

Redefining the RICO Statute  
Potential Avenues for Improvement

David Scouten

A Senior Thesis submitted in partial fulfillment  
of the requirements for graduation  
in the Honors Program  
Liberty University  
Spring 2016

Acceptance of Senior Honors Thesis

This Senior Honors Thesis is accepted in partial  
fulfillment of the requirements for graduation from the  
Honors Program of Liberty University.

---

Joel Cox, Ed.D.  
Thesis Chair

---

Robert Van Engen, Ph.D.  
Committee Member

---

Lawrence Presley, M.A.  
Committee Member

---

Brenda Ayres, Ph.D.  
Honors Director

---

Date

## Abstract

The civil application of the Racketeering Influenced and Corrupt Organizations Act (RICO) has been misapplied by the lower courts, but the statute can be improved by incorporating elements that will make the statute a better tool for justice. It is evident from examining the procedural limitations of the statute and important case law that the securities fraud gap, terrorism financing, and difficulties for indirect victims are three critical subjects that need to be addressed by enhancing RICO. Flaws and shortcomings of the RICO statute have led to inconsistencies in court rulings. The expansive language of RICO can be limited to reduce the culpability of foreign sovereigns and violators of personal use copyright infringement. Upon a survey of seven possible solutions, this thesis determines that the best solution would be for Congress to amend the law. The creators of RICO could refine and clarify the language and implement the features necessary to broaden RICO so it can fulfill its maximum potential. Data was collected by reviewing research, case statistics, academic journals, and court cases.

Law and order exist for the purpose of establishing justice and when they fail in this purpose they become the dangerously structured dams that block the flow of social progress.

—Martin Luther King, Jr.

## Redefining the RICO Statute

### Potential Avenues for Improvement

The Racketeer Influenced and Corrupt Organization Act (RICO) is a statute designed to prosecute and convict criminal organizations. Because of the complex structure of a criminal enterprise, it is difficult to convict the leaders without RICO (Pierson, 2012). RICO is valuable because it is a broad and expansive statute.

Three main issues with RICO to examine are the ambiguous language of the statute, court ruling inconsistencies, and lack of breadth of the statute. The first problem demonstrates the inherent flaws with RICO that require the statute to be redefined so that it can be construed in accordance with the will of Congress (Brady, 1986; Nybo, 2013; Pierson, 2013). The inconsistencies in court rulings demonstrate the need for further plain and clear language. In addition, a group of scholars believe that the RICO statute should be broadened so a greater variety of unlawfully acting parties can be brought to justice (Geisler, 2010; Weiss, 2010; Blakey & Gerardi, 2014). The resolution to all three of these problems is a solution in which certain elements of the statute are better defined and others are expanded.

## History and Application of RICO

### Origination of RICO

The United States Congress enacted RICO as a part of the Organized Crime Control Act of 1970 to help in the fight against organized crime. RICO was “designed to penetrate organizations and impose liability on those who orchestrate criminal acts but insulate themselves with layers of underlings and bureaucracy” (Pierson, 2012, p. 524).

The statute was created in reaction to the control and influence that the Mafia had on the business world as it operated inside and outside of the realm of legitimate business operations (Weiss, 2010). RICO was created to combat the infiltration of legitimate business by organized crime (Blakey, 2012). RICO has two different functions: authorizing the government to prosecute and enabling private plaintiffs to bring suits against alleged violators of the law. The criminal section of RICO grants the government the authority to apply criminal penalties to the leaders of organized crime, and the civil section of RICO empowers victims to recover damages from the misconduct of criminal organizations (Pierson). Ultimately, the goal behind the creation of RICO was to “protect society and the economy from the ill effects of organized crime” by giving power to the victims and government” (Nybo, 2013, p. 23).

### **Use of RICO**

The civil section of RICO provides an opportunity for victims to create claims against entities in violation of the act. Civil actions can be made against commercial organizations even if they are not related to an enterprise that is solely criminal (Cotham & Campbell, 1982). The reason behind offering remedies for RICO in civil court was due to the prevalence of organized crime at the creation of the statute. The Senate Judiciary Committee emphasized that an attack should be made on all fronts in the fight against the economic powers of racketeering organizations (Geisler, 2010). Civil court RICO actions have the potential to be used in cases ranging from securities fraud and commercial bribery, to theft and violent crime. The RICO civil statute is an extremely valuable tool for compensating victims because it grants remedies up to triple the amount

of damages plus attorney fees. RICO is an attractive opportunity for the plaintiff to obtain justice because it gives the advantages to him or her. The plaintiff gets to choose the federal forum, use federal rules of evidence and discovery, and use the expansive venue provisions (Cotham & Campbell). The goal behind offering private civil remedies for RICO is to protect “the honest businessman who is damaged by unfair competition from the racketeer businessman” (*Anza v. ISS Corp.*, 2006, p. 473).

### **Current Stading of RICO**

Prosecutors employ RICO to combat crime because it imposes severe sanctions and necessitates proving only mens rea for the predicate crimes (Bagley, Hurley & Mancuso, 2007). The RICO civil statute is a valuable tool utilized to fight white collar crime. In 2010, nine hundred fifty-five civil RICO cases were filed, and between 2001 and 2010, almost five times more civil RICO cases were initiated than criminal RICO cases (Pierson, 2012). An update to the Pierson study done between the years of 2005 and 2011 showed similar results. Between 2005 and 2011, two hundred twenty-seven opinions were rendered on RICO cases; 69% were civil and 31% were criminal (Pierson, 2013). In the span of the study, 2006 represented the year with the most cases, and an average of 22.5 decisions were made per year (Pierson, 2013).

Civil claims with RICO are an attractive option because civil RICO offers an award of treble damages, a broad choice of venue, and it can even be applied in class action suits (Cooney, Lavelle, Shariati, 2010). Plaintiffs have a broad choice of venue because RICO claims can be brought against an entity in any jurisdiction as long as the entity resides, has an agent located in, or transacts business in that jurisdiction according

to 18 U.S.C. Section 1965(c) (Cooney). A significant number of civil RICO cases are class actions, and because of recent case law development making the elements more understandable, more class action suits are expected in the future (Pierson, 2013).

Nationwide class action suits with other laws usually face a challenge with choice-of-law concerning fraud and deception laws, but class action civil RICO claims need to prove only the predicate acts, so class action suits are potentially more effective with RICO (Cooney).

Most civil RICO cases have been brought by or against businesses, which may indicate that it is being wielded in accordance with Congress's intent: to combat sophisticated business frauds (Pierson, 2013). However, about 18% of civil RICO cases are claims that are not based on the intended use of RICO; 9% of cases are brought against law enforcement by individuals convicted for crimes, and the other 9% of cases were brought by individuals trying to settle "trivial personal agreements" (Pierson, p. 222).

