

Why Civil RICO Claims Are Gaining Traction With Plaintiffs

By **Akiva Shapiro** (September 4, 2025, 3:56 PM EDT)

On July 14, in *Point Bridge Capital LLC v. Johnson*, Hal Lambert and his company secured one of the largest civil Racketeer Influenced and Corrupt Organizations Act verdicts in years.

Their claims in the U.S. District Court for the Northern District of Texas were against Charles Johnson, a former journalist who, alongside a co-conspirator, falsely claimed ties to U.S. intelligence and law enforcement in an effort to pressure Lambert and others to bend to their will.



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When Lambert refused to cave, Johnson retaliated by publicly accusing him of fraud, sexual harassment and serving as a front for organized crime. Lambert and Point Bridge Capital brought civil RICO claims predicated on wire fraud, extortion and theft, along with claims for defamation and breach of contract.

The jury returned a \$71 million verdict, including \$46.5 million in trebled civil RICO damages. The verdict illustrates the extraordinary power of the civil RICO statute, transforming what might have been a typical — albeit colorful — defamation and contract dispute into litigation framed around criminal conduct, with the risk of treble damages.

When used correctly, civil RICO is a devastating weapon in the civil litigator's arsenal. It is well worth considering in almost any large-scale clash.

Indeed, although some judges have expressed skepticism about the expanding deployment of civil RICO in commercial suits, the U.S. Supreme Court noted matter-of-factly in *Medical Marijuana Inc. v. Horn*, decided earlier this year, that more RICO suits are now brought "against ordinary businesses than against 'archetypal, intimidating mobster[s].'"

The increase in civil RICO actions has been driven by enterprising litigation counsel who have found new and creative ways to frame disputes involving a wide range of misconduct within the contours of the civil RICO pleading standards.

But, as Spider-Man's Uncle Ben imparts, "With great power comes great responsibility."

Not every commercial dispute is appropriately pled as a civil RICO case. And the commercial litigator who tries to cram inapposite facts into the civil RICO box risks blowback from the court.

Background and Growth of Civil RICO in Commercial Suits

Congress enacted the RICO statute in 1970 in the hopes of toppling organized crime. In the 1980s, RICO was used to take down the five Mafia families in New York, effectively ending the mob of legend.

In recent years, it has led to a string of high-profile convictions, including of R. Kelly and Keith Raniere, founder of the NXIVM cult. But of course, RICO is not reserved for prosecutors.

Civil litigants like Lambert can also sue under RICO, and become, as the Supreme Court put it in *Holmes v. Securities Investor Protection Corporation* in 1992, "private attorneys general" pursuing justice, and obtaining civil remedies, for criminal violations.

Under civil RICO, a plaintiff must allege that an "enterprise" consisting of an association of individuals or entities conducted a "pattern of racketeering activity." Racketeering activity under the statute can run the gamut from kidnapping and trading in nuclear materials to wire fraud, witness tampering and theft of trade secrets.

The civil RICO conspiracy provision further expands liability to those who agree to commit a RICO violation, even if none of the conspirators ever committed an overt act. Its wide reach allows a plaintiff to target a broad swath of defendants for a wide range of activities.

Civil RICO, in other words, can be applied "to almost any commercial controversy," as explained in *RICO: Civil and Criminal Law and Strategy*, the leading treatise co-edited by U.S. District Judge Jed Rakoff of the U.S. District Court for the Southern District of New York, and Howard Goldstein.

The commercial litigation-ization of civil RICO is not new, per se. Forty years ago, the Supreme Court had already referenced, in *Sedima SPRL v. Imrex Company*, that "[i]nstead of being used against mobsters and organized criminals, [civil RICO] has become a tool for everyday fraud cases brought against 'respected and legitimate enterprises.'"

There has been a slow and steady growth in the use of civil RICO in commercial suits — that is, in disputes between businesses relating to their commercial endeavors and arising out of their commercial relationships.

