

Question

Morgan Michelle Myers actively transferred funds, prepared fraudulent documents, and lied to the court, while Daniel Kenneth Branthoover used the funds to purchase tools (a second phone) to further the scheme. To be liable under RICO, a defendant must participate in the operation or management of the enterprise's affairs (*Reves v. Ernst & Young*, 507 U.S. 170 (1993)). The active participation of both Morgan and Daniel in planning, funding, and executing the fraudulent scheme demonstrates their operation and management of the enterprise's affairs, satisfying this element of RICO.

Answer (U.S. Federal)

Short response

Based on the *Reves* "operation or management" test and subsequent Third Circuit interpretations, Morgan Myers and Daniel Branthoover's activities in planning, funding, and executing the fraudulent scheme satisfy the requirement for participation in the enterprise's affairs under RICO. Their actions demonstrate sufficient control and direction of the enterprise to establish liability, even though they may not have held formal management positions.

Summary

Under the [Racketeer Influenced and Corrupt Organizations](#) Act (RICO), specifically [18 U.S.C. § 1962\(c\)](#), a defendant must "conduct or participate, directly or indirectly, in the conduct of [an] enterprise's affairs through a pattern of racketeering activity." The Supreme Court in *Reves v. Ernst & Young*, 507 U.S. 170 (1993) established that such participation requires some part in directing the enterprise's affairs, commonly known as the "operation or management" test. The facts indicate that Morgan Myers actively transferred funds, prepared fraudulent documents, and lied to the court, while Daniel Branthoover used those funds to purchase tools (a second phone) to further the scheme. These activities demonstrate direct involvement in operating and managing the enterprise's affairs.

Third Circuit case law has consistently interpreted *Reves* to extend RICO liability beyond those with formal management positions to include individuals who knowingly further the illegal aims of the enterprise by executing essential components of the scheme. The courts have recognized that even "lower-rung participants" who are under the direction of upper management can be liable if they have some part in directing the enterprise's affairs. Morgan and Daniel's actions in planning, funding, and executing the fraudulent scheme constitute participation in the operation and management of the enterprise's affairs sufficient to satisfy this element of RICO liability, as their conduct was integral to the functioning of the enterprise rather than merely peripheral.

Background and Relevant Law

RICO Statutory Framework

The [Racketeer Influenced and Corrupt Organizations](#) Act (RICO) is codified at [18 U.S.C. § 1962](#). Section 1962(c) specifically states: "It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." This provision forms the basis of the current analysis regarding whether Morgan and Daniel's activities satisfy the "operation or management" requirement for RICO liability.

The Reves "Operation or Management" Test

The seminal case defining the level of participation required under RICO is *Reves v. Ernst & Young*, 507 U.S. 170 (1993). In *Reves*, the Supreme Court established what has become known as the "operation or management" test. The Court held that "in order to 'participate, directly or indirectly, in the conduct of such enterprise's affairs,' one must have some part in directing those affairs." The Court further clarified that "RICO liability is not limited to those with primary responsibility for the enterprise's affairs, just as the phrase 'directly or indirectly' makes clear that RICO liability is not limited to those with a formal position in the enterprise, but some part in directing the enterprise's affairs is required."

This test has been consistently applied in subsequent cases to determine whether a defendant's involvement in an enterprise is sufficient to establish liability under RICO.

Third Circuit Interpretations of the "Operation or Management" Test

The Third Circuit has extensively interpreted and applied the *Reves* "operation or management" test in numerous cases, providing valuable guidance for assessing whether Morgan and Daniel's actions satisfy this element of RICO liability.

In [U.S. v. Parise, 159 F.3d 790 \(3rd Cir. 1998\)](#), the Third Circuit elaborated on the *Reves* test, stating: "According to *Reves*, '[i]n order to 'participate, directly or indirectly, in the conduct of such enterprise's affairs,' one must have some part in directing those affairs.' However, one need not hold a formal position within an enterprise in order to 'participate' in its affairs." The court emphasized that "the 'operation or management' test does not limit RICO liability to upper management because 'an enterprise is 'operated' not just by upper management but also by lower-rung participants in the enterprise who are under the direction of upper management.'" Crucially, the court concluded that "RICO liability may extend to those who do not hold a managerial position within an enterprise, but who do

nonetheless knowingly further the illegal aims of the enterprise by carrying out the directives of those in control."

Similarly, in [In re Insurance Brokerage Antitrust Litig.](#), 618 F.3d 300 (3rd Cir. 2010), the court reiterated that "mere association with an enterprise does not violate § 1962(c). To be liable under this provision, a defendant must 'conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity.'" The court emphasized that "one is not liable under [§ 1962(c)] unless one has participated in the operation or management of the enterprise itself," citing *Reves*.

In [Jaguar Cars, Inc. v. Royal Oaks Motor Car Co., Inc.](#), 46 F.3d 258 (3rd Cir. 1995), the Third Circuit recognized that even "[o]utsiders' may be liable under Sec. 1962(c) if they are 'associated with' an enterprise and participate in the conduct of its affairs--that is, participate in the operation or management of the enterprise itself." The court noted that an enterprise might be "'operated' or 'managed' by others [those not in upper management] 'associated with' the enterprise who exert control over it as, for example, by bribery," quoting *Reves*.

In [Smith v. Berg](#), 247 F.3d 532 (3rd Cir. 2001), the Third Circuit held that "in accord with the general principles of criminal conspiracy law, a defendant may be held liable for conspiracy to violate section 1962(c) if he knowingly agrees to facilitate a scheme which includes the operation or management of a RICO enterprise."

