

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 requirements for pleading predicate acts (wire fraud, Travel Act violations, extortion, fraudulent court filings) in a civil RICO complaint in the Fifth Circuit, and how should these be tied to the factual record?

Answer (Fifth Circuit)

Short response

To plead predicate acts such as wire fraud, Travel Act violations, extortion, and fraudulent court filings in a civil RICO complaint in the Fifth Circuit, a plaintiff must allege with particularity the "who, what, when, where, and how" of each act, show that at least two such acts are related and pose a threat of continued criminal activity, and tie each act to the conduct of an enterprise affecting interstate commerce. Each predicate act must be specifically linked to the factual record, demonstrating a scheme to defraud, use of interstate wires or mails, specific intent, and actual injury to business or property.

Summary

In the Fifth Circuit, civil RICO claims require plaintiffs to plead with specificity the details of each alleged predicate act—such as wire fraud, extortion, or Travel Act violations—by identifying the participants, dates, methods, and fraudulent nature of each act, in compliance with Federal Rule of Civil Procedure 9(b). The complaint must also demonstrate that these acts

are related, form a pattern of racketeering activity, and are connected to the conduct of an enterprise, with each act directly tied to the factual record and resulting in injury to the plaintiff's business or property.

To satisfy these requirements, the plaintiff must enumerate each predicate act in the complaint, cite the relevant statutory provision, and provide detailed factual allegations (including references to the record) showing how each act was committed, who was involved, and how it furthered the enterprise's unlawful objectives. The complaint must also show that the acts are not isolated incidents but part of a coordinated scheme, and that the resulting harm to the plaintiff was a direct and foreseeable consequence of the defendants' conduct.

Background and Relevant Law

Legislative and Regulatory 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 statute defines "racketeering activity" to include a range of criminal offenses, notably wire fraud (18 U.S.C. § 1343), mail fraud (18 U.S.C. § 1341), extortion (including under the Hobbs Act and Travel Act), and other specified crimes ([Bustos v. Invierte En Tex., 4:22-CV-02690 \(S.D. Tex. Jun 03, 2024\)](#); 18 U.S.C. § 1961(1)).

To state a civil RICO claim under § 1962(c), a plaintiff must allege: (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 \(5th Cir. 2009\)](#); [Abraham v. Singh, 480 F.3d 351, 355 \(5th Cir. 2007\)](#)). A "pattern of racketeering activity" requires at least two predicate acts that are related and amount to or pose a threat of continued criminal activity ([Word of Faith World Outreach Center Church, Inc. v. Sawyer, 90 F.3d 118, 122 \(5th Cir. 1996\)](#); [St. Paul Mercury Ins v. Williamson, 224 F.3d 425, 441 \(5th Cir. 2000\)](#)).

Case Law

The Fifth Circuit has consistently held that RICO claims based on fraud (including wire fraud and mail fraud) are subject to the heightened pleading requirements of Federal Rule of Civil Procedure 9(b), which requires the plaintiff to state with particularity the circumstances constituting fraud ([Bustos v. Invierte En Tex., 4:22-CV-02690 \(S.D. Tex. Jun 03, 2024\)](#); [Moore v. Town N. Auto., Inc., Civil Action No. 3:14-CV-1215-D \(N.D. Tex. Jul 11, 2014\)](#)). This means the complaint must specify the "who, what, when, where, and how" of each alleged fraudulent act ([6315 Magazine, LLC v. Flot Nola, LLC, CIVIL ACTION NO. 20-1472 SECTION M \(4\) \(E.D. La. Aug 21, 2020\)](#)).

For wire fraud, the plaintiff must allege: (1) a scheme to defraud or obtain property by false pretenses, (2) use of interstate wire communications to execute the scheme, and (3) specific intent to defraud ([Van Duzer v. U.S. Bank Nat'l Ass'n, 995 F.Supp.2d 673 \(S.D. Tex. 2014\)](#); [United Healthcare Services, Inc. v. Next Health, LLC](#), CIVIL ACTION NO. 3:17-CV-00625-M (N.D. Tex. Mar 05, 2018)). For extortion, the plaintiff must show the wrongful use of actual or threatened force, violence, fear, or misuse of official right to obtain property from another ([U.S. v. Welch, 656 F.2d 1039 \(5th Cir. 1981\)](#)).

A RICO complaint must also allege that the predicate acts caused actual injury to the plaintiff's business or property, and that the injury was proximately caused by the defendants' conduct ([WASTE MANAGEMENT OF LOUISIANA v. River Birch, Inc., 920 F.3d 958 \(5th Cir. 2019\)](#)).

Analysis

I. Jurisdiction and Venue

A RICO action may be brought in federal court if the alleged enterprise affects interstate commerce and the predicate acts include federal crimes such as wire fraud or extortion (RICO: A Primer (2022-01-31)). The factual timeline demonstrates interstate activity (e.g., transfer of funds from Texas to Oklahoma, use of interstate wire communications), satisfying the jurisdictional requirement.

II. Parties

The complaint must identify each defendant and their role in the alleged 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 detailed in the timeline.

III. Record References

The Fifth Circuit permits courts to take judicial notice of public records, including state court filings, when evaluating a RICO complaint ([Miller v. Dunn, 35 F.4th 1007 \(5th Cir. 2022\)](#)). The complaint's references to the consolidated mandamus record, with specific REC page citations, provide the necessary factual support for each alleged act.

IV. Introduction

The introduction should summarize the nature of the enterprise, the pattern of racketeering activity, and the resulting injury. The complaint alleges a coordinated scheme to deprive the plaintiff of his home and business through fraudulent legal filings, extortion, and manipulation of court proceedings.

V. Factual Timeline

Each section of the timeline must be tied to the elements of the RICO claim and the specific predicate acts:

A. The Myers-Branthroover Enterprise

The complaint must allege the formation of an association-in-fact enterprise, with a common purpose and ongoing structure ([D&T Partners LLC v. Baymark Partners LP](#), 2022-05-09). The timeline (¶¶ 1-7) details the initial agreement, planning, and execution of the scheme, including interstate meetings and communications.

B. Interstate Travel and Transfer

Allegations of interstate travel and transfer of funds (¶¶ 2-3) support the interstate commerce requirement and provide factual support for Travel Act violations and wire fraud.

C. Admissions

Admissions by Branthoover (¶ 4) corroborate the existence of the scheme and the use of interstate wires to further it.

D. Post-submission Collaboration

Ongoing collaboration (¶ 5) demonstrates the continuity and structure of the enterprise.

E. Significant and Intentional Misrepresentations

Specific misrepresentations in court filings (¶ 7) are essential for pleading fraudulent court filings and wire fraud as predicate acts.

F. Evidence to the Contrary

Contradictory evidence (¶¶ 8-11) supports the allegation that the filings were knowingly false, a key element of fraud.

G-V. Subsequent Events

Each subsequent section (¶¶ 12-93) should be referenced to show the ongoing nature of the scheme, the participation of each defendant, and the continuity of the enterprise's unlawful objectives.

VI. The RICO Enterprise

A. Structure and Membership

The complaint must allege an enterprise with a defined structure, membership, and purpose (Boyle v. United States, 556 U.S. 938, 945 (2009)). The timeline (¶¶ 1-7, 93) details the roles of Myers, Branthoover, and others.

B. Expansion, Purpose, and Continuity

The enterprise's purpose (to deprive plaintiff of property) and continuity (ongoing acts over months) are established by the timeline.

C. Decision-Making and Functioning as a Unit

Allegations of coordinated planning, decision-making, and execution (¶¶ 1-7, 93) satisfy the requirement that the enterprise function as a continuing unit.

VII. Predicate Acts

A. Wire Fraud

To plead wire fraud, the complaint must allege: (1) a scheme to defraud, (2) use of interstate wires, and (3) specific intent to defraud ([Van Duzer v. U.S. Bank Nat'l Ass'n, 995 F.Supp.2d 673 \(S.D. Tex. 2014\)](#)). The complaint should specify:

- Who: Myers, Branthoover, Munford, Baker
- What: Transfer of funds, transmission of fraudulent documents, emails with altered court filings
- When: Specific dates (e.g., December 2023 transfers, October 2024 emails)
- Where: Texas, Oklahoma, interstate communications
- How: Use of PayPal, text messages, emails, court filings

Each act must be tied to a REC page and explained in detail.

