Civil RICO: The Resolution of the Racketeering Enterprise Injury Requirement

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COMMENTS

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INTRODUCTION

Title IX of the Organized Crime Control Act, 1 entitled "Racketeer Influenced and Corrupt Organizations" 2 [hereinafter RICO],

§ 1962. Prohibited Activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity . . . to use or
was enacted for the purpose of "seek[ing] the eradication of organized crime in the United States." RICO provides "enhanced sanctions" and new criminal and civil remedies to deal with the unlawful activities of those engaged in organized crime. The civil component of RICO (hereinafter "Civil RICO") supplements the traditional penal method of recourse by allowing victims of specific criminal activity to bring a civil cause of action against the RICO offender.

Civil RICO has stirred a storm of judicial controversy because a broad reading of the RICO statute would provide plaintiffs standing to sue in the federal courts for treble damages, attorney's fees, and court costs almost any time they can allege injury caused by the commission of two or more of the racketeering acts listed in RICO. Racketeering activity, referred to by the courts as "predicate acts," includes many state and federal offenses ranging from murder, kidnapping and drug trafficking to mail, wire and securities.

invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(b) It shall be unlawful for any person through a pattern of racketeering activity . . . to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) 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.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b) or (c) of this section.

(e) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

4. Id.
10. Damages given by statute in certain cases, consisting of the single damages found by the jury, actually tripled in amount. BLACK'S DICTIONARY 1347 (rev. 5th ed. 1978).
13. Id.
ties fraud. The commission of any two predicate acts\textsuperscript{14} or two commissions of any one predicate act,\textsuperscript{15} done in furtherance of a business or an association\textsuperscript{16} invokes Civil RICO, providing anyone injured by such conduct a civil remedy.\textsuperscript{17} As a result of the inclusion of various frauds\textsuperscript{18} in the list of predicate acts, an unrestricted application of Civil RICO sweeps broadly, affecting not only members of organized crime but also ordinary white collar criminals. Consequently, judicial discomfort with the potential breadth of Civil RICO has prompted the courts to impose various standing requirements\textsuperscript{19} on those plaintiffs seeking damages. The standing requirements imposed on the Civil RICO plaintiff allow only those plaintiffs who allege a certain type of injury to sue in the federal courts\textsuperscript{20} for treble damages. While the standing requirement\textsuperscript{21} employed by the court may differ as to the type of injury the plaintiff must allege, all have the same effect of restricting the application of Civil RICO to a limited class of defendants.

The judicially created standing requirements\textsuperscript{22} most frequently invoked by the courts are: an organized crime nexus,\textsuperscript{23} a competitor

\textsuperscript{15} Id.
\textsuperscript{17} 18 U.S.C. § 1964(c) (1982). See supra note 2.
\textsuperscript{18} The courts consistently refer to mail, wire, and securities fraud collectively as “garden variety fraud.” See, e.g., Hulse v. Halle Farms Dev., 586 F. Supp. 120, 122 (D. Conn. 1984).
\textsuperscript{19} See infra notes 23-28 and accompanying text.
\textsuperscript{21} See infra notes 23-28 and accompanying text.
Some courts have required a Civil RICO plaintiff to show a competitive injury in order to attain standing. The term competitive injury is one borrowed from antitrust law. Those courts that apply a competitive injury requirement rely on the fact that the Civil RICO treble damage clause is patterned after antitrust law and they rely on the Statement of Findings and Purpose which prefaces RICO stating it was intended to protect "legitimate businesses from organized crime infiltration" and to preserve "free competition." Pub. L No. 91-452, 84 Stat. 922 (1970).

However, the majority of courts and commentators have rejected the application of the competitive injury requirement to Civil RICO plaintiffs. See Bunker Ramo Corp. v. United Business Forms, Inc., 713 F.2d 1272, 1288 (7th Cir. 1983); Schacht v. Brown, 711 F.2d 1343, 1357 (7th Cir. 1983).
A majority of courts have rejected the first three standing requirements set out above, and there remains a sharp division among the courts concerning the last standing requirement: a racketeering enterprise injury. 523 F. Supp. 244, 248 (S.D.N.Y. 1981); Blakey, Reflections, supra note 23, at 237 (1982).

