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A Day of Reckoning Is Near: RICO, Treble Damages, and Securities Fraud

A DAY OF RECKONING IS NEAR: RICO, TREBLE DAMAGES, AND SECURITIES FRAUD*

Fraudulent purchase or sale of securities is unlawful under the federal securities laws,[1] exposing a defendant to civil and criminal liabil-

* While this Note was at press, the Second Circuit handed down a series of three panel decisions issued on consecutive days narrowing the scope of the civil remedy provisions of RICO. *See* Sedima v. Imrex Co., 741 F.2d 482 (2d Cir. 1984), *cert. granted*, 53 U.S.L.W. 3495 (U.S. Jan. 14, 1985) (No. 84-648); Bankers Trust Co. v. Rhoades, 741 F.2d 511 (2d Cir. 1984); Furman v. Cirrito, 741 F.2d 524 (2d Cir. 1984). In an attempt to put a stop to what the Second Circuit characterized as the "extraordinary, if not outrageous" use of civil RICO by plaintiffs, divided panels of the court in the three cases required the plaintiffs to allege a "racketeering injury" in order to sustain a RICO claim. The three decisions appear to signal a rejection by the Second Circuit of *dicta* from *Moss v. Morgan Stanley, Inc.*, discussed herein, in which the Second Circuit previously had argued for a broad reading of civil RICO.

Following *Sedima, Bankers Trust,* and *Furman*, however, the Seventh Circuit in *Haroco Inc. v. American National Bank and Trust Co. of Chicago* reiterated its earlier pronouncements in *Schacht v. Brown,* also discussed herein. and rejected the Second Circuit's recent restrictive interpretation of RICO as inconsistent with the deliberately broad reach of the provisions of the statute. *See* 747 F.2d 384 (7th Cir. 1984), *cert. granted*, 53 U.S.L.W. 3496 (U.S. Jan. 14, 1985) (No. 84-822). The *Haroco* court characterized the Second Circuit's definition of "racketeering injury" as an "amalgamation" of standing limitations on RICO contrary to the plain language of the statute. The conflict between the Second and Seventh Circuits over the standing requirements of RICO, therefore, presaged the granting of certiorari by the United States Supreme Court in *Sedima* and *Haroco* to define the proper scope of RICO in the civil context. This Note takes the position that Congress and not the courts should decide whether to limit RICO.—Ed.

1. *See* Securities Act of 1933, 15 U.S.C. §§ 77a-77aa (1982); Securities Exchange Act of 1934, 15 U.S.C. §§ 78a-78o (1982); Public Utility Holding Company Act of 1935, 15 U.S.C. §§ 79 to 79z-6 (1982); Trust Indenture Act of 1939, 15 U.S.C. §§ 77aaa-77bbbb (1982); Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 to 80a-52 (1982); Investment Advisers Act of 1940, 17 U.S.C. §§ 80b-1 to 80b-21 (1982); Securities Investor Protection Act of 1970, 15 U.S.C. §§ 78aaa-78lll (1982). These six acts form the basis of federal statutory regulation of securities. *See* Long, *Treble Damages for Violations of the Federal Securities Laws: A Suggested Analysis and Application of the RICO Civil Cause of Action*, 85 DICK. L. REV. 201, 201 n.1 (1981). Congress intended the securities laws to protect the public through full disclosure of financial and other information concerning the sale and purchase of securities. *See* SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 186-87 (1963) (securities laws attempt to substitute philosophy of full disclosure for philosophy of caveat emptor); H.R. REP. No. 85, 73d Cong., 1st Sess. 2 & 9-10 (1933) (same); H.R. REP. No. 47, 73d Cong., 1st Sess. 1 (1933) (same). The purpose of affirmative disclosure in securities transactions is to prevent fraud in the purchase and sale of securities. Hooper v. Mountain States Sec. Corp., 282 F.2d 195, 202 (5th Cir. 1960), *cert. denied*, 365 U.S. 814 (1961); Securities Act of 1933, Pub. L. No. 73-22, Preamble, 48 Stat. 74, 74 (1933).

Section 17 of the Securities Act of 1933 ('33 Act) and §§ 10(b) and 15(c) of the Securities Exchange Act of 1934 ('34 Act) contain the principal antifraud provisions of the federal securities laws. *See* Securities Act of 1933, § 17, 15 U.S.C. § 77q (1982) (prohibiting fraud in offer or sale of securities); Securities Exchange Act of 1934, § 10(b), 15 U.S.C. § 78j(b) (1982) (prohibiting manipulative or deceptive practices in offering or selling securities); Securities Exchange Act of 1934, § 15(c), 15 U.S.C. 78o(c) (1982) (proscribing broker or dealer fraud). Congress empowered the Securities and Exchange Commission (SEC) to enforce §§ 10(b) and 15(c) of the '34 Act through appropriate rules and regulations. *See* Securities Exchange Act of 1934, §§ 4, 10(b),

ity.[2] An injured plaintiff alleging securities fraud traditionally has attempted to infer a private right of action under various provisions of the Securities Act of 1933 ('33 Act) or the Securities Exchange Act of 1934 ('34 Act).[3] A victim of securities fraud, however, also may have an express private right of action under the provisions of the Racketeer Influenced and Corrupt

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15(c), 15 U.S.C. §§ 78d, 78j(b), 78o(c) (1982) (establishing and empowering SEC to formulate rules and regulations); *see also* 17 C.F.R. §§ 240.10b-5, 240.15cl-2 (1983) (Rules 10b-5 and 15cl-2).

2. *See* Securities Act of 1933, § 11, 15 U.S.C. § 77k (1982) (providing private right of action for damages due to false registration statement); Securities Act of 1933, § 12, 15 U.S.C. § 771 (1982) (providing private right of action for damages in connection with false prospectus or oral communication); Securities Exchange Act of 1934, § 16(b), 15 U.S.C. § 78p(b) (1982) (providing private right of action for recovery of profits). Congress empowered the SEC to enforce by injunction or other means violations of the '33 and '34 Acts. *See* Securities Act of 1933, § 20, 15 U.S.C. § 77t (1982) (providing SEC with power to enjoin violations of '33 Act); Securities Exchange Act of 1934, § 21(d), 15 U.S.C. § 78u(d) (1982) (providing SEC with power to enjoin violations of '34 Act); Securities Exchange Act of 1934, § 6, 15 U.S.C. § 78f (1982) (providing SEC with power to suspend or revoke membership in securities exchange). In addition to civil penalties, the securities laws include criminal penalties of five years in prison or fines of up to $10,000 for violations of the provisions of the '33 and '34 Acts. *See* Securities Act of 1933, § 24, 15 U.S.C. § 77x (1982); Securities Exchange Act of 1934, § 32, 15 U.S.C. § 78ff (1982). *See generally*, III L. Loss, SECURITIES REGULATION 1683 (2d ed. 1961) (discussing express liability provisions under federal securities laws); Note, *Application of the Racketeer Influenced and Corrupt Organizations Act (RICO) to Securities Violations*, 8 J. CORP. L. 411 (1983) (same) [hereinafter cited as *Application of RICO*].

3. *See* Securities Act of 1933, § 17(a), 15 U.S.C. § 77q(a) (1982) (proscribing fraudulent conduct under '33 Act); Securities Exchange Act of 1934, § 10(b), 15 U.S.C. § 78j(b) (1982) (proscribing fraudulent conduct under '34 Act); Securities Exchange Act of 1934, § 15(c), 15 U.S.C. § 78o(c) (1982) (proscribing broker or dealer fraud). The antifraud measures of the '33 and '34 Acts do not contain express liability provisions. *See* L. Loss, *supra* note 2, at 1683. Since the 1960s, however, many courts routinely have implied rights of action under § 10(b) of the '34 Act. *See* Mutual Shares Corp. v. Genesco, Inc., 384 F.2d 540, 543-44 (2d Cir. 1967) (noting spectacular growth of private civil actions under § 10(b)); *see also* Kardon v. National Gypsum Co., 69 F. Supp. 512, 514 (E.D. Pa. 1946) (inferring right of action under § 10(b) despite lack of express civil remedy under § 10(b)). *But see* Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 730 (1975) (explaining that Supreme Court never expressly has held that implied right of action exists under § 10(b)).

The Supreme Court in *J.I. Case Co. v. Borak* held that implied rights of action under the securities laws provide a necessary supplement to the enforcement powers of the SEC. *See* 377 U.S. 426, 430-32 (1963) (upholding private right of action under § 14(a) of '34 Act); *see also* Securities Exchange Act of 1934, § 14(a), 15 U.S.C. § 78n(a) (1982) (proscribing solicitation of proxies in contravention of SEC rules and regulations). In *Blue Chip Stamps v. Manor Drug Stores*, however, the Supreme Court limited private rights of action under § 10(b) to purchasers or sellers in privity with the issuer. 421 U.S. 723, 745-55 (1975). The *Blue Chip Stamps* Court implicitly left open the possibility that future decisions from the Court might further limit the application of § 10(b) private rights of action. *See id.* at 737 & 752 n.15 (emphasizing Supreme Court's prerogative to define scope of § 10(b) in absence of legislative intent). In *Merrill Lynch, Pierce, Fenner, & Smith, Inc. v. Curran*, the Supreme Court determined that Congress' refusal to curtail implied rights of action under § 10(b) suggests Congress' acquiescence in judicial interpretations of § 10(b). 102 S. Ct. 1825, 1846 n.92 (1982). The Supreme Court in *Herman & MacLean v. Huddleston* expressly rejected an attempt to limit implied remedies under § 10(b) to claims not otherwise actionable under other provisions of the '33 and '34 Acts. 103 S. Ct. 683, 690 (1983).