The frivolous application of civil RICO cases can be demonstrated from the success rate of the plaintiffs. In civil RICO cases, plaintiffs win only 17% of the time (Pierson, 2013). Despite the low success rate for plaintiffs, when they do win, the defense earns a big payout. For example, some cases had settlements of \$218 million, \$177 million, and \$121.8 million with the costs of attorney's fees, which have amounted to almost \$30 million in one case (Pierson).

Because civil cases only require preponderance of the evidence as opposed to the beyond a reasonable doubt standard in criminal cases, it is less arduous to investigate and



prove guilt; this is essential in white collar cases because it is harder to assess intent and determine who knew the crime was being committed (Pierson, 2012). Civil cases are also much less expensive than criminal cases because defendants have less procedural protections and cases are resolved quicker (Pierson). Remedies in civil cases can be applied in a variety of ways that are more applicable to companies and organizations, which ensures that the jobs of innocent people are protected and the continuation of essential services to the public (Pierson). With the encouragement of high profits, civil RICO inspires knowledgeable victims and the finest private attorneys to form cases with the best resources to punish the instigators of white-collar crime (Pierson). Despite the increased use of civil RICO, it has had varied applications due to its ambiguous language, which may indicate a problem (Pierson).

### **Problem Identification**

RICO is a complex statute that is not well defined; it lacks clarity and has been applied in different courts regarding the plaintiff's standing in the case (Lloyd, 2007; Cutler, 1990). Even the creators of the law recognized that the language in RICO is very broad; the Organized Crime Control Act offers the provision that RICO "shall be liberally construed to effectuate its remedial purposes (OCCA, 1970; Cotham & Campbell, 1982, 226). Early after its creation, law practitioners recognized that future court cases would determine its effectiveness. Cotham and Campbell say that with any amendments to the law, "decisions yet to be rendered will explain more fully what the tool is good for and who can use it" (p. 263). Due to the broad language, some authors argue that the language of the powerful statute needs to be better defined (Brady, 1986;

Nybo, 2013; Pierson, 2013); others believe that the effectiveness of RICO needs to be expanded to serve justice in more situations (Geisler, 2010; Weiss, 2010; Blakey & Gerardi, 2014). Another problem with the statute is how it has been applied inconsistently in different circuits of the federal court system.

The law's construction has been altered due to the expansive language of RICO. The Supreme Court has had to repeatedly enforce the broad interpretation of standing of the victims. In order to sue under civil RICO, the victim must prove a violation of Section 1962, injury to his or her business or property, and causation of the injury by the violation (Bagley, Hurley & Mancuso, 2007). The plaintiff must further demonstrate that the predicate act is "independently wrongful under RICO" (Bagley, p. 945). In a 1994 case, the Supreme Court eliminated the Seventh District's restriction that the racketeering enterprise be accompanied by an economic motive (Bagley, p. 942).

Coppola and DeMarco (2012) believe that RICO's ambiguity and the judiciary's tendency to interpret it liberally has allowed RICO to expand beyond its intended purpose. Attempts to brandish RICO creatively include suing the Catholic Church leaders for covering up instances of sexual abuse, suing British Petroleum for concealing flaws in deep-water drilling plans, and suing Pfizer for marketing an epilepsy drug for prescriptions not approved by the Food and Drug Administration (Coppola & DeMarco). The victims of the Pfizer case were awarded \$47.4 million, which was then tripled under the RICO treble damages provision further explaining the ambition of creative lawyers and witnesses in need to take advantage of the civil RICO provision (Coppola & DeMarco). It is clear that civil RICO has been exploited in ways that congress could not

have imagined; however, the issue is determining whether the law should be better defined or left open for a variety of uses. Each of the three main issues related to the RICO law can be analyzed by considering specific examples that prove the statute is partially deficient.

### **The Statute Needs To be Better Defined**

A consistent attitude among legal commentators is that the far-reaching language in the statute needs to be better defined when considering the volume of civil cases, the broad language, copyright infringement, and foreign sovereigns (Nybo, 2013; Geisler, 2010; Pierson, 2013; Ross, 2010; Corrigan, 2010).

### **Large Volume of Civil RICO Cases**

Some argue that the RICO civil statute has been and is continually abused because courts are not using enough discretion when determining which parties can bring suit (Nybo, 2013). According to a study done in 2002, one hundred eighty-five RICO cases between 1999 and 2001 were decided by the federal appellate courts, and of those cases, 78% were civil and 22% were criminal (Bucy, 2002). This study shows that private litigants may have more motivation to pursue justice than federal prosecutors. This may be due to limited resources of the Department of Justice (Nybo). Further analysis on this study shows that only three of the one hundred forty-five civil RICO cases resulted in a final victory for the plaintiffs (Bucy). Based on the success rate of the civil RICO cases and the disparity in the number between civil and criminal cases, the issue is not related to resource allocation but to a high number of private plaintiffs filing frivolous claims (Nybo).

**American Bar Association Task Force Study**

The expansive utilization of civil RICO is not a recent discovery. In 1985 in the case of *Sedima v. Imrex*, Justice Byron White cited a study done by the American Bar Association Task Force which found that only 9% of two hundred seventy civil RICO cases were about allegations related to criminal activity generally associated with professional criminals. Of the remaining cases, 40% involved securities fraud and 37% were related to commercial or business common-law fraud (*Sedima v. Imrex*, 1985). These statistics indicate that RICO has become less of an instrument wielded for fighting organized crime and more of an instrument to bring simple fraud cases against legitimate business enterprises (Nybo, 2013). The motivation behind civil RICO litigation is certainly related to the opportunity to earn treble damages, which leads to many frivolous civil RICO cases (Nybo). The wide and varied use of RICO demonstrated in this study is directly related to the broad language in the statute.

**Broad Language**

Within RICO, many expressions have very broad definitions (Geisler, 2010). For instance, a person is defined as “any individual or entity capable of holding a legal or beneficial interest in property” (18 U.S.C. §1962(a); Geisler, 2010, p. 614). An enterprise can be any individual, partnership, corporation, or legal entity (18 U.S.C. §1961(4)). A “pattern of racketeering” requires only two acts of racketeering activity (18 U.S.C. §1961(5)). The term “racketeering activity” must be one of the eighty federal criminal acts listed in Title 18, and each of the eighty crimes will have its own definition

also (18 U.S.C. §1961(1); Geisler). Three important elements that could be better defined are pattern, proximate cause, and enterprise.

### **Definitions of Pattern, Proximate Causation, and Enterprise**

The main issues discussed in RICO cases are pattern, proximate causation, and enterprise, which account for 69% of all RICO issues discussed (Pierson, 2013). The difficulty in applying these issues in civil RICO cases is part of the reason that RICO has been “overused, underused, and maligned” (Pierson, p. 225).