The Elements of a RICO Claim

To establish liability under RICO, several elements must be proven. As articulated in [Argiro v. Lamancusa](#), 23-1820 (3rd Cir. Apr 03, 2024), "To plead a RICO claim under 18 U.S.C. § 1962(c), a plaintiff 'must allege (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.'" The court further explained that "predicate acts are related if they 'have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.'" Additionally, "the complaint must allege that [the defendant] had a sufficient role in the operation or management of the enterprise to support RICO liability," citing *Reves*.

This framework is consistently applied across Third Circuit cases. In [Hlista v. Safeguard Props., LLC](#), No. 15-1812 (3rd Cir. May 05, 2016), the court similarly stated that "A plaintiff bringing a substantive RICO claim under § 1962(c) must allege '(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.'" The court added that "A pattern of racketeering activity 'requires at least two acts of racketeering activity within a ten-year period,'" and that "no defendant can be liable under RICO unless he participated in two or more predicate offenses sufficient to constitute a pattern."

In [United States v. Ferriero](#), 866 F.3d 107 (3rd Cir. 2017), the Third Circuit emphasized the "nexus" element of RICO, which "requires proving a

sufficiently close relationship between the defendant, his involvement in the enterprise's affairs, and the pattern of racketeering." The court stated that "racketeering must be one means by which the defendant participates in the conduct of the enterprise's affairs."

Secondary Source Interpretations

Secondary sources further illuminate the requirements for RICO liability under the "operation or management" test. According to the American Criminal Law Review's article "[Racketeer Influenced and Corrupt Organizations](#)" (2022), RICO liability is "not limited to those with primary responsibility for the enterprise's affairs," citing *Reves*. The article also cites *United States v. Fowler*, 535 F.3d 408, 418 (6th Cir. 2008), which concluded that "knowingly carrying out the decisions of his superiors" within the criminal enterprise qualifies as "operation or management" under *Reves*.

Similarly, the article "[Reflections on *Reves v. Ernst & Young*: its meaning and impact on substantive, accessory, aiding abetting and conspiracy liability under RICO](#)" (1996) explains that "the 'operation or management' of the enterprise is not to merely support or encourage, that is, aid and abet, the affairs of the enterprise, but requires some participation in the operation or management of its affairs." The article further clarifies that "'Outsiders' may be liable under Section 1962(c) if they are 'associated with' an enterprise and participate in the conduct of its affairs--that is, participate in the operation or management of the enterprise itself." Importantly, it states that "The terms 'conduct' and 'participate in the affairs' of an enterprise means the performance of acts, functions, or duties that are necessary or helpful to the operation of the enterprise."

Analysis

Application of the "Operation or Management" Test to Morgan Myers' Actions

Morgan Myers' actions clearly satisfy the "operation or management" test established in *Reves* and elaborated upon in subsequent Third Circuit cases. The facts indicate that Morgan actively transferred funds, prepared fraudulent documents, and lied to the court. These activities demonstrate direct involvement in the operation and management of the enterprise's affairs.

First, transferring funds is a crucial operational function of the fraudulent enterprise. As recognized in [U.S. v. Parise, 159 F.3d 790 \(3rd Cir. 1998\)](#), RICO liability extends to those who "knowingly further the illegal aims of the enterprise by carrying out the directives of those in control." By actively transferring funds, Morgan was engaging in conduct necessary for the enterprise's operation, whether or not she held a formal management position.

Second, preparing fraudulent documents demonstrates Morgan's involvement in directing the enterprise's affairs. This activity goes beyond

mere association with the enterprise, which [In re Insurance Brokerage Antitrust Litig., 618 F.3d 300 \(3rd Cir. 2010\)](#) clarified is insufficient for RICO liability. Instead, it constitutes active participation in the operation or management of the enterprise, as required by *Reves*.

Third, lying to the court further exemplifies Morgan's role in directing the enterprise's affairs. This action was integral to the fraudulent scheme and demonstrates her essential role in its execution. As stated in the article "Reflections on *Reves v. Ernst & Young*," the terms "conduct" and "participate in the affairs" of an enterprise means "the performance of acts, functions, or duties that are necessary or helpful to the operation of the enterprise." Morgan's deception of the court was clearly necessary to the operation of the fraudulent scheme.

The American Criminal Law Review's article supports this conclusion by citing *United States v. Fowler*, 535 F.3d 408, 418 (6th Cir. 2008), which held that "knowingly carrying out the decisions of his superiors" within a criminal enterprise qualifies as "operation or management" under *Reves*. Even if Morgan was acting under the direction of others, her active role in executing essential components of the scheme would still satisfy the "operation or management" test.

Application of the "Operation or Management" Test to Daniel Branthoover's Actions

Daniel Branthoover's actions similarly demonstrate his participation in the operation or management of the enterprise's affairs. The facts indicate that Daniel used the funds transferred by Morgan to purchase tools (a second phone) to further the scheme.

In [Jaguar Cars, Inc. v. Royal Oaks Motor Car Co., Inc., 46 F.3d 258 \(3rd Cir. 1995\)](#), the Third Circuit recognized that even "outsiders" may be liable under RICO if they are "associated with" an enterprise and participate in the operation or management of the enterprise itself. By purchasing tools specifically intended to further the fraudulent scheme, Daniel was directly participating in the enterprise's operations.