Organizations Act (RICO).[4] RICO generally attempts to eradicate organized crime by proscribing the activities of defendants who engage in acts of racketeering to operate or take control of business enterprises.[5] In addition to criminal sanctions,[6] RICO provides civil remedies to a private plaintiff for injuries to his business or property caused by a RICO violation.[7] Under the civil remedies section of RICO (civil RICO), an injured plaintiff may recover in federal court treble damages and attorneys' fees.[8] A RICO plaintiff generally must show that a person has invested in, controlled, or conducted an enterprise through a pattern of racketeering activity to prevail in a civil RICO action.[9] RICO defines the requisite pattern of activity as consisting of at least two violations of enumerated federal or state crimes occurring within a ten-year period.[10]

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4. *See* Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968 (1982). The Racketeer Influenced and Corrupt Organizations Act (RICO) generally prohibits a person from investing in, controlling, or conducting an enterprise through a pattern of racketeering activity. *See id.* § 1962. Congress defined racketeering activity as including violations of enumerated state and federal laws. *See id.* § 1961(1) (listing violations of state and federal law constituting racketeering activity); *id.* § 1961(5) (defining pattern as two or more acts of racketeering within ten-year period); *id*; § 1962 (proscribing conduct in connection with pattern of racketeering activity). Congress intended RICO to eliminate organized criminal activity. *See* Organized Crime Control Act, Pub. L. No. 91-452, § 1, 84 Stat. 922, 923 (1970) (Congress enacted RICO as Title IX of Organized Crime Control Act to help eradicate organized crime in United States).

5. 18 U.S.C. §§ 1961-1968 (1982); *see supra* note 4 (discussion of RICO).

6. *See* 18 U.S.C. § 1963 (1982) (criminal penalties of RICO). RICO provides for fines of up to $25,000, imprisonment of up to 20 years, and forfeiture of all gains from RICO violations. *Id.* § 1963(a).

7. *See id.* § 1964 (civil remedies of RICO). The Justice Department may enforce RICO by seeking divestment, injunctions, dissolution, and restraining orders. *Id.* § 1964(a)-(b). A private plaintiff successfully maintaining a cause of action under RICO for injuries to a plaintiff's business or property may recover treble damages and attorneys' fees. *Id.* § 1964(c).

8. *See id.* § 1964 (1982). Section 1964 (civil RICO) enumerates the civil remedies available to a RICO plaintiff. *Id.* Section 1964(c) provides a private right of action for treble damages and attorneys' fees. *Id.* § 1964(c). Other civil remedies under RICO include either a private action or an action by the Attorney General for divestment, a restraining order, or dissolution. *Id.* § 1964(a)-(b); *cf. id.* § 1963 (criminal penalties for RICO violations).

9. *See id.* § 1961(3) (defining person as including any individual or other legal entity as well as an informal group of individuals); *id.* § 1962(a) (prohibiting investment in enterprise through pattern of racketeering activity); *id.* 1962(b) (prohibiting control of enterprise through pattern of racketeering activity); *id.* § 1962(c) (prohibiting conduct of enterprise through pattern of racketeering activity); *id.* § 1961(5) (defining pattern); *id.* § 1961(1) (defining racketeering activity).

10. *See id.* §§ 1961(1), (5). Section 1961(1) of RICO lists 25 federal and 8 state crimes as acts of racketeering. *Id.* § 1961(1). The state crimes include murder, gambling, bribery, extortion, and other offenses punishable by imprisonment for at least one year. *Id.* § 1961(1)(A). Federal acts of racketeering include violations of various provisions of Title 18 of the United States Code. *Id.* § 1961(1)(B); *see, e.g.*, 18 U.S.C. §§ 201, 1341, 1343, 1503 & 1952 (1982) (relating to bribery, mail fraud, wire fraud, obstruction of justice, and racketeering). Section 1961 lists any offense under Title 29, dealing with labor unions, as an act of racketeering, as well as any offense involving bankruptcy fraud under Title 11, fraud in the sale of securities, or felonious trafficking in narcotics, punishable under federal law. 18 U.S.C. § 1961(1)(C)-(D) (1982); *see* 29 U.S.C. §§186, 501(c) (1982) (relating to payments and loans to labor unions and embezzlement of union funds).

Among the enumerated criminal acts of racketeering is fraud in the sale of securities which is punishable under federal law.[11] RICO, therefore, offers a plaintiff alleging securities fraud an express statutory remedy.[12]

Although Congress enacted RICO as part of the Organized Crime Control Act of 1970,[13] private plaintiffs increasingly are seeking to use RICO as a remedy for securities violations.[14] A plaintiff alleging ordinary securities fraud may maintain an action under civil RICO against investment firms and other corporate defendants who have no apparent connection with organized crime.[15] Moreover, recent decisions indicate that federal courts are unwilling to limit the scope of civil RICO to organized crime.[16] Courts' liberal interpretation of RICO exposes corporate defendants to possible RICO penalties for securities violations.[17] RICO's remedial provisions, including treble damages and attorneys' fees, therefore, provide incentives for plaintiffs routinely to allege RICO violations in actions involving securities fraud.[18]

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11. *See* 18 U.S.C. § 1961(1)(D) (1982).

12. *See infra* notes 99, 155-159 and accompanying text (broad language of RICO allows courts to apply RICO in context of securities fraud). *See generally Application of RICO, supra* note 2.

13. *See* Organized Crime Control Act, Pub. L. No. 91-452, Title IX, §§ 901-904, 84 Stat. 922, 941-47 (1970) (RICO is Title IX of Organized Crime Control Act's twelve titles). Congress sought through the Organized Crime Control Act of 1970(OCCA) to strengthen evidence-gathering tools, establish new penal prohibitions, and provide enhanced sanctions and new remedies to achieve the eradication of organized crime. *Id.* § 1; *see* S. REP. No. 617, 91st Cong., 1st Sess. 2 (1969). The first seven titles of OCCA address the problems that confront the government in obtaining evidence of organized crime. *See* OCCA, Pub. L. No. 91-452, 84 Stat. 922, 923-26 (1970). The evidence-gathering tools include use of a special grand jury, new immunity provisions for witnesses, sanctions against recalcitrant witnesses, revised perjury provisions, protected facilities for government witnesses, special deposition procedures, and various rules for litigation concerning sources of evidence. *See id.* Titles VIII, X, and XI of OCCA contain new penal prohibitions. *See id.* at 937-40 (proscribing activities of syndicated gambling business); *id.* at 948-52 (providing enhanced sentences for repeat offenders); *id.* at 952-60 (regulating interstate commerce in explosives). Title XII provides for the establishment of a temporary National Commission on Individual Rights to monitor government practices relating to special grand juries, wiretapping, bail reform, preventive detention, search warrants, and federal data banks. *See id.* at 960-61. Title IX (RICO) expressly provides severe criminal sanctions and treble damage recovery for private plaintiffs. 18 U.S.C. §§ 1963-1964 (1982); *see supra* notes 6-7 (discussing RICO's remedial provisions).

14. *See Application of RICO, supra* note 2, at 412 (broad language of RICO allows plaintiffs bringing securities fraud claims under RICO to satisfy easily the definitional prerequisites of RICO); Skinner & Tone, *Civil RICO and the Corporation Defendant*, Nat'l L.J., Jan. 30, 1984, at 22, col. 1 (noting recent deluge of private RICO actions).

15. *See* Skinner & Tone, *supra* note 14, at 22, col. 1 (defendants with no connection to organized crime are primary focus of civil RICO actions); Skinner & Tone, *Recent Developments in RICO Litigation*, Nat'l L.J., Feb. 13, 1984, at 20, col. 1 (plaintiffs increasingly are using RICO in lieu of traditional civil remedies for corporate fraud).

16. *See infra* notes 32-35 & 43-57 and accompanying text (discussing majority view that nexus with organized crime is not required for plaintiff to recovery under civil RICO).

17. *See infra* notes 12-35, 43-57, 67-69, 71-80, 85-91, 95-97, 111-114, 133-143 & 151-152 (discussion of cases that liberally construe RICO); *see also* OCCA, Pub. L. No. 91-452, Title IX, § 904(a), 84 Stat. 922, 947 (1970) (Congress mandated that courts liberally construe RICO to effectuate RICO's remedial purposes).

18. *See* Morrison, *Old Bottle—Not So New Wine: Treble Damages in Actions Under Federal*

The language of RICO proscribing racketeering activity in connection with an enterprise emerged primarily because Congress wanted to provide a bold, new approach to the problems of organized crime.[19] During the 1950s, Congress first recognized that existing sanctions and remedies to combat organized crime were limited in scope and impact.[20] The passage of RICO in 1970

Securities Laws, 10 SEC. REG. L.J. 67, 68 (1982) (lure of RICO's treble damages and attorneys' fees provisions will increase frequency of allegations of RICO violations in securities fraud cases).

19. *See* OCCA, Pub. L. No. 91-452, § 1, 84 Stat. 922, 923 (1970) (Congress passed RICO to provide more severe sanctions and new remedies to combat activities of organized crime); S. REP. No. 617, 91st Cong., 1st Sess. 79 (1969) (remarks of Sen. McClellan, principal sponsor of OCCA). *See generally*, Blakey, *The RICO Civil Fraud Action in Context: Reflections on* Bennett v. Berg, 58 NOTRE DAME L. REV. 237 (1982) (discussion of legislative history of RICO).

20. *See* OCCA, Pub. L. No. 91-452, § 1, 84 Stat. 922, 923 (1970); *see also* S. REP. No. 141, 82d Cong., 1st Sess. 33 (1951) (organized crime uses profits of racketeering to buy and operate legitimate business enterprises). Beginning in 1950, Sen. Estes Kefauver's Committee to Investigate Organized Crime attempted to expose the activities of the underworld. *See* S. REP. No. 307, 82d Cong., 1st Sess. 170-81 (1951) (underhanded methods of organized crime and enormous accumulation of wealth account for infiltration of organized crime into American society). In 1955, Sen. John McClellan and Robert Kennedy initiated a systematic investigation of racketeering. *See* A. SCHLESINGER, ROBERT KENNEDY AND HIS TIMES 115 & 137-91 (1978) (documenting Robert Kennedy's experiences as chief counsel for Subcommittee on Investigations of the Senate Government Operations Committee); *see also* R. KENNEDY, THE ENEMY WITHIN 229 (1960) (gangsters are highly organized, are more powerful than at any time in history of country, and continue to grow stronger). In 1957, Sen. McClellan and Chief Counsel Kennedy conducted extensive hearings before the newly created Senate Select Committee on Improper Activities in the Labor or Management Field. *See* S. REP. No. 1417, 85th Cong., 2d Sess. (1958). The Senate Select Committee, or Rackets Committee, heard testimony from hundreds of witnesses and found that existing methods were not adequate to combat organized crime. *See id.; see also* R. KENNEDY, *supra*, at 253 (arguing that attack on organized crime requires new weapons and techniques); J. MCCLELLAN, CRIME WITHOUT PUNISHMENT 11 & 251-57 (1962) (need for legislation exists since statutes are not strong or specific enough to combat organized crime successfully).