One factor considered by the courts rejecting the competitive injury requirement is the report issued by the antitrust division of the American Bar Association. The report advocated that RICO should not supplement the antitrust law, but should be separate legislation. The report stated that the use of antitrust laws as a vehicle for combatting organized crime could create inappropriate and unnecessary obstacles in the way of persons injured by organized crime who might seek treble damage recovery. Such a private litigant would have to contend with a body of precedent—appropriate in a purely antitrust context—setting strict requirements on questions such as "standing to sue" and "proximate cause." S.1623 and S.1624, 91st Cong., 1st Sess., 115 CONG. REC. 6995 (1969) (Sen. Hruska). See also Cong. Rec. 9567 (1969) (Sen. McClellan) (no intent to incorporate complexity of antitrust principles). In light of the ABA's report, separate legislation was enacted. Professor G. Robert Blakey, who served as chief counsel of the Senate Subcommittee of Criminal Laws and Procedures when these RICO bills were processed, concluded "any suggestion that RICO action be limited by antitrust type limitations—'competitive,' 'commercial,' or 'direct/indirect' injuries—flies in the face of the very considerations that led to the drafting of RICO as a separate statute from the antitrust statutes that are so limited." Blakey, Reflections, supra note 23, at 237, 255 n.52 (1982).

Furthermore, the goals behind the two statutes are vastly different. Civil RICO and the antitrust laws are "not coterminous." Bennett v. Berg, 685 F.2d 1053, 1059. On a very simplistic level, "fostering free competition is the purpose of the antitrust laws, while only an ancillary purpose of RICO." Catanella, 583 F. Supp. 1388, 1433 (E.D. Pa. 1984). RICO "was broadly aimed at striking . . . a mortal blow against the property interest of organized crime." Schacht v. Brown, 711 F.2d 1343, 1357-58 (7th Cir. 1983) (quoting 116 CONG. REC. 602) (1970) (Sen. Hruska). The competitive injury requirement prevents frivolous suits from undermining the purpose behind the antitrust laws which is the promotion of competition. This safeguard is misplaced in the application of Civil RICO because the economic ruin of an enterprise which operates through a pattern of racketeering is the very purpose behind section 1964(c). In short, "there are few countervailing reasons to lessen the impact of remedies on Civil RICO defendants as there might be in a typical antitrust case": Blakey, Racketeer Influenced and Corrupt Organizations (RICO): Basic Concepts—Criminal and Civil Remedies, 53 TEMP. L.Q. 1009, 1042 (1980) [hereinafter cited as Blakey, Basic Concepts].


This Comment will examine the racketeering enterprise injury standing requirement and show that there is no such requirement in Civil RICO's legislative history nor in its express language. Part I will trace the evolution of the racketeering enterprise injury. Part II will examine the definitions given by the courts of a racketeering enterprise injury. Part III will scrutinize and reject the justifications given by those courts for requiring a racketeering enterprise injury. Part IV will discuss In re Catanella & E.F. Hutton & Co., Inc., Securities Litigation,29 the most comprehensive and well-reasoned case to date, which addresses and rejects the racketeering enterprise injury requirement. Finally, Part V will emphasize why a racketeering enterprise injury is an artificial requirement and will


conclude that the Civil RICO plaintiff should only have to allege injury from the predicate acts for standing to sue in the federal courts.

I. THE EVOLUTION OF THE RACKETEERING ENTERPRISE INJURY REQUIREMENT

The evolution of the racketeering enterprise injury begins in Congress' attempt "to strike a mortal blow" against organized crime through the enactment of Civil RICO. The aggressive measures taken by Congress reflect the realization that criminal organizations possess an overwhelming amount of money and power and are using these resources to infiltrate and corrupt legitimate businesses. Congress was concerned that our democratic and economic systems were gradually being subverted by these criminal forces. In response to this threat, Congress acted drastically in its adoption of Civil RICO by providing the private civil litigant a powerful tool to attack the lifeline of organized crime—its profits. Civil RICO operates to take the profit incentive out of organized crime by awarding the victim treble damages. This new remedy furthers Congress' goal, the eradication of organized crime, by depleting the assets of criminal organizations and thereby impeding their ability to influence and corrupt society.

While the intended purpose of Civil RICO was the abolition of organized crime, Congress was aware that a law targeted solely at organized crime would be unconstitutional. Representative Poff argued that any statute aimed at the status of an individual would be constitutionally suspect in light of the Supreme Court's consistent invalidation of statutes that create status offenses or that make it unlawful to be a member of certain organizations. The amendment proposed by Representative Biaggi suggesting that the bill