The purchase of a second phone also demonstrates Daniel's deliberate association with and participation in the enterprise. This action was not incidental or tangential but was specifically undertaken to advance the scheme's objectives. As stated in [United States v. Ferriero, 866 F.3d 107 \(3rd Cir. 2017\)](#), RICO requires "a sufficiently close relationship between the defendant, his involvement in the enterprise's affairs, and the pattern of racketeering." Daniel's purposeful acquisition of tools to further the scheme establishes this nexus.

Furthermore, in [Smith v. Berg, 247 F.3d 532 \(3rd Cir. 2001\)](#), the Third Circuit held that a defendant may be liable if he "knowingly agrees to facilitate a scheme which includes the operation or management of a RICO enterprise." Daniel's actions in purchasing tools for the scheme demonstrate such knowing facilitation.

The Collective Impact of Morgan and Daniel's Actions

Together, Morgan and Daniel's actions constitute a coordinated effort to operate and manage the enterprise's affairs. Their respective roles in transferring funds, preparing fraudulent documents, lying to the court, and purchasing tools to further the scheme demonstrate active participation in the enterprise's operations.

As articulated in [Argiro v. Lamancusa, 23-1820 \(3rd Cir. Apr 03, 2024\)](#), predicate acts are related if they "have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events." Morgan and Daniel's activities were interrelated and served the common purpose of advancing the fraudulent scheme.

Moreover, [Hlista v. Safeguard Props., LLC, No. 15-1812 \(3rd Cir. May 05, 2016\)](#) emphasizes that "no defendant can be liable under RICO unless he participated in two or more predicate offenses sufficient to constitute a pattern." Both Morgan and Daniel engaged in multiple acts that could constitute predicate offenses under RICO, establishing the pattern necessary for liability.

In particular, Morgan's preparation of fraudulent documents and lies to the court could constitute mail or wire fraud if they involved the use of those facilities. Similarly, Daniel's use of the fraudulently obtained funds to purchase tools for the scheme could implicate money laundering provisions. These acts, if proven to constitute predicate offenses, would satisfy the pattern requirement for RICO liability.

Lower-Rung Participation as Sufficient for RICO Liability

Even if Morgan and Daniel were not the primary architects of the fraudulent scheme but rather "lower-rung participants" acting under the direction of others, their actions would still satisfy the "operation or management" test under *Reves*.

As the Third Circuit clarified in [U.S. v. Parise, 159 F.3d 790 \(3rd Cir. 1998\)](#), the "operation or management" test "does not limit RICO liability to upper management because 'an enterprise is 'operated' not just by upper management but also by lower-rung participants in the enterprise who are under the direction of upper management.'" The court emphasized that "RICO liability may extend to those who do not hold a managerial position within an enterprise, but who do nonetheless knowingly further the illegal aims of the enterprise by carrying out the directives of those in control."

This principle is further supported by the American Criminal Law Review's article, which notes that RICO liability is "not limited to those with primary responsibility for the enterprise's affairs," citing *Reves*. The article also cites *United States v. Fowler*, which concluded that "knowingly carrying out the decisions of his superiors" within the criminal enterprise qualifies as "operation or management" under *Reves*.

Morgan's actions in transferring funds, preparing fraudulent documents, and lying to the court, as well as Daniel's use of those funds to purchase tools to further the scheme, demonstrate the kind of knowing furtherance of the enterprise's illegal aims that the Third Circuit has recognized as sufficient for RICO liability, even for lower-rung participants.

Exceptions and Caveats

Mere Association Versus Active Participation

It is important to distinguish between mere association with an enterprise and active participation in its operation or management. As the Third Circuit emphasized in [In re Insurance Brokerage Antitrust Litig., 618 F.3d 300 \(3rd Cir. 2010\)](#), "mere association with an enterprise does not violate § 1962(c)."

If Morgan or Daniel were merely aware of the fraudulent scheme but did not actively participate in it, they would not satisfy the "operation or management" test. However, the facts indicate that they both took specific actions—Morgan transferring funds, preparing fraudulent documents, and lying to the court, and Daniel purchasing tools to further the scheme—that go beyond mere association and demonstrate active participation in the enterprise's affairs.

The Need for Predicate Acts

RICO liability requires not only participation in the operation or management of an enterprise but also engagement in a "pattern of racketeering activity," which consists of at least two predicate acts. As stated in [Hlista v. Safeguard Props., LLC, No. 15-1812 \(3rd Cir. May 05, 2016\)](#), "no defendant can be liable under RICO unless he participated in two or more predicate offenses sufficient to constitute a pattern."

While the facts suggest that Morgan and Daniel engaged in activities that could constitute predicate offenses under RICO, such as mail or wire fraud (if the fraudulent documents were transmitted via mail or wire) or money laundering (if the funds were transferred with the intent to promote unlawful activity), these specific predicate acts would need to be established to complete the RICO liability analysis.

The Impact of [Tabas v. Tabas](#) and [U.S. v. Riccobene](#) Subsequent Treatment

It is important to note that two cases cited in this analysis have been subject to subsequent negative treatment. [Tabas v. Tabas, 47 F.3d 1280 \(3rd Cir. 1995\)](#) was declined to be extended by *Yucaipa Am. All. Fund I, LP v. Ehrlich*, No. 16-3664 (3rd Cir. Nov 15, 2017), and [U.S. v. Riccobene, 709 F.2d 214 \(3rd Cir. 1983\)](#) was stated as overruled by *Pacheco v. Golden Living Ctr.-Summit*, No. 3:10cv1641 (M.D. Pa. Feb 23, 2011).

