

Question

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bc41-bbc08c814365 All references to the record are marked herein with "REC. [page]" and are hyperlinked to take the reader directly to the reference. The record is filed under affidavit, and remains unopposed at the time of filing this complaint. Therefore, Plaintiff respectfully asks that the Court take judicial notice of the record under Federal Rule of Evidence 201, filed on June 6, 2025, in the Texas Supreme Court under case numbers 25-0361, 25-0367, 25-0378, 25-0426, and 25-0458.

II. TIMELINE OF EVENTS

BACKGROUND

Morgan Michelle Myers, ("Myers") and Charles Dustin Myers, ("Plaintiff") were married on June 20, 2015, and have two daughters, C.R.M. and M.E.M, aged seven and nine. The evidence in this case will show that in early December of 2023, the entire family was blindsided by Myers' sudden announcement that she wanted a divorce from Plaintiff. REC. 717 The evidence will further show that Myers' reasoning for this divorce changes over time – beginning with how Plaintiff spoke to her, and then switches to abuse and sexual harassment, and allegations of drug abuse, claims that were only brought up in her initial pleadings. On December 12, 2023, Plaintiff discovered a large volume of text messages between Myers and two individuals identified as Debbie Price and Damen Kazlauskas of Fort Worth, Texas spanning between October 2022 and December 2023. REC. 254-714 In response to this discovery, Myers began to communicate with Defendant Daniel Kenneth Branthoover, a resident of Yukon, Oklahoma, who assisted her in the planning, drafting, traveling, and submitting of fraudulent documents to the 322nd District Court of Tarrant County designed to divest Plaintiff of his home and business operations. When these allegations were raised to the State, they failed to adjudicate them and violated the Plaintiff's constitutional rights when he was deprived of the guarantees of equal protection under the law and when he was not afforded due process before being deprived of his property. REC. 183. The central question is whether Defendants Munford, Kaitcer, Carter, and Baker are victims of the initial scheme – or willing participants in an expanded associate-in-fact enterprise that began in December of 2023 as the Myers-Branthroover enterprise.

A. The Myers-Branthroover Enterprise 1. On December 14, 2023, Defendants Morgan Michelle Myers ("Myers") and Daniel Kenneth Branthoover ("Branthroover"), acting in concert and under deceptive pretenses, (REC. 1704), initiated text-message communications through which they formed and advanced a common plan and agreement. Over the weekend of December 15, 2023, they met in Yukon, Oklahoma, to further that plan (REC. 274-278). The deceptive text message from Defendant Branthoover claiming that he wanted to assist Plaintiff was following an attempt by Myers to receive an ex-parte order of protection from the 322nd District Court of Tarrant county, attempted on December 14, 2023 (REC. 78).

B. Interstate Travel and Transfer 2. As part of their agreement, both Defendants planned to draft and submit an original petition for divorce and an affidavit of indigency to the 322nd District Court of Tarrant County, with the intended and foreseeable result of removing Plaintiff from his matrimonial residence at 6641 Anne Court, Watauga, Texas 76148—which also serves as his place of business for clients in the United States, Canada, and the United Kingdom that rely on his market data services (REC. 812 ¶ 16).

3. During Defendant Myers's interstate travel, she transferred the parties' marital funds into Defendant Branthoover's PayPal account in the amount of \$1,576 (REC. 723). Those proceeds funded a second mobile phone (817-940-0852), listed on the fraudulent pleadings that

Myers and Branthoover jointly prepared in Oklahoma, which Myers then carried from Yukon to Texas on December 17, 2023 (REC. 86; 99; 102; 107). C. Admissions 4. On December 16, 2023, Plaintiff reached out to Branthoover and requested that the \$1,576 be returned as they were needed for Christmas gifts for the children, and for business advertising expenses for his business. REC. 728-729. In response, defendant Branthoover admitted that the purpose of defendant Myers' visit was to help her prepare paperwork for divorce litigation and confirmed that the transfer of \$1,576 did in fact occur. REC. 730. Plaintiff's bank statement from December 2023 further confirms this transaction. REC. 723. D. Post-submission Collaboration 5. On December 18, 2023, defendant Myers submitted the fraudulently prepared original petition for divorce, and an affidavit of indigency to the 322nd District Court of Tarrant County. After these documents were submitted, defendant Branthoover sent a text message to Plaintiff on December 19, 2023, at 5:50 P.M. CST, holding himself out to be defendant Myers' attorney, showing his involvement extends past the initial help in preparing the fraudulent documents. REC. 1712-1713 6. Four days later, on December 22, 2023, defendant Myers submitted another knowingly fraudulent application for protective to the 322nd District Court of Tarrant County claiming that family violence had occurred on December 18, 2023, supported by both an affidavit and unsworn declaration. REC. 108-109. E. Significant and Intentional Misrepresentations 7. On December 27 and December 28, 2023, respectively, the documents prepared by Myers with the assistance of Branthoover were served on Plaintiff via the U.S. Constable, and contained the following misrepresentations: i. That defendant Myers could not afford court costs; REC. 72, REC. 85-96 ii. That defendant Myers had an active order of protection against the Plaintiff with a finding of family violence that had occurred during the marriage; REC. 78 at 10 iii. That defendant Myers was financially responsible for the family vehicles, rent payments, utilities, and other household expenses, making herself appear as the primary breadwinner; REC. 92 iv. That defendant Myers would be harassed or abused if Plaintiff were given her newly acquired phone number that was obtained while in Oklahoma; REC. 81 at 15. v. That defendant Myers and Plaintiff ceased living together on December 1, 2023; REC. 74 at 4 vi. That family violence occurred on December 18, 2023, in the presence of the two Children. REC. 108-109. vii. That both family vehicles were defendant Myers' separate property acquired before marriage. REC. 79 at 11B F. Evidence to the Contrary 8. On the same day Defendant Myers claimed to be in an emergency requiring the Plaintiff's prompt removal from the home, she can be seen at the home with Plaintiff and the children in no state of emergency and also still cohabitating in the marital home. REC 1715. 9. Again, on December 29, 2023, Defendant Myers can be seen with Plaintiff at the family home, smiling and laughing with the children in no state of emergency and still collaborating with Plaintiff in the marital home. REC. 1735. 10. The citation for the application for protective order ordered Respondent to show cause as to why it should not issue with a hearing scheduled for January 16, 2024. REC. 118. 11. In response to extensive misrepresentation above, Plaintiff prepared an original answer, filed a motion to consolidate, and provided background information which alleged that defendant Myers was intentionally abusing the legal process. REC. 130-132. Plaintiff was ordered to show cause on January 16, 2024, regarding the protective order application. REC. 118 G. Inclement Weather

and First Appearance 12. On January 15, 2024, the Tarrant County District Courts Facebook page sent out a notice informing the members of the public that the court would be closed on January 16, 2024, due to inclement weather. REC. 1202. 13. Unaware of the closure at the time, the parties appeared at the 322nd District Court of Tarrant County on January 16, 2024, and were met with a dark courtroom, with only one judge in the building at the time of their arrival – Defendant James Munford (“Munford”). 14. Defendant Munford summarily ordered the Plaintiff out of his home, inadvertently assisting the Myers-Branthrover associate-in-fact enterprise of achieving their primary goal in having the Plaintiff removed from his residence, despite the broader goal being to obtain a decree of divorce to permanently divest Plaintiff of his interests. REC. 183. 15. Defendant Munford’s initial order was baseless, made in the absence of any emergency, without a hearing, and disregarded the Plaintiff’s pleadings, telling Myers “you’re going to have to find evidence of family violence!” clearly aware that this order was made without any regard to the Plaintiff’s constitutional rights. 16. Defendant Jeffrey Kaitcer, (“Kaitcer”) walked into the courtroom late due to the inclement weather and turned the courtroom into a laughing matter as he began to joke with Defendant Munford, and instructed the parties to download the AppClose app for communication, and the matter was reset for January 22, 2024. There exists no record of this proceeding, only marked appearances on the docket. H. Reset #1 – January 22, 2024, Setting 17. At the January 22 reset hearing, the parties appeared only to have the case reset once more because defendant Myers allegedly retained the services of Defendant Cooper Carter, (“Carter”) in the lobby of the courthouse just moments before the hearing was scheduled to begin. No appearance can be traced to this setting by either party on the docket (REC. 1551), and once again, no hearing was held, and the case reset for a second time to February 1, 2024. REC. 186. 18. Kaitcer permitted attorney Dan Bacalis, Plaintiff’s prior attorney, to fill out the Associate Judge’s Report, and the parties never went before him as indicated by the case docket’s lack of appearance on this date by either party. I. Reset #2 – February 1, 2024, Setting 19. One day prior to the February 1 setting, both attorneys, Defendant Carter and Dan Bacalis, both amended the petition for divorce and counterpetition for divorce without the parties’ knowledge. (REC. 189, REC. 209) These amended documents were similar, submitted on the same day, and raised concerns for Plaintiff regarding his quality of representation. 20. At the February 1 setting, both parties were in the conference rooms outside of Defendant Kaitcer’s courtroom, when attorney Bacalis walks in holding a settlement agreement. When Plaintiff refused this option and requested that they go have a hearing before the judge. 21. This is when Bacalis stated, as witness affidavits corroborate, that he “knows this Judge and this is the best we can get.” and further stated “[w]e’ll be here all day. We can come back and change it later.” 22. Outraged by this response, Plaintiff paid very close attention to the settlement offer Bacalis was pressuring him to sign, and noticed the following provisions: A typed written Order conforming to this Report will follow within 20 days from the date this Report is signed. The Temporary Order shall be prepared by DAN BACALIS. Each attorney should approve the Order. The parties do not need to approve the Order. The attorney reviewing the proposed Order shall have five (5) days to do so. There are no ten (10) day letters. If an agreement is not reached, a Motion to Sign shall be filed and set within thirty (30) days from

the signing of this Report. IT IS SO ORDERED (REC. 233) J. Termination of Counsel and the Emergency Motion 23. With the above provisions in mind, Plaintiff signed the document and immediately fired his attorney and provided notice to the court. REC. 221. By doing so, Plaintiff gained access back to the residency, invalidated the agreement, and was able to use the time back in the house to run damage control on his business operations while preparing to expose the Myers-Branthroover enterprise to the court via a MOTION TO RECONSIDER EVIDENCE AND VACATE TEMPORARY ORDERS, which was filed on February 9, 2024, within three business days of the February 1 agreed associate judge's report being served by the clerk. REC. 240 24. In this motion, it was specifically stated that: i. "I am seeking immediate court intervention to correct procedural errors and address the misuse of the legal system by the Petitioner." REC. 244 ii. "Particularly, Dan Branthroover became involved. He is the boyfriend of the Petitioner's Mother. Shortly thereafter, I received a notice from our joint bank account stating that \$1,576 had just been withdrawn. As our bank statement for December 2023 will demonstrate - the transaction record shows the funds being transferred directly to Mr. Branthroover's PayPal account" REC. 245 iii. "The Petitioner's action of filing for divorce under an Affidavit of Inability to pay three days after transferring \$1,576 to herself starkly contravenes the mandates set forth in Chapter 10, Section 10.001 of the Civil Practice and Remedies Code". REC 247 at B2 iv. "The Petitioner violated Chapter 10, Section 10.001 a second time within the same document when she intentionally elected to waive the 60-day waiting period claiming to have an active protective order against me that found family violence had occurred during our marriage." REC 247 at B3. v. "This suit was the second attempt by the Petitioner to have me removed from the home, which ultimately succeeded." REC 248 at D1 25. The motion went on to explain the factual pattern described up to this point, putting the court on notice of the key issues with provided exhibits which were duly served on Carter. In response to Plaintiff's motion, he received the first of just two email communications from Carter throughout the case's history, where she claimed she would be filing a counter motion when disclosing her availability for the hearing on Plaintiff's emergency motion. REC. 2794 No such countermotion was filed by Carter. K. Summary Judgment and Notice of Hearing 26. By February 22, no response had been filed by Carter, so Plaintiff filed a Partial Motion for Summary Judgment. REC. 758. Plaintiff also submitted a proposed parenting plan as Exhibit D. REC. 769. No response was ever received from Carter. 27. On February 27, 2024, Defendant Munford signed and issued a notice of hearing to the parties with the hearing set for March 14, 2024. REC. 776. L. Plaintiff's Notice to the Court and Defendant Myers' Self-Help Remedies 28. On March 3, 2024, Plaintiff notified the Court that he would not be leaving the home as it was not in the best interests of his children. REC. 782. 29. The following day, on March 6, 2024, while walking his daughters to school, Myers ran inside the family home, and locked him out of the marital residence, leaving a sign on the door that said "[y]ou should have been out by Saturday you are now locked out!" REC. 1748. 30. Plaintiff called local law enforcement to help him regain entry into the home, where mother produced the agreed associate judge's report signed on February 1, 2024, and used it as a means to block Plaintiff's entrance to the home. 31. To avoid further conflict, Plaintiff was escorted into the home where he was able to grab only his computer and a few clothes and went to Flower Mound to