In order to prove a RICO violation, the plaintiff must demonstrate a pattern or a continual series of violating predicate acts. Courts have had different interpretations of what constitutes a pattern of racketeering activity. The pattern requirement for RICO is considered vague and non-intuitive when compared to most other criminal statutes (Pierson, 2013). However, the Supreme Court has given enough guidance, according to Pierson, to make this element of RICO predictable.

The second issue is with determining “whether the plaintiff’s alleged injury has been proximately cause by the defendant’s alleged conduct” (Pierson, 2013, p. 223). Based on three important Supreme Court cases, a clear standard for what it takes to prove proximate causation now exists (Pierson, p. 246). One of the most difficult elements to prove by the plaintiffs is that their injury is directly related to the defendant’s alleged violation of RICO (Pierson, p. 241). Also, the plaintiff must prove that other factors besides the alleged RICO misconduct did not contribute to the injury (Pierson, p. 246). Finally, the plaintiff must demonstrate that he or she is the primary victim and most

deserving of the damages (Pierson, p. 246). It may also be beneficial for the plaintiff to prove that no other statute is in place to address the injury at issue (Pierson, p. 246).

The third issue is determining what constitutes an enterprise in the RICO provisions. The lower federal courts often interpret the enterprise element very narrowly, while the Supreme Court has often applied a very broad definition of enterprise (Pierson, 2013). Even if a group is informally formed and loosely organized, it is still considered an enterprise under the law (Pierson). In addition to the broad language of the statute, another issue is related to copyright infringement.

### **Copyright Infringement**

The purpose of copyright law is to encourage the creation of artistic works as well as encourage access to those creative works to the public (Ross, 2010). According to Ross, copyright infringement should be removed from the list of predicate acts as a part of RICO, or Congress should limit the RICO liability for copyright infringement to the most significant commercial offenders. Many people in the younger generation (tweens to those in their mid-twenties) believe that copyright laws are “unfair or inapplicable” for private use (Ross, 2012, p. 57). Recognizing copyright infringement as a predicate crime gives civil courts too much power by granting them access to treble damages (Ross, 2010, p. 71). By granting copyright holders this much power, too much authority is given to the monopolistic entities and not enough to the public interest (Ross, p. 63). Presently, the penalties for copyright infringement are very severe. The RICO statute has already been broadly interpreted to include conduct beyond that of its intended purpose

by ignoring its legislative history (Ross, p. 62). If the penalty for infringements are too severe, copyright owners will have increased monopolistic rights over creative items and the public will have less access to those works (Ross).

The purpose of RICO was to offer remedies to those injured by criminal enterprises; however, the courts have expanded and broadly interpreted the RICO statute beyond what Congress intended (Ross, 2010). Ross proposes that Congress should amend the law to remove copyright infringement as a predicate act for RICO, or simply limit the exploitation of RICO in the cases of copyright infringement to those “defendants that engage in large-scale, commercial piracy and not those who copy for private use” (p. 63).

The criminal side of RICO enables prosecutors to apply discretion when determining whom to prosecute, while the government is limited to prosecuting “the most severe, profit seeking conduct” (Ross, 2010, p. 125). In contrast, copyright owners have no obligation to show the same discretion under the civil section (Ross, p. 125).

Ross (2010) suggests that increasing the pattern requirement, narrowing the enterprise requirement, limiting penalties, or simply removing copyright infringement completely from the list of predicate acts in section 1961(1) will increase RICO’s effectiveness. The pattern requirement should be increased to the point that only a full scale criminal enterprise can be sued. The enterprise element should be narrowly interpreted, especially to exclude those who simply participate in peer-to-peer sharing (Ross). Removing copyright infringement from RICO is a viable option because the Anti-Counterfeiting Consumer Protection Act already protects against counterfeiting

goods and services and organized trafficking (Ross, p. 126). However, if the federal legislators believe counterfeiting should remain a part of RICO, it should be limited to include only cases of commercial and for profit counterfeiting, not for personal use counterfeiting (Ross, p. 63). Similar to how Ross believes that small scale counterfeiting should not be a predicate act to RICO, Corrigan argues that foreign sovereigns should be immune to civil RICO claims (Ross, p. 56; Corrigan, 2010).

### **Foreign Sovereigns**

The Foreign Sovereign Immunities Act of 1976 (FISA) regulates suits against foreign sovereigns by permitting U.S. courts jurisdictional authority over foreign sovereigns for only civil claims (Corrigan, 2010). This raises an issue with civil suits in relation to RICO. Because civil RICO claims require the plaintiff to prove a criminal element as a part of the predicate acts to determine the presence of racketeering, a discrepancy exists as to whether a foreign sovereign should be immune to any civil RICO suit. According to Corrigan, foreign sovereigns should be immune to “civil RICO claims because they are not subject to jurisdiction for the requisite underlying criminal act needed to succeed on a RICO claim” (Corrigan, p. 1478). Those with a dissenting opinion believe that as long as a foreign sovereign is proven to be acting in a commercial capacity, which is an exception to FISA, then the sovereign may not claim immunity (Corrigan, p. 1484). A sovereign is deemed to have acted in a commercial capacity when it is acting in a private, business focused capacity as opposed to a political or regulatory capacity (Corrigan, p. 1485). Outside of a commercial capacity, the FISA statute grants



civil jurisdiction to U.S. courts so that U.S. citizens can resolve ordinary legal disputes with foreign sovereigns (Corrigan, p. 1484).

This difficulty in determining whether U.S. courts have jurisdictional authority to determine civil RICO cases shows an inherent flaw with the FISA statute and the complexity of the RICO statute. This discrepancy should be addressed so that courts can rule consistently, international relations are not negatively affected, and the will of Congress is followed.

In his article, Corrigan (2010) highlights two cases where two circuits ruled differently on the submission of a FISA suit with a civil RICO claim. The Tenth Circuit in the decision of *Southway v. Central Bank of Nigeria*, 2003, held that a foreign state was not immune from a civil RICO claim because it had determined that the commercial activity exception applied, so immunity was denied to the defendant (Corrigan, p. 1490). Corrigan notes four flaws in the reasoning of this court, and he points out an opposing opinion from the Sixth Circuit case of *Keller v. Central Bank of Nigeria* (2002). In this case, the court determined that commercial exception did not apply, so immunity was granted (Corrigan, p.1493-1494). The ruling of the Sixth Circuit disagreed with the Tenth Circuits ruling in three ways. First, due to FISA, a foreign sovereign cannot be indicted based on the wording of the statute; Congress's silence on criminal jurisdiction for sovereigns led the court to assume it did not have the authority to decide criminal matters (Corrigan, p. 1489). Secondly, the provisions in FISA endorse criminal prosecution only with an existing international agreement, and in this case, none existed (Corrigan, p. 1494). Lastly, since civil RICO requires that the defendant be indictable

and FISA does not permit sovereigns to be indicted in the U.S., the court determined that the sovereign must be immune (Corrigan, p. 1488). A later decision by the Fifth Circuit also held that sovereigns are immune to civil RICO because they cannot be indicted (Corrigan, p. 1495).