However, this subsequent treatment does not affect the central holding of *Reves* regarding the "operation or management" test, nor does it undermine

the Third Circuit's consistent interpretation of that test in cases such as [U.S. v. Parise](#), *In re Insurance Brokerage Antitrust Litig.*, and [Smith v. Berg](#). The principles established in these cases regarding the level of participation required for RICO liability remain valid and applicable to the current analysis.

The negative treatment of Tabas and Riccobene primarily concerns other aspects of RICO liability, such as pleading standards and the definition of an "enterprise," rather than the "operation or management" test at issue here. Therefore, while acknowledging this negative treatment, it does not significantly impact the conclusion that Morgan and Daniel's actions satisfy the "operation or management" test under *Reves*.

Conclusion

Based on the *Reves* "operation or management" test and its interpretation by the Third Circuit, Morgan Myers and Daniel Branthoover's actions demonstrate sufficient participation in the operation or management of the enterprise's affairs to satisfy this element of RICO liability.

Morgan's active transfer of funds, preparation of fraudulent documents, and lies to the court constitute direct involvement in the enterprise's operations. These actions go beyond mere association and demonstrate the kind of participation in directing the enterprise's affairs that *Reves* requires for RICO liability.

Similarly, Daniel's use of the fraudulently obtained funds to purchase tools (a second phone) specifically intended to further the scheme demonstrates his participation in the operation or management of the enterprise. By knowingly facilitating the scheme through these purchases, Daniel was actively participating in the enterprise's affairs, even if he was not in a formal management position.

The Third Circuit has consistently recognized that RICO liability extends beyond those with formal management positions to include individuals who knowingly further the illegal aims of an enterprise by carrying out activities necessary to its operation. Morgan and Daniel's actions fall squarely within this understanding of the "operation or management" test.

Furthermore, their coordinated efforts—Morgan providing the funds and Daniel using them to purchase tools for the scheme—demonstrate the kind of interrelated activities with a common purpose that the Third Circuit has recognized as establishing a pattern of racketeering activity.

While the full analysis of RICO liability would also require identification of specific predicate acts constituting a pattern of racketeering activity, the "operation or management" element is satisfied by Morgan and Daniel's active participation in the fraudulent scheme. Their planning, funding, and execution of the scheme demonstrate their roles in directing the enterprise's affairs, thereby satisfying this crucial requirement for RICO liability under *Reves v. Ernst & Young*, 507 U.S. 170 (1993) and subsequent Third Circuit interpretations.

Legal Authorities

[Smith v. Berg, 247 F.3d 532 \(3rd Cir. 2001\)](#)

U.S. Court of Appeals — Third Circuit

Extract

As the District Court observed, the starting point for our analysis is the Supreme Court's decision in *Reves v. Ernst & Young*, 507 U.S. 170 (1993). In *Reves*, the Court held that to be liable under section 1962(c), a person must participate in the 'operation or management' of the corrupt enterprise's affairs. *Id.* at 179... We therefore hold that any reading of *Antar* suggesting a stricter standard of liability under section 1962(d) is inconsistent with the broad application of general conspiracy law set forth in *Salinas*. In accord with the general principles of criminal conspiracy law, a defendant may be held liable for conspiracy to violate section 1962(c) if he knowingly agrees to facilitate a scheme which includes the operation or management of a RICO enterprise.

Summary

Requirement under RICO that a defendant must participate in the "operation or management" of the enterprise's affairs, as established in *Reves v. Ernst & Young*. It further clarifies that under general conspiracy law, as applied in *Salinas*, a defendant can be held liable if they knowingly agree to facilitate a scheme involving the operation or management of a RICO enterprise. This supports the proposition that both Morgan and Daniel's active participation in the fraudulent scheme could satisfy the RICO requirement of participating in the operation or management of the enterprise.

[Banks v. Wolk, 918 F.2d 418 \(3rd Cir. 1990\)](#)

U.S. Court of Appeals — Third Circuit

Extract

We note that no defendant can be liable under RICO unless he participated in two or more predicate offenses sufficient to constitute a pattern. This participation need not be direct. RICO recognizes liability for those who merely aid and abet the underlying predicate offenses. *Petro-Tech, Inc. v. Western Co. of North America*, 824 F.2d 1349, 1356-58 (3d Cir.1987). Moreover, a defendant can be liable under RICO's conspiracy provision for agreeing to the commission of a pattern of racketeering activity, even if that defendant does not directly participate in the underlying acts.

Summary

Under RICO, a defendant does not need to directly participate in predicate offenses to be held liable. Liability can extend to those who aid and abet or conspire to commit a pattern of racketeering activity. This supports the proposition that both Morgan and Daniel's active participation in the fraudulent scheme, even if not directly managing the enterprise, could satisfy RICO's requirements.

[Jaguar Cars, Inc. v. Royal Oaks Motor Car Co., Inc., 46 F.3d 258 \(3rd Cir. 1995\)](#)

U.S. Court of Appeals — Third Circuit

Extract

In *Reves*, the Court acknowledged that in certain rare instances infiltrating 'persons' distinct from the corporate enterprise could satisfy the 'operation or management test,' if they exerted sufficient control over the corporation's activities. ' 'Outsiders' may be liable under Sec. 1962(c) if they are 'associated with' an enterprise and participate in the conduct of its affairs--that is, participate in the operation or management of the enterprise itself.' *Reves*, --- U.S. at ---, 113 S.Ct. at 1173 ('An enterprise also might be 'operated' or 'managed' by others [those not in upper management] 'associated with' the enterprise who exert control over it as, for example, by bribery.').