B. Travel Act Violations

The Travel Act prohibits interstate travel or use of interstate facilities to promote or carry on unlawful activity, including extortion ([U.S. v. Welch, 656 F.2d 1039 \(5th Cir. 1981\)](#)). The complaint should allege:

- Who: Myers, Branthoover
- What: Interstate travel to plan and execute fraudulent filings
- When: December 2023
- Where: Texas to Oklahoma and back
- How: Meetings, transfer of funds, preparation of documents

C. Extortion

Extortion as a predicate act requires the wrongful use of threats or official process to obtain property ([U.S. v. Welch, 656 F.2d 1039 \(5th Cir. 1981\)](#)). The complaint should allege:

- Who: Carter, Kaitcer, Myers
- What: Use of fraudulent court orders, threats of legal action, coercion to sign documents
- When: March 2024 and other specified dates
- Where: Tarrant County, Texas
- How: Presentation and enforcement of orders, threats of loss of home/business

D. Fraudulent Court Filings

Fraudulent court filings may constitute wire fraud or mail fraud if transmitted electronically or by mail, and must be pleaded with particularity ([Bustos v. Invierte En Tex., 4:22-CV-02690 \(S.D. Tex. Jun 03, 2024\)](#)). The complaint should specify:

- Who: Myers, Branthoover, Carter, Kaitcer
- What: Submission of false affidavits, petitions, orders
- When: Specific dates as per REC references
- Where: 322nd District Court, Tarrant County
- How: Filing of documents containing material misrepresentations

E. Relatedness and Continuity

The complaint must show that the predicate acts are related (same or similar purposes, participants, methods) and pose a threat of continued criminal activity ([Word of Faith World Outreach Center Church, Inc. v. Sawyer, 90 F.3d 118, 122 \(5th Cir. 1996\)](#)). The timeline demonstrates ongoing, coordinated acts over an extended period.

VIII. RICO Conspiracy

To plead a RICO conspiracy under § 1962(d), the complaint must allege an agreement among defendants to commit at least two predicate acts and further the enterprise's objectives ([Abraham v. Singh, 480 F.3d 351, 355 \(5th Cir. 2007\)](#)). The complaint should detail overt acts in furtherance of the conspiracy, referencing specific REC pages.

IX. Potential Defenses

Defendants may raise defenses such as preclusion, Rooker-Feldman, Younger abstention, or judicial immunity. The complaint should anticipate these defenses and allege facts showing why they do not bar the RICO claim (e.g., ongoing injury, lack of final judgment, acts outside judicial capacity).

X. State Law Claims

The complaint may also plead state law claims (fraud, abuse of process, intentional infliction of emotional distress) based on the same factual allegations, but must distinguish these from the federal RICO claims.

XI. Claims for Relief

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

XII. Damages

The complaint must allege actual injury to business or property, with specific facts showing how the predicate acts caused the harm ([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, referencing the statutory basis for each.

Exceptions and Caveats

- RICO claims based on fraud must meet Rule 9(b)'s heightened pleading standard; conclusory or speculative allegations are insufficient ([6315 Magazine, LLC v. Flot Nola, LLC, CIVIL ACTION NO. 20-1472 SECTION M \(4\) \(E.D. La. Aug 21, 2020\)](#)).
- The complaint must show both but-for and proximate causation between the predicate acts and the injury ([WASTE MANAGEMENT OF LOUISIANA v. River Birch, Inc., 920 F.3d 958 \(5th Cir. 2019\)](#)).
- Judicial immunity may bar claims against judges for acts taken in their judicial capacity, unless the acts were clearly outside their jurisdiction.

Conclusion

To properly plead predicate acts in a civil RICO complaint in the Fifth Circuit, the plaintiff must allege with particularity each act of wire fraud, Travel Act violation, extortion, or fraudulent court filing, specifying the participants, dates, methods, and fraudulent nature of each act, and tie each to the conduct of an enterprise affecting interstate commerce. The complaint must show that these acts are related, form a pattern of racketeering activity, and directly caused injury to the plaintiff's business or property, with each allegation supported by specific references to the factual record.

Legal Authorities

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

U.S. Court of Appeals — Fifth Circuit

Extract

The plaintiff pleaded acts which could serve as 'predicate acts'—mail fraud and wire fraud. 18 U.S.C. § 1961(1). Our guideline for the elements of RICO mail fraud is: 1) a scheme to defraud by means of false or fraudulent representation, 2) interstate or intrastate use of the mails to execute the scheme, 3) the use of the mails by the defendant connected with scheme, and 4) actual injury to the plaintiff. *Landry v. Air Line Pilots Ass'n Int'l*, 901 F.2d 404, 428 (5th Cir.), cert. denied, 498 U.S. 895, 111 S.Ct. 244, 112 L.Ed. 2d 203 (1990).

Summary

Elements required to plead mail and wire fraud as predicate acts in a RICO claim within the Fifth Circuit. These elements include a scheme to defraud, use of mail or wires to execute the scheme, and actual injury to the plaintiff. This information is directly relevant to understanding how to plead these predicate acts in a civil RICO complaint.

[W. Tex. Nat'l Bank v. FEC Holdings, LP, MO-11-CV-086, MO-11-CV-121 \(W.D. Tex. May 17, 2013\)](#)

U.S. District Court — Western District of Texas

Extract

The First Amended Original Complaint gives some specifics about discussions regarding the loans on the telephone. Misrepresentations, however, that occurred at a meeting do not constitute wire or mail fraud, 18 U.S.C.A. §§ 1341, 1343, and thus cannot constitute racketeering activity. *Id.* § 1961(1); *Tel-Phonic Services*, 975 F.2d at 1139. Further, as to the wire fraud, FEC failed to plead any of the wire transfers were interstate, and failed to plead the time, place and contents of a predicate act of wire fraud. Lastly, FEC does not plead how mailing the loan documents and requiring interest payments over the wires constitutes a pattern of racketeering activity, or furthers a 'recognizable scheme formed with specific intent to defraud,' or presents a continued threat of criminal activity.

Summary

Requirements for pleading wire fraud as a predicate act in a civil RICO complaint. It emphasizes the necessity of pleading specific facts, including the interstate nature of wire transfers, the time, place, and contents of the predicate act, and how these acts constitute a pattern of racketeering activity. The passage also highlights the need to demonstrate a

"recognizable scheme formed with specific intent to defraud" and a continued threat of criminal activity. These requirements are crucial for establishing a RICO claim in the Fifth Circuit.

[Marriott Bros. v. Gage, 704 F.Supp. 731 \(N.D. Tex. 1988\)](#)

U.S. District Court — Northern District of Texas

Extract

The absence of any RICO predicate acts under 18 U.S.C. § 1962 defeats the plaintiffs' RICO claims. Even if some of the conduct involving the non-Marriott loans could be construed as predicate acts (or, in the language of RICO, 'acts of racketeering activity,' 18 U.S.C. § 1961(5)), the record does not establish that they were part of the same pattern of racketeering activity as the Marriott-Yates transaction.

Summary

The passage highlights the importance of demonstrating predicate acts that are part of a pattern of racketeering activity to sustain a RICO claim. It emphasizes that even if certain actions could be considered predicate acts, they must be shown to be part of the same pattern of racketeering activity. This is crucial for tying the factual record to the legal requirements of a RICO claim, as it underscores the need for a coherent and connected series of acts that constitute racketeering activity.

[Robinson v. Standard Mortg. Corp., 191 F.Supp.3d 630 \(E.D. La. 2016\)](#)

U.S. District Court — Eastern District of Louisiana

Extract

To allege a 'pattern of racketeering activity,' a plaintiff must show that the defendant committed two or more predicate offenses that are (1) related and (2) amount to or pose a threat of continued criminal activity. *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989). Predicate offenses include violations of certain state and federal laws, including the wire and mail fraud statutes and the Hobbs Act, which prohibits extortion. 18 U.S.C. § 1961(1).

Summary

Clear explanation of what constitutes a "pattern of racketeering activity" under RICO, which is essential for pleading a civil RICO claim. It specifies that a plaintiff must demonstrate that the defendant committed at least two predicate offenses that are related and pose a threat of continued criminal activity. The passage also identifies wire fraud, mail fraud, and extortion as

examples of predicate offenses under RICO. This information is directly relevant to understanding how to plead predicate acts in a civil RICO complaint in the Fifth Circuit.

[Martin v. Magee, NO: 10-2786 \(E.D. La. Jun 10, 2011\)](#)

U.S. District Court — Eastern District of Louisiana

Extract

RICO claims under section 1962 require, inter alia, '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)). To allege a 'pattern of racketeering activity,' a plaintiff must show that the defendant committed two or more predicate offenses that are (1) related and (2) amount to or pose a threat of continued criminal activity. H.J. Inc. v. Nw. Bell Tel. Co., 492 U.S. 229, 239 (1989).

Summary

Requirements for a RICO claim under section 1962, which includes engaging in a pattern of racketeering activity connected to an enterprise. It specifies that a pattern of racketeering activity requires at least two related predicate offenses that pose a threat of continued criminal activity. This is directly relevant to understanding how to plead predicate acts in a civil RICO complaint in the Fifth Circuit.

