PUBLICATION UPDATE

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Civil RICO

Publication 527 Release 66 October 2021

HIGHLIGHTS

Recent Case Law

- Release 66 discusses numerous important new cases related to the RICO statute.
- Added new ¶ 9.19, Money Laundering Defenses to the federal criminal code in 1986 as part of the Anti-Drug Abuse Act of 1986.

Recent developments discussed in Release 66 include:

In *Bank of America v. City of Miami, FL,* the Court squarely rejected foreseeability as sufficient to establish proximate cause for a Fair Housing Act statutory claim. More important, the Bank of America opinion cited as authority for concluding the foreseeability is insufficient to establish proximate cause both its Lexmark opinion, and its civil RICO proximate cause opinions. *See* Chapter 6, *Instituting a Civil RICO Action*, 6.04[3C].

In *Muskegan Hotels, LLC v. Patel*, the Seventh Circuit held that "simply performing services for an enterprise, even with knowledge of the enterprise's illicit nature, is not enough to subject an individual to RICO liability under § 1962(c)." Specifically, the *Muskegan* Hotels opinion held that: (i) "the operation-or-management requirement is not met through the mere provision of professional services to the alleged racketeering enterprise"; and (ii) allegations "that a law firm provided legal representation to an enterprise do not, without more, suffice to state a RICO conspiracy." *See* Chapter 7, *Pretrial Proceedings*, ¶ 7.02[7][a][5].

In *United States v. Cauble*, the Fifth Circuit affirmed a RICO conviction even though the trial court had not given an instruction on juror unanimity as to the predicate offenses. *See* Chapter 8, *Trial and Appeal of a Civil RICO Action*, ¶ 8.04.

In *United States v. Gotti*, the Sec-

ond Circuit held that jury unanimity is not required as to specific RICO predicates, but its reasoning may simply be a recognition that a jury may hang on specific predicates, but have to unanimously agree to convict on specific predicates. *See* Chapter 8, *Trial and Appeal of a Civil RICO Action*, ¶ 8.04.

In *Alvarez-Mauras v. Banco Popular of Puerto Rico*, the First Circuit claimed that it "already noted our adoption of the injury discovery accrual rule for civil RICO violations" seven years before *Rotella*. "[D]iscovery of the injury, not discovery of the other elements of a claim, is what starts the clock." Under the First Circuit's precedent, "the meter begins to tick when the plaintiff discovers the injury, even if the plaintiff is unaware of the precise acts of racketeering that caused the injury." *See* Chapter 9, *Defenses*, ¶ 9.01[5][b][iv].

In *Barton v. Barbour*, the Supreme Court held that a suit against a court-appointed receiver cannot be filed absent leave of the appointing court. This defense is considered a jurisdictional defense—not court can assert jurisdiction without leave of the appointing court. The Barton doctrine has been extended to bankruptcy trustees and their agents, or their "functional equivalents." *See* Chapter 9, *Defenses*, ¶ 9.03.

In a subsequent Second Circuit opinion in *Chevron v. Donziger*, the Second Circuit reversed a contempt finding based upon an alleged violation of the RICO injunction. Without backing away from approving the issuance of a RICO injunction that created a constructive trust on the proceeds of the Ecuadorian litigation, the Second Circuit vacated the trial court's subsequent contempt findings, ruling that conflicts and ambiguities between the injunction and the court's subsequent stay denial precluded a contempt finding. *See* Chapter 10, *Remedies*, ¶ 10.03[1].

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Publication 527, Release 66, October 2021

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Civil RICO

Publication 527 Release 66 October 2021

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