Prior to the passage of RICO, the government used the law of conspiracy to prosecute organized criminal activity. *See* Blakey & Gettings, *Racketeer Influenced and Corrupt Organizations (RICO): Basic Concepts—Criminal and Civil Remedies*, 53 TEMP. L.Q. 1009, 1010 n.4 (1980). Conspiracy, however, was difficult to prove in the context of organized crime because members of organized crime were able to insulate themselves from prosecution by diversifying their activity and by using the fruits of criminal activity in legitimate businesses. *See* Blumenthal v. United States, 332 U.S. 539, 549 & 557-59 (1947) (conspiracy theory requires plaintiff to show evidence of scheme or common objective of members, identity of members of scheme, members' connection with scheme, and members' knowledge of scheme's general scope); United States v. Elliott, 571 F.2d 880, 902 (5th Cir.) (pre-RICO conspiracy law allowed organized crime to avoid prosecution by diversifying criminal activity, thereby thwarting attempts by prosecutors to prove common objective of conspiracy), *cert. denied*, 439 U.S. 953 (1978).

Notwithstanding the difficulties in prosecuting organized crime prior to the passage of OCCA, Robert Kennedy, Attorney General in the Kennedy Administration, put pressure on the federal government to prosecute those who had been exposed during the course of the Rackets Committee's investigation of organized crime. *See* A. SCHLESINGER, *supra* at 285. Thus, under the Kennedy Administration, convictions of racketeers by the Organized Crime Section and the Tax Division of the Justice Department increased from 96 in 1961 and 101 in 1962 to 373 in 1963. *Id.* at 278; *see* 115 CONG. REC. S5883-84 (daily ed. Mar. 11, 1969).

Prosecutorial zeal, however, was not adequate in the fight against organized crime since the remedies and sanctions available to the government were limited to fines and imprisonment.

represented an attempt by Congress to reverse the perceived trend of growing infiltration of organized crime into American society.[21] The drafters of the legislation sought to make RICO broad and flexible enough to apply to the various ways in which organized crime operates.[22] Congress believed that the best way to attack organized crime was to destroy the economic base of organized crime through criminal penalties and civil remedies.[23]

Before a private plaintiff can recover treble damages and attorneys' fees under section 1964 of RICO,[24] a plaintiff must show a violation of section 1962 which sets forth the conduct proscribed by RICO.[25] A plaintiff bringing a RICO claim usually alleges that the defendant violated section 1962(c) by conducting or participating in an enterprise through a pattern of racketeering activity.[26] Under section 1962 of RICO, a plaintiff first must show that the

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See J. McCLELLAN, *supra*, at 251-57 (new legislation, in addition to vigorous Justice Department, needed to curtail activities of organized crime); *see also* S. REP. No. 617, 91st Cong., 1st Sess. 78-79 (1969) (traditional approaches to organized crime do not deal effectively with organized crime's economic power). In 1965, President Johnson appointed a National Crime Commission to explain why the efforts aimed at eliminating organized crime had been ineffective. *See* Blakey & Gettings, *supra*, at 1015 nn.24-25. *See generally* PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADM. OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY (1967) [hereinafter cited as PRESIDENT'S COMM'N]. The Commission recommended new legislation to thwart organized crime's infiltration of legitimate business through severe criminal sanctions and civil treble damage remedies patterned after the antitrust laws. *See* PRESIDENT'S COMM'N, *supra*, at 190. The Commission's findings prompted Sen. McClellan in 1969 to introduce the Organized Crime Control Act. *See* 115 CONG. REC. S5877 (daily ed. Mar. 11, 1969) (remarks of Sen. McClellan).

21. *See* S. REP. No. 617, 91st Cong., 1st Sess. 76-83 (1969) (organized crime's infiltration of legitimate business threatens free enterprise).

22. *See* McClellan, *The Organized Crime Act (S. 30) or Its Critics: Which Threatens Civil Liberties?*, 46 NOTRE DAME LAW. 55, 142-43 (1970) (Congress purposefully designed RICO to apply to variety of criminal offenses characteristic of organized crime).

23. *See* 18 U.S.C. §§ 1963-1964 (1982) (providing criminal penalties and civil remedies for violations of RICO); S. REP. No. 617, 91st Cong., 1st Sess. 79 (1969) (remarks of Sen. McClellan) (claiming that RICO represents frontal attack on subversion of economic system by organized crime). RICO's criminal forfeiture and 20-year imprisonment provisions seek to remove members of organized crime from control of legitimate businesses and to destroy organized crime's economic power resulting from the benefits of criminal activity. *See* 18 U.S.C. § 1963(a) (1982); *see also* OCCA, Pub. L. No. 91-452, § 1, 84 Stat. 922, 922-23 (1970) (Congress noted that organized crime derives power from enormous amount of money illegally obtained); S. REP. No. 617, 91st Cong., 1st Sess. 79 (1969) (same). RICO's treble damages provision gives private plaintiffs an opportunity to help destroy the economic base of organized crime. *See* 18 U.S.C. § 1964(c) (1982); *supra* notes 6-8 and accompanying text (discussing civil remedies and criminal penalties).

24. 18 U.S.C. § 1964(c) (1982) (RICO provision for civil remedies including treble damages and attorneys' fees).

25. *Id.* § 1962. Subsection (a) of § 1962 proscribes investment of income in an enterprise by a person who has participated in a pattern of racketeering activity. 18 U.S.C. § 1962(a) (1982). Subsection (b) makes it unlawful to acquire through a pattern of racketeering activity an interest in or control of an enterprise. *Id.* § 1962(b). Subsection (c) makes it unlawful to conduct or participate in an enterprise through a pattern of racketeering activity. *Id.* § 1962(c). Finally, subsection (d) prohibits conspiracy to violate subsection (a), (b), or (c). *Id.* § 1962(d).

26. *See id.* § 1962(c). A plaintiff bringing a RICO claim, particularly one involving securities fraud, typically alleges a violation of § 1962(c). *See Application of RICO, supra* note 2, at 416 (subsection (c) is broadest provision of § 1962).

defendant is a person as defined in section 1961.[27] Section 1961 defines a person as either an individual or a legal entity.[28] The express language of RICO, therefore, does not require a plaintiff to show that the defendant is connected with organized crime.[29]

Notwithstanding the express language of section 1961 requiring a RICO plaintiff to show only that the defendant is a person, defendants frequently argue that RICO is not applicable to defendants who are not members of organized crime.[30] In *Moss v. Morgan Stanley, Inc.*,[31] the United States Court of Appeals for the Second Circuit recently considered whether to limit civil RICO to members of organized crime.[32] The defendant stockbroker in *Moss*

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27. *See* 18 U.S.C. § 1961(3) (1982). RICO defines person to include any individual or entity capable of holding a legal or beneficial interest in property. *Id.*

28. *Id.*

29. *See id.* §§ 1961-1968 (statute is silent on whether RICO defendant must be member of organized crime).

30. *See, e.g.*, Moss v. Morgan Stanley, Inc., 719 F.2d 5, 21 (2d Cir. 1983) (rejecting defendant's argument that language of RICO premises RICO violation on proof of defendant's ties to organized crime), *cert. denied*, 52 U.S.L.W. 3564 (U.S. Feb. 21, 1984) (No. 83-950); Schacht v. Brown, 711 F.2d 1343, 1353 (7th Cir.) (same), *cert. denied*, 52 U.S.L.W. 3423 (U.S. Nov. 29, 1983) (No. 83-548); Bennett v. Berg, 685 F.2d 1053, 1063-64 (8th Cir. 1982) (rejecting defendants' argument that RICO does not extend outside context of organized crime), *aff'd on reh'g in part and rev'd and remanded on reh'g in part*, 710 F.2d 1361 (1983), *cert. denied*, 52 U.S.L.W. 3440 (U.S. Dec. 5, 1983) (No. 83-587).

Consistent with the Second, Seventh, and Eighth Circuits' refusal to accept defendants' arguments that courts should limit RICO to defendants connected with organized crime, a majority of United States district courts deciding the issue similarly have held that the express language of RICO does not require a plaintiff to allege an organized crime nexus. *See, e.g.*, *In re* Longhorn Sec. Litigation, 573 F. Supp. 255, 269 (W.D. Okla. 1983) (RICO does not require that plaintiff establish connection between defendant and organized crime); *In re* Action Indus. Tender Offer, 572 F. Supp. 846, 851 (E.D. Va. 1983) (same); Taylor v. Bear Stearns & Co., 572 F. Supp. 667, 682 (N.D. Ga. 1983) (same); Austin v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 570 F. Supp. 667, 670 (W.D. Mich. 1983) (same); Kimmel v. Peterson, 565 F. Supp. 476, 490-93 (E.D. Pa. 1983) (noting majority view that courts should not limit RICO to organized crime); Crocker Nat'l Bank v. Rockwell Int'l Corp., 555 F. Supp. 47, 49 (N.D. Cal. 1982) (Congress did not limit RICO to persons connected with organized crime); Hanna Mining Co. v. Norcen Energy Resources Ltd., [1982 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 98,742, p. 93,737 (N.D. Ohio June 11, 1982) (unnecessary for plaintiff to allege that defendant is member of organized crime); [1981-1982 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 98,361, p. 92,214 (D. Mass. Nov. 17, 1981) (same); *see also infra* notes 32-35 & 43-57 (discussion of cases supporting majority view that organized crime nexus is not prerequisite to recovery under civil RICO). *But see* Hokama v. E.F. Hutton & Co., 566 F. Supp. 636, 643 (C.D. Cal. 1983) (accepting defendants' argument that plaintiff must allege some connection between defendant and organized crime); Adair v. Hunt Int'l Resources Corp., 526 F. Supp. 736, 746-48 (N.D. Ill. 1981) (same); Bar v. WUI/TAS, Inc., 66 F.R.D. 109, 113 (S.D.N.Y. 1975) (same); *infra* notes 36-42 and accompanying text (discussing minority view cases requiring plaintiff to allege organized crime nexus).