[Allstate Ins. Co. v. Donovan, CIVIL ACTION NO. H-12-0432 \(S.D. Tex. Jul 03, 2012\)](#)

U.S. District Court — Southern District of Texas

Extract

Defendants argue that plaintiffs' RICO claims fail as a matter of law because plaintiffs have not sufficiently alleged that defendants engaged in a pattern of racketeering activity and have failed to plead fraud with particularity. 'A pattern of racketeering activity consists of two or more predicate criminal acts that are (1) related and (2) amount to or pose a threat of continued criminal activity.' St. Germain, 556 F.3d at 263. See also 18 U.S.C. § 1961(5) ('pattern of racketeering activity' requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years... after the commission of a prior act of racketeering activity'). Predicate acts can be either state or federal crimes. Id. Plaintiffs allege that defendants engaged in acts of mail fraud in violation of 18 U.S.C. § 1841, which prohibits use of the mail to plan or

conduct fraudulent schemes. Plaintiffs' mail fraud allegations must be based on facts capable of establishing: '(1) a scheme to defraud by means of false or fraudulent representation, (2) interstate or intrastate use of the mails to execute the scheme, (3) the use of the mails by the defendant connected with [the] scheme, and (4) actual injury to the plaintiff.' In re Burzynski, 989 F.2d 733, 742 (5th Cir. 1993). '[A]lthough reliance is not an element of statutory mail or wire fraud, [the Fifth Circuit has] required its showing when mail or wire fraud is alleged as a RICO predicate.'

Summary

Requirements for pleading predicate acts in a civil RICO complaint in the Fifth Circuit. It specifies that a pattern of racketeering activity must consist of at least two related predicate acts that pose a threat of continued criminal activity. For mail fraud, which is analogous to wire fraud, the complaint must establish a scheme to defraud, use of the mails (or wires) to execute the scheme, and actual injury to the plaintiff. The Fifth Circuit also requires showing reliance when mail or wire fraud is alleged as a RICO predicate. This information is crucial for understanding how to structure a RICO complaint and tie it to the factual record.

[U.S. v. Welch, 656 F.2d 1039 \(5th Cir. 1981\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

Finally, Welch contends that the evidence presented at trial was insufficient to sustain a conviction on Count V the substantive RICO offense. This Court has recently stated that five elements comprise a substantive RICO charge: The government must prove (1) the existence of the enterprise; (2) that the enterprise affected interstate commerce; (3) that the defendant was employed by or associated with the enterprise; (4) that he participated in the conduct of the affairs of the enterprise; and (5) that he participated through a pattern of racketeering activity.

Summary

Five essential elements required to establish a substantive RICO charge in the Fifth Circuit. These elements include proving the existence of an enterprise, its effect on interstate commerce, the defendant's association with the enterprise, participation in its affairs, and participation through a pattern of racketeering activity. This framework is crucial for understanding how to plead predicate acts in a civil RICO complaint, as it provides the foundational requirements that must be met.

[LSC Towers, LLC v. LG Preston Campbell, LLC, Civil Action No. 3:17-cv-00625-M \(N.D. Tex. Mar 05, 2018\)](#)

U.S. District Court — Northern District of Texas

Extract

To sufficiently plead a RICO claim, a plaintiff must allege that: (1) a person (2) engages in 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). A 'pattern of racketeering activity' requires at least two predicate acts of racketeering that are related and pose a threat of continued criminal activity. *Brown v. Protective Life Ins. Co.*, 353 F.3d 405, 407 (5th Cir. 2003). In the context of mail or wire fraud, the plaintiff must demonstrate that the predicate acts consisted of making false or fraudulent representations calculated to deceive.

Summary

To plead a RICO claim in the Fifth Circuit, a plaintiff must allege a person engaged in a pattern of racketeering activity connected to an enterprise. This pattern requires at least two related predicate acts that pose a threat of continued criminal activity. For wire fraud, the plaintiff must show false or fraudulent representations intended to deceive. This provides a clear framework for tying factual allegations to the legal requirements for a RICO claim.

[Interstate Nat'l Dealer Servs. v. MSRV Repair LLC, 6:24-CV-00170-ADA-DTG \(W.D. Tex. Jun 20, 2025\)](#)

U.S. District Court — Western District of Texas

Extract

To state a claim for a violation of § 1962(c), the plaintiffs must allege conduct or participation of an enterprise through a pattern of racketeering activity. *Allstate Ins. Co. v. Benhamou*, 190 F.Supp.3d 631, 647 (S.D. Tex. 2016) (citing *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 496 (1985)). Racketeering activity includes mail or wire fraud. 18 U.S.C. § 1961(1) (defining "racketeering activity"). To establish a RICO conspiracy claim, the plaintiffs must allege that at least two people agreed to commit a substantive RICO offense, and the defendants 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) (listing the elements of a RICO conspiracy claim under § 1962(d) (quoting *United States v. Sharpe*, 193 F.3d 852, 869 (5th Cir. 1999))).

Summary

To plead a civil RICO claim under § 1962(c) in the Fifth Circuit, a plaintiff must allege the conduct or participation of an enterprise through a pattern of racketeering activity, which includes acts like wire fraud. For a RICO

conspiracy claim under § 1962(d), it must be alleged that at least two people agreed to commit a substantive RICO offense and were aware of and agreed to the overall objective of the RICO offense. These elements must be tied to the factual record by demonstrating how the defendants' actions fit into the pattern of racketeering activity and the enterprise's objectives.

[Verges v. Babovich, 644 F.Supp. 150 \(E.D. La. 1986\)](#)

U.S. District Court — Eastern District of Louisiana

Extract

Defendants say that the RICO claim is deficient in three essential respects: 1) failure to allege a 'pattern of racketeering activity'; 2) failure to allege, with the requisite specificity, predicate acts by each defendant, a conspiracy, and an interstate nexus; and, 3) failure to allege fraud with particularity, as required by F.R.C.P. 9(b)... Plaintiffs allege facts sufficient to describe multiple violations of the mail and wire fraud statutes by all of the defendants (18 U.S.C. §§ 1341 and 1343), which requires only that it appear from a fair reading of the complaint that each of the defendants have devised or participated in a scheme to defraud, and used the mails and wires in furtherance of that scheme. This, plaintiffs have done.

Summary

Requirements for a RICO claim, emphasizing the need to allege a pattern of racketeering activity, specify predicate acts by each defendant, and detail the conspiracy and interstate nexus. It also highlights the necessity of alleging fraud with particularity under F.R.C.P. 9(b). The passage provides guidance on how to tie these elements to the factual record by ensuring that the complaint shows each defendant's participation in a scheme to defraud and the use of mails and wires in furtherance of that scheme.

[Moore v. Town N. Auto., Inc., Civil Action No. 3:14-CV-1215-D \(N.D. Tex. Jul 11, 2014\)](#)

U.S. District Court — Northern District of Texas

Extract

Rule 9(b) imposes a heightened pleading standard for fraud claims and requires that a party state with particularity facts supporting each element of fraud." ... "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.'" ... "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." ... "18 U.S.C. § 1961(1)(B) 'defines 'racketeering activity' according to whether it constitutes 'any act which is indictable' under several specified sections of title 18 of the United States Code, [two] of which [are] mail fraud [and wire fraud][.]'

Summary

Requirements for pleading fraud under Rule 9(b), which applies to RICO claims involving fraud as predicate acts. It specifies that fraud claims must be stated with particularity, detailing the time, place, contents of false representations, and the identity of the person making them. The passage also clarifies the essential elements of a RICO claim, which include engaging in a pattern of racketeering activity connected to an enterprise. It further identifies wire fraud as a recognized predicate act under RICO.

[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

Essential elements required to plead a RICO claim in the Fifth Circuit, emphasizing the need to demonstrate a pattern of racketeering activity connected to an enterprise. The pattern must show continuity and relationship among the predicate acts. This is crucial for tying the factual record to the legal requirements of a RICO claim.

[Heden v. Hill, 937 F.Supp. 1230 \(S.D. Tex. 1996\)](#)

U.S. District Court — Southern District of Texas

Extract

Under RICO, while four distinct offenses are declared to be unlawful, common elements are present in all four offenses... Under § 1961(1)(B), racketeering activity includes any act which is indictable under a number of federal criminal statutes, including mail fraud and wire fraud... In this case, Heden alleges mail fraud and wire fraud as predicate acts supporting his civil RICO claims... Nonetheless, 'the conduct used to support a civil RICO action must be indictable.'... Thus, the plaintiff must plead and prove each prong of the predicate offense, or 'racketeering activity,' to maintain a civil action under the RICO statute... Hence, to maintain his RICO claims, Heden must show that each element of a mail fraud or wire fraud offense has been committed by the defendants. For mail fraud, it is necessary to show that (1) the defendants formed a scheme or artifice to defraud; (2) the defendants used the United States mails or caused a use of the United States mails in furtherance of the scheme; and (3) the defendants did so with the specific intent to deceive or defraud... Similarly, a wire fraud violation consists of (1) the formation of a scheme or artifice to defraud; (2) use of the United States wires or causing a use of the United States wires in furtherance of the scheme; and (3) specific intent to deceive or defraud.

Summary

Elements required to plead predicate acts of mail and wire fraud in a civil RICO complaint, emphasizing that the conduct must be indictable and that each element of the offense must be proven. This is relevant to understanding how to structure a RICO complaint in the Fifth Circuit.