32. Id. See also 115 Cong. Rec. 6993 (1969) (Sen. Hruska).
33. Id.
   What is needed... are new approaches that will deal not only with individuals, but also with an economic base to which those individuals constitute such a serious threat to the economic well-being of the nation... [A]n attack must be made on their source of economic power itself, and the attack must take place on all available fronts.
36. Id.
37. See infra notes 38-39 and accompanying text.
be tailored to outlawing membership in the Mafia or in La Cosa Nostra was rejected by Congress. Accordingly, the enactment of Civil RICO did not create a status offense but rather created a conduct offense. A statute aimed at conduct affects all individuals equally who, regardless of their affiliations, engage in the proscribed activity. Further evidence that Civil RICO is a law geared toward conduct is the fact that it was enacted over specific objections that its reach went far beyond organized crime. These objections were voiced by Senators Philip A. Hart and Edward M. Kennedy when the predicate acts listed in RICO were expanded to include mail, wire, and securities fraud. These predicate acts bring ordinary white collar criminals within the scope of Civil RICO. Therefore, Congress’ intent not to limit the application of Civil RICO to organized crime is evidenced by the express language of Civil RICO and by the comments of those who did not fully support the bill.

Despite the clear legislative intent to extend the application of Civil RICO beyond members of organized crime, some courts have been reluctant to do so. These courts are hesitant to inflict treble damages upon defendants who are not typically considered members of criminal organizations. To alleviate their judicial discomfort in applying Civil RICO to white collar criminals, these courts have imposed stringent standing requirements on plaintiffs seeking to sue under Civil RICO. The court’s imposition of one such standing requirement, the racketeering enterprise injury, requires the plaintiff to allege injury from the enterprise instead of merely alleging injury from the predicate acts.

The court’s requirement of a racketeering enterprise injury is the most frequently litigated issue regarding the application of Civil RICO today. The opposing views are: those who advocate restricting the use of Civil RICO by requiring a racketeering enterprise injury and those who oppose limiting the application of Civil RICO and instead require only injury from the predicate acts.

As the racketeering enterprise injury requirement has evolved in the courts, it has been applied inconsistent and sporadically. This difficulty in application is due, at least in part, to the fact that the courts have not been able to define this concept precisely. It would be appropriate to analyze the definitions currently attached to the

40. See infra note 41.
42. See supra notes 23-28 and accompanying text.
43. Id.
44. See supra note 26.
45. For an example, see infra notes 84-87 and accompanying text.
46. See supra note 28.
racketeering enterprise injury by those courts requiring such an injury.

II. THE DEFINITIONS OF A RACKETEERING ENTERPRISE INJURY

No court has offered a practical or tangible definition of what is meant by a racketeering enterprise injury. Moreover, very few courts have even attempted to define this nebulous requirement. One court appropriately stated that a racketeering enterprise injury is a “slippery concept whose definition has eluded even those courts professing to recognize it.”

To illustrate this point, in *Willamette Savings & Loan v. Blake & Neal Finance Co.*, the court conceded that it was a difficult task to define a racketeering enterprise injury, but nevertheless proclaimed that courts will recognize “a racketeering enterprise injury when they see one.” Justice Stewart’s well known observation regarding pornography was relied upon by the *Willamette* court:

I shall not attempt to further define the kind of material I understand to be embraced within the shorthand description (i.e., hardcore pornography); and perhaps I could never succeed in intelligently doing so. But I know it when I see it, and the motion picture involved in this case is not it.

This paraphrase of Justice Stewart’s observation seems inappropriate for use in the application of Civil RICO. What constitutes pornography is determined by individual and societal morals. This standard fluctuates from community to community and is changed by the passage of time. In contrast, the prerequisites for a Civil

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49. Alexander Grant & Co. v. Tiffany Indus., 742 F.2d 408, 413 (8th Cir. 1984).


RICO plaintiff to gain standing to sue should be consistent throughout the United States. Injury "by reason of" should not be a subjective determination based on a pliable, evolving standard, but should be an objective determination applied to the facts of each case. Thus, analogizing a RICO injury to the definition of pornography results in the illusory requirement of a racketeering enterprise injury being used to deny standing to the direct victims of racketeering activity.

Another court attempted to define a racketeering enterprise injury by way of an illustration: "An injury might be found where a Civil RICO defendant's ability to harm the plaintiff is enhanced by infusion of money from a pattern of racketeering activity into the enterprise."

This example does nothing by way of providing a concrete definition of a racketeering enterprise injury and "does even less in terms of limiting the statute's reach since almost every defendant's ability to inflict harm on a plaintiff would be enhanced by the fruits of racketeering activity." It seems any plaintiff that alleges a violation of section 1962 and an accompanying injury would satisfy this example. In effect, this purported illustration of a racketeering enterprise injury is consistent with the reading of Civil RICO employed by the courts that reject a special injury requirement.

Other courts have defined a racketeering enterprise injury as a "different sort of injury than injury from the predicate acts"; other courts have defined it as an injury which possesses "something more than the injury resulting from the . . . predicate acts."