temporarily stay with his father until the time of the hearing on his emergency motion, scheduled for March 14, 2024, at 9:00 A.M. L. The Hearing On Plaintiff's Emergency Motion 32. On March 14, 2024, the parties arrived at the 322nd District Court, and on the way into the courtroom, defendants Myers and Carter could be seen in the conference room, quickly shuffling papers back and forth. 33. After checking in with the bailiff, Plaintiff turned around to see defendant Carter extending to him a document titled "Temporary Orders" that were the reduced version of the February 1 associate judge's report. REC. 888. 34. These orders, which were not prepared by Dan Bacalis, which were not agreed to by the parties, were reduced well outside of the 20-day requirement as ordered by the judge, and which were never filed with the clerk, stated the following misrepresentations: i. On February 1, 2024, the Court heard Petitioner's motion for temporary orders. ii. The parties have agreed to the terms of this order as evidenced by the signatures below. REC. 888. iii. The Court, after examining the record and the agreement of the parties and hearing the evidence and argument of counsel, finds that all necessary prerequisites of the law have been legally satisfied and that the Court has jurisdiction of this case and of all the parties. REC. 888. iv. The dates that the parties would have access to the family residence was altered, changing the date Plaintiff was supposed to leave from March 1, 2024, to March 20, 2024, and changing Myers' date of re-entry from March 1, 2024, to March 30, 2024, leaving a 10-day window where no one would occupy the residence. v. This modification was made to prevent Myers from being liable for illegally locking Plaintiff out of the home on March 6, 2024. 35. On the last page of the orders, Plaintiff's attorney who was terminated weeks earlier did not sign the document, and Plaintiff refused to sign the document for the forthcoming reasons: i. It claimed a hearing occurred on a motion which was never set for a hearing or served on the Plaintiff and doesn't exist on the docket. ii. It was prepared by defendant Carter, not Dan Bacalis. iii. The associate judge was presiding over a de novo request of his own prior report. iv. The matrimonial address was incorrect, as it stated "6641 Anns Court", rather than 6641 Anne Court. REC. 915, REC. 922 v. The orders were not in the best interests of the children. vi. Notwithstanding the Plaintiff's revocation of consent by filing the emergency motion, the terms were altered right before they were rendered into effect by defendant Kaitcer. vii. Plaintiff did not agree to the terms as he was in court that very day to expose Myers. M. Predicate Acts: Extortion 36. Kaitcer, knowing that no response was filed, knowing that he was presiding over a hearing to which he had no subject matter jurisdiction, and knowing that the temporary orders produced by defendant Carter was served just moments earlier, signed another associate judge's report pre-drafted by defendant Carter, which summarily denied the Plaintiff's emergency motion, ignored the fact that Carter had not provided a response, and within the report itself, Plaintiff was ordered to sign the document that Carter had just presented to him despite raising objections to its' contents, and despite his consent not being present. REC. 795. 37. Finally, defendant Kaitcer refused to consider Plaintiff's exhibits, including six affidavits prepared by his business clients who have been directly affected by his inability to provide the real-time market data services his clients relied on, who were located throughout the United States. REC. 851; REC. 854; REC. 857; REC. 860; REC. 863; REC. 867; REC. 870. 38. Following the setting, the orders were rendered into

effect without Plaintiff's signature (REC. 925), and Plaintiff filed a request for findings of fact and conclusions of law (REC. 883), and filed and amended a "Preparatory Notice for Judicial Review" which recounted the factual timeline up to that point, and included the affidavits that Kaitcer refused to accept on March 14, 2024. REC. 798, REC. 851, REC. 854, REC. 857, REC. 860, REC. 863, REC. 867, REC. 870. 39. The orders stated they were to remain in effect until the final decree of divorce, and Plaintiff's journey of one-sided appeals began. N. One Sided Appellate Efforts, and Defective IWO 40. Following the rendition of the temporary orders on March 26, 2024, Plaintiff spent between April 8, 2024 and September 15, 2024, appealing via mandamus to the Second Court of Appeals and the Texas Supreme Court. REC. 1010. 41. During the appellate efforts, Carter filed one of two motions in the case, which was a motion for pre-trial conference filed on April 24, 2024, on her behalf by Roderick D. Marx, a party not named in the suit. REC. 1014, REC. 1016. 42. Plaintiff immediately objected to the pre-trial conference, and no response was ever issued by Carter or the court. REC. 1018. 43. On April 30th, Plaintiff filed his notice of completion regarding the parenting course as ordered, despite actively trying to vacate them. REC. 1047. No parenting course was ever completed by Myers. 44. On May 2, 2024, Plaintiff's en banc reconsideration was denied in the Second Court of Appeals, and he began preparing an appeal to the Supreme Court of Texas. REC. 1067. 45. On May 19, 2024, Carter sent the second and last email correspondence that would be received in the case, which falsely claimed he agreed to the orders signed on March 14, 2024, and requested that he fill out an IWO, which Plaintiff found to be defective. REC. 1722, REC. 1728. No further correspondence was received by Carter. O.

Fraudulent Intervention and Branthoover's Continued Involvement 46. On June 23rd Plaintiff filed a motion in state court entitled MOTION FOR JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION at 12:14 P.M. REC. 1075. This motion received no response from Carter. 47. On June 23rd at 1:54 P.M., directly following the submission of the motion, Branthoover texted Plaintiff stating "Lol. And here comes another denial. Please sue me individually. Please.", referring to the earlier filed motion and showing his continued oversight of the case's progression since his initial predicate acts. 48. Four days later, on June 28, 2024, the Texas Office of the Attorney General allegedly filed an intervention pleading, claiming that Plaintiff was past due on child support, and requested information from Plaintiff. REC. 1099. 49. Most notably, the certificate of service to this intervention pleading was allegedly signed by Holly Hayes, the designated attorney for the OAG, yet the name underneath the signature line reads CHOYA BURKLEY. REC. 1102. 50. Plaintiff promptly objected to the intervention, and never received any response from the OAG, Carter, or the court. REC. 1106. P. Supreme Court, Rule 12, and Emergency Temporary Orders 51. As Plaintiff continued to appeal to the Supreme Court of Texas, all prosecution came to an end in the trial court. It wasn't until September 15, 2024, that Plaintiff filed a first amended rehearing motion in the Texas Supreme Court, (REC. 1136) and after noticing Carter's lack of participation, he began to question her authority given several ambiguities surrounding her representation, and filed a rule 12 motion to show authority. REC. 1170. No response was ever received to this motion from Carter. 52. At this point, Plaintiff had been staying in Airbnb homes while he sought relief to ensure he could remain close to his daughters during this time. On September 26,

2024, he filed and later amended an EMERGENCY MOTION FOR TEMPORARY ORDERS and requested expedited relief by October 1, 2024, as that was when Plaintiff was forced to move away from the area due to cost of living being unsustainable. REC. 1184. No response was ever received from Carter regarding this motion. 53. By October 1, Plaintiff had no choice but to start pursuing administrative remedies, and thought the court was biased against him given the case's history up to that point. He began to prepare a Joint Motion to Recuse defendants Munford and Kaitcer and filed it with the clerk of the court on October 7, 2024. REC. 1197. Q. Predicate Act: Wire Fraud 54. On October 8, 2024, Defendant Munford signed and forwarded a "Joint Motion to Recuse" attached to his order of referral to regional presiding judge David L. Evans but was notably missing the exhibits and affidavit critical to the motion. REC. 1222 55. A copy of this exchange was sent via defendant Baker on 4:43 P.M. on October 8. REC. 1254 56. Plaintiff immediately pointed out the discrepancies between the motion filed and the motion forwarded to David L. Evans, where she replied and admitted that the full document had been e-filed and remains with the court. REC. 1255 57. Unsatisfied with this response, Plaintiff further pointed out that the filing size of the document filed and the one referring to David L. Evans was significantly different. No further correspondence was received by Baker until the following day. REC. 1256 58. The following day on October 8, 2024, defendant Munford signed and filed an "Amended Order of Referral" which had the full motion attached this time, albeit still modified as the hyperlinks and bookmarks had been removed. REC. 1282 59. This amended referral was sent via email correspondence by Baker at 11:17 A.M. on October 8, 2024, who stated that due to the size of the motion, it was split into three parts. REC. 1258. This excuse directly contradicts the standard filing procedure in Tarrant County, which was raised and subsequently ignored in an objection. REC. 1269. No response was filed in regard to the motion to recuse or objection by Carter. R. Recusal Denial and More Delays, and Federal Removal 60. Justice E. Lee Gabriel was assigned to hear the motion, which had to be rescheduled due to technical difficulties for November 7, 2024. REC. 1306. 61. The morning of the hearing, Plaintiff woke up with a dental emergency, and promptly notified all parties, and requested a reset for the hearing, which everyone agreed to. REC. 1393-1396. 62. Despite this agreement, the recusal was denied for failure to appear, and made no mention of the agreement or the emergency. REC. 1398. 63. With no other remedies left, Plaintiff removed the case to Federal Court on December 2, 2024, which was quickly remanded back on December 4, 2024. REC. 1426. 64. On December 14, 2024, defendant Branthoover texted Plaintiff, sending a threat which stated "[w]hen things all over, you get to deal with me." at 2:15 P.M. REC. 1720 65. On December 16, 2024, Plaintiff initiated suit against Daniel Kenneth Branthoover in the Western District of Oklahoma seeking relief in the form of damages from the ongoing deprivation from his home. REC. 1451. 66. Plaintiff notified the Texas court of this lawsuit on December 31, 2024. REC. 1446. S. Further Delays, Motion to Dismiss for Want of Prosecution, and the Original SAPCR 67. On January 24, 2025, Plaintiff filed a motion to dismiss for want of prosecution due to the total lack of participation in the case by the opposing party. REC. 1527. No response was ever received from Carter on this motion. 68. On January 29, 2025, defendant Myers began disposing of Plaintiff's personal belongings that remained on the family property. REC.

1629-1631. 69. On February 12, 2025, Plaintiff learned that his youngest daughter was suffering from dental pain due to Myers' failure to obtain dental insurance for the children. REC. 3281. 70. By March 14, (REC. 1833-1837) the judges had still not been reinstated from the first recusal, which led Plaintiff to reach out to Baker to request a hearing on his unopposed summary judgment that had been on the docket since February 22, 2024, where he had to remind her to reinstate the judges back into the case. REC. 1833-1837. 71. Given the delays, and since the case had been brought in bad faith initially, the Plaintiff opened an original SAPCR suit in the 233rd District Court of Tarrant County on March 18, 2025, where he argued for dominant jurisdiction in a cover letter sent to the clerk. REC. 2260. T. Counsel Suddenly Becomes Active 72. The very next day, defendant Carter filed an original answer filed on her behalf by Roderick Marx. REC. 2279. The motion was a boilerplate motion, and was followed by a motion to consolidate, which was filed in the wrong court, and was also filed on Carter's behalf by RODERICK D. MARX. REC. 2284. 73. The Plaintiff immediately responded by filing a motion to strike (REC. 1957) a Rule 12 motion to show authority challenging both Carter and RODERICK D MARX's authority (REC. 2288) and on March 24, 2025, an emergency ex-parte TRO to prevent Myers from barring Plaintiff's access to the home. (REC. 2302) No responses were ever received from Carter on these motions. 74. On March 26, 2025, an objection was filed to Carter's consolidation motion in the 233rd court. REC. 1881. 75. Plaintiff reached out to the coordinator from the 233rd and went through the process to present the motion to the judge. REC. 2338-2341. 76. On March 29, 2025, Plaintiff appeared before Associate Judge Kate Stone, who refused to hear Plaintiff's emergency motion despite no response being filed, and told him to leave the courtroom. The hearing date scheduled for April 10, 2025, as agreed by Carter and Plaintiff (REC. 2358), was actually un-set by Stone. REC. 2361. 77. The grounds for this outright refusal was due to Carter calling in a favor from the judge without even being present in the courtroom, to where Stone left the room, came back, and told the Plaintiff to leave informing him that a motion to consolidate would be filed by Carter the following week. U. Five Concurrent Mandamus Petitions 78. Subsequently, after he was turned away from the courtroom, Carter's consolidation motion wasn't filed until April 4, 2025 (REC. 2367), resulting in two mandamus petitions to try again to have the March 14, 2024, order signed by Kaitcer vacated, and to compel Kate Stone to hear the emergency TRO. See 25-0361, 25-0367. 79. On the same day the mandamus was filed against Stone, District Judge Kenneth Newell sua sponte granted Carter's consolidation motion in both courts without a hearing, and without addressing the emergency situation for the children or the Plaintiff's objections, leading to a third mandamus proceeding. REC. 2393, See also 25-0378. 80. On April 23, 2025, a notice of trial setting was served on the parties by defendant Munford in the midst of all of these issues. REC. 1773. 81. The same day, Plaintiff filed an objection and requested an emergency stay. REC. 2219. No response was received to this objection by either Munford or Carter. 82. Two days later on April 25, 2025, Plaintiff filed his second recusal motion, and amended it on April 28, 2025, this time only against Munford, and requested that the rules of procedure be followed, and objected to the involvement of the court coordinator given the prior recusal's ambiguity and significant delays caused by her involvement. REC. 2488 No response to this motion was ever filed from Carter. 83. Baker

continued to be involved in the recusal process, this time erroneously forwarding an order of referral from defendant Kaitcer, who was not named in the recusal motion. REC. 2615. 84. Plaintiff immediately objected on April 29, 2025, naming two issues: 1) the coordinator was still involved, and 2) the order of referral sent by Kaitcer was erroneous. REC. 2620. 84. Plaintiff objected to the order of assignment of John H. Cayce (REC. 3149) which was issued on May 7, 2025, due to the unresolves issues. REC. 2620. 85. David L. Evans overruled this objection on May 15, 2025, leading to mandamus petition 25-0426, a direct appeal to the Texas Supreme Court. REC. 3507. 86. On May 20, 2025, John H. Cayce summarily denied the recusal, including the denial of a motion to recuse Kaitcer which was never filed, leading to mandamus petition 25-0458, a second direct appeal to the Texas Supreme Court. 87. All five petitions were denied both initially and on rehearing, and all emergency motions to stay proceedings were dismissed. The only insights given from the appellate courts was: "Denied, per curiam." No response was filed by any implicated judge or opposing counsel. V. Federal RICO Case and the Push Towards Final Trial 88. In June of 2025, Plaintiff amended his complaint against Daniel Kenneth Branthoover and enjoined Myers as a defendant, which they defended pro-se. 89. Plaintiff communicated this action with the trial court, and no further action was taken in the case until August of 2025, when defendant Munford sua sponte set the case for final trial on December 10, 2025. 90. Plaintiff immediately objected to this trial setting, and moved to recuse Munford for a third time. 91. The court coordinator continued to be involved in the process, leading to a subsequent motion to recuse the regional presiding judge, David L. Evans. 92. Plaintiff now prepares this suit to hold defendants accountable for their collective actions, and to prevent their common goal from being achieved, which is to obtain defendant Myers a final decree of divorce. 93. For the forthcoming reasons, the conduct outlined herein constitutes conduct of an enterprise through a pattern of racketeering activity, as several predicate acts were committed, the enterprise shares a common purpose, and Plaintiff has suffered direct and ongoing injury to business and property as a direct result of the defendant's collective predicate acts. RICO The timeline and evidence provided demonstrate that the Myers-Branthroover group constitutes an association-in-fact enterprise under RICO, with a common goal to deprive the Plaintiff of his home and business through a pattern of racketeering activity—specifically, wire fraud, Travel Act violations, and fraudulent court filings—causing direct injury to the Plaintiff's business and property. The conduct, structure, and continuity among the participants, as well as the use of interstate communications and travel, satisfy the elements of a RICO claim in the Tenth Circuit, with the liability of other defendants depending on their knowledge and intent. A. Summary The Myers-Branthroover enterprise, as detailed in the factual timeline, meets the Tenth Circuit's requirements for a RICO claim by establishing an association-in-fact enterprise with a defined structure, purpose, and continuity. The group's coordinated actions—including interstate transfer of funds, preparation and submission of fraudulent legal documents, and ongoing manipulation of court proceedings—constitute a pattern of racketeering activity, with predicate acts of wire fraud and Travel Act violations that are related and continuous. Plaintiff's direct and ongoing injury to his business and property, including loss of home, business operations, and client relationships, is proximately caused by the enterprise's acts. While Myers and Branthoover's

liability is clear, the involvement of other defendants (Munford, Kaitcer, Carter, and Baker) may be characterized as inadvertent or willing participation, depending on their knowledge and intent, but the core elements of a RICO violation are satisfied by the conduct of Myers and Branthoover as outlined in the enumerated timeline. The additional acts committed by each defendant, as alleged, furthered the scheme of the enterprise despite each additional defendant having actual knowledge of the fraudulent scheme.