31. 719 F.2d 5 (2d Cir. 1983), *cert. denied*, 52 U.S.L.W. 3564 (U.S. Feb. 21, 1984) (No. 83-590).

32. *Id.* at 21. In *Moss v. Morgan Stanley, Inc.*, the Second Circuit considered whether RICO is applicable to ordinary securities fraud under § 10(b) of the '34 Act. *Id.; see also* Securities Exchange Act of 1934 § 10(b), 15 U.S.C. § 78j(b) (prohibiting manipulative or deceptive practices in offering or selling of securities). The *Moss* court disagreed with the district court that RICO

allegedly received confidential information of an imminent tender offer and subsequently purchased shares in a target company in violation of section 10(b) of the '34 Act.[33] The defendant claimed that RICO only proscribes conduct relating to criminal racketeering and therefore does not encompass acts of securities fraud committed by a defendant who has no connection with organized crime.[34] Although noting decisions from United States district courts requiring a plaintiff to allege an organized crime nexus, the Second Circuit in *Moss* held that the plain language of RICO does not premise a RICO violation on proof of a defendant's connection with organized crime.[35] Courts in the Southern District of New York, including the district court in *Moss*,[36] previously had held that a plaintiff could maintain a RICO action only if some nexus existed between the defendant and organized crime.[37] These courts reasoned that Congress intended RICO to apply only in the context of organized crime despite the lack of specific references to organized crime within the statute.[38] For example, in *Barr v. WUI/TAS,*

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does not encompass private actions for violations of securities statutes by ordinary businesses. 719 F.2d at 21; *see* Moss v. Morgan Stanley, Inc., 553 F. Supp. 1347, 1361 (S.D.N.Y. 1983). The Second Circuit concluded that the district court misinterpreted RICO since the language of the statute does not premise a RICO claim on proof of allegations of a defendant's ties to organized crime. 719 F.2d at 21. *See generally* Note, *Civil RICO: The Temptations and Impropriety of Judicial Restriction*, 95 HARV. L. REV. 1101 (1982) (arguing that in the absence of statutory language limiting RICO to organized crime, courts exceed limits of judicial discretion when courts decide not to allow plaintiff to proceed under RICO because defendant is not member of organized crime) [hereinafter cited as *Impropriety of Judicial Restriction*].

33. 719 F.2d at 8.

34. *Id.* at 21.

35. *Id.; see infra* notes 37-42 and accompanying text (discussing cases cited in *Moss* requiring plaintiff to allege organized crime nexus).

36. Moss v. Morgan Stanley, Inc., 553 F. Supp. 1347, 1361 (S.D.N.Y. 1983), *aff'd*, 719 F.2d 5 (2d Cir. 1983), *cert. denied*, 52 U.S.L.W. 3564 (U.S. Feb. 21, 1984) (No. 83-950).

37. *See* Noonan v. Granville-Smith, 537 F. Supp. 23, 29 (S.D.N.Y. 1981) (dismissing plaintiffs' RICO claim because defendants were not within scope of statute dealing with organized crime's control of business enterprises); Barr v. WUI/TAS, Inc., 66 F.R.D. 109, 113 (S.D.N.Y. 1975) (RICO defendants must be members of organized crime).

38. *See Moss*, 553 F. Supp. at 1361 (courts should limit RICO strictly to organized crime); Barr v. WUI/TAS, Inc., 66 F.R.D. 109, 113 (S.D.N.Y. 1975) (same). In *Moss v. Morgan Stanley, Inc.*, the United States District Court for the Southern District of New York argued that Congress' failure expressly to limit RICO to organized crime does not imply that Congress intended to prevent courts from exercising discretion to filter out RICO claims alleging ordinary business fraud. *See* 553 F. Supp. at 1359-61. In support of a restrictive interpretation of the statute, the district court in *Moss* noted that the legislative history of RICO does not indicate that Congress intended RICO to apply outside the context of organized crime. *Id.* at 1361. The district court, however, did not provide any specific references to the legislative history. *See id.; cf.* S. REP. No. 617, 91st Cong., 1st Sess. 34 (1969) (RICO proscribes activity characteristic of organized crime); McClellan, *supra* note 22, at 142-43 (notwithstanding criticisms of RICO that statute would apply outside context of organized crime, Congress drafted RICO broadly to apply to variety of offenses characteristic of organized crime). In *Barr v. WUI/TAS, Inc.*, the court similarly held that RICO is not applicable outside the context of organized crime since the legislative history makes frequent reference to racketeers and organized crime. 66 F.R.D. at 113. The district courts in *Moss* and *Barr*, however, appear to have based their holdings on the legislative history instead of the language of the statute. *See* 553 F. Supp. at 1361; 66 F.R.D. at 113; *cf.* 18 U.S.C. §§ 1961-1968 (1982) (statute is silent on whether RICO defendant must be member of organized

Inc.,[39] one of the first cases to analyze the pleading requirements of a civil RICO claim, the United States District Court for the Southern District of New York considered whether RICO was applicable to a defendant who had no apparent connection with organized crime.[40] The *Barr* court dismissed a RICO claim involving mail fraud because the defendant was not a member of organized crime.[41] Relying on the *Barr* decision, a number of other United States district courts subsequently held that RICO is applicable only within the context of organized crime.[42]

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crime). *See generally* Blakey, *supra* note 19, at 285 (criticizing district courts that limit RICO to organized crime for redrafting rather than reading RICO); Long, *supra* note 1, at p. 209 (*Barr* court misconstrued RICO). The Second Circuit in *Moss* overturned the district court's holding requiring that a plaintiff allege a connection between the defendant and organized crime and thus effectively overruled *Barr*. *See* Moss v. Morgan Stanley, Inc., 719 F.2d 5, 21 (2d Cir. 1983) (notwithstanding *Barr* decision, language of RICO does not premise violation on proof of defendant's ties to organized crime), *cert. denied*, 52 U.S.L.W. 3564 (U.S. Feb. 21, 1984) (No. 83-590).

39. 66 F.R.D. 109 (S.D.N.Y. 1975).

40. *Id.* at 113. In *Barr v. WUI/TAS, Inc.*, the United States District Court for the Southern District of New York denied the plaintiff's motion to amend the complaint to add a RICO count in addition to a Sherman Act claim based upon an alleged scheme to mail overstated bills for telephone answering service charges. *Id.; see* 18 U.S.C. § 1961(1)(B) (1982) (listing federal mail fraud as act of racketeering); *see also* 18 U.S.C. § 1341 (1982) (federal mail fraud statute). The *Barr* court determined that the defendant, a telephone answering service business, was a legitimate business organization and therefore was not subject to a statute directed against the activities of organized crime. 66 F.R.D. at 113; *see supra* note 38 (explaining *Barr* holding limiting RICO to defendants who are members of organized crime).

41. 66 F.R.D. at 113.

42. *See, e.g.*, Hokama v. E.F. Hutton & Co., 566 F. Supp. 636, 643 (C.D. Cal. 1983) (despite language of RICO providing plaintiff with cause of action in securities fraud case, plaintiff must allege some connection with organized crime since Congress intended RICO to eradicate organized crime); Noland v. Gurley, 566 F. Supp. 210, 218 (D. Colo. 1983) (RICO is not applicable to plaintiff alleging securities fraud who has sufficient remedies under federal and state securities laws); City of Atlanta v. Ashland-Warren, Inc., No. 81-106A (N.D. Ga. Aug. 20, 1981) (available on LEXIS, Genfed Library, Dist. file) (limiting RICO to defendants involved with organized crime); Waterman S.S. Corp. v. Avondale Shipyards, Inc., 527 F. Supp. 256, 260 (E.D. La. 1981) (Congress did not design civil remedies provisions of RICO to convert every fraud action into treble damage RICO action); Adair v. Hunt Int'l Resources Corp., 526 F. Supp. 736, 746-48 (N.D. Ill. 1981) (plaintiff can maintain RICO claim only by showing defendant's ties to organized crime).

In *Waterman S.S. Corp. v. Avondale Shipyards, Inc.*, the United States District Court for the Eastern District of Louisiana held that the legislative history of the statute clearly reveals that RICO should apply only to actions involving the activities of organized crime. 527 F. Supp. at 260. The *Waterman* court's interpretation of RICO's legislative history is questionable. *Cf. id.* (broad application of RICO would contravene clear intent of Congress not to allow statute to operate outside context of organized crime). Congress' purpose in passing RICO unquestionably was to combat organized crime. *See* S. REP. No. 617, 91st Cong., 1st Sess. 78-79 (1969) (RICO represents attack on economic base of organized crime). Congress recognized that a new approach was necessary to eradicate organized crime. *Id.* at 78; *see supra* note 20 (discussing Congress' recognition of inadequacies of pre-RICO sanctions and remedies). Congress, however, opted for a statutory scheme sufficiently broad in scope to deal with the problems of organized crime. *See* McClellan, *supra* note 22, at 60-61 (attacking criticisms of OCCA that statute would operate outside context of organized crime). Senator McClellan noted the difficulty of drafting a statute broadly enough to include the activities characteristic of organized crime without also subjecting ordinary defendants to the provisions of the statute. *See* McClellan, *supra* note 22, at 61.