These courts, however, have failed to explain what is meant by a "different sort of injury" or what constitutes "something more" than injury resulting from the predicate acts. In sum, the only feature of a racketeering enterprise injury which the courts have been able to articulate is that a racketeering enterprise injury does not

54. In other words, a "racketeering enterprise injury."
55. Landmark Sav. & Loan v. Loeb Rhoades & Co., 527 F. Supp. 206, 208-09 (E.D. Mich. 1981). The court also noted that racketeering enterprise injuries and competitive injuries are not identical; however, it conceded to the existence of an overlap between the two types of injuries. Id. at 209.
56. Id.
57. Furman v. Cirrito, 741 F.2d 524, 530 (2d Cir. 1984).
59. See infra note 64.
62. See supra note 60.
63. See supra note 61.
include injuries flowing from the commission of the predicate acts.\textsuperscript{64} Since these courts cannot sufficiently define a racketeering enterprise injury it becomes necessary to examine how these courts justify the imposition of a racketeering enterprise injury requirement.

### III. The Justifications Given by the Courts for Requiring a Racketeering Enterprise Injury

There are several justifications given by those courts interpreting Section 1964(c)\textsuperscript{65} to require a racketeering enterprise injury. These justifications include: (1) the analogy to antitrust law whereby a distinct injury is required; (2) the assertion that Congress did not intend to federalize pre-existing state law, nor did they intend to supplement the substantive statutes constituting racketeering activity; (3) the court's concern over crowded dockets; and (4) the plain language of Civil RICO requires a racketeering enterprise injury.\textsuperscript{66}

The first justification given by some courts for requiring a racketeering enterprise injury is based on a general analogy to antitrust law. The legislative history of Civil RICO\textsuperscript{67} makes reference to an

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\textsuperscript{66} Courts on both sides of the racketeering enterprise injury dispute have claimed that they are merely following the "plain" meaning of section 1964(c). Compare Bankers Trust Co. v. Rhoades, 741 F.2d 511, 516, (2d Cir. 1984) (plain meaning requires a distinct RICO injury), and Haroco v. Am. Nat'l Bank & Trust Co. 577 F. Supp. 111, 113-14 (N.D. Ill. 1983) ("this RICO injury requirement is . . . supported by the plain language of the statute"); with Furman v. Cirrito, 711 F.2d 524, 528 (2d Cir. 1984) ("language is clear and does not require racketeering injury"). In Clute v. Davenport, 584 F. Supp. 1562, 1570-71 (D. Conn. 1984), the court admitted that the plain meaning of the statute did not require a racketeering enterprise injury, but nevertheless advocated requiring one:

A literal interpretation of the statute might lead one to the conclusion that a defendant is civilly liable under RICO merely upon the showing that he has committed any two of the predicate offenses. Such a reading, I believe, would be in error because it fails to recognize that Congress meant to limit redress to injuries caused by racketeering.

\textsuperscript{67} At 115 CONG. REC. 6993 (1969) Senator Hruska states: "Patterned closely after the Sherman Act (RICO) provides for private treble damage suits prospective injunctive relief, discovery procedures and all the other devices which bring to bear the
titrust principles, for example, the Civil RICO treble damage clause was modeled after the Clayton Antitrust Act. A few courts have seized upon these antitrust references as evidence that Congress intended to impose on Civil RICO plaintiffs standing requirements which are similar to those required of antitrust plaintiffs. In order for a plaintiff to gain standing under the Clayton Act, the plaintiff must prove an “antitrust injury,” which is to say “injury of the type the antitrust laws were intended to prevent.”71 In light of Civil RICO’s adoption of the antitrust treble damage language, some courts maintain that the plaintiff must demonstrate a distinct “RICO injury” in order to state a Civil RICO claim, in other words, “the type of injury RICO was intended to prevent.”72 Accordingly, the requirement for a distinct injury, different from the injury resulting from the predicate acts, was created.73 Further, these courts contend there is nothing in Civil RICO’s legislative history that suggests Congress did not intend to create analogous standing barriers to Civil RICO by using the “injury by reason of” language. Consequently, these courts conclude that standing should only be granted to those who have suffered a racketeering enterprise injury.74

The requirement of a distinct RICO injury—the type RICO was intended to prevent—is vague and ambiguous. It could be interpreted to require an indirect injury. Inherent in the interpretation

full panoply of our antitrust machinery in the aid of business competing with organized crime.” Senator McClellan states: “The many references to antitrust cases are necessary because particular equitable remedies desired have been brought to their greatest development in this field and in many instances they are the primary precedents for the remedies in this bill.” Id. at 9567.