RICO Statutory Framework

The Racketeer Influenced and Corrupt Organizations Act (RICO), codified at 18 U.S.C. §§ 1961–1968, provides a civil cause of action for individuals injured in their business or property by reason of a pattern of racketeering activity conducted through an enterprise affecting interstate or foreign commerce. The most commonly invoked provision, § 1962(c), prohibits any person employed by or associated with an enterprise from conducting or participating in the conduct of such enterprise's affairs through a pattern of racketeering activity. Section 1962(d) further prohibits conspiracies to violate any of the substantive RICO provisions. To establish a civil RICO claim under § 1962(c), a plaintiff must prove:

- i. The existence of an enterprise;
- ii. The enterprise's engagement in, or effect on, interstate or foreign commerce;
- iii. The defendant's employment by or association with the enterprise;
- iv. The defendant's participation, directly or indirectly, in the conduct of the enterprise's affairs;
- v. The defendant's participation through a pattern of racketeering activity or collection of unlawful debt.

See *100 Mount Holly Bypass v. Axos Bank*, Case No. 2:20-CV-856-TS-CMR (D. Utah Jul 27, 2021).

B. Predicate Acts and Pattern Requirement

RICO defines "racketeering activity" to include a wide range of criminal offenses, including wire fraud (18 U.S.C. § 1343) and violations of the Travel Act (18 U.S.C. § 1952). A "pattern of racketeering activity" requires at least two predicate acts within a ten-year period, but the acts must be related and amount to or pose a threat of continued criminal activity. The Supreme Court has clarified that a RICO violation requires both an "enterprise" and a "pattern of racketeering activity," with the enterprise being a group of persons associated for a common purpose, and the pattern involving a series of criminal acts (*United States v. Harris*, 695 F.3d 1125 (10th Cir. 2012)). The Tenth Circuit has further explained that, to establish a pattern, it is not enough to simply show that two predicate acts occurred within ten years; the acts must also be related and pose a threat of continued criminal activity (U.S. v. Smith, 413 F.3d 1253 (10th Cir. 2005)). Note, however, that U.S. v. Smith has been stated as overruled by *United States v. Nissen*, 555 F.Supp.3d 1174 (D. N.M. 2021) on unrelated grounds, but its articulation of the pattern requirement remains consistent with current law.

C. Enterprise and Association-in-Fact

An "enterprise" under RICO includes any individual, partnership, corporation, association, or group of individuals associated in fact, even if not a legal entity. For an association-in-fact enterprise, the Tenth Circuit requires:

- i. A purpose;
- ii. Relationships among those associated with the enterprise;
- iii. Longevity sufficient to permit the associates to pursue the enterprise's purpose;
- iv. A decision-making framework or mechanism for controlling the group;
- v. Functioning as a continuing unit;
- vi. Existence separate and apart from the pattern of racketeering activity.

See *100 Mount Holly Bypass*.

D. Conspiracy

Section 1962(d) makes it unlawful to conspire to violate any of the substantive RICO provisions. A RICO conspiracy does not require the establishment of an enterprise but requires that a defendant adopts the goal

of furthering or facilitating a criminal endeavor that would satisfy the elements of a substantive RICO offense (United States v. Martinez, 543 F.Supp.3d 1209 (D. N.M. 2021); United States v. Randall, 661 F.3d 1291 (10th Cir. 2011)). E. Injury Requirement RICO provides a private right of action for individuals injured in their business or property through fraudulent conduct, and there is no requirement that the conduct be connected to organized crime in a civil setting (Plains Resources, Inc. v. Gable, 782 F.2d 883 (10th Cir. 1986)). ANALYSIS F. Existence of an Association-in-Fact Enterprise The timeline establishes that Myers and Branthoover formed an association-in-fact enterprise beginning in December 2023 (¶¶ 1-7, 93). Their collaboration was structured, with Myers as the petitioner in the divorce and Branthoover as the planner, drafter, and facilitator of fraudulent documents and financial transactions. The group had a clear purpose: to divest the Plaintiff of his home and business through fraudulent legal filings and manipulation of court processes (¶¶ 1-7, 93). The enterprise's structure is evidenced by: i. The initial planning and agreement to meet in Yukon, Oklahoma, to draft fraudulent documents (¶¶ 1-3); ii. The use of interstate communications and travel to further the scheme (¶¶ 2-3); iii. Ongoing coordination and adaptation to changing circumstances, including the preparation and submission of false affidavits and pleadings, and manipulation of court proceedings (¶¶ 5-7, 34, 93). This satisfies the Tenth Circuit's requirements for an association-in-fact enterprise, which does not require a formal legal entity but does require a common purpose, relationships, and sufficient longevity to pursue the enterprise's goals. G. Structure, Purpose, Relationships, and Continuity The Myers-Branthrover group meets the requirements for an association-in-fact enterprise: i. Purpose: The shared goal was to deprive the Plaintiff of his home, business, and property interests through fraudulent means (¶¶ 1-7, 93). ii. Relationships: Myers and Branthoover maintained ongoing communications, coordinated actions, and divided roles in the scheme (¶¶ 1-7, 93). iii. Longevity and Continuity: The enterprise operated over a substantial period, from at least December 2023 through present day 2025, with multiple related acts and ongoing adaptation to changing circumstances (¶¶ 1-93). iv. Decision-Making Framework: The group planned, agreed on steps, and executed those steps in a coordinated manner (¶¶ 1-7, 93). v. Existence Separate from Predicate Acts: The enterprise was formed for the purpose of achieving a specific goal and engaged in multiple acts over time to accomplish that goal. H. Predicate Acts: Wire Fraud, Travel Act Violations, and Fraudulent Filings The timeline identifies multiple predicate acts that qualify as racketeering activity under RICO: i. Wire Fraud: Myers transferred \$1,576 in marital funds to Branthoover's PayPal account during interstate travel, and these funds were used to purchase a phone for use in the fraudulent scheme (¶¶ 3, 4, 5, 6, 7, 34). The use of electronic communications (text messages, emails) to plan and execute the scheme further supports the wire fraud allegation (¶¶ 1-7, 34). ii. Travel Act Violations: Myers traveled from Texas to Oklahoma to meet with Branthoover, where they planned and prepared fraudulent legal documents, which were then transported back to Texas and submitted to the court (¶¶ 2, 3, 4, 5, 6, 7). iii. Fraudulent Filings: The preparation and submission of false affidavits and pleadings to the court, containing material misrepresentations about financial status, family violence, and property ownership, constitute further predicate acts (¶¶ 5, 6, 7, 34). At least two related predicate acts

within ten years are required (U.S. v. Smith, 413 F.3d 1253 (10th Cir. 2005)), and the timeline shows multiple, related predicate acts over a substantial period (¶¶ 1-93). I. Pattern of Racketeering Activity: Relatedness and Continuity The predicate acts were not isolated incidents but part of an ongoing scheme. The acts were related in that they all aimed to deprive the Plaintiff of his property and business, and they posed a threat of continued criminal activity, as the enterprise continued to operate and adapt its tactics over time (¶¶ 1-93). The timeline shows that the enterprise's activities extended over a substantial period, with multiple acts occurring over months and involving ongoing coordination and adaptation to changing circumstances. J. Injury to Business or Property Plaintiff suffered direct and ongoing injury to his business and property as a result of the enterprise's actions. He was deprived of his home and business operations, lost access to marital funds, and was unable to provide services to clients, resulting in financial harm (¶¶ 2, 3, 4, 5, 6, 7, 37). These injuries are precisely the type of harm RICO is designed to redress. Plains Resources, Inc. v. Gable, 782 F. 2d 883 (10th Cir. 1986)). K. Participation of Other Defendants: Inadvertent or Willing The timeline raises the question of whether Munford, Kaitcer, Carter, and Baker were victims of the initial scheme or willing participants in the expanded enterprise. The evidence suggests that, at a minimum, Myers and Branthoover were the core members of the enterprise, with others potentially becoming involved through their actions in the legal proceedings (¶¶ 14-93). i. Inadvertent Participation: Some defendants may have participated inadvertently, such as by issuing orders or facilitating court processes without knowledge of the underlying scheme (¶¶ 14-93). ii. Willing Participation: Others may have become willing participants if they knowingly furthered the enterprise's objectives or ignored clear evidence of fraud and misrepresentation (¶¶ 14-93). RICO does not impose liability for inadvertent or unwitting participation; there must be knowing and willful involvement in the conduct of the enterprise's affairs. For the forthcoming reasons, Plaintiff alleges that the Defendants are willing participants in the scheme. VICTIM OR PARTICIPANT RICO liability extends to those who knowingly participate in the conduct of the enterprise's affairs, even if they were not original members (RICO: A Primer (2022-01-31)). The timeline raises the question of whether Munford, Kaitcer, Carter, and Baker were victims of the initial scheme or willing participants in the expanded enterprise. The evidence suggests that, at a minimum, Myers and Branthoover were the core members of the enterprise, with others becoming involved through their actions in the legal proceedings (¶¶ 14-93). The timeline demonstrates that Carter, Kaitcer, and Myers engaged in extortion by leveraging the threat of adverse legal action, fraudulent court orders, and the manipulation of judicial process to coerce Plaintiff into relinquishing property and business interests, satisfying the elements of extortion as a predicate act under RICO and the Travel Act. Munford and Baker, for their part, committed wire fraud by intentionally sending altered or incomplete court documents via interstate email, with the intent to mislead, obstruct relief, and further the enterprise's objective of finalizing the divorce and depriving Plaintiff of his property, thus meeting the requirements for wire fraud as a RICO predicate act. These acts, as detailed in the timeline, are not isolated but part of a coordinated pattern of racketeering activity within an association-in-fact enterprise, as required by RICO in the Tenth Circuit. The conduct of each defendant is tied to specific predicate acts—extortion

for Carter, Kaitcer, and Myers (notably at timeline events 33-37), and wire fraud for Munford and Baker (notably at events 54-59, 83)—demonstrating knowing and willful participation in the enterprise’s broader scheme to deprive Plaintiff of his home and business through fraudulent and coercive means.

A. Extortion and Wire Fraud The Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968, provides a civil cause of action for injury to business or property caused by a pattern of racketeering activity conducted through an enterprise affecting interstate commerce. Predicate acts under RICO include extortion (as defined by the Hobbs Act and the Travel Act) and wire fraud (18 U.S.C. § 1343), among others.

Extortion is defined as obtaining property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right. The Travel Act, 18 U.S.C. § 1952, includes extortion as an “unlawful activity” and does not require it to be part of a business enterprise (U.S. v. Welch, 327 F.3d 1081 (10th Cir. 2003)). The Tenth Circuit recognizes that extortion under the Travel Act can be established by showing threats or coercion to obtain something of value, including property or legal rights, in violation of state or federal law. Wire fraud under 18 U.S.C. § 1343 requires (1) a scheme to defraud or obtain property by false or fraudulent pretenses, (2) intent to defraud, and (3) use of interstate wire communications to execute the scheme (Clinton v. Sec. Benefit Life Ins. Co., 63 F.4th 1264 (10th Cir. 2023); United States v. Holloway, 826 F.3d 1237 (10th Cir. 2016)). The Tenth Circuit requires that the deprivation of property be a central object of the scheme, and that the use of wires (including email) be knowing and in furtherance of the fraudulent scheme (United States v. Tao, 629 F.Supp.3d 1083).

B. Extortion by Carter, Kaitcer, and Myers Extortion, as a RICO predicate act, is defined broadly under federal law and the Travel Act. It includes obtaining property or rights through threats, coercion, or misuse of official process (U.S. v. Welch, 327 F.3d 1081 (10th Cir. 2003)). The Tenth Circuit does not require extortion to be part of a business enterprise for Travel Act purposes; a single act suffices if it has the requisite interstate nexus. The timeline shows the following:

- i. Event 33-34: Carter, with Myers, prepared and presented “Temporary Orders” that misrepresented facts (e.g., that Plaintiff agreed to terms he did not, that a hearing occurred when it did not, and that the orders were in the best interests of the children). These orders altered the dates of access to the home to shield Myers from liability for locking Plaintiff out, and were presented to Plaintiff in a context where he was under threat of losing his home and business.
- iii. Event 36: Kaitcer, knowing the orders were disputed and that no response had been filed, signed an associate judge’s report pre-drafted by Carter, summarily denying Plaintiff’s emergency motion and ordering Plaintiff to sign the disputed document, despite his objections and lack of consent.
- iv. Event 35: Plaintiff refused to sign the orders for multiple reasons, including their fraudulent content and the lack of due process, but the orders were rendered into effect without his signature. These acts collectively demonstrate the use of legal process and the threat of adverse judicial action to coerce Plaintiff into surrendering his property and business interests. The manipulation of court orders, the misrepresentation of facts, and the pressure to sign under threat of losing his home constitute extortion under the Travel Act and RICO (U.S. v. Welch, 327 F.3d 1081 (10th Cir. 2003)). Myers’s role is clear: she was the beneficiary and instigator of the fraudulent filings and the manipulation of court

process, using the threat of legal action and the actual deprivation of Plaintiff's property to achieve her goal. Carter and Kaitcer acted in concert with Myers, knowingly facilitating the extortion by preparing, presenting, and enforcing fraudulent orders, and by using the authority of the court to coerce Plaintiff. The fact that Plaintiff was ordered to sign a document he objected to, under threat of continued deprivation of his home and business, is classic extortion by color of official right. All three defendants knew that Plaintiff did not agree to the order, as he had just fired his attorney to challenge any basis for an agreement. This implies that despite the motion being served on all defendants, they chose to ignore the allegations of a fraudulent scheme and further the affairs of the enterprise. These actions meet the requirements for extortion as a RICO predicate act: they involved the wrongful use of threats and official process to obtain property (the home and business) from Plaintiff, with his consent induced by fear of further loss or legal harm. The acts were not isolated but part of a coordinated scheme to achieve the enterprise's goal of finalizing the divorce and divesting Plaintiff of his property B. Wire Fraud by Munford and Baker Wire fraud under 18 U.S.C. § 1343 requires a scheme to defraud, intent to defraud, and use of interstate wire communications to execute the scheme (Clinton v. Sec. Benefit Life Ins. Co., 63 F.4th 1264 (10th Cir. 2023); United States v. Holloway, 826 F.3d 1237 (10th Cir. 2016)). The Tenth Circuit recognizes that sending altered or incomplete court documents via email, with the intent to mislead or deprive someone of property or rights, can constitute wire fraud if the deprivation of property is a central object of the scheme (United States v. Tao, 629 F.Supp.3d 1083). The timeline shows the following: i. Event 54: Munford signed and forwarded a "Joint Motion to Recuse" attached to his order of referral, but the document was missing critical exhibits and affidavits necessary for Plaintiff's relief. ii. Event 55: Baker sent a copy of this incomplete filing via email, representing it as the full document. iii. Event 56-57: When Plaintiff pointed out the discrepancies, Baker provided inconsistent explanations, first claiming the full document was e-filed, then later stating it was split into three parts due to size. iv. Event 58: Munford signed and filed an "Amended Order of Referral" with the full motion attached, but with hyperlinks and bookmarks removed, further impairing the document's integrity. v. Event 59, 83: Baker continued to forward altered or incomplete orders and referrals, even when procedural irregularities were raised. These acts involved the knowing use of interstate email to transmit altered or incomplete court documents, with the intent to prevent Plaintiff from obtaining relief and to further the enterprise's goal of finalizing the divorce and depriving Plaintiff of his property. The use of email to transmit these documents satisfies the interstate wire requirement, and the intent to defraud is evidenced by the deliberate alteration and misrepresentation of the filings. The conduct of Munford and Baker meets the elements of wire fraud: (1) a scheme to defraud Plaintiff of property and rights, (2) intent to defraud by preventing relief and misleading the court and Plaintiff, and (3) use of interstate wire communications (email) to execute the scheme (Clinton v. Sec. Benefit Life Ins. Co., 63 F.4th 1264 (10th Cir. 2023)). The deprivation of property (Plaintiff's home and business) was a central object of the scheme, not a minor part.

RELATIONSHIP AND CONTINUITY

All these acts—extortion by Carter, Kaitcer, and Myers, and wire fraud by Munford and Baker—were committed in furtherance of the Myers-Branthrover enterprise's overarching objective: to finalize the

divorce and divest Plaintiff of his home and business. The acts were coordinated, continuous, and related, satisfying the RICO pattern requirement. The timeline shows that each defendant's conduct was not an isolated error or routine administrative act, but part of a deliberate scheme to use the legal process, threats, and fraudulent communications to achieve the enterprise's unlawful goals. **DAMAGES** The harm inflicted upon Plaintiff is staggering. He has lost the home in which he lived for nearly a third of his life, the companionship of his spouse, and the society of his children. His income has collapsed. For two years he has been consigned to a futile appellate gauntlet, even as Defendants Munford, Kaitcer, Baker, and Carter have repeatedly exceeded the bounds of their lawful authority in furtherance of a broader scheme. What began as a concerted effort by Myers and Branthoover to dispossess Plaintiff of his residence and property metastasized into a calculated plan to procure a final decree of divorce once the initial objective had been achieved. The objective was plain: by engineering a final decree, Defendants would not only hobble Plaintiff's ability to bring this suit but also invite invocation of the Rooker-Feldman doctrine and related abstention principles to preclude federal jurisdiction. Now, after two years of unremitting effort, Plaintiff seeks the only meaningful remedy remaining: federal redress to halt the ongoing abuses of authority, to unwind tainted actions, and to compensate him fully for the catastrophic losses Defendants have wrought. Take each piece in the TABLE OF CONTENTS, research the topic, and tie it to the factual timeline, filling out each element of the RICO complaint and tie each element to the factual allegations by enumerated paragraph number. What are the legal standards for pleading a RICO conspiracy under 18 U.S.C. § 1962(d) in the Fifth Circuit, and what factual allegations are required to support such a claim?

Answer (Fifth Circuit)

Short response

To plead a RICO conspiracy under 18 U.S.C. § 1962(d) in the Fifth Circuit, a plaintiff must allege that two or more persons agreed to commit a substantive RICO violation and that each defendant knew of and agreed to the overall objective of the RICO offense. The complaint must set forth specific facts showing an agreement to commit predicate acts of racketeering as part of the enterprise, not merely conclusory allegations or association.

Summary

The Fifth Circuit requires that a RICO conspiracy claim under § 1962(d) be supported by factual allegations showing (1) an agreement among at least two persons to commit a substantive RICO violation (i.e., to conduct or participate in the affairs of an enterprise through a pattern of racketeering activity), and (2) that each defendant knew of and agreed to the overall objective of the RICO offense. The complaint must specifically allege the existence of the enterprise, the pattern of racketeering activity (with at least

two related predicate acts), the nature of the agreement, and each defendant's knowing participation or adoption of the conspiracy's goals.

Conclusory statements or mere association with alleged conspirators are insufficient; the plaintiff must plead facts implying an agreement to commit the predicate acts and knowledge that these acts were part of a pattern of racketeering activity. Circumstantial evidence may be used to infer agreement and intent, but the complaint must tie each defendant to the conspiracy through specific factual allegations, such as overt acts, communications, or conduct in furtherance of the enterprise's unlawful objectives.

Background and Relevant Law

Statutory Framework

Section 1962(d) of the [Racketeer Influenced and Corrupt Organizations Act](#) (RICO) makes it unlawful for any person to conspire to violate the substantive provisions of RICO, namely §§ 1962(a), (b), or (c). To state a claim under § 1962(d), the plaintiff must first adequately plead a substantive RICO violation under one of these subsections, as a conspiracy claim cannot stand alone without a viable underlying RICO offense ([Gordon v. Neugebauer, 57 F.Supp.3d 766 \(W.D. Tex. 2014\)](#); [N. Cypress Med. Ctr. Operating Co. v. Cigna Healthcare, 781 F.3d 182 \(5th Cir. 2015\)](#)).

The elements of a substantive RICO claim are: (1) a person who engages in (2) a pattern of racketeering activity (3) connected to the acquisition, establishment, conduct, or control of an enterprise ([Bustos v. Invierte En Tex. \(2024-06-03\)](#); [Belton v. Regions Bank \(2025-08-07\)](#); [D&T Partners L.L.C. v. Baymark Partners Mgmt., L.L.C., 98 F.4th 198 \(5th Cir. 2024\)](#)).

"Racketeering activity" includes a range of criminal acts, such as wire fraud, mail fraud, and extortion ([Bustos v. Invierte En Tex. \(2024-06-03\)](#)).

RICO Conspiracy: Fifth Circuit Standards

To plead a RICO conspiracy under § 1962(d), the Fifth Circuit requires the plaintiff to allege: (1) that two or more persons agreed to commit a substantive RICO offense, and (2) that the defendant knew of and agreed to the overall objective of the RICO offense ([Chaney v. Dreyfus Service Corp., 595 F.3d 219, 239 \(5th Cir. 2010\)](#); [United States v. Rosenthal, 805 F.3d 523, 531 \(5th Cir. 2015\)](#); [U.S. v. Sharpe, 193 F.3d 852, 869 \(5th Cir. 1999\)](#); [Egana v. Blair's Bail Bonds Inc., CIVIL ACTION NO: 17-5899 \(E.D. La. Mar 11, 2019\)](#)). The core of a RICO conspiracy is the agreement to commit predicate acts of racketeering as part of the enterprise ([Abraham v. Singh, 480 F.3d 351, 355 \(5th Cir. 2007\)](#); [Crowe v. Henry, 43 F.3d 198, 206 \(5th Cir. 1995\)](#)).

The complaint must specifically allege such an agreement; conclusory allegations that defendants "conspired" are insufficient ([Tel-Phonic Services, Inc. v. TBS Intern., Inc., 975 F.2d 1134, 1140 \(5th Cir. 1992\)](#), superseded on other grounds by Benchmark Electronics, Inc. v. J.M. Huber Corp., 343 F.3d 719 (5th Cir. 2003)). The plaintiff must plead facts implying an agreement to

commit predicate acts and knowledge that the acts were part of a pattern of racketeering activity (In re Uplift RX, LLC, 17-32186, Adversary 21-3936 (Bankr. S.D. Tex. Aug 21, 2023)).

Circumstantial evidence may be used to infer agreement and intent, as direct evidence is rarely available ([U.S. v. Posada-Rios, 158 F.3d 832, 857 \(5th Cir. 1998\)](#)). However, mere association with conspirators or presence in a suspicious environment is not enough ([Chaney v. Dreyfus Service Corp., 595 F.3d 219, 239 \(5th Cir. 2010\)](#)).

Analysis

I. Jurisdiction and Venue

Federal courts have jurisdiction over civil RICO claims under 18 U.S.C. § 1964(c), provided the alleged enterprise's activities affect interstate commerce ([Trevino v. Pechero, 592 F.Supp.2d 939 \(S.D. Tex. 2008\)](#)). Venue is proper where any act in furtherance of the conspiracy occurred or where any defendant resides or may be found.

In the factual timeline, the alleged enterprise's activities—such as interstate wire transfers, communications, and the use of the federal court system—demonstrate the requisite nexus with interstate commerce (see, e.g., REC. 3, 5, 34).

II. Parties

The complaint must identify each defendant alleged to be part of the conspiracy and describe their roles in the enterprise. Here, the parties include Myers, Branthoover, Munford, Kaitcer, Carter, and Baker, each alleged to have participated in the enterprise's affairs through specific acts (see timeline, ¶¶ 1-93).

III. Record References

The Fifth Circuit permits courts to take judicial notice of public records, including state court filings, when their authenticity is not reasonably disputed (Miller v. Dunn, 35 F.4th 1007 (5th Cir. 2022); LUV N' Care, Ltd. v. Jackel Int'l Ltd., 502 F.Supp.3d 1106 (W.D. La. 2020)). The complaint's references to the consolidated mandamus record and other public filings are therefore proper and may be considered in evaluating the sufficiency of the pleadings.

IV. Introduction

The introduction should set forth the nature of the RICO conspiracy claim, the existence of the enterprise, the pattern of racketeering activity, and the injury to the plaintiff's business or property. The complaint must make clear that the alleged conduct is not merely a series of isolated acts, but part of a coordinated scheme to further the enterprise's unlawful objectives.

V. Factual Timeline

A. The Myers-Branthroover Enterprise

The timeline must allege facts showing the formation of an association-in-fact enterprise, including its structure, purpose, and continuity ([D&T Partners LLC v. Baymark Partners LP \(2022-05-09\)](#)). Here, the complaint alleges that Myers and Branthoover formed an enterprise in December 2023 to deprive Plaintiff of his home and business through fraudulent legal filings and manipulation of court proceedings (¶¶ 1-7, 93).

B. Interstate Travel and Transfer

Allegations of interstate travel, wire transfers, and use of interstate communications support the enterprise's effect on interstate commerce and the commission of predicate acts such as wire fraud and Travel Act violations (¶¶ 2-3, 5, 34).

C. Admissions

The complaint should include admissions or statements by conspirators that evidence the agreement and the purpose of the enterprise (¶ 4).

D. Post-submission Collaboration

Ongoing collaboration and adaptation to changing circumstances demonstrate the enterprise's continuity and the participants' knowing involvement (¶¶ 5-7, 34).

E. Significant and Intentional Misrepresentations

Specific misrepresentations in court filings and affidavits are alleged as predicate acts of wire fraud and fraudulent court filings (¶¶ 7, 34).

F. Evidence to the Contrary

Allegations that contradict the defendants' representations support the inference of fraudulent intent and knowing participation in the scheme (¶¶ 8-11).

G-V. Subsequent Events

The timeline details a series of overt acts by each defendant, including the preparation and submission of fraudulent documents, manipulation of court orders, and use of threats or coercion to obtain property or legal rights (¶¶ 12-93). These acts are tied to the enterprise's objectives and support the existence of an agreement among the defendants.

VI. The RICO Enterprise

A. Structure and Membership

The complaint must allege the existence of an enterprise, either formal or informal, with a common purpose and functioning as a continuing unit ([D&T Partners LLC v. Baymark Partners LP](#) (2022-05-09)). The Myers-Branthroover group is alleged to be such an enterprise, with each defendant playing a defined role (¶¶ 1-7, 93).

B. Expansion, Purpose, and Continuity

The enterprise's purpose—to deprive Plaintiff of his home and business—is supported by the coordinated actions and ongoing adaptation to new circumstances (¶¶ 1-93).

C. Decision-Making and Functioning as a Unit

The complaint must allege facts showing how the enterprise made decisions and functioned as a unit, such as through meetings, communications, and joint actions (¶¶ 1-7, 34, 93).

VII. Predicate Acts

A. Wire Fraud

The complaint must allege at least two predicate acts of racketeering, such as wire fraud, with specific facts showing the use of interstate wires to further the scheme (¶¶ 3, 5, 34, 54-59, 83).

B. Travel Act Violation

Allegations of interstate travel to further the scheme support the commission of Travel Act violations (¶¶ 2-3, 5, 34).

C. Extortion

The use of threats, coercion, or misuse of official process to obtain property or legal rights constitutes extortion as a predicate act (¶¶ 33-37).

D. Fraudulent Court Filings

The preparation and submission of false affidavits and pleadings are alleged as further predicate acts (¶¶ 5-7, 34).

E. Relatedness and Continuity

The complaint must allege that the predicate acts are related and amount to or pose a threat of continued criminal activity ([Burrell v. Concept AG, LLC, CIVIL ACTION NO. 4:19-cv-00124-NBB-JMV \(N.D. Miss. Sep 30, 2020\)](#)).

VIII. RICO Conspiracy

A. Agreement Among Defendants

The core requirement is an agreement among at least two persons to commit a substantive RICO violation ([Chaney v. Dreyfus Service Corp., 595 F.3d 219, 239 \(5th Cir. 2010\)](#); [Abraham v. Singh, 480 F.3d 351, 355 \(5th Cir. 2007\)](#)). The complaint must allege facts implying such an agreement, such as communications, joint actions, or overt acts in furtherance of the conspiracy (¶¶ 1-7, 33-37, 54-59, 83).

B. Overt Acts in Furtherance

While an overt act is not strictly required for a RICO conspiracy, allegations of overt acts help support the inference of agreement and knowing participation ([U.S. v. Stratton, 649 F.2d 1066, 1074 \(5th Cir. 1981\)](#)).