Courts, moreover, have time and again found that a pleading that satisfies all the elements of the civil RICO statute should not be dismissed simply because it is a commercial case.

Benefits of Civil RICO

Civil RICO is known as the nuclear bomb of civil practice — and for good reason. The statute provides for treble damages and attorney fees, exposing defendants to colossal verdicts far beyond the actual damages incurred by plaintiffs, with attorney fees awards alone sometimes exceeding \$10 million.

The statute's breadth allows for expansive discovery that plaintiffs may not be able to obtain in standard litigation. For example, in a standard fraud suit, a plaintiff would be hard-pressed to get emails or texts between defendants that may be facially unrelated to the lawsuit.

But in a civil RICO suit, which requires evidence of consistent association, anything that might

demonstrate the existence of association between defendants is fair game. For the same reason, litigants can also acquire evidence going back years to demonstrate long-standing relationships and cooperation.

A civil RICO claim provides a basis for federal jurisdiction. Plaintiffs seeking access to federal court can do so by asserting a civil RICO claim where, for example, a common law fraud claim would not.

And the "mere assertion of a RICO claim," as the U.S. Court of Appeals for the First Circuit put it in *Figueroa Ruiz v. Alegria* in 1990, leads to an "almost inevitable stigmatizing effect" against those accused of racketeering. This is because a civil RICO claim levies charges of coordinated violations of criminal statutes against a wide swath of defendants and nondefendants.

Bringing a civil RICO claim sends an unmistakable public message that your client was the victim of egregious and criminal behavior — and that the defendants are criminal actors.

In contrast, an ordinary fraud or breach of contract case suggests a run-of-the-mill business dispute: a misunderstanding or an exaggeration during negotiations, or a few bad apples who engaged in a one-off misrepresentation.

Initial Questions to Ask

Although civil RICO is complex, with countless nooks and crannies, alleyways, trick doors and portals that the litigator must traverse on the way to a successful case, there are three fundamental questions that the commercial litigator should consider in evaluating whether a dispute may be a fit for civil RICO.

If the answer to all three is "yes," it is worth exploring in greater depth whether the plaintiff can meet the pleading standards of civil RICO, and whether it is strategically beneficial to assert a civil RICO claim.

Conversely, a lawyer representing a client who has been sued under the civil RICO statute should ask these same questions to determine whether there may be a straightforward threshold deficiency in the RICO claim.

First, was the bad conduct done via a group of individuals and entities, some of whom are not legally affiliated with one another? This is the enterprise. Think of the mob boss and his lieutenants using a garbage hauling company — a legally separate entity — to do their dirty work.

In contrast, a company and its executives, or a set of related companies, don't have sufficient distinctness, in RICO parlance, to constitute an enterprise. In layman's terms, what this means is that conduct done solely within one corporate structure cannot serve as the basis of a civil RICO claim.

There needs to be coordination across entities — for example, wire fraud perpetrated by Company A and B, working together, against Company C. This hurdle, although important, is not generally too difficult to address in cases involving sprawling or coordinated misconduct, as it is acceptable for many or most of the members of the enterprise to be legally affiliated, as long as some are not.

Relatedly, the enterprise and the RICO defendants must also be distinct — meaning that one cannot plead the exact same list of people and entities as both the enterprise and the named RICO defendants.

Second, does the bad conduct fit within any of the long list of RICO predicate acts set out in Title 18 of

the U.S. Code, Section 1961(1), under the definition of "racketeering activity"?

The most common example in commercial cases are mail and wire fraud. In part, this is because these causes of action are so broad that nearly anything involving dishonesty can be characterized as mail or wire fraud.

Indeed, because these statutes require only a "scheme to defraud," there do not even need to be affirmative misrepresentations, simply a plan involving deceit. And nowadays nearly every transaction involves emails, which constitute "wires."

For that same reason, courts look somewhat skeptically at a civil RICO case that is based solely on mail and wire fraud. One should consider whether it would be possible to assert predicate acts beyond those two.