70. See infra note 72.
74. The legislative history has been read to support both sides of the argument. This is in part attributable to the fact that the addition of the private right of action to the preliminary draft of the RICO statute did not generate discussion in either the House or Senate. Clute v. Davenport Co., 584 F. Supp. 1562, 1573 (D. Conn. 1984). See Note, Civil RICO, supra note 24, at 1101, 1112 n.62 (1982). See also supra note 66.
of the antitrust treble damage clause\textsuperscript{75} is the requirement of an indirect injury.\textsuperscript{76} Therefore, an analogy to the Clayton Act, based on this clause, could only yield an indirect injury requirement. The majority of courts, in addressing Civil RICO, have rejected the indirect injury requirement\textsuperscript{77} because Congress did not intend to limit Civil RICO by antitrust concepts such as “competitive,” “commercial,” “direct or indirect” injury.\textsuperscript{78} The application of antitrust principles to Civil RICO, “flies in the face” of legislative intent.\textsuperscript{79}

The only other reading that could be given to the distinct RICO injury requirement in the context of antitrust law is the requirement of an organized crime nexus. Civil RICO was intended to “address the infiltration of legitimate businesses by organized crime.”\textsuperscript{80} Thus, a RICO injury, the type RICO was intended to prevent, would be an injury stemming from organized crime. However, the courts have overwhelmingly rejected the requirement for a connection with organized crime.\textsuperscript{81} These courts adhere to the legislative history stating that, in order for Civil RICO to pass constitutional scrutiny, it must be construed as a conduct offense, rather than a status offense.\textsuperscript{82} Therefore, any analogy to antitrust law, which demands the Civil RICO plaintiff be injured by the defendant affiliation with organized crime, is the result of inconsistent and constitutionally impermissible reasoning.

In addition to being vague, ambiguous and contrary to legislative intent, the distinct injury requirement will lead to the anomalous result of denying relief to direct victims of organized crime.\textsuperscript{83} For example, members of organized crime who infiltrate an enterprise\textsuperscript{84} and who conduct the affairs of the enterprise to defraud their cus-


\textsuperscript{76} An indirect injury is inherent in the interpretation of the antitrust treble damage clause because an antitrust plaintiff must allege injury of the type the antitrust laws are intended to prevent. Since the antitrust laws are intended to promote free competition and to prevent competitive injuries, which are indirect injuries, any analogy based on the interpretation of the antitrust treble damage clause could only result in an indirect injury requirement.

\textsuperscript{77} See supra note 24.

\textsuperscript{78} Blakey, Reflections, supra note 23, at 237, 255 n.52. (1982).

\textsuperscript{79} Id. See also Stafer, Civil RICO in the Public Interest: Everybody’s Darling, 19 AMER. CRIM. L. REV. 655, 705-07 (1982); see also Note, Civil RICO, supra note 24, at 1101, 1109-10 (1982).


\textsuperscript{81} See supra note 23.

\textsuperscript{82} See supra notes 38-39 and accompanying text. See also 116 CONG. REC. 35,204 (1970); 116 CONG. REC. 35, 343-46 (1970); Furman v. Cirrito, 741 F.2d 524, 529 (2d Cir. 1984) (“the statute is not aimed at ‘racketeers’ . . . [i]nstead, it is aimed at ‘racketeering’ and even then only in the context of ‘racketeering activity,’ which Congress has defined carefully and precisely in terms of conduct”).


\textsuperscript{84} For example, the enterprise might be a brokerage firm or a store.
tomers may produce injury only to such customers. Based on the antitrust analogy, these customers would be denied standing to sue in those courts requiring a racketeering enterprise injury since they would not have sustained an injury "distinct or different" from the injury resulting from the predicate acts. However, such conduct would "violate RICO and lie near the center of Congress' concern." Section 1964(c) was specifically adopted by Congress to deter this very type of criminal activity and it is the responsibility of the judicial system not to "create cracks through which the targeted behavior will slip." Therefore, the standing requirement of a racketeering enterprise injury, based on any analogy to the antitrust treble damage clause, should be rejected.

The second justification offered by some courts for requiring a racketeering enterprise injury is that Congress, in drafting Civil RICO, did not intend to federalize pre-existing state laws. These courts refuse to allow standing to plaintiffs injured directly from the predicate acts because they fear that Civil RICO will transform traditional state offenses into federal offenses.