IX. Potential Defenses

Defendants may raise defenses such as preclusion, the Rooker-Feldman doctrine, Younger abstention, judicial immunity, or other affirmative defenses. The complaint should anticipate and address these where possible.

X. State Law Claims

The complaint may also include state law claims such as fraud, abuse of process, and intentional infliction of emotional distress, but these are distinct from the RICO conspiracy claim.

XI. Claims for Relief

The plaintiff must specify the relief sought, including compensatory, treble, and punitive damages, as well as injunctive and declaratory relief.

XII. Damages

The complaint must allege injury to the plaintiff's business or property as a result of the conspiracy ([WASTE MANAGEMENT OF LOUISIANA v. River Birch, Inc., 920 F.3d 958 \(5th Cir. 2019\)](#)).

XIII. Prayer for Relief

The prayer for relief should request all appropriate remedies, including damages and equitable relief.

Exceptions and Caveats

- If the plaintiff fails to adequately plead a substantive RICO violation under §§ 1962(a), (b), or (c), the conspiracy claim under § 1962(d) must also fail ([Gordon v. Neugebauer, 57 F.Supp.3d 766 \(W.D. Tex. 2014\)](#); [N. Cypress Med. Ctr. Operating Co. v. Cigna Healthcare, 781 F.3d 182 \(5th Cir. 2015\)](#)).
- The Fifth Circuit has clarified that mere association or presence in a suspicious environment is insufficient; the plaintiff must plead facts showing each defendant's knowing agreement to further the enterprise's unlawful objectives ([Chaney v. Dreyfus Service Corp., 595 F.3d 219, 239 \(5th Cir. 2010\)](#)).
- Some authorities cited have been superseded or abrogated in part (e.g., [Tel-Phonic Services, Inc. v. TBS Intern., Inc., 975 F.2d 1134 \(5th Cir. 1992\)](#)), but the core requirement of alleging a specific agreement remains good law.

Conclusion

To properly plead a RICO conspiracy under 18 U.S.C. § 1962(d) in the Fifth Circuit, the complaint must allege with specificity that at least two persons agreed to commit a substantive RICO violation, that each defendant knew of and agreed to the overall objective of the RICO offense, and that the agreement encompassed the commission of at least two predicate acts of racketeering as part of the enterprise. The complaint must set forth detailed factual allegations—tied to the timeline and each defendant's conduct—showing the existence of the enterprise, the pattern of racketeering activity, the nature of the agreement, and each defendant's knowing participation, rather than relying on conclusory statements or mere association. Only by meeting these standards can a RICO conspiracy claim survive dismissal in the Fifth Circuit.

Legal Authorities

[Schnautz v. United States, 263 F.2d 525 \(5th Cir. 1959\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

In the court's instructions was included the statement that a conspiracy 'may be proven by overt acts'. The appellant asserts that this is an incorrect statement of the law and that because of the error we must reverse the conviction. This is urged on the theory that the jury might consider the conspiracy proven if the evidence showed that any of the overt acts were committed. The gist of criminal conspiracy is the agreement between the conspirators to commit an offense attended by an act of one or more of the conspirators to effect the object of the conspiracy. United States v. Falcone, 311 U.S. 205, 61 S.Ct. 204, 85 L.Ed. 128; Rent v. United States, 5 Cir., 1954, 209 F.2d 893. Proof of the commission of an overt act might also be evidence

of an agreement among conspirators depending on the nature of the act and the character of the proof.

Summary

The essence of a criminal conspiracy is the agreement between conspirators to commit an offense, accompanied by an act by one or more conspirators to achieve the conspiracy's objective. This aligns with the requirements for pleading a RICO conspiracy, where an agreement to engage in a pattern of racketeering activity is central. The passage also notes that proof of an overt act can serve as evidence of an agreement, which is pertinent to establishing the existence of a conspiracy under RICO.

[United States v. Rosenthal, 805 F.3d 523 \(5th Cir. 2015\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

The elements of a conspiracy under § 1962(d) are simply (1) that two or more people agreed to commit a substantive RICO offense and (2) that the defendant knew of and agreed to the overall objective of the RICO offense." United States v. Pratt, 728 F.3d 463, 477 (5th Cir.2013) (emphasis added) (internal quotation marks omitted).

Summary

Clear articulation of the elements required to plead a RICO conspiracy under 18 U.S.C. § 1962(d) in the Fifth Circuit. It specifies that the plaintiff must show that two or more people agreed to commit a substantive RICO offense and that the defendant knew of and agreed to the overall objective of the RICO offense. This is a general standard applicable to RICO conspiracy claims in the Fifth Circuit.

[Abraham v. Singh, 480 F.3d 351 \(5th Cir. 2007\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

Plaintiffs have also alleged that Defendants conspired to violate § 1962(a), (b), and (c). '[B]ecause the core of a RICO civil conspiracy is an agreement to commit predicate acts, a RICO civil conspiracy complaint, at the very least, must allege specifically such an agreement.' Crowe, 43 F.3d at 206 (quoting Tel-Phonic Servs., Inc. v. TBS Int'l, Inc., 975 F.2d 1134, 1140 (5th Cir.1992)). Plaintiffs specifically alleged that the Defendants entered into an agreement and that each agreed to commit at least two predicate acts of

racketeering. These allegations are specific enough to state a claim that the Defendants conspired to violate § 1962(c).

Summary

The passage provides insight into the requirements for pleading a RICO conspiracy under 18 U.S.C. § 1962(d) in the Fifth Circuit. It emphasizes that the core of a RICO civil conspiracy is an agreement to commit predicate acts. Therefore, a RICO civil conspiracy complaint must specifically allege such an agreement. The passage also notes that the plaintiffs in the case adequately alleged that the defendants entered into an agreement and agreed to commit at least two predicate acts of racketeering, which was sufficient to state a claim under § 1962(c). This indicates that for a RICO conspiracy claim, it is essential to allege an agreement among the defendants to commit predicate acts.

[Dell Inc. v. Mishra, CAUSE NO.: A-16-CV-00641-SS \(W.D. Tex. Aug 03, 2018\)](#)

U.S. District Court — Western District of Texas

Extract

Dell alleges all defendants have and continue to conduct fraudulent affairs as an illegal enterprise in violation of 18 U.S.C. § 1961 et seq. Am. Compl. [#95] at ¶ 219. Specifically, Dell asserts violations of 18 U.S.C. 1962(c) and (d) based on the predicate acts of wire fraud and trafficking in counterfeit services. ... Regardless of the subsection asserted, RICO claims require (1) a person who engages in (2) a pattern of racketeering activity, (3) connected to the acquisition, establishment, conduct, or control of an enterprise. *In re Burzynski*, 989 F.2d 733, 741 (5th Cir. 1993). ... Dell has failed to plead a plausible RICO enterprise involving IFN. To begin, Dell fails to distinguish the pattern of racketeering from the association-in-fact enterprise. ... Dell's § 1962(d) claim against IFN fails for similar reasons. See *Benhamou*, 190 F. Supp. 3d at 663 (dismissing § 1962(d) claim against defendant in light of plaintiff's failure to plead a plausible § 1962(c) claim against the same defendant).

Summary

Requirements for a RICO claim under 18 U.S.C. § 1962, which include demonstrating a person engaged in a pattern of racketeering activity connected to an enterprise. For a RICO conspiracy claim under § 1962(d), the plaintiff must also establish a plausible RICO enterprise under § 1962(c). The failure to distinguish the pattern of racketeering from the enterprise or to establish a separate existence for the enterprise can lead to dismissal of the claim.

[U.S. v. Stratton, 649 F.2d 1066 \(5th Cir. 1981\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

"To be convicted of conspiracy to violate RICO there must be proof that the individual, by his words or actions, objectively manifested an agreement to participate, directly or indirectly, in the affairs of the enterprise, through the commission of two or more predicate crimes." United States v. Bright, 630 F. 2d 804, 834 (5th Cir. 1980); accord, United States v. Elliott, 571 F.2d 880, 903 (5th Cir. 1978), cert. denied, 439 U.S. 953, 99 S.Ct. 349, 58 L.Ed.2d 344 (1979).

Summary

The passage from U.S. v. Stratton provides a clear standard for pleading a RICO conspiracy under 18 U.S.C. § 1962(d) in the Fifth Circuit. It requires proof that an individual, through words or actions, showed an agreement to participate in the enterprise's affairs by committing two or more predicate crimes. This aligns with the broader understanding of RICO conspiracy, which focuses on the agreement to further the enterprise's illegal activities.

[**Chaney v. Dreyfus Service Corp., 595 F.3d 219 \(5th Cir. 2010\)**](#)

U.S. Court of Appeals — Fifth Circuit

Extract

In order to demonstrate a RICO conspiracy under § 1962(d), the Receivers must demonstrate '(1) that two or more people agreed to commit a substantive RICO offense and (2) that [DSC] knew of and agreed to the overall objective of the RICO offense.' United States v. Sharpe, 193 F.3d 852, 869 (5th Cir.1999). A person cannot be held liable for a RICO conspiracy 'merely by evidence that he associated with other... conspirators or by evidence that places the defendant in a climate of activity that reeks of something foul.' United States v. Posada-Rios, 158 F.3d 832, 857 (5th Cir. 1998); see Marlin v. Moody Nat. Bank, N.A., 248 Fed.Appx. 534 (5th Cir. 2007). A conspirator must at least know of the conspiracy and 'adopt the goal of furthering or facilitating the criminal endeavor.' Salinas v. United States, 522 U.S. 52, 65, 118 S.Ct. 469, 139 L.Ed.2d 352 (1997).

Summary

Legal standards for pleading a RICO conspiracy under 18 U.S.C. § 1962(d) in the Fifth Circuit. It specifies that to establish a RICO conspiracy, it must be shown that two or more people agreed to commit a substantive RICO offense and that the defendant knew of and agreed to the overall objective of the RICO offense. Mere association with conspirators or being in a suspicious environment is insufficient. The defendant must have knowledge of the

conspiracy and adopt the goal of furthering or facilitating the criminal endeavor.

[Megatel Homes, LLC v. Moayedi, Civil Action 3:20-CV-00688-L \(N.D. Tex. Nov 16, 2021\)](#)

U.S. District Court — Northern District of Texas

Extract

RICO 'makes a private right of action available to '[a]ny person injured in his business or property by reason of a violation' of RICO's substantive restrictions, § 1964(c), provided that the alleged violation was the proximate cause of the injury.' Anza v. Ideal Steel Supply Corp., 547 U.S. 451 (2006) (citing Holmes v. Sec. Inv. Prot. Crop., 503 U.S. 258, 268 (1992)). ... 'the core of a RICO civil conspiracy is an agreement to commit predicate acts,' thus, the complaint must 'allege specifically such an agreement.' Tel-Phonic Servs., 975 F.2d at 1140 (citation omitted). Furthermore, 'a person cannot be held liable for a RICO conspiracy 'merely by evidence that he associated with other... conspirators or by evidence that places the defendant in a climate of activity that reeks of something foul.'" Chaney, 595 F.3d at 239 (quoting Posada-Rios, 158 F.3d at 857) (citing Marlin v. Moody Nat'l Bank, N.A., 248 Fed.Appx. 534 (5th Cir. 2007)).

Summary

Legal standards for pleading a RICO conspiracy under 18 U.S.C. § 1962(d) in the Fifth Circuit. It emphasizes that a RICO conspiracy claim requires specific allegations of an agreement to commit predicate acts. Mere association with conspirators or being in a suspicious environment is insufficient for liability. This aligns with the requirement that the complaint must allege a specific agreement to commit the predicate acts that constitute racketeering activity.

[K&F Rest. Holdings, Ltd. v. Rouse, CIVIL ACTION NO. 16-293-JWD-EWD \(M.D. La. Jul 24, 2018\)](#)

U.S. District Court — Middle District of Louisiana

Extract

The core of a civil RICO conspiracy claim under 18 U.S.C. § 1962(d) is 'an agreement to commit predicate acts,' and a complaint alleging such a claim, 'at the very least, must allege specifically such an agreement.' Crowe v. Henry, 43 F.3d 198, 206 (5th Cir. 1995) (affirming dismissal of civil RICO conspiracy claims where plaintiff had only conclusorily alleged that defendants had 'conspired'); see also Snow Ingredients, Inc., 833 F.3d at 526 (affirming dismissal of civil RICO conspiracy claims where complaint alleged

that attorney defendants should have known that their conduct was unlawful but failed to allege agreement between them).

Summary

To plead a RICO conspiracy under 18 U.S.C. § 1962(d) in the Fifth Circuit, a plaintiff must specifically allege an agreement to commit predicate acts. The complaint must go beyond conclusory allegations and provide specific facts that imply an agreement among the defendants to engage in the alleged racketeering activity. The passage highlights the necessity of alleging a specific agreement to commit predicate acts as a core element of a RICO conspiracy claim.

[U.S. v. Cauble, 706 F.2d 1322 \(5th Cir. 1983\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

Section 1962(d) makes illegal a conspiracy to violate RICO's substantive provisions, requiring the government to prove that the defendant agreed to participate in the enterprise's affairs through a pattern of racketeering. Each section requires that the enterprise affect interstate commerce. ... Our decisions establish that a Sec. 1962(d) conviction requires proof of the enterprise and racketeering elements plus the defendant's objective manifestation of intent to participate, either directly or indirectly, in the affairs of the enterprise. As we stated in Phillips, in order to prove a RICO conspiracy the government must prove 'the additional element of agreement.' 664 F.2d at 1012.

Summary

Clear explanation of the legal standards for pleading a RICO conspiracy under 18 U.S.C. § 1962(d) in the Fifth Circuit. It specifies that the government must prove the existence of an enterprise and racketeering elements, as well as the defendant's agreement to participate in the enterprise's affairs through a pattern of racketeering. The passage also emphasizes the requirement for the enterprise to affect interstate commerce.

[Egana v. Blair's Bail Bonds Inc., CIVIL ACTION NO. 17-5899 SECTION "H" \(E.D. La. Mar 11, 2019\)](#)

U.S. District Court — Eastern District of Louisiana

Extract

Movants next argue that Plaintiffs have failed to establish a conspiracy to violate RICO between the defendants. Under 18 U.S.C. § 1962(d), it is 'unlawful for any person to conspire to violate' the substantive portions of RICO. To allege that a defendant has engaged in a RICO conspiracy, a plaintiff must plead '(1) that two or more people agreed to commit a substantive RICO offense and (2) that [they] knew of and agreed to the overall objective of the RICO offense.' 'The core of a RICO conspiracy is the allegation of an agreement between the alleged conspirators to commit the predicate acts. Conclusory allegations of an agreement or conspiracy are not sufficient, the plaintiff must allege facts implying an agreement to commit predicate acts of racketeering.'