[Bustos v. Invierte En Tex., 4:22-CV-02690 \(S.D. Tex. Jun 03, 2024\)](#)

U.S. District Court — Southern District of Texas

Extract

RICO claims based on allegations of fraud, such as wire or mail fraud, are subject to the heightened pleading burden imposed by Rule 9(b)." ... 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." ... "The elements of wire fraud, as set out in 18 U.S.C. § 1343, are: (1) a scheme to defraud, (2) the use of wire communications, and (3) a specific intent to defraud." ... The pleadings do not identify what predicate acts Plaintiffs' RICO claim relies on, despite already having a chance to amend.

Summary

Requirements for pleading predicate acts in a civil RICO complaint, emphasizing the need for specificity under Rule 9(b) when fraud is alleged.

It also details the elements required to establish wire fraud as a predicate act, which include a scheme to defraud, use of wire communications, and specific intent to defraud. The passage highlights the necessity of clearly identifying the predicate acts upon which the RICO claim relies.

[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

Clear framework for what must be included in a RICO claim, emphasizing the need for specificity in identifying predicate acts.

[AJ Holdings of Metairie, LLC v. Fischbein, Civil Action 21-318 \(E.D. La. Jan 31, 2022\)](#)

U.S. District Court — Eastern District of Louisiana

Extract

To state a claim under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), a plaintiff must allege three things: a person who engages in a "pattern of racketeering activity" that is "connected to the acquisition, establishment, conduct, or control of an enterprise."... Second, the Plaintiffs have failed to establish a "pattern of racketeering activity." To do so, they "must show at least two predicate acts of racketeering that...relate[] to or pose a threat of continued criminal activity."... The United States Supreme Court has explained: "Continuity" is both a closed- and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition...A party alleging a RICO violation may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time. Predicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement: Congress was concerned in RICO with long-term criminal conduct.

Summary

To plead predicate acts in a civil RICO complaint in the Fifth Circuit, a plaintiff must establish a "pattern of racketeering activity" by showing at least two predicate acts that relate to or pose a threat of continued criminal activity. The concept of continuity is crucial, requiring either a closed period of repeated conduct or past conduct that projects into the future with a threat of repetition. This ensures that RICO addresses long-term criminal conduct rather than isolated incidents.

[Williams v. Am. Commerical Lines, Inc., CIVIL ACTION NO. 20-139-SDD-EWD \(M.D. La. Jul 23, 2020\)](#)

U.S. District Court — Middle District of Louisiana

Extract

To recover under § 1964(c), a plaintiff must prove not only all elements of a substantive RICO violation but also that 'he has been injured in his business or property by the conduct constituting the violation,' and 'must also demonstrate that the substantive violation proximately caused his injury.' 'A plaintiff must allege specific facts concerning (1) the conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.' While Plaintiff vaguely references that Defendants engaged in conduct that rises to the level of a substantive RICO violation, and that this conduct caused him injuries, it is not sufficient to simply state the elements of a cause of action.

Summary

Clear outline of the elements required to plead a civil RICO claim, emphasizing the need for specific factual allegations that demonstrate the conduct of an enterprise through a pattern of racketeering activity, and the requirement to show injury to business or property caused by the violation.

[U.S. v. Vaccaro, 115 F.3d 1211 \(5th Cir. 1997\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

The elements of a RICO violation under § 1962(c) are: (1) the existence of an enterprise that affects interstate or foreign commerce; (2) the defendant's association with the enterprise; (3) the defendant's participation in the conduct of the enterprise's affairs; and (4) at least two predicate acts of racketeering activity designated in 18 U.S.C. § 1961(1). ... A wire fraud conviction requires proof of (1) a scheme to defraud and (2) the use of interstate wire communications in furtherance of the scheme.

Summary

Essential elements required to establish a RICO violation under § 1962(c) in the Fifth Circuit, which includes proving the existence of an enterprise, the defendant's association and participation in the enterprise, and at least two predicate acts of racketeering activity. For wire fraud, it specifies the need to demonstrate a scheme to defraud and the use of interstate wire communications in furtherance of that scheme. This information is crucial for understanding how to plead predicate acts in a civil RICO complaint.

[Wing v. JC Bradford & Co., 678 F. Supp. 622 \(N.D. Miss. 1987\)](#)

U.S. District Court — Northern District of Mississippi

Extract

Bradford argues, however, that plaintiffs have failed to state a claim under RICO. As defendant notes, an essential element of any RICO claim is that the plaintiff allege and prove that the defendant has, through the commission of two or more acts, engaged in a 'pattern of racketeering activity', as defined in 18 U.S.C. Section 1961(5). *Alcorn County v. U.S. Interstate Supplies, Inc.*, 731 F.2d 1160, 1168 (5th Cir.1984); *United States v. Phillips*, 664 F.2d 971, 1011 (5th Cir.1981), cert. denied, 457 U.S. 1136, 102 S.Ct. 2965, 73 L.Ed.2d 1354 (1982). Additionally, in order to violate RICO, a defendant must first commit a pattern of racketeering activity, and then either use the money he derives from such activity or use the activity itself to: 1) invest in an enterprise; 2) acquire or maintain an interest in an enterprise; or, 3) conduct an enterprise's affairs. *Sedima, S.P.R.L. v. Imrex Company, Inc.*, 473 U.S. 479, 481-483, 493, 105 S.Ct. 3275, 3278-79, 3284, 87 L.Ed.2d 346 (1985).

Summary

To plead predicate acts in a civil RICO complaint in the Fifth Circuit, a plaintiff must allege and prove that the defendant engaged in a "pattern of racketeering activity," which involves the commission of two or more acts as defined in 18 U.S.C. Section 1961(5). The defendant must then use the proceeds or the activity itself to invest in, acquire, maintain, or conduct an enterprise's affairs. This establishes the framework for tying specific predicate acts like wire fraud, Travel Act violations, extortion, and fraudulent court filings to the factual record by demonstrating how these acts form a pattern and are used to further the enterprise.

[Boroja v. Le Roux, 1-22-CV-01299-RP \(W.D. Tex. Jun 15, 2023\)](#)

U.S. District Court — Western District of Texas

Extract

The common elements of a RICO claim under § 1962, 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.” Brown v. Protective Life Ins. Co., 353 F.3d 405, 407 (5th Cir. 2003); see also 18 U.S.C. § 1962(a) (requiring “income derived, directly or indirectly, from a pattern of racketeering activity”); 18 U.S.C. § 1962(c) (prohibiting “conduct of such enterprise's affairs through a pattern of racketeering activity”).

Summary

Common elements required for a RICO claim under § 1962 in the Fifth Circuit, which includes engaging in a pattern of racketeering activity connected to an enterprise. This is relevant to understanding how predicate acts like wire fraud, Travel Act violations, extortion, and fraudulent court filings should be pleaded in a civil RICO complaint.

[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

Racketeering activity consists of two or more predicate criminal acts that are (1) related and (2) amount to or pose a threat of continued criminal activity.” Abraham v. Singh, 480 F.3d 351, 355 (5th Cir. 2007) (citing Word of Faith World Outreach Ctr. Church, Inc. v. Sawyer, 90 F.3d 118, 122 (5th Cir. 1996)) (internal quotation marks omitted). … Racketeering activity means, inter alia, “any act which is indictable under. . . [18 U.S.C. §] 1341 (relating to mail fraud), section 1343 (relating to wire fraud),. . . [and] section[] 2314 [] (relating to interstate transportation of stolen property).” 18 U.S.C. § 1961(1)(B). The Rule 9(b) requirement that fraud claims be pleaded with particularity “applies to the pleading of fraud as a predicate act in a RICO claim,” including mail and wire fraud. Tel-Phonic Servs., Inc. v. TBS Int'l, Inc., 975 F.2d 1134, 1138 (5th Cir. 1992).

Summary

The passage outlines that in the Fifth Circuit, racketeering activity for a RICO claim must consist of two or more predicate criminal acts that are related and pose a threat of continued criminal activity. Predicate acts include wire fraud, mail fraud, and interstate transportation of stolen property. Additionally, fraud claims, including those used as predicate acts in a RICO claim, must be pleaded with particularity under Rule 9(b). This means that the complaint must specify the fraudulent acts, the parties involved, and the context in which the fraud occurred.

[6315 Magazine, LLC v. Flot Nola, LLC, CIVIL ACTION NO. 20-1472
SECTION M \(4\) \(E.D. La. Aug 21, 2020\)](#)

U.S. District Court — Eastern District of Louisiana

Extract

Put simply, complying with Rule 9(b) requires a plaintiff to 'set forth the 'who, what, when, where, and how' of the alleged fraud.' United States ex rel. Williams v. Bell Helicopter Textron Inc., 417 F.3d 450, 453 (5th Cir. 2005) (citation omitted). Thus, a plaintiff alleging fraud 'cannot rely on speculation or conclusional allegations.' United States ex rel. Rafizadeh v. Cont'l Common, Inc., 553 F.3d 869, 873 (5th Cir. 1992). 'Rule 9(b)'s particularity requirement applies to RICO claims that rest on predicate acts of mail and wire fraud.'