However, the language of Civil RICO and its legislative history reveal that "Congress was well aware that it was entering a new domain of federal involvement through the enactment of

85. Civil RICO provisions would be limited to indirect victims, if there were any, such as the extortionists' competitors. However, "we suspect that competing extortionists would be unlikely to sue under Civil RICO." Haroco, Inc. v. American Nat'l Bank & Trust Co., 747 F.2d 384, 391 n.10 (7th Cir. 1984).
87. Id.
91. See supra note 90.
92. Id.
93. 18 U.S.C. § 1961(1)(a) (1982) provides: "[A]ny act or threat involving murder, kidnapping, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under State law." Id. (Emphasis added)
The evil ramifications of organized crime motivated Congress to adopt a sweeping statute that "moves large substantive areas formerly within the police power of the state into the federal realm." Since Congress has considered this effect, the judiciary should not be allowed to restrict Civil RICO in the name of federalism.

Another related argument made by courts in support of a racketeering enterprise injury requirement is that Congress did not intend to supplement the substantive statutes constituting racketeering activity. These courts refuse to grant standing to plaintiffs injured directly from the predicate acts because they maintain it is illogical to provide a private right of action for treble damages for exactly the same conduct punishable by the substantive statutes. One court stated: "It is incomprehensible that a plaintiff suing under securities law would receive one third the damages of a plaintiff suing under RICO for the same injury."

These courts ignore that the mere commission of a predicate offense does not trigger the application of Civil RICO. The reasoning used by these courts is deficient because it ignores the primary elements constituting a Civil RICO cause of action: a "pattern of racketeering activity" and the existence of an "enterprise." To establish a pattern of racketeering activity, the plaintiff must prove the defendant committed two or more predicate acts in a certain manner and within a specific time.

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96. Id. at 586-87.
98. Generally, this argument is made by the courts to deny standing to a victim of "garden variety fraud," e.g., mail, wire and securities fraud. Moss v. Morgan Stanley, Inc., 553 F. Supp. 1347, 1361 (S.D.N.Y. 1983) ("it was clearly established at the time that RICO was enacted that there was no private right of action for violations of the mail fraud statute"); Harper v. New Japan Sec. Int'l, Inc., 545 F. Supp. 1002, 1007-08 (C.D. Cal. 1982) (Congress could not have intended to provide treble damage causes of action to persons whose injury stems directly from the predicate acts alone); See also Guerrero v. Katzan, 511 F. Supp. 714, 719 (D.D.C. 1983).
99. See supra note 98.
102. See United States v. Forsythe, 560 F.2d 1127, 1135 (3d Cir. 1977).
103. See supra note 90.
105. Id.
108. United States v. Stofsky, 409 F. Supp. 609, 614 (S.D.N.Y. 1973) (racketeering activities may not be isolated, disconnected incidents, but must be connected with each other by some common scheme, plan or motive). But see United States v. Elliot, 571 F.2d 880, 899 (5th Cir. 1978) (racketeering activities must be related to conduct of the enterprise but not necessarily related to each other).
Furthermore, the existence of the “enterprise” is the sine qua non of a Civil RICO claim, and “at all times remains a separate element that must be proved.”

The third justification given by some courts for requiring a racketeering enterprise injury is the courts’ concern over their already overcrowded dockets. Due to the recent discovery of Civil RICO, there has been an explosion of litigation. Consequently, these courts reason that if they allow standing to plaintiffs alleging injury solely from the predicate acts, they will be inundated with Civil RICO suits.

The additional burden of proving a racketeering enterprise injury, however, contradicts the legislative intent behind Civil RICO. When drafting Civil RICO, Congress realized that it was creating revolutionary federal civil remedies in a field traditionally occupied by state law. In fact, Congress deliberately extended the potential scope of Civil RICO in disregard of the specific objections made which raised the issue of crowded court dockets. It is not the role of the judicial system to stymie the broad reach of Civil RICO in order to alleviate their own administrative burden. Therefore, the crowded court docket rationale requiring a racketeering enterprise injury should be accorded no weight.

The fourth justification given by some courts for requiring a racketeering enterprise injury is based on the plain language of Civil RICO. The plain meaning of Civil RICO has been interpreted by some courts to necessitate a racketeering enterprise injury. These courts read section 1964(c) as requiring “something more” than merely an injury from the predicate acts. Section 1964(c) provides a civil remedy to “[a] person injured... by reason of a violation of Section 1962.” These courts find this language to mean that the Civil RICO plaintiff must be injured not solely from...
the predicate acts, 123 but from the behavior proscribed in Section 1962. 124 In very general terms, Section 1962 125 prohibits a "person" 126 from engaging in two predicate acts to obtain an interest in or to operate an enterprise. 127 Since Section 1962 128 requires the existence of an enterprise, these courts conclude an injury "by reason of a violation of Section 1962" 129 must be an injury from the enterprise, the racketeering enterprise injury. Moreover, if Congress had intended Section 1964(c) 130 to compensate victims directly injured by the predicate acts, it could have made reference to the list of predicate acts 131 in addition to Section 1962. 132