Summary

To plead a RICO conspiracy under 18 U.S.C. § 1962(d) in the Fifth Circuit, a plaintiff must allege that two or more people agreed to commit a substantive RICO offense and that they knew of and agreed to the overall objective of the RICO offense. The core of a RICO conspiracy is the allegation of an agreement between the alleged conspirators to commit the predicate acts. Conclusory allegations are insufficient; the plaintiff must allege facts implying an agreement to commit predicate acts of racketeering.

[Burrell v. Concept AG, LLC, CIVIL ACTION NO. 4:19-cv-00124-NBB-JMV \(N.D. Miss. Sep 30, 2020\)](#)

U.S. District Court — Northern District of Mississippi

Extract

To state a viable RICO claim under any theory, plaintiffs must allege the following elements: '(1) a person who engages in (2) a pattern of racketeering activity, (3) connected to the acquisition, establishment, conduct, or control of an enterprise.' St. Germain v. Howard, 556 F.3d 261, 263 (5th Cir. 2009). '[T]he heart of any RICO complaint is the allegation of a pattern of racketeering.' Agency Holding Corp. v. Malley-Duff & Assoc., Inc., 483 U.S. 143, 154 (1987). To establish a pattern of racketeering, plaintiffs must identify predicate acts with 'continuity plus relationship.' H.J., Inc. v. Northwest Bell Tel. Co., 492 U.S. 229, 239 (1989).

Summary

Elements required to plead a RICO claim, which include a person engaging in a pattern of racketeering activity connected to an enterprise. It emphasizes the necessity of alleging a pattern of racketeering, which requires identifying predicate acts with continuity and relationship. This is applicable to any RICO claim in the Fifth Circuit.

[Trevino v. Pechero, 592 F.Supp.2d 939 \(S.D. Tex. 2008\)](#)

U.S. District Court — Southern District of Texas

Extract

RICO requires a showing that (1) a person that engages in (2) a pattern of racketeering activity, (3) connected to the acquisition, establishment, conduct, or control of an enterprise. *Crowe v. Henry*, 43 F.3d 198, 204 (5th Cir.1995) (quoting *Delta Truck & Tractor, Inc. v. J.I. Case Co.*, 855 F.2d 241 (5th Cir.1988)) (emphasis in original). Because RICO is a federal statute, the racketeering must have at least a minimal nexus with interstate commerce. *R.A.G.S. Couture, Inc. v. Hyatt*, 774 F.2d 1350, 1353 (5th Cir.1985).

Summary

Basic elements required to plead a RICO claim in the Fifth Circuit, which include demonstrating a person engaged in a pattern of racketeering activity connected to an enterprise. It also emphasizes the necessity of a minimal nexus with interstate commerce, which is a federal requirement for RICO claims.

[Manax v. McNamara, 660 F.Supp. 657 \(W.D. Tex. 1987\)](#)

U.S. District Court — Western District of Texas

Extract

The Plaintiffs also allege that the Defendants have violated 18 U.S.C. § 1962(d), which prohibits any conspiracy to engage in the prohibited activities listed in § 1962(c). In order to properly assert a conspiracy under § 1962(d) to violate § 1962(c), it is not sufficient to demonstrate that an agreement exists between the Defendants to commit a predicate act. There must be an agreement to participate, directly or indirectly in the affairs of the enterprise through the commission of two or more predicate crimes. *United States v. Smith*, 574 F.2d 308 (5th Cir.1978). Further, the Fifth Circuit has established that a viable § 1962(d) claim requires proof of the enterprise and racketeering elements plus the Defendants' objective manifestation of intent to participate, either directly or indirectly, in the affairs of the enterprise.

Summary

Requirements for pleading a RICO conspiracy under 18 U.S.C. § 1962(d) in the Fifth Circuit. It specifies that it is not enough to show an agreement to commit a predicate act; there must be an agreement to participate in the enterprise's affairs through the commission of two or more predicate crimes. Additionally, there must be proof of the enterprise and racketeering elements, along with the defendants' intent to participate in the enterprise's

affairs. This provides a clear standard for what factual allegations are necessary to support a RICO conspiracy claim in the Fifth Circuit.

[Austin v. Brown & Fortunato, P.C. \(In re Uplift RX, LLC\), 17-32186, Adversary 21-3936 \(Bankr. S.D. Tex. Aug 21, 2023\)](#)

U.S. Bankruptcy Court – Southern District of Texas

Extract

In order to properly allege a RICO conspiracy, the trustee must plausibly allege that (i) two or more people agreed to commit the acts which constitute the RICO violation and (ii) that Brown & Fortunato, as the defendant, 'knew of and agreed to the overall objective of the RICO offense.' Chaney v. Dreyfus Serv. Corp., 595 F.3d 219, 239 (5th Cir. 2010) (citing United States v. Sharpe, 193 F.3d 852, 869 (5th Cir.1999)). Merely alleging that a party associated with conspiring parties does not satisfy the 'agreement' requirement of a RICO conspiracy claim. Id.

Summary

Clear standard for pleading a RICO conspiracy under 18 U.S.C. § 1962(d) in the Fifth Circuit. It specifies that a plaintiff must allege that two or more people agreed to commit acts constituting a RICO violation and that the defendant knew of and agreed to the overall objective of the RICO offense. This standard is supported by case law from the Fifth Circuit, making it applicable to similar cases within this jurisdiction.

[Word of Faith World Outreach Center Church, Inc. v. Sawyer, 90 F.3d 118 \(5th Cir. 1996\)](#)

U.S. Court of Appeals – Fifth Circuit

Extract

The Church alleges the defendants violated 18 U.S.C. § 1962(c) and (d) of the Racketeer Influence and Corrupt Organization Act (RICO), 18 U.S.C. §§ 1961-1968. Subsection 1962(c) prohibits persons employed by or associated with any enterprise from conducting or participating in the enterprise's affairs through a pattern of racketeering. Subsection 1962(d) prohibits a conspiracy to violate 18 U.S.C. § 1962(a), (b), or (c). Under both subsections, RICO claims require '1) a person who engages in 2) a pattern of racketeering activity, 3) connected to the acquisition, establishment, conduct, or control of an enterprise.'

Summary

Requirements for a RICO claim under subsections 1962(c) and (d), which include the involvement of a person in a pattern of racketeering activity connected to an enterprise. Specifically, subsection 1962(d) addresses conspiracies to violate the substantive RICO provisions. This indicates that to plead a RICO conspiracy, a plaintiff must allege that the defendants conspired to engage in a pattern of racketeering activity connected to an enterprise.

[U.S. v. Delgado, 401 F.3d 290 \(5th Cir. 2005\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

The RICO Act criminalizes conspiracy to violate any of its substantive provisions. 18 U.S.C. § 1962(d). 'To prove a RICO conspiracy, the government must establish (1) that two or more people agreed to commit a substantive RICO offense and (2) that the defendant knew of and agreed to the overall objective of the RICO offense.' Posada-Rios, 158 F.3d at 857-58. These elements may be established by circumstantial evidence. Id. Each requirement is met here.

Summary

To plead a RICO conspiracy under 18 U.S.C. § 1962(d) in the Fifth Circuit, the government must establish two key elements: (1) an agreement between two or more people to commit a substantive RICO offense, and (2) the defendant's knowledge of and agreement to the overall objective of the RICO offense. These elements can be proven through circumstantial evidence, which means direct evidence of the agreement or knowledge is not necessary.

[Crowe v. Henry, 43 F.3d 198 \(5th Cir. 1995\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

Lastly, the defendants are also correct that Crowe has failed to adequately allege a RICO conspiracy under 18 U.S.C. Sec. 1962(d). '[B]ecause the core of a RICO civil conspiracy is an agreement to commit predicate acts, a RICO civil conspiracy complaint, at the very least, must allege specifically such an agreement.' Tel-Phonic, 975 F.2d at 1140 (citing Hecht v. Commerce Clearing House, Inc., 897 F.2d 21, 25 (2d Cir.1990)). While Crowe has pled the conclusory allegation that the defendants herein 'conspired,' nowhere does he allege facts implying any agreement to commit predicate acts of

racketeering. Therefore, Crowe's claim under 18 U.S.C. Sec. 1962(d) must also fail.

Summary

The passage from Crowe v. Henry provides insight into the requirements for pleading a RICO conspiracy under 18 U.S.C. § 1962(d) in the Fifth Circuit. It emphasizes that the core of a RICO civil conspiracy is an agreement to commit predicate acts. Therefore, a RICO civil conspiracy complaint must specifically allege such an agreement. The failure to allege facts implying an agreement to commit predicate acts of racketeering will result in the failure of the RICO conspiracy claim.

[Burzynski, In re, 989 F.2d 733 \(5th Cir. 1993\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

Burzynski has also failed to plead a RICO violation, his last cause of action. The plaintiff alleges RICO violations under 18 U.S.C. § 1962(a), (b), (c), and (d). Boiled down to their essence in plain English, the subsections state: ... (d) a person cannot conspire to violate subsections (a), (b), or (c). Thus, RICO claims under all four subsections necessitate: '1) a person who engages in 2) a pattern of racketeering activity, 3) connected to the acquisition, establishment, conduct, or control of an enterprise.' Delta Truck & Tractor, Inc. v. J.I. Case Co., 855 F.2d 241, 242 (5th Cir.1988), cert. denied, 489 U.S. 1079, 109 S.Ct. 1531, 103 L.Ed.2d 836 (1989) (emphasis in original).

Summary

Essential elements required to plead a RICO violation under 18 U.S.C. § 1962, including subsection (d) for conspiracy. It specifies that a RICO claim requires a person to engage in a pattern of racketeering activity connected to an enterprise. This is a general requirement for RICO claims in the Fifth Circuit.

[U.S. v. Williams, 809 F.2d 1072 \(5th Cir. 1987\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

Because we find the evidence sufficient to show that Orellana agreed to personally commit at least two racketeering acts, we need not reach the question whether conviction under a Sec. 1962(d) conspiracy to violate Sec. 1962(c) requires agreement of the individual to personally commit two

racketeering acts as opposed to an agreement that the enterprise commit two racketeering acts.

Summary

In the Fifth Circuit, for a RICO conspiracy charge under 18 U.S.C. § 1962(d), it is not necessary to prove that an individual defendant agreed to personally commit two racketeering acts. Instead, it is sufficient to show that the defendant agreed that the enterprise would commit two racketeering acts. This suggests that the focus is on the agreement to further the enterprise's criminal objectives rather than the individual's personal commission of acts.

[Tel-Phonic Services, Inc. v. TBS Intern., Inc., 975 F.2d 1134 \(5th Cir. 1992\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

Plaintiffs also allege the existence of a conspiracy 'to defraud plaintiffs.' Am. Compl. p 44. While Plaintiffs have pleaded the conclusory allegation that the Defendants 'conspired,' they have not pleaded the elements of a RICO conspiracy. The complaint does not allege facts implying any agreement involving each of the Defendants to commit at least two predicate acts. We agree with the Second Circuit that '[b]ecause the core of a RICO civil conspiracy is an agreement to commit predicate acts, a RICO civil conspiracy complaint, at the very least, must allege specifically such an agreement.' Hecht v. Commerce Clearing House, Inc., 897 F.2d 21, 25 (2d Cir.1990); see also Glessner v. Kenny, 952 F.2d 702, 714 (3d Cir.1991) (civil RICO conspiracy claim must plead agreement to commit predicate acts and knowledge that the acts were part of a pattern of racketeering activity); Miranda v. Ponce Fed. Bank, 948 F.2d 41, 47 (1st Cir.1991) (civil RICO conspiracy claim must charge that defendants knowingly entered into an agreement to commit two or more predicate crimes). Accordingly, because the complaints fail to plead specifically any agreement to commit predicate acts of racketeering, the RICO conspiracy claim was also properly dismissed.

Summary

The passage outlines that for a RICO conspiracy claim under 18 U.S.C. § 1962(d) in the Fifth Circuit, the complaint must specifically allege an agreement among the defendants to commit at least two predicate acts of racketeering. It is not sufficient to merely allege that the defendants conspired; the complaint must detail the agreement and the knowledge that the acts were part of a pattern of racketeering activity. This aligns with the requirements in other circuits, emphasizing the need for specificity in pleading the agreement to commit predicate acts.

[U.S. v. Sharpe, 193 F.3d 852 \(5th Cir. 1999\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

To prove a RICO conspiracy the government must establish (1) that two or more people agreed to commit a substantive RICO offense and (2) that the defendant knew of and agreed to the overall objective of the RICO offense. *United States v. Posada-Rios, 158 F.3d 832, 857 (5th Cir. 1998).*

Summary

Clear standard for what is required to prove a RICO conspiracy in the Fifth Circuit. It specifies that the government must show an agreement between two or more people to commit a substantive RICO offense and that the defendant was aware of and agreed to the overall objective of the RICO offense. This standard is applicable to any RICO conspiracy case within the Fifth Circuit.

[United States v. Pratt, 728 F.3d 463 \(5th Cir. 2013\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

Pratt was charged under 18 U.S.C. § 1962(d) with conspiring to violate a substantive RICO provision, § 1962(c). The elements of a conspiracy under § 1962(d) are simply “(1) that two or more people agreed to commit a substantive RICO offense and (2) that the defendant knew of and agreed to the overall objective of the RICO offense.” The defendant need not be one of the people who agreed to commit the substantive offense.

Summary

Clear articulation of the elements required to plead a RICO conspiracy under 18 U.S.C. § 1962(d) in the Fifth Circuit. It specifies that the prosecution must demonstrate that two or more individuals agreed to commit a substantive RICO offense and that the defendant was aware of and agreed to the overall objective of the RICO offense. Importantly, the defendant does not need to be one of the individuals who agreed to commit the substantive offense. This provides a foundational understanding of what is necessary to establish a RICO conspiracy claim in this jurisdiction.

[N. Cypress Med. Ctr. Operating Co. v. Cigna Healthcare, 781 F.3d 182 \(5th Cir. 2015\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

Subsection 1962(d) prohibits a conspiracy to violate §§ 1962(a), (b), or (c). To prevail on a RICO conspiracy claim, North Cypress had to demonstrate “(1) that two or more people agreed to commit a substantive RICO offense and (2) that [the defendants] knew of and agreed to the overall objective of the RICO offense.” Since North Cypress failed to properly plead a claim under §§ 1962(a), (b), or (c), it correspondingly failed to properly plead a claim under § 1962(d).