Summary

The *Reves* decision allows for RICO liability to extend to individuals who are not in upper management but who exert control over an enterprise's activities. This aligns with the proposition that Morgan and Daniel's active participation in the fraudulent scheme could satisfy the operation or management requirement under RICO, as they were involved in planning, funding, and executing the scheme, thereby exerting control over the enterprise's affairs.

[U.S. v. Parise, 159 F.3d 790 \(3rd Cir. 1998\)](#)

U.S. Court of Appeals — Third Circuit

Extract

In *Reves*, the Court endorsed the 'operation or management' test to determine whether a defendant participated in the conduct of an enterprise's affairs. *Id.* at 184, 113 S.Ct. 1163. According to *Reves*, '[i]n order to 'participate, directly or indirectly, in the conduct of such enterprise's affairs,' one must have some part in directing those affairs.' *Id.*

at 179, 113 S.Ct. 1163. However, one need not hold a formal position within an enterprise in order to 'participate' in its affairs. Id. at 179, 113 S.Ct. 1163. Further, the 'operation or management' test does not limit RICO liability to upper management because 'an enterprise is 'operated' not just by upper management but also by lower-rung participants in the enterprise who are under the direction of upper management.' Id. at 184, 113 S.Ct. 1163. In so holding, the Court made clear that RICO liability may extend to those who do not hold a managerial position within an enterprise, but who do nonetheless knowingly further the illegal aims of the enterprise by carrying out the directives of those in control.

Summary

The "operation or management" test from *Reves v. Ernst & Young* is used to determine RICO liability. This test does not require a formal managerial position within the enterprise but extends liability to those who knowingly further the illegal aims of the enterprise. The passage supports the proposition by indicating that both Morgan and Daniel's active participation in the fraudulent scheme could satisfy the "operation or management" requirement for RICO liability, as they were integral to carrying out the enterprise's activities.

[Reyes v. Netdeposit, LLC, 802 F.3d 469 \(3rd Cir. 2015\)](#)

U.S. Court of Appeals — Third Circuit

Extract

Reyes seeks to represent a class that may include tens of thousands of claimants with potential civil RICO claims arising from the defendants' operation of a sham enterprise. 'Establishing liability under [§ 1962(c)] of the RICO statute requires (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity, plus an injury to business or property.' In *re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 269 (3d Cir.2009) (internal quotation marks and citations omitted). ... If accepted, the District Court may conclude that this evidence supports a finding that there was a single fraudulent RICO enterprise, that each defendant participated in that enterprise, and that all members of the proposed class were damaged in the amount of the funds debited from their bank accounts pursuant to the fraudulent scheme.

Summary

Elements required to establish liability under the RICO statute, which includes conduct of an enterprise through a pattern of racketeering activity. The passage also suggests that evidence of participation in a fraudulent enterprise can support a finding of liability. This aligns with the proposition that Morgan and Daniel's active participation in the fraudulent scheme demonstrates their operation and management of the enterprise's affairs, satisfying the RICO element.

[Tabas v. Tabas, 47 F.3d 1280 \(3rd Cir. 1995\)](#)

U.S. Court of Appeals — Third Circuit

Extract

The RICO statute provides for civil damages for 'any person injured in his business or property by reason of a violation of [18 U.S.C. Sec. 1962].' 18 U.S.C. Sec. 1964(c). A common thread running throughout Sec. 1962 is that an injured party must demonstrate that the defendant was engaged in a 'pattern of racketeering activity.' ... Moreover, the Supreme Court has confined the scope of RICO by limiting the persons who can be liable under 18 U.S.C. Sec. 1962(c). See *Reves v. Ernst & Young*, --- U.S. ----, 113 S.Ct. 1163, 122 L.Ed.2d 525 (1993).

Summary

Requirements for a RICO violation, emphasizing the need for a "pattern of racketeering activity" and referencing the *Reves v. Ernst & Young* decision, which limits liability to those involved in the operation or management of the enterprise. This directly supports the proposition that both Morgan and Daniel's active participation in the fraudulent scheme could satisfy the RICO liability requirements, as their actions demonstrate involvement in the operation and management of the enterprise's affairs.

[In re Insurance Brokerage Antitrust Litig., 618 F.3d 300 \(3rd Cir. 2010\)](#)

U.S. Court of Appeals — Third Circuit

Extract

Mere association with an enterprise does not violate § 1962(c). To be liable under this provision, a defendant must "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). The Supreme Court has held that the "conduct or participate" element requires a defendant to "have some part in directing those affairs." *Reves v. Ernst & Young*, 507 U.S. 170, 179, 113 S.Ct. 1163, 122 L.Ed.2d 525 (1993). More precisely, "one is not liable under [§ 1962(c)] unless one has participated in the operation or management of the enterprise itself." *Id.* at 183, 113 S.Ct. 1163.

Summary

Mere association with an enterprise is insufficient; active participation in directing the enterprise's affairs is required. This supports the proposition that Morgan and Daniel's active roles in planning, funding, and executing the fraudulent scheme demonstrate their operation and management of the enterprise's affairs, satisfying the RICO element.

[Laurel Gardens LLC v. McKenna, 23-2649 \(3rd Cir. Jun 28, 2024\)](#)

U.S. Court of Appeals — Third Circuit

Extract

RICO recognizes liability for those who merely aid and abet the underlying predicate offenses. *Banks v. Wolk*, 918 F.2d 418, 421 (3d Cir. 1990). [T]o find a defendant liable for aiding and abetting a predicate act under RICO, the plaintiff must prove (1) that the substantive act has been committed, and (2) that the defendant alleged to have aided and abetted the act knew of the commission of the act and acted with intent to facilitate it.