Corrigan (2010) suggests that all courts should adopt the analysis of the Sixth Circuit Court because it reconciles the language of the FISA statute the best and aligns with its intended purpose. By ruling in this manner, the judicial practice of the U.S. would better align with international standards (Corrigan, 1499). The flaws with the interpretation of FISA may be fixed with a more clear definition and language in the civil RICO statute. Corrigan also notes that this consistent granting of immunity to sovereigns for civil RICO cases would serve the best interest of private parties, sovereigns, and U.S. international relations (Corrigan, p. 1503). The inconsistent rulings of the Sixth and Tenth Circuits are not rare occurrences; three different circuits also had inconsistent rulings on the element of standing.

### **Inconsistencies in Civil RICO Cases**

Different decisions by the Seventh, Ninth, and Eleventh Circuit Courts demonstrate that the RICO civil statute needs to be redefined and its intent better explained by Congress (Lloyd, 2007). This problem needs to be fixed to ensure consistent judicial interpretation of the law. The broad construction sometimes enables unpredictable and unanticipated claims to gain access to the federal courts (Coppola & DeMarco, 2012).

According to RICO Section 1964(c), a person or his business must be injured in conjunction with a predicate act of RICO in order to be able to sue for damages (Lloyd, 2007). Even though the Supreme Court has set clear precedents to interpret the statute broadly, courts have still tried to reduce the scope of the statute (Lloyd). The following three courts applied standing stipulations in different ways for each case relating to civil RICO.

**The Eleventh Circuit Court: *Grogan v. Platt*, 1988**

In this case four Federal Bureau of Investigation Special Agents and the estate of two slain Special Agents were suing a criminal enterprise under civil RICO to obtain money for physical injuries from a shootout (*Grogan v. Platt*, 1988). According to the court manuscripts, the case relied on one main question: “Does RICO’s private civil action provision, 18 U.S.C. Sec. 1964(c), permit recovery for the economic aspects of personal injuries inflicted by predicate acts involving murder?” (*Grogan v. Platt*, p. 845). The plaintiffs argued that the personal injuries and deaths constituted an injury in the statute (*Grogan v. Platt*). However, the Eleventh Circuit Court disagreed claiming that the words “business or property” limited the types of injuries that a plaintiff could sue for, so the court determined the agents did not have standing in the case (*Grogan v. Platt*, p. 845; Geisler, 2010). In the following year, the Eleventh Circuit made the same conclusion in the case of *Rylewicz v. Beaton Services Ltd.*, 1989, that the language “injury to business or property” does not include physical, mental, or emotional suffering (Geisler, p. 619).

**The Seventh District Court: *Doe v. Roe*, 1992**

The *Doe v. Roe* case presented to the Seventh District Court was between a divorce lawyer and his client. In the words of the court, “we are asked to determine whether a plaintiff may bring a civil action under RICO where she alleges that her divorce attorney defrauded her into having sexual relations with him in lieu of payment for his legal services” (*Doe v. Roe*, 1992, p. 765). The court determined, in conjunction with prior district courts’ rulings, that civil RICO action cannot be based solely on physical or emotional injuries (*Doe v. Roe*, p. 767). Again it was determined that the plaintiff did not have standing in the case.

**The Ninth Circuit Court: *Diaz v. Gates*, 2005**

The Ninth Circuit Court took on an opposing opinion to those of the Doe case and Grogan case. In the case of *Diaz v. Gates*, Diaz (2005) was suing the Los Angeles Police Department for supposedly being falsely imprisoned. He claims that his alleged false conviction caused him to lose possible employment opportunities (*Diaz v. Gates*). The Ninth Circuit granted Diaz standing because he “properly alleged an injury to business or property within the meaning of civil RICO” (Lloyd, 2007, p. 138). Their reason for granting standing was that RICO provides a cause for action when “concrete financial losses” occur (Lloyd, p. 138).

**Conclusion from these three cases.** These three cases indicate a problem with the civil RICO Statute. The statute needs to have a better definition of standing. According to Lloyd (2005), the judiciary has proven that it is incapable of consistently applying the standing element in civil RICO in the multitude of districts. Multiple solutions are available to solve the problems related to how civil RICO should be

interpreted. The problem can be addressed by the Circuit and District Courts, the Supreme Court, or the Legislature. In addition to the claim that certain terms need to be better defined, is the claim that the statute's language should be extended so that its use is even more broadened.

### **The Statute Should Be Broadened**

Certain courts have imposed standing restrictions on who can submit RICO claims, and these restrictions conflict directly with mandates from both the Supreme Court and Congress (Lloyd, 2007). Without victims being able to sue for damages from offenders, victims will not have the opportunity to receive justice. Broadening the RICO statute can remedy some concerns about the recovery of damages for indirect victims, non-actionable securities fraud cases, suits against organizations that finance terrorism. The cases of *MSMK v. Chase* and *Sedima v. Imrex* also give valuable insight into how the civil RICO statute can be enhanced.

### **Indirect Victims**

The Supreme Court decision for the case of *Bridge v. Phoenix Bond & Indemnity Co.*, 2008, helped to turn RICO into a valuable tool for keeping corporate industries honest (Geisler, 2010). Following the Bridge case, plaintiffs do not need to prove that they relied on the defendants misrepresentations to establish elements in civil RICO cases in instances concerning mail and wire fraud (*Brown v. Cassens Transport Co.*, 2008). According to Geisler, a direct victim of a predicate act of racketeering should not be the only party that can claim a remedy in a civil RICO case; an indirect victim, like an honest competitor who loses market share to a racketeer, should have access to damages when

no direct victim is available or the direct victim is not capable of making a claim (Geisler).

Legislative and judicial “tort reform” has made it difficult for individual consumers to seek damages from corporate wrongdoers (Geisler, 2010, p. 628). This allows corporate wrongdoers to take advantage of inadequate regulatory oversight to take market share away from honest competitors (Geisler). In his article, Geisler suggests that the Court should reshape its proximate cause analysis “to recognize the intended victims of corporate fraud: honest competitors that have lost market share due to fraud, deception, and misrepresentation” (p. 612). RICO should be made available for indirect victims in the same way that organizations that sponsor terrorism should be liable under RICO.