Summary

In the Fifth Circuit, when pleading predicate acts of fraud in a civil RICO complaint, the plaintiff must comply with Rule 9(b) of the Federal Rules of Civil Procedure. This rule requires the plaintiff to detail the 'who, what, when, where, and how' of the alleged fraud, ensuring that the allegations are specific and not based on speculation or conclusory statements. This requirement is crucial for RICO claims that involve predicate acts of mail and wire fraud.

[St. Germain v. Howard, 556 F.3d 261 \(5th Cir. 2009\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

Claims under RICO, 18 U.S.C. § 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.' Abraham v. Singh, 480 F.3d 351, 355 (5th Cir. 2007). A pattern of racketeering activity consists of two or more predicate criminal acts that are (1) related and (2) amount to or pose a threat of continued criminal activity. Id. The predicate acts can be either state or federal crimes.

Summary

Essential elements required to plead a RICO claim, specifically focusing on the need for a pattern of racketeering activity, which must include at least two related predicate acts that pose a threat of continued criminal activity. This is crucial for understanding how to structure a RICO complaint in the Fifth Circuit.

[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 central issue on appeal is whether the Church sufficiently pled a 'pattern of racketeering activity.' 'Racketeering activity' consists of two or more predicate offenses, defined by the statute to include acts violating federal wire or mail fraud statutes. 18 U.S.C. § 1961. To establish a pattern of racketeering activity, the Supreme Court explained in *H.J. Inc. v. Northwestern Bell Telephone, Co.* 492 U.S. 229, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989), that a plaintiff 'must show that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity.' *Id.* at 239, 109 S.Ct. at 2900 (emphasis added). The element of relatedness is established if the acts have the 'same or similar purposes, results, participants, victims, or methods of commission.'

Summary

Requirements for pleading a "pattern of racketeering activity" under RICO in the Fifth Circuit. It specifies that a pattern requires at least two predicate acts that are related and pose a threat of continued criminal activity. The relatedness is determined by whether the acts have similar purposes, results, participants, victims, or methods. This is crucial for establishing a RICO claim, as it ties the predicate acts to the broader scheme of racketeering activity.

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

U.S. Court of Appeals — Fifth Circuit

Extract

Plaintiffs allege that Defendants violated 18 U.S.C. § 1962(a), (b), (c), and (d). These RICO subsections state, in their simplest terms, that: (a) a person who has received income from a pattern of racketeering activity cannot invest that income in an enterprise; (b) a person cannot acquire or maintain an interest in an enterprise through a pattern of racketeering; (c) a person who is employed by or associated with an enterprise cannot conduct the affairs of the enterprise through a pattern of racketeering activity; and (d) a person cannot conspire to violate subsections (a), (b), or (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

Requirements for pleading a RICO violation under 18 U.S.C. § 1962, emphasizing the need to allege a pattern of racketeering activity and an agreement to commit predicate acts. It highlights that a RICO civil conspiracy complaint must specifically allege an agreement to commit at least two predicate acts of racketeering. This is crucial for establishing a RICO claim, as it ties the defendants' actions to the statutory requirements of RICO violations.

[Malvino v. Delluniversita, 840 F.3d 223 \(5th Cir. 2016\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

To establish that pattern, a plaintiff must show both a relationship between the predicate offenses—here mail fraud and wire fraud—and the threat of continuing activity. *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989). These requirements keep civil RICO focused on the long term criminal conduct Congress intended it to address, see *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 n.14, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985), and 'prevent RICO from becoming a surrogate for garden-variety fraud actions properly brought under state law,' *Tabas v. Tabas*, 47 F.3d 1280, 1310 (3d Cir. 1995) (quoting *Midwest Grinding Co. v. Spitz*, 976 F.2d 1016, 1022 (7th Cir. 1992)).

Summary

In the Fifth Circuit, to plead predicate acts in a civil RICO complaint, a plaintiff must demonstrate a pattern of racketeering activity. This involves showing a relationship between the predicate offenses (such as wire fraud) and a threat of continuing criminal activity. This requirement ensures that RICO is applied to long-term criminal conduct rather than isolated incidents or typical fraud cases that should be addressed under state law.

[United States v. Imo, 739 F.3d 226 \(5th Cir. 2014\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

To prove that a party has committed mail fraud under 18 U.S.C. § 1341, the Government must demonstrate "(1) the defendant devised or intended to devise a scheme to defraud, (2) the mails were used for the purpose of

executing, or attempting to execute, the scheme, and (3) the falsehoods employed in the scheme were material.” United States v. Read, 710 F.3d 219, 227 (5th Cir.2012) (internal quotation marks and citation omitted). The defendant must have known that “the scheme involved false representations.” Id. (internal quotation marks and citation omitted). “The first element includes a defendant's scheme or artifice ... for obtaining money or property by means of false or fraudulent pretenses, representations, or promises....”

Summary

To plead predicate acts like wire fraud in a civil RICO complaint in the Fifth Circuit, one must demonstrate a scheme to defraud, the use of communication methods (like mail or wire) to execute the scheme, and the materiality of falsehoods. The defendant must have known about the false representations involved in the scheme. This framework can be applied to wire fraud, which is relevant to the RICO complaint.

[Allstate Ins. Co. v. Benhamou, 190 F.Supp.3d 631 \(S.D. Tex. 2016\)](#)

U.S. District Court — Southern District of Texas

Extract

The elements of RICO mail fraud are: (1) a scheme to defraud by means of false or fraudulent representation; (2) interstate or intrastate use of the mails to execute the scheme; (3) the use of the mails by the defendant connected with or incident to the scheme; and (4) actual injury to the plaintiff. Landry, 901 F.2d at 428. Although reliance is not an element of statutory mail or wire fraud, the Fifth Circuit does require its showing when mail or wire fraud is alleged as a RICO predicate act. In re MasterCard Intern., 313 F.3d at 263. Moreover, because Rule 9(b)'s particularity requirement applies to the pleading of mail fraud as a predicate act in a RICO case, Landry, 901 F.2d at 430, Plaintiffs 'must state with particularity the circumstances constituting fraud or mistake.'

Summary

In the Fifth Circuit, when alleging mail or wire fraud as a predicate act in a RICO complaint, the plaintiff must demonstrate a scheme to defraud, use of the mails or wires to execute the scheme, and actual injury to the plaintiff. Additionally, the Fifth Circuit requires a showing of reliance when mail or wire fraud is alleged as a RICO predicate act. Rule 9(b)'s particularity requirement also applies, necessitating that the plaintiff state with particularity the circumstances constituting fraud or mistake.

[St. Paul Mercury Ins v. Williamson, 224 F.3d 425 \(5th Cir. 2000\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

A pattern of racketeering activity requires two or more predicate acts and a demonstration that the racketeering predicates are related and amount to or pose a threat of continued criminal activity. See Word of Faith World Outreach Ctr. Church, Inc. v. Sawyer, 90 F.3d 118, 122 (5th Cir. 1996). Among other things, both RICO mail and wire fraud require evidence of intent to defraud, i.e., evidence of a scheme to defraud by false or fraudulent representations.

Summary

To plead predicate acts in a civil RICO complaint in the Fifth Circuit, a plaintiff must demonstrate two or more predicate acts that are related and pose a threat of continued criminal activity. Specifically, for mail and wire fraud, there must be evidence of intent to defraud, which involves a scheme to defraud by false or fraudulent representations. This means that the factual record must include evidence showing the defendants' intent and the fraudulent nature of their actions.

[**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. And relevant here, bribery is a predicate offense and enumerated as a 'racketeering activity' under 18 U.S.C. § 1961(1). 'The Supreme Court requires plaintiffs to establish both but for cause and proximate cause in order to show injury 'by reason of' a RICO violation.' 'Proximate cause should be evaluated in light of its common-law foundations [and] ... requires 'some direct relation between the injury asserted and the injurious conduct alleged.' 'When a court evaluates a RICO claim for proximate cause, the central question it must ask is whether the alleged violation led directly to the plaintiff's injuries.' Therefore, to satisfy the causation element of RICO in this case, Plaintiff has the burden of establishing that the payment to Nagin was the but for cause and proximate cause of his decision to shutter the landfill. This burden requires Plaintiff to establish that its damages 'w[ere] a foreseeable and natural consequence' of Defendants' action.

Summary

In the Fifth Circuit, a civil RICO claim requires establishing both but-for and proximate causation between the alleged RICO violation and the plaintiff's injury. The plaintiff must demonstrate a direct relationship between the injurious conduct and the injury claimed. This means that the predicate acts, such as wire fraud, Travel Act violations, extortion, and fraudulent court filings, must be directly tied to the injury suffered by the plaintiff. The passage emphasizes the importance of showing that the injury was a foreseeable and natural consequence of the defendants' actions.

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

U.S. Court of Appeals — Fifth Circuit

Extract

North Cypress argues that it properly pled claims under RICO. The district court held that North Cypress failed to state a plausible claim upon which relief could be granted under any RICO provision, and thus dismissed these claims under Rule 12(b)(6). Subsections 1962(a)-(d) of RICO essentially state that: Three elements are common to claims brought under any of these subsections: "(1) a person who engages in (2) a pattern of racketeering activity, (3) connected to the acquisition, establishment, conduct, or control of an enterprise." The district court found that North Cypress presented sufficient facts to plead a pattern of racketeering activity, but not the individual RICO subsections. We consider each subsection in turn.