Prior to the Second Circuit's decision in *Moss*, courts in the Southern District of New York had begun to attack the *Barr* holding that required a plaintiff to show the defendant's connection with organized crime as a prerequisite to recovery under civil RICO.[43] In *Mauriber v. Shearson/American Express*,[44] the Southern District of New York denied the defendants' motion to dismiss the plaintiff's RICO claim for failure to allege that the defendants were affiliated with organized crime.[45] The *Mauriber* court found that both the plain language and the legislative history of RICO clearly establish that Congress intentionally declined to limit RICO's scope to defendants with organized crime connections.[46] In *Mauriber*, the court noted that Senator John McClellan, the principal sponsor of the Organized Crime Control Act, was aware that a statute drawn broadly enough to reach the activities of organized crime necessarily would include offenses committed by persons outside the context of organized crime.[47] Moreover, the court cited legislative history indicating Congress' unwillingness to make RICO violations dependent on association with a class of persons such as the Mafia since Congress rejected an amendment to RICO that would have criminalized membership in the Mafia or La Cosa Nostra.[48] The *Moss* and *Mauriber* decisions indicate that within the Second Circuit, RICO is applicable outside the context of organized crime.[49]

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43. *See* Mauriber v. Shearson/American Express, Inc., 567 F. Supp. 1231, 1239 (S.D.N.Y. 1983) (plain language of RICO does not require plaintiff to allege that defendant associated with organized crime); Hellenic Lines, Ltd. v. O'Hearn, 523 F. Supp. 244, 247-48 (S.D.N.Y. 1981) (same).

44. 567 F. Supp. 1231 (S.D.N.Y. 1983).

45. *Id.* at 1239. In *Mauriber v. Shearson/American Express, Inc.*, the United States District Court for the Southern District of New York considered the plaintiff's RICO claim involving fraud in the sale of securities. *Id.* The defendant moved to dismiss the complaint for failure to allege that the defendant was affiliated with organized crime. *Id.* The *Mauriber* court rejected the defendant's motion and instead followed the Seventh Circuit's decision in *Schacht v. Brown* refusing to limit the class of RICO defendants to members of organized crime. *Id.* at 1239-40; *see Schacht*, 711 F.2d at 1353-54; *infra* notes 55-56 and accompanying text (discussion of *Schacht*).

46. *See* 567 F. Supp. at 1239-40. The *Mauriber* court cited legislative history indicating that Congress intentionally declined to limit the reach of the statute to defendants with connections to organized crime. *Id.; see* 116 CONG. REC. S18,940 (daily ed. June 9, 1970) (remarks of Sen. McClellan) (expansive scope of statute is necessary to reach various commercial activities of organized crime).

47. 567 F. Supp. at 1239; *see* 116 CONG. REC. S18,940 (daily ed. June 9, 1970) (remarks of Sen. McClellan) (noting difficulties of drafting effective statute against organized crime that does not subject persons outside organized crime to provisions of statute).

48. *See* 116 CONG. REC. H35,343 (daily ed. Oct. 7, 1970) (remarks of Rep. Biaggi). Several congressmen attacked the proposed amendment to RICO that would have limited the statute to the Mafia and La Cosa Nostra. *See id.* at H35,343-44 (remarks of Rep. Celler) ("Mafia" and "La Cosa Nostra" are imprecise and uncertain terms); *id.* at H35,344 (remarks of Rep. Poff) (proposed amendment might violate Supreme Court's rulings striking down statutes creating status offenses); *see also* Robinson v. California, 370 U.S. 660, 660-67 (1962) (statutes that define status as criminal offense are unconstitutional as cruel and unusual punishment under eight and fourteenth amendments); Scales v. United States, 367 U.S. 203, 225 (1961) (criminalizing mere membership in organization engaged in illegal conduct is unconstitutional under due process clause of fifth amendment).

49. *See Moss*, 719 F.2d at 21; *Mauriber*, 567 F. Supp. at 1239; *see also supra* notes 32-35 & 45-48 (discussion of *Moss* and *Mauriber*).

Consistent with the Second Circuit's decision in *Moss* rejecting a requirement that a plaintiff allege an organized crime nexus, the Eighth Circuit in *United States v. Bledsoe*[50] held that RICO does not require proof that a defendant is engaged in organized crime.[51] The *Bledsoe* court noted that one of Congress' purposes in passing RICO was to avoid problems of proof that would be enormously difficult for a private plaintiff to meet.[52] The *Bledsoe* court concluded, therefore, that Congress sought to avoid imposing upon a plaintiff the burden of proving a defendant's connection with something as vaguely defined as organized crime.[53] In determining that RICO operates outside the context of organized crime, the Seventh Circuit in *Schacht v. Brown*[54] similarly underscored legislative history indicating Congress' awareness of the broad reach of RICO's provisions.[55] Although the Seventh Circuit conceded that Congress may have created a "treble damage bonanza," the *Schacht* court nevertheless held that civil RICO is applicable in ordinary business fraud cases.[56] Notwithstanding courts' sympathy with attempts by defendants to limit the scope of RICO, the United States circuit courts that have addressed the question have refused to require a plaintiff to allege a nexus between the defendant and organized crime.[57]

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50. 674 F.2d 647 (8th Cir.), *cert. denied*, 103 S. Ct. 456 (1982).

51. *Id.* at 663. In *United States v. Bledsoe*, the Eighth Circuit considered whether a scheme involving fraudulent sales of securities in agricultural cooperatives was actionable under § 1962(c) of RICO. *Id.* at 651; *see* 18 U.S.C. § 1962(c) (1982). The *Bledsoe* court held that Congress did not intend to require a plaintiff to allege that the defendant engaged in the activities of organized crime. 674 F.2d at 663. The Eighth Circuit emphasized that while RICO's focus is on organized crime, the statute uses an approach that does not confine the reach of the statute to participants in organized crime. *Id.; see* McClellan, *supra* note 22, at 142-43 (Congress did not claim that members of organized crime primarily commit offenses listed as acts of racketeering but that these offenses are characteristic of organized crime); *see also* United States v. Forsythe, 560 F.2d 1127, 1136 (3d Cir. 1977) (legislative intent was to make RICO violations dependent upon behavior not status).

52. 674 F.2d at 663; *see* United States v. Elliott, 571 F.2d 880, 902 (8th Cir.) (Congress passed RICO to obviate necessity of proving conspiracy), *cert. denied*, 439 U.S. 953 (1978); *Impropriety of Judicial Restriction, supra* note 32, at 1108 & n.45 (Congress passed RICO to remedy problems in obtaining evidence against organized crime).

53. 674 F.2d at 663.

54. 711 F.2d 1343 (7th Cir. 1983), *cert. denied*, 52 U.S.L.W. 3423 (U.S. Nov. 29, 1983) (No. 83-548).

55. *Id.* at 1353 & 1361. The Seventh Circuit in *Schacht v. Brown* considered the defendants' argument that RICO's civil provisions are not applicable in ordinary business fraud cases. *Id.* at 1353. In rejecting the defendants' contention, the *Schacht* court noted that Congress designed RICO broadly so that the statute would reach the various activities of organized crime. *Id.* The Seventh Circuit refused to adopt a narrow interpretation of RICO in deference to the legislature's purpose and intent in passing RICO. *Id.* at 1357. The *Schacht* court suggested that courts are without authority to curtail the application of RICO's provisions. *Id.* at 1353. According to the Seventh Circuit, if the legislature had not wanted RICO to apply to business fraud cases, the legislature would not have included securities or mail fraud among the acts of racketeering enumerated in § 1961. *Id.* at 1356; *see* 18 U.S.C. § 1961(1)(D) (1982).

56. 711 F.2d at 1361.

57. *See supra* notes 33-35 & 51-56 and accompanying text (discussing cases holding that organized crime nexus is not prerequisite to recovery under RICO).

Courts' refusal to narrow the scope of RICO to organized crime has prompted corporate defendants to look for other ways to limit RICO's scope.[58] Corporate defendants frequently argue that courts should not apply RICO when the alleged acts of racketeering consist of ordinary securities fraud violations since adequate remedies for fraud already exist under federal securities laws.[59] Notwithstanding defendants' interpretation of racketeering activity, Congress placed few restrictions on the types of securities violations that constitute acts of racketeering.[60] Although Congress apparently intended to exclude common-law fraud and violations of state securities laws from the requisite acts of racketeering, Congress declined to include references to specific provisions of the federal securities laws.[61] According to the express language of

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58. *See supra* notes 33-35 & 43-57 and accompanying text (discussing cases in which defendants unsuccessfully argue for restrictive interpretation of language of RICO to prevent indiscriminate application of RICO's sanctions).

59. *See, e.g., Schacht*, 711 F.2d at 1353 (defendant unsuccessfully argued that broad reading of RICO in context of securities fraud would eclipse federal securities laws); *In re* Action Indus. Tender Offer, 572 F. Supp. 846, 850 (E.D. Va. 1983) (court noted that effective remedies for plaintiff alleging securities fraud already exist under federal securities laws but nevertheless rejected defendant's argument that RICO required plaintiff to allege organized crime nexus); Noland v. Gurley, 566 F. Supp. 210, 218 (D. Colo. 1983) (court accepted defendants' contention that sufficient remedies were available to plaintiff under federal securities laws and thus dismissed plaintiff's RICO claim).

60. *See* 18 U.S.C. § 1961(1)(D) (1982) (acts of racketeering include any offense involving federal securities fraud).