### **Terrorism Financiers**

Because terrorism is an important and pressing issue today, civil RICO should be employed as a means to punish those enterprises that fund terrorism (Weiss, 2010). Civil RICO should not be constrained but instead, its breadth should be guaranteed by legislative action to allow for civil suits against organizations responsible for terrorism funding (Weiss). Even though the RICO statute allows for a variety of cases, the lower courts have continually tried to restrict the “types of enterprises that could qualify for criminal or civil liability” (Weiss, p. 1134).

One specific terrorism group is al Qaeda. Al Qaeda raises money from many different sources including legitimate business practices like investments and donations but also from various criminal schemes (Weiss, 2010). According to many scholars, the

most important source of funding for al Qaeda comes from charities (Weiss). Some of these charities are simply fronts for terrorism financing while others are authentic charities that have been infiltrated by terrorist operatives who steal and redirect funds to terrorists (Weiss).

The Seventh Circuit has recognized that the “only way to imperil the flow of money and discourage the financing of terrorist acts is to impose liability on those who knowingly and intentionally supply the funds to the persons who commit the violent acts” (*Boim v. Quaranic*, 2002, p. 1021). Following the terrorist act on September 11, 2001, Congress passed the Patriot Act of 2001, which amended RICO to include a larger list of predicate acts (Weiss, 2010). The additional predicate acts included those from the Antiterrorism and Effective Death Penalty Act of 1996, which includes the criminalization of providing material support to terrorist organizations (Weiss, 2010).

While addressing the breadth and variability of RICO, the Supreme Court has stated that it does not have any intention to confine it because Congress was well aware of the weapon that it created for curbing criminal enterprises; due to this interpretation, any attempt to limit the reach of RICO should remain with the creators of RICO (*Sedima v. Imrex*, 1985; Weiss, 2010). The Supreme Court has no intention to eliminate the private action available under RICO because Congress has expressly provided it (Weiss). The Supreme Court has emphasized that “the fact that RICO has been applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth” (*Sedima v. Imrex*, p. 499).

According to Weiss, the war on terror should not solely take place in the sphere of national security, criminal prosecution, and counterintelligence but also in the realm of public opinion and public consciousness (Weiss, 2010). This author also suggests that Congress should consider amending the statute to extend RICO liability specifically to financial supporters of terrorism (Weiss). Congress is justified to improve this statute because it will enable victims of terrorism to join the battle against funding terrorist organizations while also achieving the restitution and retribution that they deserve (Weiss). Criminal enterprise does more than simply break a law; it is an organization that propitiates and creates profit from crime, so this conduct deserves greater punishment and deterrence (Weiss). Weiss suggests that Congress should expand the already broad statute to be even broader to include the financing of terrorism.

**RICO is intentionally broad.** The drafters of RICO did recognize that this statute is a “wide net” that would most likely trap those who are specifically members of organized crime syndicates (Headley, 1985, p. 419). Courts must recognize that “organized criminality takes many forms, and that Congress is fully empowered to provide generous relief for victims even of ‘respected’ enterprises’ egregious conduct” (Headley, p. 448). The intentionally broad statute should not have a gap like it does now especially with reference to the issue of securities fraud (Gerardi, 2014).

### **Securities Fraud Gap**

In March of 1995, Representative Christopher Cox proposed an amendment to the Private Securities Litigations Reform Act of 1995 (PSLRA) with the goal to limit the use of RICO in conjunction with securities fraud suits (Blakey & Gerardi, 2014). The



purpose for amending the statute was to eliminate any possible duplication of suits under both RICO and the PSLRA (Blakey & Gerardi). Despite the intention of Congress to remove overlap, a gap now exists between the two statutes that leaves certain victims of securities fraud unable to seek recourse for the damages from the fault of infringing parties (Blakey & Gerardi). The gap exists due to “a series of unfortunate rulings from the federal courts” (Blakey & Gerardi, p. 441). With the current political climate, Blakey and Gerardi do not expect congress to solve this problem, but they insist that the federal appeals courts or ultimately the Supreme Court needs to eliminate and corral this gap (Blakey & Gerardi). This gap needs to be closed so that victims of securities fraud can have the opportunity to plead their case in the federal courts (Blakey & Gerardi).

Due to the language in the two statutes, the courts should not have found any incompatibility between RICO and the securities laws (Blakey & Gerardi, 2014). The PSLRA has provisions that preserve other remedies in other suits, and RICO has a provision that prevents encroachment on other statutes (Blakey & Gerardi). The resulting litigation from the creation of PSLRA is not in line with the intention of Congress’s intent when it created the statute was to reduce unnecessary RICO suits when an opportunity for recovery exists under other securities laws like the PSLRA is available (Blakey & Gerardi). The outcome was not only the elimination of overlap between the two sets of laws but the creation of a gap where both the RICO and the securities laws cannot be applied (Blakey & Gerardi). Courts are “improperly denying victims of crimes” access to federal courts which is the opposite of what Congress intended in the passing of the PSLRA (Blakey & Gerardi, p. 472). The economic downturn of 2007 and

2008 indicate that the nation needs more deterrence for fraud as well as opportunities for fraud victims to receive justice (Blakey & Gerardi). RICO needs to be revitalized in the realm of securities fraud; this needs to be done by the federal courts of appeal to realign RICO with its mission or else the Supreme Court needs to intervene on this issue (Blakey & Gerardi).

***MLSMK Investment Co. v. JP Morgan Chase & Co, 2011.*** A case that took place in the Second Circuit Court in 2008 demonstrates another issue with the Civil Section of RICO and the PSLRA amendment. MLSMK Investment Company invested \$12.8 million with Bernard Madoff Investment Securities (Madoff), which was owned and managed by Bernard Madoff who manipulated the funds as a part of his famous Ponzi scheme (*MLSMK v. Chase, 2011*). Madoff made legitimate trades with JP Morgan Chase (Chase) and Chase Bank, and Chase made money from fees paid by Madoff for legitimate banking activities. MLSMK filed suit with Chase seeking damages by claiming that Chase conspired with Madoff in violation of RICO. MLSMK claimed that Chase had knowledge of the illegitimate activities of Madoff because Chase at one point was invested in Madoff, but later removed all of its investments. Even though Chase removed all of its investments in Madoff, it continued to do business with Madoff by managing his accounts and making legitimate trades. MLSMK claims that Chase knew of Madoff's illegal dealings and did nothing to protect the victims of Madoff's scheme, but instead chose to protect Madoff and profit from the fees associated with serving him in legitimate business services.

The Second Circuit entirely dismissed the plaintiff's claim based on Rule 12 (b) (6); the appeals court in the Second District affirmed the ruling because the section of the PSLRA bars racketeering claims based on securities fraud (*MLSMK v. Chase*, 2011). The Court applied other district court opinions to conclude that the language in PSLRA "unambiguously" bars all claims based on securities fraud conduct (Buscher, 2012, p. 207). Buscher believes that the court incorrectly assessed the goal behind the legislation and that the case should not have been dismissed. Based on the commentary in the Committee Report on PRSLA, it appears that some of the authors of the law did not intend to bar meritorious claims such as the one by MLSMK (Buscher).