Summary

RICO liability can extend to those who aid and abet the commission of predicate offenses. This means that even if Morgan and Daniel were not the primary actors, their active participation in planning, funding, and executing the fraudulent scheme could satisfy the RICO requirement of participating in the operation or management of the enterprise's affairs. The passage supports the idea that knowing and intentional facilitation of the scheme is sufficient for RICO liability.

[Argiro v. Lamancusa, 23-1820 \(3rd Cir. Apr 03, 2024\)](#)

U.S. Court of Appeals — Third Circuit

Extract

To plead a RICO claim under 18 U.S.C. § 1962(c), a plaintiff 'must allege (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.' ... Predicate acts are related if they 'have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events.' ... First, there must be an 'enterprise' as defined in the statute. 18 U.S.C. § 1961(4). Second, the crimes alleged in the complaint must qualify as 'racketeering activity.' *Id.* § 1961(1). Third, the complaint must allege that Lamancusa had a sufficient role in the operation or management of the enterprise to support RICO liability. See *Reves*, 507 U.S. at 183.

Summary

Elements required to establish a RICO claim, which include conduct of an enterprise through a pattern of racketeering activity. It emphasizes the need for related predicate acts and the defendant's role in the operation or management of the enterprise, as established in *Reves v. Ernst & Young*. This directly supports the proposition that Morgan and Daniel's active

participation in the fraudulent scheme demonstrates their operation and management of the enterprise's affairs, satisfying the RICO element.

[Hlista v. Safeguard Props., LLC, No. 15-1812 \(3rd Cir. May 05, 2016\)](#)

U.S. Court of Appeals — Third Circuit

Extract

A plaintiff bringing a substantive RICO claim under § 1962(c) must allege '(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.' In re Ins. Brokerage Antitrust Litig., 618 F.3d 300, 362 (3d Cir. 2010) (internal quotation marks omitted). A pattern of racketeering activity 'requires at least two acts of racketeering activity within a ten-year period.' Id. (quoting 18 U.S.C. § 1961(5)); see Banks v. Wolk, 918 F.2d 418, 421 (3d Cir. 1990) ('[N]o defendant can be liable under RICO unless he participated in two or more predicate offenses sufficient to constitute a pattern.').

Summary

Elements required to establish a RICO claim under § 1962(c), which includes conduct of an enterprise through a pattern of racketeering activity. The requirement of at least two acts of racketeering activity within a ten-year period is crucial to establish a pattern. This supports the proposition that Morgan and Daniel's actions, if they include multiple acts of racketeering, could satisfy the RICO requirements. Their active participation in the fraudulent scheme aligns with the conduct of an enterprise through a pattern of racketeering activity.

[U.S. v. Riccobene, 709 F.2d 214 \(3rd Cir. 1983\)](#)

U.S. Court of Appeals — Third Circuit

Extract

In order to obtain a conviction under RICO, the government must show not only that a defendant participated in the operation of a single enterprise, but also that he did so 'through a pattern of racketeering activity or collection of unlawful debt.' 18 U.S.C. Sec. 1962(c). A pattern is established by proof that the defendant committed two or more predicate offenses--specified illegal acts, prohibited by either state or federal law--which are often associated with organized crime.

Summary

For a RICO conviction, it is necessary to demonstrate that a defendant participated in the operation of an enterprise through a pattern of racketeering activity. This aligns with the proposition that Morgan and

Daniel's active participation in the fraudulent scheme demonstrates their operation and management of the enterprise's affairs, satisfying the RICO element.

[U.S. v. Boffa, 688 F.2d 919 \(3rd Cir. 1982\)](#)

U.S. Court of Appeals — Third Circuit

Extract

Section 1962(c) of the Act provides: It shall be unlawful for any person employed by or associated with an 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. Section 1962(d) makes it unlawful for any person to conspire to violate section 1962(c). ... To be convicted as a member of an enterprise conspiracy, an individual, by his words or actions, must have objectively manifested an agreement to participate, directly or indirectly, in the affairs of an enterprise through the commission of two or more predicate crimes.

Summary

Requirements for a RICO violation, specifically under sections 1962(c) and 1962(d), which include participating in the conduct of an enterprise's affairs through a pattern of racketeering activity. It also emphasizes that an individual must have manifested an agreement to participate in the enterprise's affairs through predicate crimes. This supports the proposition that Morgan and Daniel's active participation in the fraudulent scheme could satisfy the RICO requirements, as their actions could be seen as conducting or participating in the enterprise's affairs through racketeering activity.

[United States v. Ferriero, 866 F.3d 107 \(3rd Cir. 2017\)](#)

U.S. Court of Appeals — Third Circuit

Extract

Next, Ferriero challenges his RICO conviction by attacking the sufficiency of the evidence supporting 18 U.S.C. § 1962(c)'s 'nexus' element. Section 1962(c) makes it unlawful 'to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity.' ... The nexus element requires proving a sufficiently close relationship between the defendant, his involvement in the enterprise's affairs, and the pattern of racketeering. ... We reiterate Insurance Brokerage's statement that racketeering must be one means by which the defendant participates in the conduct of the enterprise's affairs. As noted,

we believe there was sufficient evidence for a rational juror to conclude Ferriero participated in the conduct of the BCDO's affairs by means of a pattern of bribery.