61. *See id.* (RICO applies to any securities fraud that is punishable under laws of United States). Subsection (1)(D) of § 1961 lists three acts of racketeering, including fraud under title 11 of the United States Code, securities fraud, and felonious trafficking in narcotics. *Id.* The original version of RICO omitted an express reference to title 11, merely listing bankruptcy fraud as an act of racketeering. *See* OCCA, Pub. L. No. 91-452, title IX, § 901(a), 84 Stat. 922, 922 (1970). In 1978, the Bankruptcy Reform Act amended RICO to substitute fraud under title 11 for bankruptcy fraud in the list of racketeering activities. *See* Bankruptcy Reform Act, Pub. L. No. 95-598, title III, § 314(g), 92 Stat. 2549, 2677 (1978). In RICO's present form, subsection (1)(D) is ambiguous since RICO now proscribes fraud under title 11, securities fraud, and felonious trafficking in narcotics, punishable under federal law. *See* 18 U.S.C. § 1961(1)(D) (1982). The phrase, "punishable under any law of the United States," may be interpreted to refer only to the final act in the series, felonious trafficking in narcotics, rather than to each of the three acts of racketeering. *See id.* Interpreting the phrase to modify each act in the series would result in redundancy because the first act listed would have two phrases qualifying bankruptcy fraud as punishable by federal law. *See id.* ("any offense involving fraud . . . under title 11 . . . punishable under any law of the United States. . . .") Since no redundancy existed in the original version, Congress probably intended the final phrase to modify each act listed in § 1961(1)(D). *See* OCCA, Pub. L. No. 91-452, title IX, § 910(a), 84 Stat. 922, 922 (1970). The confusion created by the statute is merely the result of poor drafting of the amendment. *See* 18 U.S.C. § 1961(1)(D) (1982); *Moss*, 719 F.2d at 18-19 n.14 (reserving issue of whether RICO encompasses common-law fraud under § 1961(1)D)). Most commentators and courts have interpreted the language of § 1961(1)(D) to mean federal securities fraud. *See* Trane v. O'Connor Sec., No. 1519, slip op. at 6545 (2d Cir. Sept. 19, 1983) (interpreting racketeering activity under § 1961 to include securities fraud punishable under federal law); Furman v. Cirrito, No. 4428, slip op. at ____ (S.D.N.Y. Jan. 6, 1984) (same); Long, *supra* note 1, at 205 (same); Blakey, *supra* note 19, at 307 n.172 (RICO requires plaintiffs to show more than common law fraud).

the statute, therefore, any offense involving securities fraud under federal law constitutes an act of racketeering, or predicate act, for purposes of establishing a pattern of racketeering activity.[62]

RICO defendants also have encountered difficulty in showing that the plaintiff has failed to allege a pattern of racketeering activity.[63] The language of RICO requires only that a plaintiff prove the defendant's commission of two or more acts of racketeering within a ten-year period.[64] Since fraud in the sale of securities is an act of racketeering, a plaintiff can satisfy RICO's pattern requirement by showing two or more securities fraud violations within ten years.[65] For example, in *Spencer Companies, Inc. v. Agency Rent-A-Car, Inc.*,[66] the United States District Court for the District of Massachusetts held that the filing with the Securities and Exchange Commission of fraudulent schedules and amendments constituted a pattern of racketeering activity since each filing constituted a single act of racketeering.[67] Similarly, the Seventh Circuit in *United States v. Weatherspoon*[68] held that a defendant who used the mails five times in furtherance of one scheme to defraud the plaintiff was

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62. *See* 18 U.S.C. § 1961(1)(D) (1982). The legislative history of RICO includes only passing references to securities fraud. *See* OCCA, Pub. L. No. 91-452, § 1, 82 Stat. 922, 923 (organized crime harms innocent investors); S. REP. No. 617, 91st Cong., 1st Sess. 77 (1969) (organized crime has penetrated securities firms and stock exchanges). During hearings on RICO before the House Judiciary Committee, the New York City Bar Association criticized the inclusion of securities fraud as an act of racketeering, arguing that securities fraud was not characteristic of organized crime. *See Relating to the Control of Organized Crime in the United States: Hearings on S. 30 and Related Proposals Before Subcomm. No. 5 of the Comm. on the Judiciary*, 91st Cong., 2d Sess. 401 (1970) (securities fraud is not synonymous with racketeering activity). Notwithstanding the New York City Bar's position, however, Congress enacted § 1961(1)(D) listing securities fraud as a predicate offense. *See* 18 U.S.C. § 1961(1)(D) (1982).

63. *See* 18 U.S.C. § 1961(5) (1982) (RICO defines pattern of racketeering activity as at least two acts of racketeering within a ten-year period).

64. *See id.*

65. *See id.* §§ 1961(1)(D) & 1961(5). Each securities violation constitutes a single act of racketeering. *Id.* § 1961(1)(D); *see also* S. REP. No. 617, 91st Cong., 1st Sess. 158 (1969) (each criminal violation of enumerated acts of racketeering is equivalent to one act of racketeering for purposes of satisfying pattern requirement of RICO).

66. [1981-1982 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 98,361 (D. Mass. Nov. 17, 1981).

67. *Id.* at 92,215. In *Spencer Companies, Inc. v. Agency Rent-A-Car, Inc.*, the United States District Court for the District of Massachusetts considered whether individual incidents of one scheme to defraud can constitute acts of racketeering. *Id.* at ____. The defendants in *Spencer* allegedly engaged in a pattern of racketeering activity by filing with the SEC a series of misleading Schedules 13D relating to the purchase of equity securities and subsequent amendments to induce plaintiff to purchase defendants' securities. *Id.* at ____; *see* Securities Exchange Act of 1934, § 13(d), 18 U.S.C. § 78m(d) (1982); Rule 13d-1, 17 C.F.R. § 240.13d-1 (1983) (explaining SEC's filing requirement for Schedule 13D); *see also* Securities Exchange Act of 1934, § 9(a)(2), 18 U.S.C. § 78i(a)(2) (1982) (violation of § 13(d) is actionable under § 9(a), which proscribes manipulation of price of security to induce purchase of security). The *Spencer* court held that each fraudulent filing of a Schedule 13D and any subsequent amendments constituted one act of racketeering, and thus the scheme to defraud amounted to a pattern of racketeering activity. [1981-1982 Transfer Binder] FED. SEC. L. REP. (CCH) at p. 92,215.

68. 581 F.2d 595 (7th Cir. 1978).

subject to liability under RICO since each instance of mail fraud constituted a predicate act of racketeering.[69]

Defendants also argue that RICO requires a plaintiff to show a connection in time or in character between the acts of racketeering as a prerequisite to satisfying the pattern of racketeering activity requirement.[70] The Fourth Circuit in *United States v. Computer Sciences Corporation*[71] considered whether a predicate offense committed almost ten years prior to a second predicate offense could combine with the second offense to meet the pattern requirement of RICO.[72] The *Computer Sciences* court rejected the defendants' interpretation of RICO requiring the plaintiff to show a connection between the acts of racketeering and instead held that the plaintiff sufficiently alleged a pattern of racketeering activity under RICO since the acts of racketeering occurred within ten years of each other.[73] The *Computer Sciences* court reasoned that RICO contains no requirement of relatedness in time or in character between the predicate acts of racketeering other than the ten-year provision.[74] The Fifth Circuit in *United States v. Elliott*[75] also refused to impose a requirement of interrelatedness in character between the predicate acts of racketeering in addition to the statutory time requirement.[76] The *Elliott* court noted that Congress imposed only the requirement that a defendant commit two acts of racketeering within a ten-year period.[77] Moreover, according to the *Elliott* court, Congress expressly indicated that one of the purposes of RICO

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69. *Id.* at 602. In *United States v. Weatherspoon*, the defendant argued that one scheme of five instances of mail fraud constituted only one act of racketeering activity under RICO. *Id.* at 601. The Seventh Circuit disagreed and held that the plain language of the statute did not require two schemes of racketeering to constitute the requisite pattern of activity. *Id.* at 601-602. The *Weatherspoon* court determined that the statute allows each act of mail fraud to combine with other similar acts of one scheme to defraud to satisfy the pattern of racketeering activity requirement. *Id.* at 602; *see* 18 U.S.C. § 1961(1)(B) (1982) (federal mail fraud is act of racketeering); 18 U.S.C. § 1341 (1982) (federal mail fraud statute).

70. *Cf.* 18 U.S.C. § 1961(5) (1982) (two acts of racketeering within ten years constitute pattern of racketeering activity).

71. 689 F.2d 1181 (4th Cir. 1982), *cert. denied*, 103 S. Ct. 729 (1983).

72. *Id.* at 1189. In *United States v. Computer Sciences Corp.*, the defendant allegedly engaged in mail fraud nearly ten years before conducting a scheme to overbill the General Services Administration for computer services. *Id.* at 1183-84. The Fourth Circuit held that the remoteness of the predicate acts of racketeering did not warrant a dismissal of the RICO action unless the predicate acts occurred more than ten years apart. *Id.* at 1190; *see* 18 U.S.C. § 1961(5) (1982) plaintiff can satisfy pattern of racketeering activity requirement merely by showing occurrence of two acts of racketeering within ten years).

73. 689 F.2d at 1190.

74. *Id.*

75. 571 F.2d 880 (5th Cir.), *cert. denied*, 439 U.S. 953 (1978).

