

## *RICO; “PROSECUTOR’S POWERHOUSE AND A PLAINTIFF’S DREAM”*

- As written by Congress, it’s an easy statute to understand
- Note p. 116: RICO “is to be liberally construed to effectuate its remedial purposes.”
- However, as interpreted by the courts, it’s a hard statute to use for plaintiffs

# *LET'S CONNECT THE DOTS...*

- Start with section 1961 (see p. 118-19)
- There you find “racketeering activity” defined very liberally
- Mail and wire fraud are predicate acts
- So are many, many other things, like murder, arson, bankruptcy fraud, you name it

# *A “PATTERN,” UNDER THE STATUTE IS EASY TO FIND*

- Two predicate acts within 10 years of each other, one of which occurred after RICO was enacted (1970)
- The upshot is that nearly any substantial amount of criminal activity meets the pattern requirement

# *THE “ENTERPRISE” REQUIREMENT*

- See p. 119; the enterprise must affect interstate or foreign commerce
- Easy to find an enterprise
- Companies, partnerships, “groups associated in fact although not a legal entity”
- Why this last form of enterprise?
- Mafia; Al Qaeda, a drug cartel

## *SECTION 1962 see pp. 120-21*

- (a) Cannot use or invest money derived from the pattern
- (b) Cannot use a pattern to acquire or maintain control over an enterprise
- (c) Cannot conduct the enterprise's affairs through a pattern
- (d) Cannot conspire to do (a)-(c)

# *IF RICO IS A TREASURE HUNT, WHERE'S THE TREASURE?*

- In 1963 and 1964
- 1963 has drastic criminal sanctions, including forfeiture
- 1964(c) gives treble damages and fees
- (But not for securities fraud absent a prior criminal conviction)

# *OTHER ISSUES*



- What's the statute of limitations? Four years
- Where can you sue? State or federal court
- How do courts treat RICO civil claims?
- Very, very harshly

# *THE ENTERPRISE*

- Can consist of an association in fact between two legal entities (corps., law firm and medical practice or whatever)
- Enterprise can be wholly criminal
- You should assume the court will insist that the enterprise needs to exist apart from the racketeering activity



# *ASSUME THAT THE COURT WILL PICK YOU APART*

- Look at Burdett
- Plaintiff is sitting there with \$725,000; ends up with \$200,000
- There was a violation, but not the one plaintiff alleged accounting firm was designated as an enterprise but was not involved in wrongdoing
- There was a RICO enterprise, but it was not alleged
- And the fiduciary duty claim was mishandled, too

# *SUMMARY ON ENTERPRISE*



- You are the master of your complaint
- Ink and paper are cheap
- Nobody limits you to one enterprise, and one pattern
- Think things through carefully
- Better to have too much rather than not enough

# *THE PATTERN REQUIREMENT*

- The key from H.J.: “Continuity plus relationship”
- It needs to be big, bad, ongoing, repeated
- The longer it runs, and the more robust, the better
- The more repeated predicate acts, the better
- The more it poses a threat to society, the better

# *WHY IS RICO NOT LIMITED TO “ORGANIZED CRIME”?*

- See p. 141
- Think about where we are if two people do exactly the same things, and one is subject to criminal punishment as a “member of organized crime” and the other, who did the exact same thing, skates free?
- Do you see the problem?

# *WORD OF FAITH*



- Expect the “pattern” element to be narrowly construed
- You need to assume that predicate acts occurring as part of a single, discrete and otherwise lawful transaction are not going to be enough.

# *VILD; A RICO PATTERN'S IN THE EYE OF THE BEHOLDER*

- Seems like two parts of the same long-running scam
- “The defendants argue that Rule 11 sanctions are mandatory when a breach of the duty to make a proper prefiling investigation has occurred. . . . They reason that the plaintiff's four amended complaints, none of which successfully stated a cause of action under RICO or established subject matter jurisdiction, constituted a violation of the duty to know the applicable law.”

## *AN ISSUE IN VILD*

- Does the pattern requirement mean that all the victims of the wrongdoing need to be people just like the plaintiff?

# *UNIROYAL*

- This is the RICO pattern you dream about
- Notice the relatedness of the schemes → Germano
- Bogus refunds for “Detroitter” tires
- Nigerian advertising/billboards and kickbacks
- Volume bonus shenanigans



# *WHAT DOES UNIROYAL SAY ABOUT “PATTERN”?*

- Number and variety of predicate acts
- Number of victims (only 1 may be OK; was in Uniroyal)
- Presence of separate schemes
- Occurrence of distinct injuries
- Long duration

**According to an article found in 80 J. Crim. L. & Criminology 197, 248:**

**In United States v. Zang, the defendants "fraudulently miscertified" lower grade crude oil, which was price controlled, as higher grade oil "resulting in an illegal profit of nearly 7.5 million dollars." The RICO charge was investing income acquired through a pattern of racketeering activity in an enterprise, Dalco Investments, in violation of Title 18, United States Code, Section 1962(a). "The government sought forfeiture of the [defendants'] respective interests in Dalco Investments, including its sole asset, the Dalco Building, pursuant to § 1963(a)(1)." Because subsection 1963(a)(1) was the only forfeiture provision relied upon, the Zang court correctly concluded that only the interest in Dalco Investments acquired by tainted funds was subject to forfeiture. As to the Dalco Building, the government was required to show what portion of the building was "acquired by racketeering funds." If the prosecution had also sought forfeiture pursuant to subsection 1963(a)(2)(A), however, this "taint" showing would have been obviated. The court would have required the defendants to forfeit their entire interest in the Dalco Building, irrespective of what portion of the enterprise and the building were acquired with tainted funds.**

# LOCAL 560

- Hobbs Act prohibits use of extortion to restrain commerce
- What's the difference between bribery and extortion?
- Pay me and I will help you.
- Pay me or I will hurt you.
- Where you have a witness “in the *grip of extreme fear or even sheer terror*” you likely have something funky going on....

## *LOCAL 560 CONT'D*

- Provenzano mob did use extortion to take control of Local 560, which was an enterprise
- Note the intermingling of criminal enterprises at p. 175 (Provenzano group was part of the Genovese family)
- Note the different enterprises under 1962(b) and 1962(c) p. 173

# *UNITED HEALTHCARE*

- Note the req'ts of 1962(c) on p. 179
- Enterprise needs to have “a common or shared purpose”; some continuity in structure and personnel; and a structure distinct from the the pattern of racketeering
- Here, that existed; the enterprise performed some legal functions and was distinct from Benton, though he was associated with it

# *AS FOR THE RACKETEERING*

- Note pp. 180-81; follow the money trail
- Note the check list for mail and wire fraud:
- Scheme to defraud (some planning req'd)
- Intent to defraud
- Foreseeable use of the mails or wires
- Actual use of mail or wires in furtherance of the scheme

# *AS FOR THE PATTERN*



- Note what you have: systematic looting
- All directed toward victimizing HANA insureds

# *AS FOR WHOM CAN VIOLATE*

*1962(c)*

- You need to assume that the perpetrator must be different from the enterprise
- See Haraco on p. 183



# *FOR LAUGHS*

- Look at the defense offered in Jensen
- Everything was conceded except intent
- To problems here
- A. Jury did not believe Jensen
- B. Under Pinkerton, you do not need to intend to commit the substantive offenses committed by your co-conspirators

## *UNDER 1962(d)*

- No requirement that you intend to commit violations of other parts of 1962, so long as there is an agreement that *some* conspirator will commit the violations
- Stated differently, you can be liable as a RICO conspirator even though you could not have committed the 1962 violation, as long as a co-conspirator agreed to do so