Summary

Three common elements required for pleading a RICO claim under any of the subsections 1962(a)-(d): (1) a person who engages in (2) a pattern of racketeering activity, (3) connected to the acquisition, establishment, conduct, or control of an enterprise. This provides a foundational understanding of what is necessary to plead a RICO claim in the Fifth Circuit. The passage does not specifically address the requirements for pleading predicate acts like wire fraud, Travel Act violations, extortion, or fraudulent court filings, but it does establish the need to connect these acts to a pattern of racketeering activity and an enterprise.

[Landry v. Air Line Pilots Ass'n Intern., AFL-CIO, 901 F.2d 404 \(5th Cir. 1990\)](#)

U.S. Court of Appeals — Fifth Circuit

Extract

The elements of mail fraud as a predicate offense for civil RICO purposes are... A party alleging a RICO violation may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time. Predicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement: Congress was concerned in RICO with long-term criminal conduct. Often a RICO action will be brought before continuity can be established in this way. In such cases, liability depends on whether the threat of continuity is demonstrated.

Summary

Necessity of demonstrating a pattern of racketeering activity, which involves proving a series of related predicate acts over a substantial period. It emphasizes that short-term acts without a threat of future criminal conduct do not meet the continuity requirement. This is crucial for RICO claims, as Congress intended to target long-term criminal conduct. The passage also suggests that in some cases, the threat of continuity can be sufficient to establish liability, even if the continuity itself is not yet fully demonstrated.

[Van Duzer v. U.S. Bank Nat'l Ass'n, 995 F.Supp.2d 673 \(S.D. Tex. 2014\)](#)

U.S. District Court — Southern District of Texas

Extract

Federal Rule of Civil Procedure 9(b) imposes a heightened level of pleading for fraud claims. A party bringing a fraud claim 'must state with particularity the circumstances constituting fraud or mistake.' Fed.R.Civ.P. 9(b). The plaintiff must therefore 'specify the statements contended to be fraudulent, identify the speaker, state when and where the statements were made, and explain why the statements were fraudulent.' ... To state a civil RICO claim under any subsection in 18 U.S.C. § 1962, 'there must be: (1) a person who engages in (2) a pattern of racketeering activity (3) connected to the acquisition, establishment, conduct, or control of an enterprise.' ... 'A pattern of racketeering activity requires two or more predicate acts and a demonstration that the racketeering predicates are related and amount to or pose a threat of continued criminal activity.' ... The predicate acts complained of by Plaintiffs are 'mail or wire fraud.' See 18 U.S.C. §§ 1341, 1343. 'To state a claim for mail or wire fraud to support a RICO violation under § 1341 or § 1343, a plaintiff must establish three elements; '(1) a scheme or artifice to defraud or to obtain money or property by means of false pretenses, representations, or promises; (2) a use of the interstate mails or wires for the purpose of executing the scheme; and (3) a specific intent to defraud either by [d]evising, participating in, or abetting the scheme.'

Summary

Requirements for pleading fraud under Federal Rule of Civil Procedure 9(b), which requires specificity in the allegations. For a civil RICO claim under 18 U.S.C. § 1962, the plaintiff must demonstrate a pattern of racketeering activity, which includes at least two predicate acts that are related and pose a threat of continued criminal activity. Specifically, for mail or wire fraud, the plaintiff must establish a scheme to defraud, use of interstate mails or wires, and specific intent to defraud. These elements must be tied to the factual record by specifying the fraudulent statements, identifying the speaker, and explaining the fraudulent nature of the statements.

[Lavin v. Bank Of Am. Corp.](#)

Extract

Typically, civil liability resulting from a violation of RICO requires the defendant to engage in a 'pattern of racketeering activity.' 18 U.S.C. § 1962. The Fifth Circuit requires a showing of two elements to demonstrate a 'pattern of racketeering activity': '(1) predicate acts-the requisite racketeering activity, and (2) a pattern of such acts.' *In re Burzynski*, 989 F. 2d 733, 742 (5th Cir. 1993). 'Racketeering activity' is defined as the commission of any number of state and federal offenses enumerated in Section 1961(1), such as: mail fraud, wire fraud, drug trafficking, murder, arson, gambling, bribery, extortion, or embezzlement. 18U.S.C. § 1961(1). The United States Supreme Court has held that to prove a 'pattern' of racketeering activity, a plaintiff must show that the predicate acts (1) are related and (2) amount to or pose a threat of continued criminal activity. *H.J., Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 237, 239 (1989). A plaintiff can satisfy the continuity requirement of the RICO statute by establishing the defendants engaged in either closed conduct or open-ended conduct—that is, a 'closed period of repeated conduct' or 'past conduct that by its nature projects into the future with a threat of repetition.' *H.J., Inc.*, 492 U.S. at 241.

Summary

To plead predicate acts in a civil RICO complaint in the Fifth Circuit, a plaintiff must demonstrate a pattern of racketeering activity. This requires showing predicate acts that are related and pose a threat of continued criminal activity. The continuity requirement can be satisfied by showing either closed-ended or open-ended conduct. Predicate acts include offenses like wire fraud, extortion, and others listed in 18 U.S.C. § 1961(1).

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

Extract

'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 establish a RICO claim, which includes engaging in a pattern of racketeering activity connected to an enterprise. This is relevant to understanding how predicate acts like wire fraud, Travel Act violations, extortion, and fraudulent court filings should be pleaded in a civil RICO complaint.

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

Extract

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). The statute broadly defines "person" to include "any individual or entity capable of holding a legal or beneficial interest in property." 18 U.S.C. § 1961(3); Boyle v. United States, 556 U.S. 938, 944 (2009) ("The term 'any' ensures that the definition has a wide reach"). "To establish th[e] pattern [element], a plaintiff must show both a relationship between the predicate offenses. .. and the threat of continuing activity." Malvino v. Delluniversita, 840 F.3d 223, 231 (5th Cir. 2016). "[A]n 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

Requirements for pleading a civil RICO claim under § 1962, which includes demonstrating a person engaged in a pattern of racketeering activity connected to an enterprise. It emphasizes the need to show a relationship between predicate offenses and a threat of continuing activity, as well as evidence of an ongoing organization functioning as a continuing unit.

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

Extract

To eradicate 'organized crime in the United States,' Congress passed the Racketeer Influenced and Corrupt Organizations Act, a legislative package that provided the government 'new weapons of unprecedented scope' targeting organized crime at 'its economic roots.' ... RICO is also more than a criminal statute. When drafting the legislation, Congress incorporated provisions in RICO that allow private plaintiffs to seek redress in federal court. If their lawsuit succeeds, the statute provides a big payout: Plaintiffs are entitled to triple damages, court costs, and attorney's fees. 18 U.S.C. § 1964(c). ... By its terms, 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 or collection of unlawful debt.' 18 U.S.C. § 1962(c). ... 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

Foundational understanding of the elements required for a RICO claim, which is essential for tying predicate acts to the factual record in a civil RICO complaint.

[Belton v. Regions Bank](#)

Extract

Plaintiff alleges that the defendants 'engaged in a pattern of racketing 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)). Furthermore, Plaintiff fails to allege any non-conclusory predicate criminal acts of 'racketeering activity' sufficient to state a claim. 'A pattern of racketeering activity requires two or more predicate acts and a demonstration that the racketeering predicates are related and amount to or pose a threat of continued criminal activity.' St. Paul Mercury Ins. Co. v. Williamson, 224 F.3d 425, 441 (5th Cir. 2000).

Summary

Requirements for a RICO claim in the Fifth Circuit, emphasizing the need for a pattern of racketeering activity, which includes two or more predicate acts that are related and pose a threat of continued criminal activity. It also highlights the necessity of connecting these acts to the conduct of an enterprise.

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

Extract

A RICO plaintiff must allege facts to show a 'pattern of racketeering activity,' which consists of two or more predicate criminal acts that are (1) related and (2) amount to or pose a threat of continued criminal activity. See 18 U.S.C. §§ 1961(5), 1962(c). United alleges predicate acts of money laundering and mail and wire fraud, which are racketeering activities. See 18 U.S.C. §§ 1341, 1343, 1956, 1961(1). Executive Defendants contend United fails to adequately plead both the predicate acts with specificity and that a pattern exists. To establish a money laundering violation, a plaintiff must plead that a RICO defendant '(1) knowingly conducted a financial transaction; (2) which involved the proceeds of an unlawful activity; and (3) with the intent to promote or further unlawful activity.' U.S. v. Dovalina, 262 F.3d 472, 475 (5th Cir. 2001); 18 U.S.C. § 1956(a)(1)(A)(i). The elements of a claim for wire fraud are the same as mail fraud, except the second element involves 'the use of, or causing the use of, wire communications in furtherance of' the scheme. See United States v. Rush, 236 F. App'x 944, 947 (5th Cir. 2007); 18 U.S.C. § 1343.