76. *Id.* at 899 n.23. The Fifth Circuit in *United States v. Elliott* considered whether RICO applied to a scheme involving a number of diverse acts including arson, car theft, murder, and sale of narcotics. *Id.* at 899. The *Elliott* court held that the activities of the loosely connected criminal network constituted a pattern of racketeering activity. *Id.*

77. *Id.* at 899 n.23; *see* 18 U.S.C. § 1961(5) (1982) (definition of pattern does not require interrelation of acts of racketeering).

was to attack the diversified activities of organized crime.[78] Consequently, the Fifth Circuit declined to read a further requirement of relatedness between the different types of acts of racketeering because Congress intended RICO to reach the diverse ways in which organized crime operates.[79] Since the express language of the statute does not require a showing of relatedness between the acts of racketeering to satisfy the requisite pattern of racketeering activity, a majority of federal courts after *Elliott* have decided whether a pattern exists solely on the basis of the requisite number of acts within the ten-year time frame without a discussion of the relationship in time or in character between the acts of racketeering.[80]

In addition to proving a pattern of racketeering activity, a plaintiff also must prove the existence of an enterprise.[81] Under the definitional section of RICO, an enterprise includes any individual, corporation, or other legal entity, as well as a group of individuals not comprising a formal legal entity.[82] Despite the apparently unambiguous definition of an enterprise within the statute, the enterprise requirement has been the subject of much litigation.[83] In *United States v. Turkette*,[84] the Supreme Court considered the meaning and scope of the RICO enterprise requirement.[85] In *Turkette*, the alleged enterprise consisted of a group of individuals who together engaged in various criminal acts constituting racketeering activity under RICO.[86] The defendant in *Turkette* argued that RICO was applicable only when the enterprise constituted a legitimate enterprise rather than an exclusively criminal or illegitimate enterprise.[87] In support of the view that a RICO enterprise does not encompass illegitimate entities, the defendant in *Turkette* cited legislative history of

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78. 571 F.2d at 899; *see* OCCA, Pub. L. No. 91-452, § 1, 84 Stat. 922, 922 (1970). (Congress aimed RICO at diversified activities of organized crime).

79. 571 F.2d at 899 n.23.

80. *See* Moss v. Morgan Stanley, Inc., 719 F.2d 5, 17-18 (2d Cir. 1983) (two acts of § 10(b) fraud under '34 Act satisfy pattern of racketeering activity requirement), *cert denied*, 52 U.S.L.W. 3564 (U.S. Feb. 21, 1984) (No. 83-590); United States v. Aleman, 609 F.2d 298, 304 (7th Cir. 1979) (two instances of state crime of robbery satisfy pattern of racketeering activity requirement), *cert. denied*, 445 U.S. 946 (1980). *See generally* Long, *supra* note 1, at 217 & n.115 (citing cases following *Elliott* holding that RICO does require showing of relatedness between predicate acts to satisfy requisite pattern).

81. *See* 18 U.S.C. § 1961(4) (1982) (enterprise includes any individual or other legal entity as well as informal groups of individuals not comprising legal entity).

82. *Id.*

83. *See Application of RICO*, *supra* note 2, at 417-26 (explaining courts' treatment of RICO enterprise requirement).

84. 452 U.S. 576 (1981).

85. *Id.* at 579. In *United States v. Turkette*, the Supreme Court reversed a First Circuit ruling that RICO applies only to legitimate enterprises. *Id.* at 580. The defendant in *Turkette* allegedly conducted an enterprise in acts of felonious trafficking in narcotics, arson, mail fraud, bribery, and obstruction of justice. *Id.* at 579. The activities of the alleged criminal enterprise constituted acts of racketeering under § 1961 of RICO. *Id.* at 579 & n.3; *see* 18 U.S.C. § 1961(1)(A)-(C) (1982) (listing acts of racketeering activity).

86. 452 U.S. at 579.

87. *Id.* at 579-80.

RICO indicating that one of the major purposes of the statute was to prevent the infiltration of legitimate businesses by organized crime.[88] The *Turkette* Court, however, refused to exclude association with a criminal enterprise from the reach of the statute since RICO contains no express language limiting RICO to the infiltration of legitimate enterprises.[89] Moreover, the *Turkette* Court emphasized that any attempt to limit the scope of RICO to legitimate enterprises would be contrary to Congress' mandate that courts liberally construe RICO's provisions.[90] The *Turkette* Court, therefore, interpreted the enterprise requirement to include both legitimate and illegitimate enterprises.[91]

Since an enterprise can include not only a legitimate business but also a criminal organization or enterprise, an enterprise may comprise the association of a broker who fraudulently sells securities and the investment firm that employs him.[92] Such an illegitimate enterprise consists of a legitimate entity, the investment firm, and the broker's illegitimate scheme of racketeering activity.[93] A corporate defendant, therefore, potentially is liable for treble damages under RICO even though he may be involved only remotely with the securities fraud.[94] For example, in *Austin v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*,[95] the United States District Court for the Western District of Michigan considered whether the association of a broker and two brokerage firms constituted an enterprise within the meaning of RICO.[96] In denying the defendant's motion to dismiss for failure to allege the existence of an enterprise, the *Austin* court relied on *Turkette* to find that Congress did not intend to confine RICO to the infiltration of legitimate businesses.[97]

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88. *Id.* at 591-93 & nn.13-14; *see* 116 CONG. REC. S591 (daily ed. Jan. 21, 1970) (remarks of Sen. McClellan) (goal of RICO is removal of organized crime from control of legitimate organizations).

89. *Id.* at 581.

90. *Id.* at 587; *see* OCCA, Pub. L. No. 91-452, title IX, § 904(a), 84 Stat. 922, 946 (1970) (Congress directed courts to construe liberally RICO's provisions).

91. 452 U.S. at 584-85.

92. *See id.* at 584-85 & 590. In *Turkette*, the Supreme Court rejected a narrow interpretation of the scope of the RICO enterprise, holding instead that RICO applies both to legitimate and illegitimate enterprises. *Id.* at 584-85. The *Turkette* Court held that RICO does not require a plaintiff to prove that the defendant infiltrated the plaintiff's legitimate business. *Id.* at 590. *See generally Application of RICO, supra* note 2, at 419 (explaining that *Turkette* has had far-reaching implications in securities fraud context).

93. *See* 18 U.S.C. § 1961(4) (1982) (definition of RICO enterprise includes any association of individuals, even if group is not legal entity).

94. *See id.* §§ 1961(4), 1962(c), 1964(c) (defendant's association with an enterprise engaged in racketeering activity exposes defendant to treble damages under civil RICO).

95. 570 F. Supp. 667 (W.D. Mich. 1983).

96. *Id.* at 669. In *Austin v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, the United States District Court for the Western District of Michigan considered whether the plaintiffs sufficiently alleged an enterprise consisting of a broker and two brokerage firms who associated together to induce the plaintiffs to trade in high-risk stock options. *Id.* at 668-69 & n.2. The *Austin* court held that the association of defendants to defraud the plaintiffs constituted an enterprise. *Id.* at 669 n.2; *see* 18 U.S.C. § 1961(4) (1982) (defining enterprise).

97. 570 F. Supp. at 669; *see Turkette*, 452 U.S. at 590 (rejecting narrow interpretation of enterprise requirement).

Notwithstanding the apparent applicability of RICO to ordinary securities fraud claims after *Turkette*, a number of federal courts have gone beyond the Supreme Court's interpretation of the enterprise requirement to impose a requirement that the enterprise exist separately from the predicate acts of racketeering.[98] In *Bennett v. Berg*,[99] the Eighth Circuit reasoned that under RICO, an enterprise cannot be merely the equivalent of the scheme to commit acts of racketeering.[100] According to the Eighth Circuit in *Bennett*, Congress did not intend RICO to provide enhanced remedies for racketeering activity when adequate remedies already exist under the enumerated state and federal laws comprising acts of racketeering.[101] The *Bennett* court reasoned that RICO does not proscribe conduct constituting a violation of one of the enumerated acts of racketeering activity.[102] RICO instead prohibits a defendant from investing in, acquiring an interest in, or conducting the affairs of an enterprise through a pattern of racketeering activity.[103] The Eighth Circuit, therefore, focused on the scope of the enterprise requirement, requiring proof that the enterprise have an ascertainable structure distinct from the conduct constituting the pattern of racketeering activity.[104] In support of a narrow interpretation

98. *See* Bennett v. Berg, 685 F.2d 1053, 1060 (8th Cir. 1982) (RICO does not provide enhanced remedies for acts of racketeering already cognizable under other state and federal statutes); United States v. Bledsoe, 674 F.2d 647, 663-64 (8th Cir. 1982) (RICO does not proscribe the activities of informal groups engaged in acts of racketeering); *In re* Action Indus. Tender Offer, 572 F. Supp. 846, 850 (E.D. Va. 1983) (plaintiff's allegations of two or more acts of federal securities fraud is not necessarily sufficient to maintain RICO action since effective remedies for acts of racketeering already exist under federal law). *See generally* Comment, *Reading the "Enterprise" Element Back Into RICO: Sections 1962 and 1964(c)*, 76 NW. U.L. REV. 100 (1981) (courts that uphold existence of enterprise based upon proof of association to commit racketeering activity have made enterprise requirement superfluous).

99. 685 F.2d 1053 (8th Cir. 1982).

100. *Id.* at 1060-61 & n.10. In *Bennett v. Berg*, the alleged enterprise consisted of a corporation that owned and operated a retirement community. *Id.* at 1056 & 1060. The defendants, who were officers, directors, and other individuals and organizations associated with the retirement community, allegedly engaged in a scheme of mail fraud that misled the plaintiffs concerning the financial soundness of the community. *Id.* at 1056-57. The acts of mail fraud apparently induced the plaintiffs to pay a substantial endowment fee in exchange for promises of care for an entire lifetime. *Id.* The defendants argued for dismissal on grounds that the plaintiffs failed to show the existence of an enterprise separate from the pattern of racketeering activity. *Id.* at 1059. The district court characterized the alleged enterprise as pervasively fraudulent and thus without existence apart from the pattern of racketeering activity. *Id.* The Eighth Circuit in *Bennett* disagreed and held that the retirement community constituted an enterprise because the retirement community provided various services indicating the existence of a structure separate from the acts of mail fraud. *Id.* The *Bennett* court, however, emphasized that a RICO enterprise must have an existence apart from the pattern of racketeering activity. *Id.* at 1060. Under the *Bennett* court's interpretation of *Turkette*, the legality or illegality of the enterprise's activities is irrelevant. *Id.*; *see Turkette*, 452 U.S. at 583 (enterprise is separate element from pattern of racketeering activity).

101. 685 F.2d at 1060.

102. *Id.* at 1061 n.10.

103. *Id.*; *see* 18 U.S.C. §§ 1961, 1962(c) (1982) (requiring plaintiff to prove existence of enterprise in addition to pattern of racketeering activity).