Federal case law also barred the plaintiff MLSMK from bringing a claim under the Securities Exchange Act associated with aiding and abetting, so the only other option for recovering damages in civil court against Chase was via RICO (Buscher, 2012). With PSLRA excluding any civil RICO cases associated with securities fraud, many victims are left with no private cause of action (Buscher).

According to a senate report, the PSLRA was intended to curb frivolous claims and encourage lawyers to pursue valid claims for some Senators, but others claim that goal of the legislation was to protect investors in the capital markets (S. Rep. No. 104-98, 1995; Buscher, 2012). However, Buscher claims that these intentions are isolated and that the overall theme of the legislation is to promote meritorious claims. And no doubt remains that the claims of MLSMK against Chase are meritorious (Buscher). Dissenting Senators Sarbanes, Bryan, and Boxer believed that in order to balance the barring of frivolous claims with meritorious claims, a provision in the law is needed that restores

liability for aiding and abetting securities fraud (Buscher). Concerning the PSLRA and the case of *MLSMK*, the court missed the overall goal behind the amendment, which was to simply deter meritless claims, not to throw out worthy cases (Buscher). According to Senator Dodd and other dissenting Senators, securities fraud victims should not be left without private action as a repercussion of this act, and while deterring meritless claims, laws are needed to ensure that “legitimate victims can continue to sue and can recover damages quickly” (S. Rep. No. 104-98; Buscher, p. 211). The case of *MLSMK v. Chase* demonstrates a problem with RICO and securities fraud, but the case of *Sedima v. Imrex* is valuable for comprehending the Supreme Court’s understanding and application of the law.

***Sedima S.P.R.L v. Imrex Co., 1985***

The case of *Sedima v. Imrex* is a very important case for considering the implications of the civil RICO statute. This court case involved two parties that were partners in a business venture. The plaintiff, Sedima alleges that the defendant, Imrex, was inflating bills and expenses to cheat Sedima out of proceeds by collecting on expenses that did not exist (*Sedima v. Imrex*, 1985). This Supreme Court case decided whether the civil RICO statute permits suits against defendants who have not been convicted of criminal RICO charges and whether damages other than racketeering injuries can be recovered (*Sedima v. Imrex*). Considering that the civil court has a lower burden of proof, it does not make sense to require a criminal prosecution, so the Court decided that a criminal prosecution is not necessary in order for a civil RICO suit to take place (*Sedima v. Imrex*). The Court also decided that because the language in RICO is

very broad, injuries need not to have resulted from a criminal enterprise, but suits may be brought against legitimate businesses when they can be found at fault for breaching any of the predicate acts (*Sedima v. Imrex*).

In the U.S. Supreme Court case of *Sedima v. Imrex* (1985), the

court noted that private action under RICO was beginning to evolve into something quite different from the original conception of its enactors:

Originally designed to decrease the activity of mobsters and organized criminals, RICO was beginning to become a common tool for everyday fraud cases brought against 'respected and legitimate' enterprises. (Buscher, 2012, p. 208)

**Civil RICO prior to *Sedima v. Imrex*.** Prior to the case of *Sedima v. Imrex*, RICO was limited by the courts, which had decided to restrict which plaintiffs could bring claims under the statute, and four limitations were consistently used (Brady, 1986). The first was that the defendant must have had some sort of connection to organized crime (Brady). The second was that “the plaintiff must allege a unique inquiry in addition to the injury flowing from the predicate acts” (Brady, p. 1121). Third, the enterprise had to be separate from the defendant or from the pattern of racketeering (Brady). Fourth, the defendant had to have already been criminally convicted of a predicate act (Brady). The district and circuit courts have placed these restrictions assuming that Congress did not intend to create such a far-reaching law (Brady). Different courts have chosen to enforce the law by recognizing that the language of the statute is intentionally broad (Brady). In truth, Congress chose to enact RICO with non-

specific language, so the restrictions that have been employed by the courts are not in alignment with Congress's intentions (Brady).

**Civil RICO after *Sedima v. Imrex*.** The case of *Sedima v. Imrex* gave the Supreme Court the chance to eliminate some of the inconsistencies among courts as well as remove the major restrictions on RICO (Brady, 1986). Due to the decision, plaintiffs are no longer required to "allege a prior conviction and a separate racketeering injury" (Brady, p. 1153).

Ultimately, concerning the RICO statute, Congress has not communicated its intentions as well as most parties interpreting it would like (Brady, 1986). However, Congress has not made any major changes to the statute other than adding and removing predicate acts. Congress has the power to change how the statute is interpreted by introducing new legislation or amending prior legislation, so if Congress is not pleased with how RICO is being interpreted, then Congress alone must take action to correct the misapplication (Brady).

### **Solutions for the Ambiguity and Limitations of RICO**

Three main remedies that have been utilized to curb the misuse of the civil section of RICO include self-policing, narrow statutory construction, and simply repealing the civil section of RICO (Nybo, 2013). Some other solutions include, allowing the districts to have their separate interpretations narrowly construing the statute, a Supreme Court Ruling, and having Congress amend the law.

#### **Self-Policing**

Self-Policing would be the simplest remedy to reduce the amount of frivolous RICO cases filed. Currently, the United States Attorney's Office is successfully regulating itself regarding criminal RICO claims because federal prosecutors are required to get formal approval from the Criminal Division of the Department of Justice (Dept. of Justice, 1997). However, this solution does not guarantee results because for civil suits, self-policing has been regarded as a conflict of interest (Nybo, 2013). The legal profession has come under heavy criticism for self-regulation because lawyers cannot be expected to regulate their members effectively (Nybo). This solution does not address the need to broaden the statute to address the issues with terrorism financing and securities fraud. Similar to the solution to encourage courts to self-regulate is the idea to let District Courts continue to rule differently.

#### **Allow Circuit Courts the Freedom to Define the Statute**

The decisions made by the Seventh, Ninth, and Eleventh Circuit Courts each set precedent for the inferior courts in each of their circuits. Application of the civil RICO standing statute could continue to be determined by the circuit courts. This option would be simple to institute and would not require any significant changes. The circuit courts can continue to make rulings consistent with their prior opinions even though they disagree with other circuits. The substantial problem with this solution is that inconsistencies remain between circuits in interpretation of the standing statute for RICO (Lloyd, 2005). This solution also does not address the changes that are needed in the language of the statute. Another option would be to give the courts a general instruction to narrowly construe the civil RICO statute.