Summary

Requirements for pleading predicate acts in a RICO complaint, specifically in the Fifth Circuit. It emphasizes the need to show a pattern of racketeering activity, which includes two or more related predicate acts that pose a threat of continued criminal activity. The passage also details the elements required to establish wire fraud and money laundering as predicate acts. This information is crucial for understanding how to tie these elements to the factual record in a RICO complaint.

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

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 WL32130462 (N.D. Tex. Sept. 17, 2002) (Fitzwater, J.)).

Summary

To plead a RICO claim in the Fifth Circuit, a plaintiff must establish: (1) a person engaged in (2) a pattern of racketeering activity (3) connected to the acquisition, establishment, conduct, or control of an enterprise. Predicate acts such as wire fraud, Travel Act violations, and extortion must be detailed with particularity, including the "who, what, when, where, and how" of the fraudulent acts, as required by Rule 9(b).

[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"). To rise to the level of "racketeering activity" there must be two or more predicate acts that are: (1) related; and (2) amount to or pose a threat of continued criminal activity. Alvarez, 2020 WL 2061491, at *4 (quoting Abraham v. Singh, 480 F.3d 351, 355 (5th Cir. 2007)); accord Word of Faith, 90 F.3d at 122. The "continuity" element is intended to "prevent RICO from becoming a surrogate for garden-variety fraud actions properly brought under state law." Malvino v. Delluniversita, 840 F.3d 223, 231 (5th Cir. 2016) (quotation omitted). Continuity can be demonstrated in two ways: "(1) a closed period of repeated conduct, or (2) an open-ended period of conduct that by its nature projects into the future with a threat of repetition." Id. (cleaned up).

Summary

Requirements for pleading a civil RICO claim in the Fifth Circuit, including the need to allege a pattern of racketeering activity with at least two related predicate acts that pose a threat of continued criminal activity. This is essential for understanding how to structure a RICO complaint and tie it to the factual record.

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

Extract

To state a claim for civil RICO violation under § 1962(c), a plaintiff must allege a pattern of racketeering activity. *In re Burzynski*, 989 F.2d 733, 741-42 (5th Cir. 1993). A pattern of racketeering activity 'requires two or more predicate acts and a demonstration that the racketeering predicates are related and amount to or pose a threat of continued criminal activity.' *Word of Faith World Outreach Ctr. Church, Inc. v. Sawyer*, 90 F.3d 118, 122 (5th Cir. 1996). The Complaint alleges instances of mail and wire fraud as predicate acts that form a pattern of racketeering activity. 'To state a claim for mail or wire fraud to support a RICO violation under § 1341 or § 1343, a plaintiff must establish three elements; '(1) a scheme or artifice to defraud or to obtain money or property by means of false pretenses, representations, or promises; (2) a use of the interstate mails or wires for the purpose of executing the scheme; and (3) a specific intent to defraud either by [d]evising, participating in, or abetting the scheme.' *Van Duzer v. U.S. Bank Nat. Ass'n*, 995 F. Supp. 2d 673, 690-91 (S.D. Tex.), aff'd, 582 F. App'x 279 (5th Cir. 2014) (quoting *Hewlett-Packard Co. v. Byd: Sign, Inc.*, No. 05-456, 2007 WL 275476, at *3 (E.D. Tex. 2007)).

Summary

Requirements for pleading predicate acts in a civil RICO complaint, specifically in the context of mail and wire fraud. It specifies that a plaintiff must demonstrate a scheme to defraud, use of interstate mails or wires, and specific intent to defraud. These elements must be tied to the factual record by showing how the alleged acts are related and pose a threat of continued criminal activity.

[Gordon v. Neugebauer](#)

Extract

To establish the second element of a § 1962(c) claim—a pattern of racketeering activity—a plaintiff must allege facts that show (1) the violation of two or more 'predicate acts' of racketeering activity enumerated in 18 U.S.C. § 1961(1), and (2) that the predicate acts form a pattern because they are related to each other and they have continuity. See *Burzynski*, 989 F.2d at 742; *Orthoflex, Inc. v. ThermoTek, Inc.*, 3:11-CV-0870-D, 2012 WL 2864510, at *2 (N.D. Tex. July 12, 2012).

Summary

Clear explanation of the requirements for establishing a pattern of racketeering activity under § 1962(c) of RICO, which includes demonstrating

the violation of two or more predicate acts that are related and continuous. This is essential for understanding how to plead predicate acts in a civil RICO complaint.

[875 F.3d 179 United States v. Gibson](#)

Extract

A rational juror could find beyond a reasonable doubt that the Gibsons joined a health care fraud conspiracy (Count 1). That crime comprises three elements: that (1) two or more persons made an agreement to commit health care fraud; (2) the defendant knew the unlawful purpose of the agreement; and (3) the defendant joined in the agreement willfully, that is, with the intent to further the unlawful purpose. *United States v. Willett*, 751 F.3d 335, 339 (5th Cir. 2014) (quotation marks omitted). The jury need not find that the defendants 'actually submitted the fraudulent documentation' to convict. *United States v. Umawa Oke Imo*, 739 F.3d 226, 235 (5th Cir. 2014). In fact, the government need not show an overt act at all. *United States v. Njoku*, 737 F.3d 55, 67–68 (5th Cir. 2013). Nor must the prosecution show direct evidence of the conspiracy; 'each element may be inferred from circumstantial evidence.' *Willett*, 751 F.3d at 339 (quotation marks omitted). The illegal agreement may even be 'silent and informal.' *Id.* (quotation marks omitted). Still, a conviction must rest on sturdier legs than mere inference or supposition. *United States v. Grant*, 683 F.3d 639, 642 (5th Cir. 2012) ('[T]he government must do more than pile inference upon inference upon which to base a conspiracy charge.' (quotation marks omitted)).

Summary

In the Fifth Circuit, to plead a conspiracy, including those involving RICO predicate acts like wire fraud, Travel Act violations, and extortion, the government must show that two or more persons made an agreement to commit an unlawful act, the defendant knew the unlawful purpose of the agreement, and the defendant joined the agreement willfully. The government does not need to show that the defendants actually committed the unlawful act or that there was an overt act. Circumstantial evidence can be used to infer the elements of the conspiracy, but the evidence must be more than mere inference or supposition.

[Earl v. The Boeing Co.](#)

Extract

A RICO plaintiff may bring 'a private civil action to recover treble damages for injury 'by reason of a violation of' [RICO's] substantive provisions.' *Sedima*, 473 U.S. at 481 (quoting 18 U.S.C. § 1964(c)). Succeeding on a RICO cause of action requires a plaintiff to prove two separate aspects: (1)

substantive violation of the statute, and (2) statutory standing. See *Nolen v. Nucentrix Broadband Networks Inc.*, 293 F.3d 926, 929 (5th Cir. 2002). On the substantive-violation front, § 1962 of RICO 'sets forth four specific prohibitions aimed at different ways in which a pattern of racketeering activity may be used to infiltrate, control, or operate 'an enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.' *RJR Nabisco, Inc. v. European Cmty.*, 136 S.Ct. 2090, 2097 (2016) (brackets omitted). Here, Plaintiffs allege two violations of prohibitions (see Dkt. #165 at pp. 87-93). Under § 1962(c), it is 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). Under § 1962(d), it is unlawful for 'any person to conspire to violate' any of § 1962's first three subsections. Id. § 1962(d). Though each § 1962 subsection varies, all RICO plaintiffs 'must establish 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.' *Snow Ingredients, Inc. v. SnoWizard, Inc.*, 833 F.3d 512, 523-24 (5th Cir. 2016) (quoting *Abraham v. Singh*, 480 F. 3d 351, 355 (5th Cir. 2007)).

Summary

Detailed explanation of the requirements for pleading a RICO violation in the Fifth Circuit, including the need to establish a substantive violation of the statute and statutory standing. It outlines the elements required under § 1962(c) and § 1962(d), which are relevant to the question of pleading predicate acts in a civil RICO complaint.

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

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

Extract

To plead mail and wire fraud violations within the strictures of Rule 9(b), the plaintiff must allege (1) the existence of a scheme to defraud, (2) the use of the mails in furtherance of the fraudulent scheme, and (3) culpable participation by the defendant. ... A description of the pattern of racketeering activity shall include the following information: a. List the alleged predicate acts and the specific statutes allegedly violated by each predicate act; b. Provide the dates of the predicate acts, the participants in the predicate acts and a description of the facts surrounding each predicate act; c. If the RICO claim is based upon the predicate offenses of wire fraud, mail fraud, fraud in the sale of securities, or fraud in connection with a case under U.S.C. Title 11, the 'circumstances constituting fraud or mistake shall be stated with particularity.'

Summary

Requirements for pleading predicate acts of wire fraud in a civil RICO complaint, emphasizing the need for particularity under Rule 9(b). It specifies that the plaintiff must allege a scheme to defraud, use of mails or wires, and culpable participation. Additionally, it requires a detailed description of the pattern of racketeering activity, including listing predicate acts, statutes violated, dates, participants, and facts surrounding each act. This information is crucial for establishing a viable RICO claim and demonstrating standing.