The better reasoned view is that the plain meaning of Civil RICO does not require a racketeering enterprise injury. Concededly, an injury sustained "by reason of a violation of Section 1962" 133 necessarily involves two predicate acts 134 and the existence of an enterprise. 135 The requirement for the existence of an enterprise, 136 however, is vastly different from the requirement that the plaintiff's injury must result from or through the enterprise. 137 The simple answer is that Congress did not write Civil RICO to require an injury from or through an enterprise. 138 In most cases, the plaintiff's injury will flow from the predicate acts as "the enterprise is merely the means or vehicle through which those acts are accompl-

125. Id.
128. Id.
130. Id.
135. The concept of the enterprise may be divided into four broad categories: (1) commercial entities (corporations, partnerships, sole proprietorships); (2) benevolent organizations (unions, benefit funds, schools); (3) governmental units (the office of a governor, a state legislator, a court, a prosecutor's office, a police or sheriff department, or an executive department or agency); or (4) associations in fact (licit or illicit). See Blakey, Reflections, supra note 23, at 237, 297-99 (1982).
137. Id.
138. Professor G. Robert Blakey points out that there seems to be two views of 18 U.S.C. § 1964(c)—that of Congress' and that of some defense counsel and courts' (the latter has interpreted § 1964(c) to read: "any person competitively injured by organized crime in his business or property by reason of a violation of Section 1962 of this chapter distinct from any injury sustained from the commission of any racketeering activity . . . shall . . . recover threefold damages . . . court costs and attorney's fees") Blakey, RICO From Genesis to 1984 The Birth and Maturation of the Statute in RICO SECOND STAGE, Tab N, 23 (1984) (hereinafter cited as RICO SECOND STAGE). (emphasis added).
plished.”139 Congress provided in Section 1964(c)140 unambiguous language which is controlling in the absence of “a clearly expressed legislative intent to the contrary.”141 Section 1964(c)142 grants private civil relief for “injury, which logically includes any injury,” by reason of a violation of Section 1962.143 Therefore, Section 1964(c)144 should be read as simply requiring a Civil RICO plaintiff to allege injury from the predicate acts to attain standing145 to sue. It is appropriate to examine In re Catanella & E.F. Hutton & Co., Inc. Securities Litigation146 which represents and supports the views expressed above.

IV. THE RACKETEERING ENTERPRISE INJURY REJECTED

Catanella147 is the most significant and well reasoned case to date addressing the racketeering enterprise injury.148 Catanella149 provides a thorough analysis of a racketeering enterprise injury and rejects it as “vague and artificial.”150 The case concludes that injury from the predicate acts is sufficient for a plaintiff to gain standing to sue in the federal courts.151

Multiple plaintiffs brought a Civil RICO cause of action against Kenneth Catanella for alleged unlawful conduct in his dealings as a securities broker and against his employer, E.F. Hutton & Co. for failing to adequately supervise Catanella.152 Catanella was accused of a continuing course of fraud in connection with his handling of plaintiff’s portfolios.153 The allegations ran “the gamut from churning to the purchase of unsuitable securities and the failure to disclose the risk inherent in certain transactions.”154 To establish their Civil RICO cause of action, the plaintiffs alleged that Catanella par-

139. Furman v. Ciritto, 741 F.2d 524, 529 (2d Cir. 1984).
143. Furman v. Ciritto, 741 F.2d 524, 528 (2d Cir. 1984).
147. Id.
148. Prof. G. Robert Blakey stated that Catanella provides “an excellent analysis of the most recent district court arguments.” RICO SECOND STAGE, supra note 138, at Tab N, 26.
150. Id.
151. Id.
152. Id. at 1392.
153. Id.
154. Id.
ticipated in the affairs of an “enterprise”—E.F. Hutton & Co. through a “pattern of racketeering”—multiple acts of fraud. As a defense to the Civil RICO charge, the defendants asserted that the plaintiffs failed to allege the appropriate type of injury to establish an injury “by reason of a violation of Section 1962.” The defendant maintained that the injuries sustained were only those flowing from the commission of the predicate acts. Further, they contended “some additional injury”; was required, and they advocated the necessity of either an injury resulting from organized crime, a competitive injury or a racketeering enterprise injury. The Catanella court addressed and rejected each of the judicially imposed standing barriers. Most importantly, the Catanella court refused to engraft the elusive racketeering enterprise injury requirement onto a Civil RICO cause of action. It is necessary to probe this court’s rationale for renouncing the racketeering enterprise injury requirement.

