PUBLICATION UPDATE

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Civil RICO

Publication 527 Release 65 April 2021

HIGHLIGHTS

Recent Case Law

- Release 65 discusses numerous important new cases related to the RICO statute.

Recent developments discussed in Release 65 include:

In *Snowden v. Lexmark Int'l*, the 6th Circuit held that the addition of copyright to RICO's list of predicate offenses could not be given retroactive effect in either criminal or civil RICO prosecutions. Other courts have responded to this statutory mission creep by limiting new predicates to the stated objectives for their addition. *See* Chapter 6, *Instituting a Civil RICO Action*, ¶ 6.00.

In *Hemi Group, LLC v. City of New York*, the Supreme Court held that RICO's proximate cause element could not be satisfied solely by reference to the foreseeability of injury, reaffirming once again the centrality of the issue of direct injury. The Supreme Court has repeatedly emphasized the importance of a direct relationship between defendant's wrongful conduct and the RICO injury suffered by the plaintiff. This requirement is often referred to as a "direct relationship" requirement for proximate cause. *See* Chapter 6, *Instituting a Civil RICO Action*, ¶ 6.04[3].

In *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, the Supreme Court cited its RICO proximate cause standard and extended it to issues of causation involving other federal statutory claims. *See* Chapter 6, *Instituting a Civil RICO Action*, ¶ 6.04[3].

In *Torres v. S.G.E. Management*, LLC, the Fifth Circuit extended its prior post-Bridge precedent holding reliance was not a necessary element of a RICO claim to the issue of class certification. *See* Chapter 6, *Instituting a Civil RICO Action*, ¶ 6.05[2].

In *ASI, Inc. v. Aquawood, LLC*, a district court rejected a Rule 9(b) challenge to federal fraud predicates based upon the failure to plead reliance, and it did so because reliance is not an essential element of federal fraud. *See* Chapter 7, *Pretrial Proceedings*, ¶ 7.02.

In *Cisneros v. Petland, Inc.*, the Eleventh Circuit applied the particularly in pleading requirement to reject mail fraud claims that "arise from a single transaction." Cisneros held that a single transaction can give rise to only one mail fraud offense, regardless of the number of mailings involved, and rejected a RICO complaint identifying only one transaction. *See* Chapter 7, *Pretrial Proceedings*, ¶ 7.02[5].

In *Muskegan Hotels, LLC v. Patel*, the Seventh Circuit dismissed a RICO complaint against a law firm, holding that a "complaint that does no more than allege that a law firm performed legal work for an enterprise fails to state a violation under § 1962(c)," or § 1962(d). *See* Chapter 7, *Pretrial Proceedings*, ¶ 7.02[7][a][v].

In *PacifiCare Health Systems, Inc. v. Book*, the Supreme Court held that RICO claims are subject to arbitration notwithstanding an arbitration provision's ban on punitive damages, concluding that the effect of such a limitation was for the arbitrator to decide in the first instance. *See* Chapter 9, *Defenses*, ¶ 9.04[1].

In *Janvey v. Alguire*, the Fifth Circuit distinguished between two types of equitable estoppel: (i) the intertwined claims theory that "governs motions to compel arbitration when a signatory-plaintiff brings an action against a nonsignatory-defendant asserting claims dependent on a contract that includes an arbitration agreement that the defendant did not sign;" and (ii) the direct benefits theory which "prevents a nonsignatory from knowingly exploiting an agreement containing the arbitration clause." Concurring Judge Higginbotham would have gone one step farther to hold that "arbitration agreements may be rejected when they are instruments of a criminal enterprise." *See* Chapter 9, *Defenses*, ¶ 9.04[1].

In *Henry Schein, Inc. v. Archer and White Sales, Inc.*, the Supreme Court held that such agreements must be enforced even if federal courts determine that the argument for arbitration is "wholly groundless." *See* Chapter 9, Defenses, ¶ 9.04[1].

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Publication 527, Release 65, April 2021

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Publication 527 Release 65 April 2021

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VOLUME 1

Revision		
☐	Title page.	Title page
☐	6-4.1 thru 6-4.3	6-4.1 thru 6-4.5
☐	6-29 thru 6-35	6-29 thru 6-36.1
☐	6-57 thru 6-61	6-57 thru 6-62.1
☐	6-90.5	6-90.5 thru 6-90.6(1)
☐	6-183 thru 6-190.7	6-183 thru 6-190.9
☐	7-3 thru 7-19	7-3 thru 7-20.3
☐	7-24.5 thru 7-30.8(1)	7-25 thru 7-30.8(5)
☐	7-30.15 thru 7-30.20(13).	7-30.15 thru 7-30.20(14)(e)
☐	7-30.23.	7-30.23
☐	7-30.30(1) thru 7-30.32(6)(a).	7-30.31 thru 7-30.32(6)(m)
☐	8-1 thru 8-5.	8-1 thru 8-5
☐	9-1 thru 9-2.1.	9-1 thru 9-2.1
☐	9-41 thru 9-50.1.	9-41 thru 9-50.11
☐	9-61	9-61 thru 9-62.1
☐	9-81 thru 9-84.1.	9-81 thru 9-84.3
☐	9-99 thru 9-100.2(1).	9-99 thru 9-100.2(3)
☐	9-114.2(1) thru 9-114.15	9-114.3 thru 9-114.17
☐	10-1 thru 10-7	10-1 thru 10-8.1
☐	10-42.1.	10-42.1 thru 10-42.2(1)
☐	TC-1 thru I-25	TC-1 thru I-25

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