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

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

Extract

In order to survive a motion to dismiss, a plaintiff must allege facts sufficient to support each of the statutory elements for at least two of the pleaded predicate acts. To be criminal, conduct must be committed with the mens rea appropriate to the offense. In order to establish liability under RICO, the plaintiff must prove that the defendant acted with the appropriate mens rea at one or two levels, depending on the circuit. In all circuits, the defendant must possess 'the specific intent associated with the various underlying predicate offenses.'

Summary

To plead predicate acts in a civil RICO complaint, a plaintiff must allege facts sufficient to support each statutory element of at least two predicate acts. The conduct must be criminal, committed with the appropriate mens rea, and the defendant must have the specific intent associated with the predicate offenses. This requirement is generally applicable across all circuits, including the Fifth Circuit.

[The crime of associating with criminals? An argument for extending the Reves "operation or management" test to RICO conspiracy.](#)

Journal of Criminal Law and Criminology - Northwestern University, School of Law - Baumgartnerl, Sarah - 2006-09-22

Extract

Mere participation in the predicate offenses listed in RICO, even in conjunction with a RICO enterprise, may be insufficient to support a RICO cause of action. A defendant's participation must be in the conduct of the

affairs of a RICO enterprise, which ordinarily will require some participation in the operation or management of the enterprise itself.

Summary

For a civil RICO complaint, it is not enough to merely allege that a defendant participated in predicate offenses. The defendant must have participated in the conduct of the enterprise's affairs, which typically requires involvement in the operation or management of the enterprise. This is crucial for establishing liability under § 1962(c) of RICO.

[Chapter Five: The Racketeer Influenced and Corrupt Organizations \(RICO\) Statute, 18 U.S.C. §§ 1961-1968](#)

Business Torts Litigation. Fifth Edition - American Bar Association - Robert W. Dibert

Extract

The next term I will define for you is the term 'act of racketeering activity.' An act of racketeering activity includes any act or threat that is indictable as a violation of certain federal statutes, or chargeable under certain state criminal laws. Here, the plaintiff contends that defendant engaged in [describe the RICO violations that are alleged]. COMMENT As noted in Section 5.1 supra, 18 U.S.C. § 1961(1) identifies the RICO predicate 'acts of racketeering activity.' The most commonly charged RICO predicate acts are mail fraud and wire fraud, 18 U.S.C. §§ 1341, 1343. The elements of proof necessary to establish mail or wire fraud predicates are set forth in Section 5.10, infra. 5.10 Mail or Wire Fraud 5.10.1 General Elements of Mail or Fraud The plaintiff has charged the defendant with mail [wire] fraud as a predicate act under RICO. Under 18 U.S.C. § 1341 [1343], a person who has devised or intended to devise a scheme or artifice to defraud, or to obtain money or property by means of false or fraudulent pretenses, representations, or promises, and who uses the mails [or interstate wire communications] to execute or attempt to execute the scheme or artifice to defraud, has committed mail [wire] fraud. To state a violation of the mail [wire] fraud statute, plaintiff must establish each of the following elements:

(a) The...

Summary

General elements required to establish mail or wire fraud as predicate acts under RICO. It specifies that a person must have devised a scheme to defraud and used interstate wire communications to execute the scheme. This is relevant to understanding how to plead predicate acts in a civil RICO complaint, as it provides the necessary elements that must be demonstrated in the factual record.

[Blue-collar crime: conspiracy, organized labor, and the anti-union civil RICO claim.](#)

Albany Law Review - Albany Law School - Levin, Benjamin - 2011-09-22

Extract

To succeed in a civil RICO action, a plaintiff must show the '(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.' In turn, a 'pattern of racketeering activity' requires at least two 'predicate acts' in a ten-year period.

Summary

A civil RICO action requires demonstrating conduct of an enterprise through a pattern of racketeering activity, which includes at least two predicate acts within a ten-year period. This framework is applicable to civil RICO claims in general, including those in the Fifth Circuit.

[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... the RICO scheme and its damages. If there was no money or property belonging originally to the plaintiffs and taken into the possession of the defendants as the primary purpose of the scheme, there is not a valid civil RICO claim.

Summary

A civil RICO complaint must allege conduct of an enterprise through a pattern of racketeering activity. Each element must be adequately pleaded, and for claims based on fraud, such as wire fraud, the allegations must meet the particularity requirements of Rule 9(b). This means the complaint must describe the predicate acts with specificity, including the time, place, and content of the alleged fraudulent communications. The passage emphasizes the importance of articulating a viable racketeering scheme and

demonstrating that the primary purpose of the scheme was to take money or property from the plaintiffs.

[§ 5.06 Mail and Wire Fraud](#)

Intellectual Property and Computer Crimes - Full Court Press - 2020-00-00

Extract

The federal government has routinely charged defendants with violating Sections 1341 (mail fraud) and 1343 (wire fraud) by engaging in a scheme to defraud individuals of money or other tangible property interests. While neither statute provides guidance to the meaning of scheme to defraud, courts generally emphasize any false or misleading statements made by the defendant to the victim. It is not necessary for the government to establish that the defendant had direct contact with the victim. Misrepresentations or omissions must be material and have been 'reasonably calculated to deceive persons of ordinary prudence and comprehension.' Since this is an objective standard, the government is not required to prove that the victim was actually harmed or that the scheme was successful. Courts, instead, focus on whether a reasonable person would have...

Summary

Requirements for establishing wire fraud, which is a predicate act under RICO. It emphasizes that false or misleading statements must be material and calculated to deceive. The government does not need to prove direct contact with the victim or actual harm, focusing instead on the potential to deceive a reasonable person. This aligns with the requirements for pleading wire fraud in a civil RICO complaint, where the focus is on the scheme to defraud and the use of interstate communications.

[RICO: A Primer](#)

Extract

To prove a violation of Section 1962(c), a plaintiff must prove the following elements: * Existence of an enterprise; * The enterprise engaged in, or its activities affected, interstate or foreign commerce; * The defendant was employed by or was associated with the enterprise; * The defendant conducted or participated, either directly or indirectly, in the conduct of the affairs of the enterprise; and * The defendant participated in the affairs of the enterprise through a pattern of racketeering activity or collection of unlawful debt.

Summary

To plead predicate acts in a civil RICO complaint, the plaintiff must establish the existence of an enterprise, its engagement in interstate commerce, the defendant's association with the enterprise, and the defendant's participation in the enterprise's affairs through a pattern of racketeering activity. This framework is essential for tying the factual record to the legal requirements of a RICO claim.

[RICO: A Primer](#)

Extract

To prove a violation of Section 1962(c), a plaintiff must prove the following elements: * Existence of an enterprise; * The enterprise engaged in, or its activities affected, interstate or foreign commerce; * The defendant was employed by or was associated with the enterprise; * The defendant conducted or participated, either directly or indirectly, in the conduct of the affairs of the enterprise; and * The defendant participated in the affairs of the enterprise through a pattern of racketeering activity or collection of unlawful debt.

Summary

To plead predicate acts in a civil RICO complaint, a plaintiff must establish the existence of an enterprise, its engagement in interstate commerce, the defendant's association with the enterprise, and the defendant's participation in the enterprise's affairs through a pattern of racketeering activity. This framework is essential for tying the factual record to the legal requirements of a RICO claim.

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

Extract

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. Business deals gone sour do not count. Rather, the plaintiff must be able to prove the elements of the asserted crime, and often an intent to defraud. If there is nothing criminal in nature about the complained-of conduct, RICO should not apply. It is an abuse of the RICO statute to attempt to shoehorn ordinary business or contractual disputes into a civil RICO claim. 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. And oftentimes, because there is

a fraud component, those instances must be particularly identified in the plaintiff's pleading—a barrier that can prove difficult to accomplish.

Summary

Necessity for a plaintiff to plead that the defendant committed a qualifying criminal action, such as wire fraud, and to prove the elements of the asserted crime, including intent to defraud. It also emphasizes the need to plead a pattern of racketeering activity, which requires more than isolated incidents and must be continuous. The passage highlights the importance of identifying specific instances of fraud in the pleading.

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

Extract

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. Business deals gone sour do not count. Rather, the plaintiff must be able to prove the elements of the asserted crime, and often an intent to defraud. If there is nothing criminal in nature about the complained-of conduct, RICO should not apply. It is an abuse of the RICO statute to attempt to shoehorn ordinary business or contractual disputes into a civil RICO claim. 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. And oftentimes, because there is a fraud component, those instances must be particularly identified in the plaintiff's pleading—a barrier that can prove difficult to accomplish.

Summary

Requirements for pleading predicate acts in a civil RICO complaint. It emphasizes that the plaintiff must plead that the defendant committed a qualifying criminal action, such as wire fraud, and must prove the elements of the asserted crime, including intent to defraud. Additionally, the plaintiff must plead a pattern of racketeering activity, which requires more than isolated incidents and must be continuous. The passage also highlights the importance of particularly identifying instances of fraud in the plaintiff's pleading.

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