The Catanella court described a racketeering enterprise injury as an “umbrella concept” or a “catch-all” term possibly encompassing competitive, commercial, and infiltration injuries. Yet, the court was cognizant that this enlarged definition, including any form of indirect injury, did not remedy the basic flaw: a direct/indirect dichotomy “harkens back to an antitrust analogy” which is “untenable in light of RICO language and purpose.” The court exposed this basic flaw by way of an example:

Consider . . . threats made to induce a small grocer to pay . . . for “protection services.” The grocer is not in competition with the vendors of this service . . . [n]o attempt is made to infiltrate . . . the grocer’s business. Nor is the grocer hampered in his ability to compete. Imposition of an [indirect] injury requirement would prevent the grocer from suing under section 1964(c). . . . The grocer in the example is a direct victim of racketeering activity.

Clearly, the grocer was injured by the members of the protection ring, who operated the affairs of their “enterprise” through a “pattern of racketeering”—repeated acts of extortion. However, since the injuries suffered by the grocer were only those flowing from the predicate acts of extortion, those courts requiring a racketeering en-

155. Id. at 1430.
156. Id.
157. Id.
158. Id.
159. Id. at 1426-37.
160. Id. at 1434-37.
161. Id. at 1436.
162. Id.
163. Id.
164. Id. at 1433.
enterprise injury would bar the grocer from recovering. The Catanella court found this result inconsistent with the nature and purposes behind the Civil RICO legislation. First, "targeted behavior would go unpunished and the protection ring would not be divested of its ill-gotten gains." Second, by demanding injuries that are greater or different from those sustained by the predicate acts "is to imply that the damages must be indirect." It is clear from the legislative history that Civil RICO was not to be limited by the pre-established body of law restricting the standing of antitrust plaintiffs.

Lastly, the Catanella court made two meritorious observations regarding the racketeering enterprise injury: first, those courts requiring a racketeering enterprise injury have not defined the "parameters of this concept and it . . . [is] impossible to apply that which defies definition," and second, perhaps the "most telling fact about a racketeering enterprise injury is that none of the courts requiring this special injury have found it to exist in any of the cases before them." In other words, these courts have not adhered to the broad sweep Congress intended Civil RICO to have, but have succumbed to the temptation of substituting their own views as to when the statute should be applied.

CONCLUSION

The judicial curtailing of Civil RICO stems from the courts' discomfort with inflicting treble damages upon defendants who are not involved in organized crime. The courts experiencing this uneasiness have focused on the problem that gave rise to the Civil RICO legislation—organized crime—rather than focusing on the statute as promulgated by Congress. What these courts have overlooked is that the scope of Civil RICO was intentionally expanded by Congress to include white collar crime when Civil RICO was designed to deter all conduct that endangers the legitimate functioning of businesses. Today, due to the pervasiveness of white collar crime, and to the serious threat it poses to the economy, the far-ranging application of Civil RICO has come of age. The courts, therefore, should stop trying to thwart Civil RICO's potential im-

165. Id.
166. Id.
167. Id. at 1434-35.
168. See supra note 24 and accompanying text.
170. Id.
172. See supra notes 38-41 and accompanying text.
pact by narrowly construing Section 1964(c)\(^{173}\) to require a racketeering enterprise injury.

Moreover, a growing number of courts have come to recognize the meaninglessness of the racketeering enterprise injury requirement as a standing barrier\(^{174}\) to the Civil RICO plaintiff. A racketeering enterprise injury is unprincipled, impossible to define and has been arbitrarily applied. Justifications given in support of it are premised on forced analogies to antitrust law; misunderstandings of Civil RICO's legislative intent and purposes; judicial overreactions to crowded court dockets; and twisted interpretations of the statutory language of Civil RICO.

There is not a scintilla of evidence in Civil RICO's expressed language, nor in its legislative history, indicating that Congress envisioned a racketeering enterprise injury requirement. Courts straining to find such a requirement should start applying Civil RICO instead of trying to redesign it. Civil RICO demands broad judicial interpretation\(^{175}\) by mandating a liberal construction to effectuate its remedial purpose.\(^{176}\) To honor the liberal construction clause, Section 1964(c)\(^{177}\) should be read by the courts to require no more than an allegation of injury from the predicate acts for the Civil RICO plaintiff to gain standing to sue in the federal courts.

Randall Jon Friend

and

Susan Ballard Friend


\(^{175}\) "We are mindful of the jurisprudential maxims that statutes are not to be interpreted woodenly and without regard to their aim; we do not see how any legitimate or principled tailoring of RICO could be effectuated without impairing the broad strategy embodied in the act." United States v. Turkette, 452 U.S. 576, 580 (1981).