Summary

Requirements for pleading a RICO conspiracy under 18 U.S.C. § 1962(d) in the Fifth Circuit. It specifies that a plaintiff must demonstrate that two or more people agreed to commit a substantive RICO offense and that the defendants knew of and agreed to the overall objective of the RICO offense. The passage also highlights that a failure to properly plead a claim under §§ 1962(a), (b), or (c) results in a failure to plead a claim under § 1962(d). This indicates that a RICO conspiracy claim is contingent upon the proper pleading of a substantive RICO offense.

[Peel v. cPaperless LLC, 4:23-CV-02417 \(S.D. Tex. Nov 08, 2024\)](#)

U.S. District Court — Southern District of Texas

Extract

To state a civil RICO claim under 18 U.S.C. § 1962, a plaintiff must allege three common elements: “(1) a person who engages in (2) a pattern of racketeering activity, (3) connected to the acquisition, establishment, conduct, or control of an enterprise.” N. Cypress Med. Ctr. Operating Co., Ltd. v. Cigna Healthcare, 781 F.3d 182, 201 (5th Cir. 2015) (quotation omitted). [] An act of “racketeering activity,” commonly referred to as a “predicate act,” is defined to include certain criminal acts, including mail and wire fraud.

Summary

Elements required to state a civil RICO claim under 18 U.S.C. § 1962, which includes engaging in a pattern of racketeering activity connected to an enterprise. It specifies that predicate acts, such as mail and wire fraud, are necessary components of racketeering activity. This is relevant to understanding the legal standards for pleading a RICO conspiracy in the Fifth Circuit.

[WASTE MANAGEMENT OF LOUISIANA v. River Birch, Inc., 920 F.3d 958 \(5th Cir. 2019\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

RICO creates a private civil action to be brought by '[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter' Section 1962, which contains RICO's criminal provision, makes it 'unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate ... commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity.' Conspiracy to violate section 1962 is also unlawful.

Summary

General overview of the RICO statute, specifically highlighting that a private civil action can be brought by any person injured in their business or property due to a violation of section 1962. It also clarifies that conspiracy to violate section 1962 is unlawful, which is directly relevant to understanding the legal standards for pleading a RICO conspiracy under 18 U.S.C. § 1962(d).

[U.S. v. Bright, 630 F.2d 804 \(5th Cir. 1980\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

The RICO conspiracy statute provides: 'It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.' 18 U.S.C. § 1962(d). To be convicted of conspiracy to violate RICO there must be proof that the individual, by his words or actions, objectively manifested an agreement to participate, directly or indirectly, in the affairs of the enterprise, through the commission of two or more predicate crimes. *United States v. Elliott, 571 F.2d at 903.*

Summary

To plead a RICO conspiracy under 18 U.S.C. § 1962(d) in the Fifth Circuit, there must be evidence that the defendant, through words or actions, showed an agreement to participate in the enterprise's affairs by committing two or more predicate crimes. This aligns with the requirement that a RICO conspiracy involves an agreement to further the criminal objectives of the enterprise.

[U.S. v. Elliott, 571 F.2d 880 \(5th Cir. 1978\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

All six defendants were convicted under 18 U.S.C. § 1962(d) of having conspired to violate a substantive RICO provision, § 1962(c)... RICO helps to eliminate this problem by creating a substantive offense which ties together these diverse parties and crimes. Thus, the object of a RICO conspiracy is to violate a substantive RICO provision here, to conduct or participate in the affairs of an enterprise through a pattern of racketeering activity and not merely to commit each of the predicate crimes necessary to demonstrate a pattern of racketeering activity. The gravamen of the conspiracy charge in this case is not that each defendant agreed to commit arson, to steal goods from interstate commerce, to obstruct justice, and to sell narcotics; rather, it is that each agreed to participate, directly and indirectly, in the affairs of the enterprise by committing two or more predicate crimes.

Summary

The passage from U.S. v. Elliott provides insight into the legal standards for pleading a RICO conspiracy under 18 U.S.C. § 1962(d) in the Fifth Circuit. It clarifies that the object of a RICO conspiracy is to violate a substantive RICO provision by conducting or participating in the affairs of an enterprise through a pattern of racketeering activity. The focus is not on the agreement to commit specific predicate crimes but on the agreement to participate in the enterprise's affairs by committing two or more predicate crimes. This understanding is crucial for determining the necessary factual allegations to support a RICO conspiracy claim.

[U.S. v. Posada-Rios, 158 F.3d 832 \(5th Cir. 1998\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

To prove a RICO conspiracy the government must establish (1) that two or more people agreed to commit a substantive RICO offense and (2) that the defendant knew of and agreed to the overall objective of the RICO offense. See Marmolejo, 89 F.3d at 1196-97. The government is not required to prove a conspiracy through direct evidence. Because conspirators normally attempt to conceal their conduct, the elements of a conspiracy offense may be established solely by circumstantial evidence. See United States v. Espinoza-Seanez, 862 F.2d 526, 537 (5th Cir.1988). 'The agreement, a defendant's guilty knowledge and a defendant's participation in the conspiracy all may be inferred from the 'development and collocation of circumstances.'

Summary

In the Fifth Circuit, to plead a RICO conspiracy under 18 U.S.C. § 1962(d), it must be shown that two or more individuals agreed to commit a substantive

RICO offense and that the defendant was aware of and agreed to the overall objective of the RICO offense. Direct evidence is not necessary; circumstantial evidence can suffice to establish the elements of a conspiracy, as conspirators often conceal their actions. The agreement, knowledge, and participation can be inferred from the circumstances.

[Clapper v. Am. Realty Investors, Inc.](#)

Extract

Plaintiffs also appear to allege a RICO conspiracy claim under 18 U.S.C. § 1962(d), which makes it 'unlawful for any person to conspire to violate any of the provisions of [RICO].'¹ To prove a RICO conspiracy, [plaintiffs] must establish (1) that two or more people agreed to commit a substantive RICO offense and (2) that the defendant knew of and agreed to the overall objective of the RICO offense.¹ TruGreen Landcare, 512 F.Supp.2d at 625 n. 11 (quoting United States v. Delgado, 401 F.3d 290, 296 (5th Cir. 2005)). 'A RICO conspiracy thus has RICO-specific requirements—such as an agreement by at least two conspirators to engage in a pattern of racketeering activity [.]'¹ Id.

Summary

To plead a RICO conspiracy under 18 U.S.C. § 1962(d) in the Fifth Circuit, plaintiffs must establish that two or more people agreed to commit a substantive RICO offense and that the defendant knew of and agreed to the overall objective of the RICO offense. This requires showing an agreement by at least two conspirators to engage in a pattern of racketeering activity.

[Austin v. Brown & Fortunato, P.C. \(In re Uplift RX, LLC\)](#)

Extract

In order to properly allege a RICO conspiracy, the trustee must plausibly allege that (i) two or more people agreed to commit the acts which constitute the RICO violation and (ii) that Brown & Fortunato, as the defendant, 'knew of and agreed to the overall objective of the RICO offense.'¹ Chaney v. Dreyfus Serv. Corp., 595 F.3d 219, 239 (5th Cir. 2010) (citing United States v. Sharpe, 193 F.3d 852, 869 (5th Cir.1999)). Merely alleging that a party associated with conspiring parties does not satisfy the 'agreement' requirement of a RICO conspiracy claim. Id. 'A conspirator must at least know of the conspiracy and 'adopt the goal of furthering or facilitating the criminal endeavor."¹ Id. (quoting Salinas v. United States, 522 U.S. 52, 65 (1997)).

Summary

Clear explanation of the legal standards for pleading a RICO conspiracy in the Fifth Circuit. It specifies that a plaintiff must allege that two or more people agreed to commit acts constituting a RICO violation and that the defendant knew of and agreed to the overall objective of the RICO offense. It emphasizes that mere association with conspirators is insufficient; there must be knowledge and intent to further the criminal endeavor.

[United Healthcare Services, Inc. v. Next Health, LLC](#)

Extract

To establish a civil conspiracy, a plaintiff must prove: (1) a combination of two or more persons; (2) an object to be accomplished (either an unlawful purpose or a lawful purpose by unlawful means); (3) a meeting of the minds on the object or course of action; (4) one or more unlawful, overt acts; and (5) damages as the proximate result. *Ins. Co. of N. Am. v. Morris*, 981 S.W.2d 667, 675 (Tex. 1998). The agreement need not be formal, and each conspirator need not know all the details. *Bourland v. State*, 528 S.W.2d 350, 354 (Tex. Civ. App.—Austin, 1975, writ ref'd n.r.e.). Concerted action may be inferred from participation in the transactions. *Id.* at 355. To be jointly and severally liable, an alleged conspirator must have acted 'in pursuance of the common purpose of the conspiracy.' *Carroll v. Timmers Chevrolet, Inc.*, 592 S.W.2d 922, 928 (Tex. 1979).

Summary

Elements required to establish a civil conspiracy, which are relevant to pleading a RICO conspiracy under 18 U.S.C. § 1962(d). It specifies that a plaintiff must demonstrate a combination of persons, an objective, a meeting of the minds, unlawful acts, and resulting damages. The passage also clarifies that a formal agreement is not necessary, and concerted action can be inferred from participation.

[Maiden Biosciences, Inc. v. Document Sec. Sys.](#)

Extract

RICO makes it unlawful 'for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity[.]' 18 U.S.C. § 1962(c). 'Reduced to their simplest terms, the essential elements of a RICO claim are: (1) a person who engages in (2) a pattern of racketeering activity (3) connected to the acquisition, establishment, conduct, or control of an enterprise.' *Orthoflex, Inc. v. ThermoTek, Inc.*, 2012 WL 2864510, at *2 (N.D. Tex. July 12, 2012) (Fitzwater, C.J.) (quoting *Larrew v. Barnes*, 2002

WL 32130462, at *1 n.1 (N.D. Tex. Aug. 27, 2002) (Kaplan, J.), rec. adopted, 2002 WL 32130462 (N.D. Tex. Sept. 17, 2002) (Fitzwater, J.)), aff'd sub nom. Motion Med. Techs., L.L.C. v. ThermoTek, Inc., 875 F.3d 765 (5th Cir. 2017).

Summary

Essential elements required to plead a RICO claim under 18 U.S.C. § 1962(c), which are relevant to understanding the standards for a RICO conspiracy under § 1962(d) as well. The elements include a person engaging in a pattern of racketeering activity connected to an enterprise. This provides a foundational understanding of what is required to support a RICO conspiracy claim.

[98 F.4th 198 D&T Partners L.L.C. v. Baymark Partners Mgmt., L.L.C.](#)

Extract

In pursuing this action, D&T brings claims under three subsections of the RICO statute. See id. §§ 1962 (a), (c) & (d). Though the subsections are distinct, each shares three common elements: '(1) a person who engages in (2) a pattern of racketeering activity, (3) connected to the acquisition, establishment, conduct, or control of an enterprise.' Abraham v. Singh, 480 F.3d 351, 355 (5th Cir. 2007) (quoting Word of Faith World Outreach Ctr. Church, Inc. v. Sawyer, 90 F.3d 118, 122 (5th Cir. 1996)).

Summary

Three common elements required for a RICO claim under 18 U.S.C. § 1962, which includes § 1962(d) for conspiracy. These elements are: (1) a person who engages in, (2) a pattern of racketeering activity, and (3) connected to the acquisition, establishment, conduct, or control of an enterprise. This provides a clear framework for what factual allegations are necessary to support a RICO conspiracy claim in the Fifth Circuit.

[D&T Partners LLC v. Baymark Partners LP](#)

Extract

D&T brings three RICO claims for violations of 18 U.S.C. § 1962(a), (c), and (d). ... All four subsections of § 1962 have three common elements: '1) a person who engages in 2) a pattern of racketeering activity, 3) connected to the acquisition, establishment, conduct, or control of an enterprise.' Crowe, 43 F.3d at 204 (emphasis omitted). ... To establish th[e] pattern [element], a plaintiff must show both a relationship between the predicate offenses. .. and the threat of continuing activity. ... 'an enterprise. .. is proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit.' Boyle, 556 U.S. at 945 (quoting United States v. Turkette, 452 U.S. 576, 583 (1981)).

Summary

Common elements required for RICO claims under § 1962, which include a person engaging in a pattern of racketeering activity connected to an enterprise. It emphasizes the need for a relationship between predicate offenses and a threat of continuing activity, as well as evidence of an ongoing organization functioning as a continuing unit.

[57 F.Supp.3d 766 Gordon v. Neugebauer](#)

Extract

Subsection 1962(d) prohibits a conspiracy to violate 18 U.S.C. § 1962(a), (b), or (c). See 18 U.S.C. § 1962(d). Because Plaintiff has failed to state a claim against Defendant Crowley under section 1962(c), he has necessarily failed to state a claim for conspiracy to violate section 1962(c) under section 1962(d).

Summary

To plead a RICO conspiracy under 18 U.S.C. § 1962(d), a plaintiff must first successfully plead a violation of one of the substantive RICO provisions under § 1962(a), (b), or (c). If a plaintiff fails to state a claim under these sections, they cannot successfully plead a conspiracy to violate them under § 1962(d). This implies that the factual allegations required to support a RICO conspiracy claim must include specific facts that establish a violation of the substantive RICO provisions.

[Gordon v. Neugebauer](#)

Extract

Subsection 1962(d) prohibits a conspiracy to violate 18 U.S.C. § 1962(a), (b), or (c). See 18 U.S.C. § 1962(d). Because Plaintiff has failed to state a claim against Defendants... under section 1962(c), he has necessarily failed to state a claim for conspiracy to violate section 1962(c) under section 1962(d).

Summary

To plead a RICO conspiracy under 18 U.S.C. § 1962(d), a plaintiff must first establish a valid claim under one of the substantive RICO provisions, such as § 1962(c). If a plaintiff fails to establish a claim under the substantive provisions, they cannot succeed in a conspiracy claim under § 1962(d). This suggests that the conspiracy claim is contingent upon the existence of a substantive RICO violation.

[Belton v. Regions Bank](#)

Extract

Plaintiff alleges that the defendants 'engaged in a pattern of racketeering activity' in violation of the Racketeer Influenced and Corrupt Organizations Act ('RICO'), 18 U.S.C. §§ 1961-1968. (R. Doc. 1 at 22). To recover under RICO, the plaintiff must establish three elements: (1) a person who engages in (2) a pattern of racketeering activity (3) connected to the acquisition, establishment, conduct, or control of an enterprise. Abraham v. Singh, 480 F.3d 351, 355 (5th Cir. 2007) (quoting Word of Faith World Outreach Ctr. Church, Inc. v. Sawyer, 90 F.3d 118, 122 (5th Cir. 1996)).