Summary

The court in *United States v. Ferriero* affirmed the RICO conviction by emphasizing the importance of the nexus element, which requires a close relationship between the defendant's involvement in the enterprise's affairs and the pattern of racketeering. This supports the proposition that Morgan and Daniel's active participation in the fraudulent scheme could satisfy the RICO requirement of participating in the operation or management of the enterprise's affairs.

[U.S. v. Philip Morris Usa, Inc., 327 F.Supp.2d 13 \(D. D.C. 2004\)](#)

U.S. District Court — District of Columbia

Extract

In response, Defendants cite *Reves v. Ernst & Young*, 507 U.S. 170, 185, 113 S.Ct. 1163, 122 L.Ed.2d 525 (1993), claiming that it requires a showing of 'operation or management of the enterprise' to demonstrate a RICO conspiracy under Section 1962(d). Even though the Supreme Court did hold in *Reves* that, to 'conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs, one must participate in the operation or management of the enterprise itself,' Defendants' argument fails for the following reasons. Thus, *Reves*' 'operation or management' standard applies only to substantive RICO offenses under Section 1962(c) and not to a conspiracy to violate RICO under Section 1962(d).

Summary

This requirement does not extend to RICO conspiracy under Section 1962(d), which only requires an agreement to further the criminal endeavor. However, the proposition is about substantive RICO liability under Section 1962(c), which aligns with the *Reves* standard.

[In re Ins. Brokerage Antitrust Litigation, 579 F.3d 241 \(3rd Cir. 2009\)](#)

U.S. Court of Appeals — Third Circuit

Extract

The RICO statute provides, in relevant part: 'It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs

through a pattern of racketeering activity....' 18 U.S.C. § 1962(c). Establishing liability under this section of the RICO statute 'requires (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity,' plus an injury to 'business or property.' *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985) (footnote omitted); see *Lum v. Bank of Am.*, 361 F.3d 217, 223 (3d Cir.2004).

Summary

The passage outlines the elements required to establish a RICO violation, which includes conduct of an enterprise through a pattern of racketeering activity. This directly relates to the proposition that Morgan and Daniel's actions demonstrate their participation in the operation and management of the enterprise's affairs, as required by RICO. The passage supports the idea that their active involvement in the fraudulent scheme could satisfy the conduct element of a RICO claim.

[18 U.S.C. § 1962 18 U.S.C. § 1962 Prohibited Activities](#)

Extract

It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

Summary

The passage explicitly states that it is unlawful for any person associated with an enterprise to conduct or participate in the conduct of the enterprise's affairs through a pattern of racketeering activity. This aligns with the proposition that Morgan and Daniel's active participation in the fraudulent scheme demonstrates their involvement in the operation and management of the enterprise's affairs, which is a requirement for RICO liability.

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

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

Extract

The late Chief Judge Becker of the Third Circuit properly observed that, when an organizational entity is involved, it is important to bear in mind the directive of *Reves v. Ernst & Young*, 507 U.S. 170, 183 (1993), that the defendant must be involved in the operation and management of the

enterprise... In *Reves v. Ernst & Young*, 507 U.S. 170, 183 (1993), the Supreme Court declared that there is no liability under § 1962(c) 'unless one has participated in the operation or management of the enterprise itself.'

Summary

The *Reves v. Ernst & Young* decision is a key authority in determining liability under RICO. It establishes that a defendant must participate in the operation or management of the enterprise to be held liable. The passage emphasizes the importance of this requirement and its application in RICO cases.

[Chapter 3. Standing](#)

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

Extract

In *Reves v. Ernst & Young*, 507 U.S. 170, 183 (1993), the Supreme Court interpreted the requirement that a defendant 'conduct or participate, directly or indirectly, in the conduct of [the] enterprise's affairs,'... In order to 'participate, directly or indirectly, in the conduct of such enterprise's affairs,' one must have some part in directing those affairs. Of course, the word 'participate' makes clear that RICO liability is not limited to those with primary responsibility for the enterprise's affairs, just as the phrase 'directly or indirectly' makes clear that RICO liability is not limited to those with a formal position in the enterprise, but some part in directing the enterprise's affairs is required.

Summary

RICO liability is not limited to those with primary responsibility or formal positions, but rather includes those who participate in directing the enterprise's affairs, directly or indirectly. This supports the proposition that Morgan and Daniel's active participation in the fraudulent scheme could satisfy the operation-and-management requirement under 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

Among the other elements the plaintiff must prove to establish RICO liability on the part of the defendant are that the defendant was employed by or

associated with the enterprise and conducted or participated in the conduct of the affairs of the enterprise through a pattern of racketeering activity. In this regard, you must find that the defendant participated in the operation or management of the enterprise itself and was involved in the alleged unlawful activities. To participate in the operation or management of an enterprise, a defendant must have had some part in directing the enterprise's affairs. A defendant need not be a member of upper management to satisfy this requirement but may be a lower rung participant in the enterprise who acted under the direction of upper management.

Summary

Requirements for establishing RICO liability, specifically the need for a defendant to participate in the operation or management of the enterprise's affairs. It clarifies that a defendant does not need to be in upper management but can be a lower-level participant who directs the enterprise's affairs. This supports the proposition that both Morgan and Daniel, through their active participation in the fraudulent scheme, satisfy the RICO requirement of participating in the operation or management of the enterprise.