**Narrow Construction**

Another possible remedy would be for the courts to narrowly construe the RICO provisions to actual criminal organizations (Nybo, 2013). One example of when a district court attempted to narrowly construe the injury element of RICO was in the case of *Sedima v. Imrex* (Nybo). The Second Circuit Court decided in this case that any injury in a civil RICO claim should be specifically related to an activity that RICO was designed to deter not just injuries related to the predicate acts (*Sedima v. Imrex*, 1984). The Supreme Court rejected the narrow interpretation of the injury clause because it determined that the goal of RICO was not just to deter criminal enterprises but also the predicate acts (*Sedima v. Imrex*, 1985). Though a narrow construction applied by all the courts would be a simple remedy, it would require congressional approval because the Supreme Court clearly endorsed the liberal interpretation of RICO in civil suits (*Sedima v. Imrex*, 1985; Nybo). Ultimately, this solution addresses only the need to narrow the statute in certain instances while it entirely neglects the need to extend the statute; it also goes against the directive of the Supreme Court.

**Repeal**

A simple solution would be to repeal the civil RICO statute or at least remove the treble damages provision. However, the statute has demonstrated some success in the prosecutions and deterrence of criminal enterprise, so the simplest option would not be the most beneficial. With the continual threat of organized crime, repeal is not the correct remedy, but enforcing a specific rule of court procedure may help reduce frivolous claims (Nybo, 2013).



**Strict Enforcement of Rule 11**

Rule 11 of the Federal Rules of Civil Procedure provides the option to impose sanctions on attorneys who file papers with the court that are not supported by reasonable inquiry or otherwise lack merit (Nybo, 2013). Rule 11(b) specifies that when an attorney submits a signed document to the court, he or she certifies that the document

(1) is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information. (Fed. R. Civ. P., 2007, 11(b) (1)-(4))

According to the Supreme Court, the goal of Rule 11 is to deter baseless filings in District Court (*Cooter v. Hartmarx*, 1990). Nybo believes that Rule 11 is the best solution to reduce manipulation of civil RICO, and some circuit courts have already utilized Rule 11 to punish litigants whose pleadings misused the rule's standards (Nybo, 2013). Even though Rule 11 is a good option as a remedy, due to its peculiar language, multiple issues persist with the application of Rule 11 (Nybo, p. 37-43). Nybo concludes that Rule 11 will not successfully remove all malfeasance of RICO, but district courts

need to “utilize its expansive discretion in punishing the parties (attorneys and clients alike) who are responsible” for the unashamed exploitation of RICO (p. 49). Courts need to utilize Rule 11 to protect their dockets and the legitimacy of the RICO statute (Nybo). In order to properly deter misuse while maintaining the functionality of RICO, Rule 11 is a good place to punish fraudulent RICO claimants (Nybo). The enforcing of Rule 11 is practical and necessary, but it does not address the reasonable and appropriate use of RICO and the expansion for improvement.

### **Supreme Court Ruling**

The Supreme Court has the power to set precedent for all of the inferior courts including the circuit courts. The benefit of the Supreme Court making a decision on the definition of standing for civil RICO is that its implementation will be uniform after its ruling. However, the judicial branch cannot correct the inherent imperfections of RICO and rewrite the law (Lloyd, 2007). Ultimately, the best solution to succinctly enhance the civil RICO statute would be to amend the law.

### **Legislative Action**

Congress has the authority and ability to clarify the terms of RICO swiftly and definitely. From his concurring opinion in *Diaz v. Gates* (2005) Judge Reinhardt suggested that Congress “take another look at RICO and consider amending the statute so as to limit it to its original purpose” (Lloyd, 2007, p. 140). If nothing is done, the inconsistencies will continue, and courts will continue to disagree on the rendition of the civil RICO statute (Lloyd). The only downside with the legislature redefining the law is

the political process of drafting and passing the law and the challenges that it involves, but the benefit of this application will solve the current problem with RICO.

Congress can solve the problem by better defining the standing requirements for civil RICO and using more specific and detailed language that will better explain the purpose of the law for proper execution by the courts. By adding specific definitions for the standing, pattern, proximate causation, and enterprise elements, the statute will not be misinterpreted and inconsistently construed. If Congress were to amend the statute, it would have the opportunity to remove copyright infringement liability for small scale offenders as well as make a decision on the culpability of foreign sovereigns in the context of civil RICO. Congress would have the unquestionable authority to ensure that indirect victims have the ability to sue under RICO. Weiss (2010) suggests that Congress extend the RICO statute so that financial supporters of terrorism can be liable under civil RICO. With litigation, the securities fraud gap could be closed to ensure right of action for securities fraud victims (Blakey & Gerardi, 2014). Unlike all the other solutions, legislative action by Congress would be capable of addressing every issue with the statute. Congress has the authority to change the statute as well as the power to influence how the statute is interpreted by the courts.

### **Conclusion**

Pierson's study on the civil RICO statute demonstrated that it has been employed relatively little yet maligned much (2013). Civil RICO is not yet fully developed, which is why it has not been fully utilized, but as it matures, it will grow into its usefulness (Pierson). The broad language of the RICO statute has led to problems with its

interpretation and application (Pierson). However, the powerful statute can be expanded to include terrorism financing, securities fraud, and indirect victims. The District and Circuit courts have continually applied a narrow interpretation of the statute, which goes against the will of the Supreme Court and Congress (Pierson). Legislative action would correct this problem and the others associated with the statute. According to the Supreme Court, Congress was aware of the weapon that it created for curbing criminal enterprises, and any attempt to change the language or interpretation of RICO should remain in the hands of its creators (*Sedima v. Imrex*, 1985; Weiss, 2010). Solving the problems related to civil RICO would open the door for those who have been cut off from justice and help serve the original purpose of the law as created by Congress, which is to punish and deter organizations that commit crime.