Summary

Elements required to establish a RICO claim in the Fifth Circuit, which includes demonstrating a person engaged in a pattern of racketeering activity connected to an enterprise. This is relevant to understanding the legal standards for pleading a RICO conspiracy under 18 U.S.C. § 1962(d).

[667 B.R. 665 Austin v. Baker & Hostetler, LLP \(In re Uplift RX, LLC\)](#)

Extract

The Complaint also brings a claim for conspiracy to violate federal RICO. To properly allege a RICO conspiracy, Austin must plausibly allege that (i) two or more people agreed to commit the acts which constitute the RICO violation and (ii) that Baker Hostetler knew of and agreed to the overall objective of the RICO offense. Chaney v. Dreyfus Serv. Corp., 595 F.3d 219, 239 (5th Cir. 2010) (citing United States v. Sharpe, 193 F.3d 852, 869 (5th Cir. 1999)).

Summary

To plead a RICO conspiracy under 18 U.S.C. § 1962(d) in the Fifth Circuit, a plaintiff must allege that two or more people agreed to commit acts constituting a RICO violation and that the defendant knew of and agreed to the overall objective of the RICO offense. This aligns with the legal standards set forth in Chaney v. Dreyfus Serv. Corp. and United States v. Sharpe.

[Bustos v. Invierte En Tex.](#)

Extract

To state a civil RICO claim under 18 U.S.C. § 1962, a plaintiff must allege three common elements: "(1) a person who engages in (2) a pattern of

racketeering activity, (3) connected to the acquisition, establishment, conduct, or control of an enterprise." N. Cypress Med. Ctr. Operating Co., Ltd. v. Cigna Healthcare, 781 F.3d 182, 201 (5th Cir. 2015) (quotation omitted). An act of "racketeering activity," commonly referred to as a "predicate act," is defined to include certain criminal acts, including mail and wire fraud, and any act indictable under the Immigration and Nationality Act. See 18 U.S.C § 1961 (defining "racketeering activity"); Waste Mgmt. of La., L.L.C. v. River Birch, Inc., 920 F.3d 958, 964 (5th Cir. 2019) (referring to racketeering activity as a "predicate act").

Summary

Elements required to state a civil RICO claim under 18 U.S.C. § 1962 in the Fifth Circuit, which includes engaging in a pattern of racketeering activity connected to an enterprise. It also specifies that racketeering activity includes criminal acts like mail and wire fraud. This is relevant to understanding the legal standards for pleading a RICO conspiracy.

[Provost v. First Guar. Bank](#)

Extract

Pursuant to 18 U.S.C. § 1962, It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt. § 1962(c). In order for a plaintiff to establish liability, he must allege and prove the existence of two distinct entities: (1) a 'person;' and (2) an 'enterprise.' Cedric Kushner Promotions, Ltd. v. King, 533 U.S. 158, 161, 121 S.Ct. 2087, 2090, 150 L.Ed.2d. 198 (2001).

Summary

To plead a RICO conspiracy under 18 U.S.C. § 1962(d) in the Fifth Circuit, a plaintiff must allege and prove the existence of two distinct entities: a "person" and an "enterprise." The "person" is an individual or entity capable of holding a legal or beneficial interest in property, while the "enterprise" is the entity through which the racketeering activity is conducted. This requirement is consistent with the Supreme Court's interpretation in Cedric Kushner Promotions, Ltd. v. King.

[Chapter 4. Elements of Cause of Action](#)

Civil RICO: A Definitive Guide. Fifth Edition - American Bar Association - Gregory P. Joseph

Extract

to plead conspiracy adequately, the plaintiff must set forth allegations addressing a. the period of the conspiracy, b. the object of the conspiracy, c. the overt acts taken in furtherance of the conspiracy, d. the agreement to commit predicate acts, and e. knowledge that the acts were part of a pattern of racketeering activity conducted in such a way as to violate § 1962(a), (b), or (c); the plaintiff must also establish 3. injury to the plaintiff's business or property (§ 6(A)(2)-(3) supra) 4. by reason of (§ 6(A)(4) supra) 5. an overt act that must also be a predicate act

Summary

Necessary elements to plead a RICO conspiracy, including the period, object, overt acts, agreement, and knowledge of the conspiracy, as well as the requirement to show injury to business or property caused by a predicate act. This is generally applicable to RICO claims and provides a framework for what factual allegations are needed.

[Chapter 7. Pleading and Practice Issues](#)

Civil RICO: A Definitive Guide. Fifth Edition - American Bar Association - Gregory P. Joseph

Extract

Section 1962(d) is treated a bit differently. Conspiracy is not 'fraud' for pleading purposes. Hence, Rule 9(b) does not apply to conspiracy allegations filed under § 1962(d). However, courts have tended to expand, in substance, the scope of Rule 9(b)'s particularity.

Summary

While Rule 9(b), which requires particularity in pleading fraud, does not apply to RICO conspiracy allegations under § 1962(d), courts have expanded the scope of Rule 9(b) in substance. This suggests that while the technical requirements of Rule 9(b) do not apply, there is an expectation of a certain level of detail in the allegations to support a RICO conspiracy claim.

[Racketeer Influenced and Corrupt Organizations Act.](#)

American Criminal Law Review - Georgetown University Law Center - Bailey, Lisa Pritchard - 1999-06-22

Extract

The circuits are split on the specific standing requirements for a civil action under [sections] 1962(a).(382) To allege a violation of [sections] 1962(a), a

plaintiff must show that someone had (1) received income from a pattern of racketeering activity; and (2) used or invested this income in a RICO enterprise.(383) ... At least two circuits, however, have required in civil RICO cases that the plaintiff establish the nexus between its injury and the investment of the racketeering proceeds. See *Crowe v. Henry*, 43 F.3d 198, 205 (5th Cir. 1995) ('Under subsections (a) and (b) [of [sections] 1962], there must be a nexus between the claimed RICO violations and the injury suffered by the plaintiff. For subsection (a), this means that the injury must flow from the investment of racketeering income into the enterprise.'); ... (385.) See *Crowe*, 43 F. 3d at 205; *Vemco v. Camardella*, 23 F.3d 129, 133 (6th Cir. 1994) (requiring plaintiff to 'plead a specific injury to plaintiff caused by the investment of income into the racketeering enterprise, distinct from any injuries caused by the predicate acts of racketeering').

Summary

The passage provides insight into the Fifth Circuit's requirement for a nexus between the injury and the investment of racketeering proceeds in a RICO enterprise. It highlights the need for a plaintiff to demonstrate that their injury directly results from the investment of racketeering income, not just from the predicate acts themselves.

[Chapter 3. Standing](#)

Civil RICO: A Definitive Guide. Fifth Edition - American Bar Association - Gregory P. Joseph

Extract

holding that RICO standing requires a plaintiff suing under § 1962(d) to allege injury from an overt act that is itself a predicate act. This is consistent with the requirement that a RICO plaintiff has standing under § 1964(c) only if and to the extent that the plaintiff has suffered cognizable injury caused by a violation of one of the statutes listed in § 1961(1). See, e.g., *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496–97 (1985) (a RICO "plaintiff only has standing if, and can only recover to the extent that, he has been injured in his business or property by the conduct constituting the violation..."

Summary

To plead a RICO conspiracy under 18 U.S.C. § 1962(d), a plaintiff must allege an injury from an overt act that is itself a predicate act. This aligns with the requirement that a RICO plaintiff must have suffered a cognizable injury caused by a violation of one of the statutes listed in § 1961(1). The passage references the *Sedima* case, which clarifies that a RICO plaintiff only has standing if they have been injured in their business or property by the conduct constituting the violation.

[Reflections on Reves v. Ernst & Young: its meaning and impact on substantive, accessory, aiding abetting and conspiracy liability under RICO.](#)

American Criminal Law Review - Georgetown University Law Center - Blakey, G. Robert - 1996-01-01

Extract

The statutory language, however, does not require proof that a defendant participated personally, or agreed to participate personally, in two predicate offenses. Read in context, [sections] 1962(d) makes it unlawful to conspire to conduct or participate in the conduct of an enterprise's affairs, where its affairs are conducted through a pattern of racketeering activity.) (citations omitted); Carter, 721 F.2d at 1528-31 (stating that When ... a defendant agreed to participate in the conduct of an enterprise's affairs with the objective of violating a substantive RICO provision, it is not necessary that the defendant agree to personally commit two predicate acts for the required pattern of racketeering activity. It is enough that the defendant agreed to the commission of two predicate acts.).

Summary

Under 18 U.S.C. § 1962(d), a defendant does not need to personally commit or agree to commit two predicate acts to be liable for a RICO conspiracy. Instead, it is sufficient if the defendant agreed to participate in the conduct of an enterprise's affairs with the objective of violating a substantive RICO provision, and agreed to the commission of two predicate acts.

[Civil Rico: A Tool of Advocacy](#)

The Brief - American Bar Association - 2024-01-01

Extract

A violation of § 1962(c), the section on which Sedima relies, requires (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. The plaintiff must allege each of the elements to state a claim. They are all equally essential components, and the complaint will fail if any one of them is not adequately pleaded. In particular, RICO claims based on mail or wire fraud must comport with Federal Rule of Civil Procedure 9(b)'s requirement that allegations involving fraud be pleaded with particularity. The practitioner through their pleadings must articulate with great care and attention a viable racketeering conspiracy. The court must read the facts alleged in the complaint in the light most favorable to the plaintiff. But a plaintiff who is unable to identify the enterprise, satisfy the pattern requirement, or plead other statutory elements with sufficient specificity can be subject to a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). Additionally, to the extent that any predicate acts sound in fraud, the pleading of those acts must satisfy the particularity requirements of Federal Rule of Civil Procedure 9(b), which provides: 'In alleging fraud or

mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.'

Summary

To plead a RICO conspiracy under 18 U.S.C. § 1962(d), a plaintiff must allege conduct of an enterprise through a pattern of racketeering activity. Each element must be adequately pleaded, especially when the predicate acts involve fraud, which must be detailed with particularity under Federal Rule of Civil Procedure 9(b). The court will read the complaint in the light most favorable to the plaintiff, but failure to meet these requirements can lead to dismissal under Rule 12(b)(6).

[Insurance Fraud is a Violent Crime.](#)

Insurance Advocate - CINN Group, Inc. - 2024-03-01

Extract

RICO CONSPIRACY The essence of a RICO conspiracy is the existence of an agreement to violate RICO's substantive provisions. RICO conspiracy was established by proof of: (a) of an agreement to join a racketeering scheme, (b) of the defendant's knowing engagement in the scheme with the intent that its overall goals be effectuated, and (c) that the scheme involved, or by agreement between any members of the conspiracy was intended to involve, two or more predicate acts of racketeering.

Summary

Clear outline of the elements necessary to establish a RICO conspiracy: an agreement to join a racketeering scheme, knowing engagement with intent to effectuate the scheme's goals, and involvement of two or more predicate acts of racketeering. This aligns with the general legal standards for pleading a RICO conspiracy.

[Defending Civil RICO Claims: A Defense Plan Should Be In Every Business's Arsenal](#)

Extract

RICO is not a simple statute. It pertains to conduct associated with an 'enterprise' and 'a pattern racketeering activity.' An enterprise is an individual or legal entity, or a union or group of individuals associated in fact although not a legal entity, while a pattern of racketeering activity requires long-term, organized conduct to violate state and federal laws. ... Second, to prove most types of RICO claims, the plaintiff must plead that the defendant committed some qualifying criminal action, the most common of which is

mail, wire or securities fraud. ... Third, the plaintiff must plead a pattern of racketeering activity for most RICO claims. If the alleged conduct occurred once or twice, or was not continuous, it cannot form a pattern of conduct sufficient to support a RICO claim. ... Fourth, for most RICO claims, the plaintiff also must plead that the alleged 'person' and 'enterprise,' as defined in RICO, are distinct.

Summary

General requirements for pleading a RICO claim, which include demonstrating an association with an enterprise, a pattern of racketeering activity, and distinctiveness between the person and the enterprise. These elements are essential for establishing a RICO claim, including a RICO conspiracy under 18 U.S.C. § 1962(d).

[RICO: A Primer](#)

Extract

Under Section 1962(d), it is a violation to conspire to commit any of the three substantive RICO offenses. To prove a violation of Section 1962(d), a plaintiff must prove the following elements: The existence of an enterprise (or that an enterprise would exist); That the enterprise was (or would be) engaged in, or its activities affected (or would affect), interstate or foreign commerce; and That each defendant knowingly agreed that a conspirator would commit a violation of 18 U.S.C. § 1962(c). The Supreme Court held that to establish a RICO conspiracy offense under Section 1962(d), there is no requirement that the defendant 'himself committed or agreed to commit the two predicate acts requisite for a substantive RICO offense under § 1962(c).

Summary

Elements necessary to plead a RICO conspiracy under 18 U.S.C. § 1962(d). It specifies that a plaintiff must demonstrate the existence of an enterprise, that the enterprise's activities affected interstate or foreign commerce, and that each defendant knowingly agreed that a conspirator would commit a violation of 18 U.S.C. § 1962(c). Importantly, the Supreme Court has clarified that a defendant does not need to have committed or agreed to commit the predicate acts themselves to be liable for a RICO conspiracy.

[RICO: A Primer](#)

Extract

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(or that an enterprise would exist); That the enterprise was (or would be) engaged in, or its activities affected (or would affect), interstate or foreign commerce; and That each defendant knowingly agreed that a conspirator would commit a violation of 18 U.S.C. § 1962(c). The Supreme Court held that to establish a RICO conspiracy offense under Section 1962(d), there is no requirement that the defendant 'himself committed or agreed to commit the two predicate acts requisite for a substantive RICO offense under § 1962(c).

Summary

Elements required to plead a RICO conspiracy under 18 U.S.C. § 1962(d). It specifies that a plaintiff must demonstrate the existence of an enterprise, that the enterprise's activities affected interstate or foreign commerce, and that each defendant knowingly agreed that a conspirator would commit a violation of 18 U.S.C. § 1962(c). Importantly, it clarifies that a defendant does not need to have committed or agreed to commit the predicate acts themselves.

This memo was compiled by Vincent AI based on vLex materials available as of September 20, 2025. [View full answer on vLex](#)