[Racketeer Influenced and Corrupt Organizations](#)

American Criminal Law Review - Georgetown University Law Center - Adam Governale, Keyes Gilmer, Elizabeth Hadley, Caroline Lagumina, Omoyele Okunola - 2022-07-01

Extract

Reves v. Ernst & Young, 507 U.S. 170, 183 (1993) (holding that RICO defendants must have participated in the "operation or management" of the enterprise); Baisch v. Gallina, 346 F.3d 366, 376 (2d Cir. 2003) (citing Reves, 507 U.S. at 179); ... RICO liability is not limited to those with primary responsibility for the enterprise's affairs (quoting Reves v. Ernst & Young, 507 U.S. 170, 179 (1993)); ... United States v. Fowler, 535 F.3d 408, 418 (6th Cir. 2008) (concluding that "knowingly carrying out the decisions of his superiors" within the criminal enterprise qualifies as "operation or management" under Reves).

Summary

The passages from the American Criminal Law Review provide a legal basis for understanding the "operation or management" test under RICO, as established in Reves v. Ernst & Young. The cited cases illustrate that RICO liability extends beyond those with primary responsibility to include individuals who actively participate in the enterprise's affairs, even if they are not at the top of the hierarchy. This supports the proposition that both Morgan and Daniel's actions in planning, funding, and executing the scheme could satisfy the RICO requirement of participating in the operation or management of the enterprise.

RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

American Criminal Law Review - Georgetown University Law Center - 2021-07-01

Extract

In *Reves v. Ernst & Young*, the Supreme Court held that the nexus between a pattern of racketeering activity and the enterprise exists only when the defendant participates in the management or operation of the enterprise. The defendant does not need a primary responsibility nor a formal position within the enterprise to participate in its affairs; however, 'some part in directing the enterprise's affairs is required.'

Summary

This does not require a formal position or primary responsibility, but rather some part in directing the enterprise's affairs. This supports the proposition that Morgan and Daniel's active participation in the fraudulent scheme could satisfy the RICO requirement of participating in the operation or management of the enterprise.

[Time-bars: RICO-criminal and civil-federal and state.](#)

Notre Dame Law Review - University of Notre Dame Law School - Blakey, G. Robert - 2013-04-01

Extract

Reves v. Ernst & Young, 507 U.S. 170, 177-86 (1993), established that 'conduct' meant some part in the 'operation or management' of the enterprise's affairs. Compare *Slaney*, 244 F.3d at 598 (holding that person charged with violating RICO must have participated in the operation or management of the enterprise and must have asserted some control over the enterprise), and *Viola*, 35 F.3d at 43 (excluding an unwitting janitor/handyman), with *Aetna Casualty Sur. Co.*, 43 F.3d at 1559 (holding that causing insurance payments to be made is included in 'operation').

Summary

The *Reves v. Ernst & Young* decision is a key authority in determining what constitutes "operation or management" of an enterprise under RICO. The passage highlights that participation in the operation or management of an enterprise's affairs is necessary for RICO liability. The examples provided, such as causing insurance payments to be made, illustrate actions that can be considered part of the operation or management. This supports the proposition that Morgan and Daniel's actions in planning, funding, and

executing the fraudulent scheme could satisfy the RICO requirement of participating in the operation or management of the enterprise.

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

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

Extract

the 'operation or management' of the enterprise is not to merely support or encourage, that is, aid and abet, the affairs of the enterprise, but requires some participation in the operation or management of its affairs... 'Outsiders' may be liable under Section 1962(c) if they are 'associated with' an enterprise and participate in the conduct of its affairs--that is, participate in the operation or management of the enterprise itself... The terms 'conduct' and 'participate in the affairs' of an enterprise means [sic] the performance of acts, functions, or duties that are necessary or helpful to the operation of the enterprise.

Summary

Even those without primary responsibility can be liable if they perform acts necessary or helpful to the enterprise's operation. This supports the proposition that Morgan and Daniel's active roles in the fraudulent scheme could satisfy the RICO requirement of participating in the enterprise's affairs.

[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 claim.

Summary

To establish a RICO claim under § 1962(c), a plaintiff must prove conduct of an enterprise through a pattern of racketeering activity. The passage emphasizes the need for particularity in pleading fraud-related RICO claims, which aligns with the proposition that Morgan and Daniel's actions demonstrate their operation and management of the enterprise's affairs. Their active participation in the fraudulent scheme can be seen as conduct of the enterprise through a pattern of racketeering activity.

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

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

Extract

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

Summary

Elements necessary to establish a RICO conspiracy, which includes an agreement to join a racketeering scheme, knowing engagement in the scheme with intent to achieve its goals, and involvement in two or more predicate acts of racketeering. This supports the proposition that Morgan and Daniel's active participation in the fraudulent scheme demonstrates their operation and management of the enterprise's affairs, as they would have had to agree to join the scheme, engage in it knowingly, and commit predicate acts, which aligns with the requirements for RICO liability.

[RICO: A Primer](#)

Extract

To prove a violation of Section 1962(c), a plaintiff must prove the following elements: ... 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

Elements required to prove a violation of Section 1962(c) of RICO, which includes the requirement that the defendant conducted or participated in

the conduct of the affairs of the enterprise. This directly supports the proposition that Morgan and Daniel's active participation in the fraudulent scheme demonstrates their operation and management of the enterprise's affairs, satisfying the RICO element of participation in the enterprise's affairs through a pattern of racketeering activity.

[RICO: A Primer](#)

Extract

To prove a violation of Section 1962(c), a plaintiff must prove the following elements: ... 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

Elements required to prove such a violation, which aligns with the proposition that Morgan and Daniel's active participation in the fraudulent scheme satisfies the RICO requirement of participating in the operation or management of the enterprise's affairs.

This memo was compiled by Vincent AI based on vLex materials available as of June 14, 2025. [View full answer on vLex](#)