## References

- Anza v. Ideal Steel Supply Corp., 547 U.S. 451, 126 S. Ct. 1991, 164 L. Ed. 2d 720 (2006).
- Bagley, R., Hurley, D., & Mancuso, P. (2007). Racketeer Influenced and Corrupt Organizations. *Am. Crim. L. Rev.*, 44, 901. Retrieved from [http://go.galegroup.com.ezproxy.liberty.edu:2048/ps/i.do?p=AONE&u=vic\\_liberty&id=GALE|A165938482&v=2.1&it=r&sid=summon&userGroup=vic\\_liberty](http://go.galegroup.com.ezproxy.liberty.edu:2048/ps/i.do?p=AONE&u=vic_liberty&id=GALE|A165938482&v=2.1&it=r&sid=summon&userGroup=vic_liberty)
- Blakey, G. R. (2012). Time-bars: RICO criminal and civil federal and state. *Notre Dame L. Rev.*, 88, 1581. Retrieved from <http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1139&context=ndlr>
- Blakey, G. R., & Gerardi, M. (2014). Eliminating overlap, or creating a gap; judicial interpretation of the Private Securities Litigation Reform Act of 1995 and RICO. *Notre Dame JL Ethics & Pub. Pol'y*, 28, 435. Retrieved from <http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1732&context=ndjlepp>
- Boim v. Quranic Literacy Inst. & Holy Land Found., 291 F.3d 1000 (7th Cir. 2002).
- Brady, B. E. (1985). RICO-expansive interpretation of civil RICO gets stamp of approval-Sedima, SPRL v. Imrex Co. *Wake Forest L. Rev*, 21, 1121. Retrieved from <http://heinonline.org.ezproxy.liberty.edu:2048/HOL/Page?handle=hein.journals/wflr21&id=1131>
- Brown v. Cassens Transport Co., 546 F.3d 347 (6th Cir. 2008).
- Bucy, P. H. (2002). Private justice. *76 S. Cal. L. Rev.* 1, 22 & n. 111

- Buscher, M. (2012). Civil RICO liability: The Second Circuit's interpretation of the PSLRA amendment has broad implications for victims of securities fraud conspiracy. *SMUL Rev.*, 65, 205. Retrieved from <http://heinonline.org.ezproxy.liberty.edu:2048/HOL/Page?handle=hein.journals/smulr65&id=207>
- Cooney, J. G., Lavelle, J. P. Jr, & Shariati, B. (2010). Back to the future: Civil RICO in off-label promotion litigation. *Defense Counsel Journal*, 77(2), 168-179. Retrieved from <http://ezproxy.liberty.edu:2048/login?url=http://search.proquest.com/docview/219977938?accountid=12085>
- Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 110 S. Ct. 2447, 110 L. Ed. 2d 359 (1990).
- Coppola, L., & DeMarco, N. (2012). Civil RICO: How ambiguity allowed the Racketeer Influenced and Corrupt Organizations Act to expand beyond its intended purpose. *New Eng. J. on Crim. & Civ. Confinement*, 38, 241. Retrieved from <http://heinonline.org/HOL/LandingPage?handle=hein.journals/nejccc38&div=16&id=&page=>
- Corrigan, J. D. (2010). Restricting RICO under FSIA. *John's L. Rev.*, 84, 1477. Retrieved from <http://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=1039&context=lawreview>
- Cotham, W. M., & Campbell, R. G. (1982). Civil actions under the Racketeer Influenced and Corrupt Organizations Act (RICO). *Rev. Litig.*, 3, 223. Retrieved from <http://heinonline.org/HOL/LandingPage?handle=hein.journals/rol3&div=15&id=&page=>

Cutler, K. R. (1990). Civil use of the Racketeer Influenced and Corrupt Organizations

Act: A problem for the 1990's. *The. SDL Rev.*, 35, 150. Retrieved from <http://heinonline.org/HOL/LandingPage?handle=hein.journals/sdlr35&div=14&id=&page=>

Department of Justice, U.S. (1997). *United States Attorney's Manual*, Section 9-110.101.

Retrieved from <http://www.justice.gov/usam/usam-9-110000-organized-crime-and-racketeering#9-110.101>

Diaz v. Gates, 420 F.3d 897 (9th Cir. 2005).

Doe v. Roe, 958 F.2d 763 (7th Cir. 1992).

Federal Rules of Civil Procedure. (Amended 2007). Rule 11(b) (1)-(4).

Geisler, E. S. (2010). Bridge to somewhere: How a bolder causal analysis can shape civil

RICO into the ideal free market safeguard, *A. Louis ULJ*, 54, 609. Retrieved from <http://search.ebscohost.com.ezproxy.liberty.edu:2048/login.aspx?direct=true&db=lgh&AN=55466317&site=ehost-live&scope=site>

Grogan v. Platt, 835 F.2d 844 (11th Cir. 1988).

Hoppe, D. (2012). Racketeering after Morrison: Extraterritorial application of civil

RICO. *Nw. UL Rev.*, 107, 1375. Retrieved from <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1055&context=nulr>

Headley, M. (1985). Sedima v. Imrex: Civil immunity for unprosecuted RICO violators?.

*Columbia Law Review*, 85(2), 419–448. <http://doi.org/10.2307/1122443>

Lloyd, E. (2007). Making civil RICO suave: Congress must act to ensure consistent

judicial interpretations of the Racketeer Influenced and Corrupt Organizations

Act. *Santa Clara L. Rev.*, 47, 123. Retrieved from <http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1148&context=lawreview>

MLSMK Inv. Co. v. JP Morgan Chase & Co., 651 F.3d 268 (2d Cir. 2011).

National Organization for Women, Inc. v. Scheidler, 510 U.S. 249, 114 S. Ct. 798, 127 L. Ed. 2d 99 (1994).

Nybo, N. L. (2013). Three-right circus: The exploitation of civil RICO, how treble damages caused it, and whether Rule 11 can remedy the abuse. *A. Roger Williams UL Rev.*, 18, 19. Retrieved from <http://heinonline.org.ezproxy.liberty.edu:2048/HOL/Page?handle=hein.journals/rwulr18&id=29>

Organized Crime Control Act of 1970. (1970). Pub. L. No. 91-452, 84 Stat. 904(a).

Pierson, P. B. (2012). RICO, corruption and white-collar crime. *Temp. L. Rev.*, 85, 523.

Pierson, P. B. (2013). RICO trends: From gangsters to class actions. *SCL Rev.*, 65, 213. Retrieved from <http://heinonline.org/HOL/LandingPage?handle=hein.journals/sclr65&div=8&id=&page>

Ross, J. L. (2010). Generation of racketeers: Eliminating civil RICO liability for copyright infringement. *A. Vand. J. Ent. & Tech. L.*, 13, 55. Retrieved from [http://www.jetlaw.org/wp-content/uploads/2011/08/Ross\\_online.pdf](http://www.jetlaw.org/wp-content/uploads/2011/08/Ross_online.pdf)

S. Rep. No. 104-98, at 4 (1995) reprinted in 1995 U.S.C.C.A.N. 679, 683

Sedima, SPRL v. Imrex Co., Inc., 741 F.2d 482 (2d Cir. 1984).

Sedima, SPRL v. Imrex Co., 473 U.S. 479, 105 S. Ct. 3275, 87 L. Ed. 2d 346 (1985).

Weiss, A. B. (2010). From the Bonannos to the Bin Ladens: The Reves operation or management test and the viability of civil RICO suits against financial supporters



of terrorism. *Columbia Law Review*, 1123-1171. Retrieved from <http://columbia-lawreview.org/wp-content/uploads/2014/04/Weiss.pdf>