Predicate acts that I've found sometimes fit in commercial cases include money laundering, financial institutions fraud, witness tampering, obstruction of justice, extortion and theft of trade secrets, but the possibilities are vast.

It's also important to keep in mind that under the securities bar established by the Private Securities Litigation Reform Act in 1995, any claim predicated on conduct that could have been pled as securities fraud categorically cannot be prosecuted under civil RICO.

Third, did the nefarious conduct stretch over a significant period of time and involve multiple transactions or victims, or was it a one-off event? Civil RICO requires a pattern of racketeering activity.

Although the statute requires only a minimum of two acts occurring no longer than 10 years apart, in practice, and under the caselaw, courts look for replicated behavior of sufficient longevity — that is, a scheme or plot stretching over a period of many months or, better yet, years — and preferably involving multiple transactions and victims. Shenanigans relating to a single two-party contract, for example, cannot support a civil RICO case.

If the answer to these three questions is in the affirmative, civil RICO is likely worth exploring further. These are threshold questions that help determine whether the case may fit the contours of civil RICO.

Engaging with them is a worthwhile exercise, because clients often raise civil RICO, and we then quickly determine that the events at issue don't meet these basis requirements. If they do, further investigation and analysis is always required to ensure that all of the various elements of civil RICO can be met.

The Downsides

Civil RICO also has its downsides and risks. Successfully pleading and proving a civil RICO case requires a plaintiff to meet various complex technical requirements and elements absent from a traditional tort or breach of contract case.

With many judges skeptical of attempts to "RICO-ize" commercial litigation, the many technical requirements established by the statute and case law can provide an out to clear a case off a court's docket.

Take the "pattern of racketeering" element. Courts require a plaintiff to allege a pattern of repeated and

related criminal activity. Some courts have interpreted this requirement to mean that a single transaction cannot form the basis of a RICO claim.

But a skeptical judge can group a series of repeat commercial dealings into a larger transaction, and dismiss the case. Relatedly, if an alleged pattern of racketeering does not threaten ongoing harm, courts often require that the racketeering activities alleged have taken place over multiple years.

Civil RICO claims may also lead to more acrimonious and bare-knuckled litigation, drawing out the case and driving up costs. And although some defendants may look to quickly settle a civil RICO case to maintain their public image, other defendants seeking to clear their name of racketeering accusations may be less likely to settle.

Conclusion

To maintain a civil RICO case in the commercial context, a plaintiff must be able to allege that legally unaffiliated people or entities conspired over a sustained period of time to commit a series of wrongs from among the list of predicate criminal acts set out in the statute. If a set of facts fits within these general contours, a civil RICO claim is well worth exploring further.

Although civil RICO presents plenty of hurdles for plaintiffs, and can backfire if asserted in a case that does not fit its requirements, it is now common for corporate clients to inquire about bringing civil RICO claims. And the landscape for civil RICO appears to be moving in plaintiffs' direction, with strong signaling — and some specific decisions — from the Supreme Court.

For example, in its 2023 decision in *Yegiazaryan v. Smagin*, the court expanded the extraterritorial reach of civil RICO by rejecting the rigid residency test for domestic injury claims, instead offering a contextual test in which courts would look to whether the "circumstances sufficiently ground the injury in the United States, such that it is clear the injury arose domestically."

And in *Horn*, the Supreme Court held earlier this year that economic harms resulting from personal injuries such as lost wages could constitute injuries to business or property under RICO.

It remains to be seen whether courts will continue to expand the bounds of civil RICO, or seek to find new ways to limit such suits. But as the landscape stands, asserting a civil RICO claim is worth considering in cases involving allegations of sprawling bad acts.

Ultimately, civil RICO is a formidable weapon in the hands of a commercial litigator. While it should be deployed sparingly and only in appropriate circumstances, when used correctly it can shift the strategic landscape in dramatic ways.

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