with 18 U.S.C. § 1965(d), authorizes the exercise of federal court personal jurisdiction anywhere in the United States, as long as effective service is accomplished and due process is not offended. *See* Chapter 6, *Instituting a Civil RICO Action*, ¶¶ 6.01[2][a], 6.02[1].

In *Lawson v. Rubin*, 2018 U.S. Dist. LEXIS 71582 (E.D.N.Y. Apr. 29, 2018), the district court found pendent venue applicable in a suit against defendants associated with defendant Rubin for inducing

the plaintiffs to come to New York to be sexually assaulted. While normally venue must be established as to each claim, pendent venue is an exception, and the court held that if venue is proper for any federal claim, it is also the proper venue for any other claims arising out of the same series of events. *See* Chapter 6, *Instituting a Civil RICO Action*, ¶ 6.01[6].

In *Harvest Natural Resources, Inc. v. Garza*, 2018 U.S. Dist. LEXIS 80315 (S.D. Tex. May 11, 2018), the district court held that 18 U.S.C. § 1965(b) authorizes nationwide service of process for RICO claims and authorized jurisdictional discovery to permit the plaintiff to determine whether the defendant had minimum contacts with the United States. *See* Chapter 6, *Instituting a Civil RICO Action*, ¶ 6.02[1].

In *Ocoro v. Montelongo*, 2018 U.S. Dist. LEXIS 102028 (W.D. Tex. June 19, 2018), the court offered a nuanced interpretation of Federal Rule of Civil Procedure 9(b)'s applicability to a stolen goods predicate offense (18 U.S.C. § 2314), recognizing that it does not on its face trigger either fraud or Rule 9(b), but where the goods are allegedly the proceeds of a scheme to

defraud, Rule 9(b) applies. Under this rationale, some courts have viewed Rule 9(b) as a threshold barrier preventing plaintiffs from filing baseless complaints and then attempting to discover unknown wrongs. Courts endorsing this interpretation require that the particular circumstances of fraud be laid out before access to the discovery process is granted. *See* Chapter 7, *Pretrial Proceedings*, ¶ 7.02[2].

In *Planned Parenthood Federation of America, Inc. v. Center for Medical Progress*, 2018 U.S. Dist. LEXIS 91336 (N.D. Cal. May 31, 2018), a federal magistrate confronted the RICO claim of Planned Parenthood against a collection of defendants accused of promoting false and doctored videos taken during undercover investigations into the practices of Planned Parenthood. The defendants opposed discovery into their undercover operations, donors, and communications regarding their publications, on the ground that the RICO claims were limited to the pled predicate offenses of using false identifications. The magistrate disagreed, concluding instead that RICO's conspiracy, enterprise, pattern, and causation allegations render the range of relevant discovery far broader than information relevant only to these alleged predicate acts. *See* Chapter 7, *Pretrial Proceedings*, ¶ 7.03[1].

In *New York City District Council of Carpenters Pension Fund v. Forde*, 2018 U.S. Dist. LEXIS 92145 (S.D.N.Y. June 1, 2018), the court addressed a limitations defense raised on summary judgment by a convicted union official who argued that a codefendant's earlier conviction triggered inquiry notice. Recognizing that either actual or inquiry notice is sufficient for ac-

tual, the court observed that the determination whether a plaintiff was on inquiry notice need not be left to the factfinder, but may be a legal conclusion when uncontroverted evidence clearly establishes when the plaintiff should have discovered the fraudulent conduct. *See* Chapter 9, *Defenses*, ¶ 9.01[5][b][vi].

In *Baek v. Clausen*, 886 F.3d 652 (7th Cir. 2018), the Seventh Circuit upheld the trial court's discretionary decision to stay a federal RICO action—despite its failure to analyze ten relevant non-exclusive factors—because it was done to permit the perfection of state court appeals from a state court judgment entered shortly after the commencement of the federal action. *See* Chapter 9, *Defenses*, ¶ 9.10[2].

In *Langan v. Smith*, 2018 U.S. Dist. LEXIS 90491 (D. Mass. May 31, 2018), the district court concluded that federal courts have overwhelmingly rejected attempts to base extortion claims on litigation conduct, even when abusive or undertaken in bad faith, ascribing this result to the recognition that casting abusive litigation as a RICO claim would promote further litigation against unsuccessful litigants. *See* Chapter 9, *Defenses*, ¶ 9.18.

In *Allstate Insurance Co. v. Shah*, 2018 U.S. Dist. LEXIS 101952 (D. Nev. June 18, 2018), a civil RICO case based on alleged fraudulent expert testimony, the district court rejected federal immunity by distinguishing between the witness's testimony versus his participation in the alleged fabrication of evidence. *See* Chapter 9, *Defenses*, ¶ 9.19.

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