104. 685 F.2d at 1060.

of the enterprise requirement to prevent indiscriminate application of RICO's sanctions outside the context of organized crime, the *Bennett* court cited the Supreme Court's opinion in *Turkette* for the general proposition that proof of an enterprise cannot consist merely of the proof offered to satisfy the pattern of racketeering activity requirement.[105] In *Turkette*, the Court held that a pattern of racketeering activity under RICO is not the equivalent of an enterprise, whether legitimate or illegitimate.[106] The *Turkette* Court explained that the plaintiff must prove the existence of both the enterprise and the pattern of racketeering activity.[107] The *Bennett* court, however, cited specific language from *Turkette* suggesting that the enterprise exists separately from the pattern of racketeering activity.[108] The *Bennett* court, therefore, concluded that the enterprise must have a discrete economic existence apart from the pattern of racketeering activity.[109]

In contrast to the Eighth Circuit's narrow interpretation of the enterprise requirement in *Bennett*, the Second Circuit in *Moss v. Morgan Stanley, Inc.*,[110] held that the enterprise may be identical to the pattern of racketeering activity.[111] In *Moss*, the plaintiff alleged that a RICO enterprise consisted of a group of employees of investment firms and a broker who committed securities violations.[112] The *Moss* court admitted that the enterprise essentially was the

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105. *Id.* at 1064 & n.17 (RICO does not convert every fraud claim into RICO cause of action since plaintiff must prove existence of enterprise); *see* United States v. Turkette, 452 U.S. 576, 583 (1981) (plaintiff must prove existence of enterprise separate from pattern of racketeering activity).

106. 452 U.S. at 583.

107. *Id.*

108. 685 F.2d at 1060; *see* 452 U.S. at 583 (enterprise is separate element from pattern of racketeering activity).

109. 685 F.2d at 1060.

110. 719 F.2d 5 (2d Cir. 1983), *cert denied*, 52 U.S.L.W. 3564 (U.S. Feb. 21, 1984) (No. 83-590).

111. *Id.* at 22. Like the Eighth Circuit in *Bennett v. Berg*, the Second Circuit in *Moss v. Morgan Stanley, Inc.* considered language from *Turkette* concerning the proper scope of the RICO enterprise. *See id.; see also* 452 U.S. at 583 (emphasizing necessity of proving existence of enterprise as prerequisite to recovery under RICO). The district court dismissed the plaintiff's RICO claim because the plaintiff failed both to allege an organized crime nexus and to demonstrate the existence of an enterprise distinct from the pattern of racketeering activity. Moss v. Morgan Stanley, Inc., 553 F. Supp. 1347, 1358-63 (S.D.N.Y. 1983). The Second Circuit affirmed the district court's dismissal of the plaintiff's RICO claim because the plaintiff failed to prove securities fraud under § 10(b) of the '34 Act. 719 F.2d at 18-19; *see* Securities Exchange Act of 1934 § 10(b), 15 U.S.C. § 78j(b) (1982). In interpreting § 10(b), the Second Circuit followed the Supreme court's decision in *Chiarella v. United States* and held that the defendant broker had no duty to the plaintiff to disclose the confidential information concerning the imminent tender offer. 719 F.2d at 16; *see Chiarella*, 445 U.S. 222, 223 (1980) (limiting § 10(b) liability of defendant to breach of duty of disclosure). In the absence of such a duty, the defendant did not commit fraud under § 10(b). 719 F.2d at 16. Thus without proof of securities fraud to establish racketeering activity, the plaintiff's RICO claim failed. *Id.* at 18-19.

112. 719 F.2d at 22. In *Moss*, the plaintiff was a former shareholder who had sold his shares in a target company prior to the public announcement of a tender offer. *Id.* at 8. An employee of Morgan Stanley acquired advance knowledge of the imminent tender offer and informed an employee of a different investment firm as well as a broker. *Id.* These three individuals allegedly

equivalent of the scheme of racketeering activity.[113] The Second Circuit expressly rejected the Eighth Circuit's holding in *Bennett* and cited language from *Turkette* indicating that in some cases the evidence offered to prove the existence of an enterprise may be the same evidence necessary to show a pattern of racketeering activity.[114] Both the *Moss* and *Bennett* courts emphasized that *Turkette* requires a plaintiff to prove the existence of an enterprise.[115] Unlike the Eighth Circuit in *Bennett*, however, the Second Circuit in *Moss* recognized that *Turkette* left open the possibility that proof of the acts of racketeering activity also may constitute proof of the enterprise.[116] The Second Circuit in *Moss* held, therefore, that RICO is applicable to situations in which the enterprise is equivalent to the acts of racketeering.[117]

The Second Circuit's holding in *Moss* is consistent both with the Supreme Court's decision in *Turkette* and with the language of RICO.[118] While *Turkette* requires that a plaintiff prove the existence of both an enterprise and a pattern of racketeering activity, *Turkette* does not require that the enterprise necessarily have a discrete existence apart from the pattern of racketeering activity.[119] *Turkette* merely emphasizes that the enterprise and the pattern of racketeering activity are separate elements of a RICO violation.[120] While proof of a pattern of racketeering activity may not necessarily establish an enterprise, evidence of a pattern of racketeering, in particular cases, also may satisfy the enterprise requirement.[121]

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associated together to purchase shares in the target company and then to resell the shares at a higher price after the public announcement. *Id.* The plaintiff claimed that the broker was a member of an enterprise that engaged in a pattern of securities fraud. *Id.* at 9; *see* 18 U.S.C. §§ 1961 (1)(D) & 1962(c) (1982).

113. 719 F.2d at 22; United States v. Bagaric, 706 F.2d 42, 55 (2d Cir. 1983) (RICO applies when enterprise is equivalent to predicate acts of racketeering), *cert. denied*, 104 S. Ct. 133 (1984).

114. 719 F.2d at 22; *see Turkette*, 452 U.S. at 583.

115. *See Moss*, 719 F.2d at 22; *Bennett*, 685 F.2d at 1060; *see also Turkette*, 452 U.S. at 583.

116. *See Moss*, 719 F.2d at 22; *see also Turkette*, 452 U.S. at 583; *cf.* Bennett, 685 F.2d at 1060.

117. 719 F.2d at 22. In *Moss*, the Second Circuit affirmed the district court's dismissal of the RICO claim but relied on a rationale different from the lower court's rationale. *Id.* at 20. The district court had held that the enterprise must have an economic existence discrete from the pattern of racketeering activity. *Id.* at 22. The Second Circuit, however, held that *Turkette* does not mandate that the RICO enterprise be separate from the pattern of racketeering activity. *Id.* at 22. The Second Circuit cited language from *Turkette* indicating that while the enterprise and the pattern of racketeering activity are separate elements, proof used to establish these elements may coincide. *Id.; see Turkette*, 452 U.S. at 583. The Second Circuit in *Moss*, therefore, expressly rejected the Eighth Circuit's holding in *Bennett*. 719 F.2d at 22; *Bennett*, 685 F.2d at 1060; *supra* note 100 (discussion of *Bennett*).

118. *See* 452 U.S. at 583; 18 U.S.C. § 1962 (1982) (language of RICO does not indicate that enterprise and pattern of racketeering activity are mutually exclusive terms).

119. *See* 452 U.S. at 583 (enterprise and pattern of racketeering activity are separate elements that plaintiff must prove).

120. *See id.*

121. *See id.; see also* United States v. Aleman, 609 F.2d 298, 301 (7th Cir. 1979) (enterprise can be equivalent of acts of racketeering activity), *cert. denied*, 445 U.S. 946 (1980). *But see* United States v. Bledsoe, 674 F.2d 647, 664 (8th Cir.)(enterprise cannot be equivalent of acts of racketeering), *cert denied*, 103 S. Ct. 456 (1982). In *United States v. Aleman*, the Seventh

The Second Circuit's broad interpretation of the enterprise requirement in *Moss* is more consistent with the express language of RICO than the Eighth Circuit's reading of the enterprise requirement in *Bennett*.[122] The *Moss* court's interpretation of RICO also is consistent with RICO's legislative history since Congress directed courts to construe liberally the provisions of the statute.[123] The Supreme Court's reading of the enterprise requirement in *Turkette* combined with courts' liberal construction of RICO's other definitional prerequisites suggest that RICO extends far enough to include ordinary securities fraud claims.[124]

Assuming a plaintiff proves a RICO violation under section 1962, a final prerequisite to recovery of treble damages and attorneys' fees under section

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Circuit upheld the existence of an enterprise that consisted merely of the association of defendants to commit three home robberies. 609 F.2d at 301. Although the enterprise in *Aleman* lacked a definite structure apart from the acts of racketeering, the Seventh Circuit refused to reverse the defendant's RICO convictions since the state crime of robbery is an act of racketeering under RICO. *Id.* at 304; 18 U.S.C. § 1961(1)(A) (1982) (robbery punishable by imprisonment for more than one year is act of racketeering). 609 F.2d at 304; *cf. id.* at 311 (Swygert, J., dissenting) (expressing opinion that majority in *Aleman* misapplied RICO because no enterprise existed apart from racketeering activity).

The Eighth Circuit in *United States v. Bledsoe* criticized the *Aleman* court's loose construction of RICO and held that a group of individuals who allegedly sold securities to defraud the plaintiff did not constitute an enterprise within the meaning of RICO. 674 F.2d at 662, 664. According to the *Bledsoe* court, Congress did not intend to include under RICO informal groups created to commit acts of racketeering. *Id.* at 663-64. *But see* 18 U.S.C. § 1961(4) (1982) (enterprise includes group of associated individuals even though group is not legal entity). The Eighth Circuit that Congress did not design RICO to serve as a recidivist statute, imposing enhanced sentences for acts of racketeering that already are punishable under other statutes. 674 F.2d at 659, 664; *see* S. REP. No. 617, 91st Cong., 1st Sess. 158 (1969) (Congress did not intend that RICO attack isolated acts of racketeering); 116 CONG. REC. S18,940 (daily ed. June 9, 1970) (remarks of Sen. McClellan) (RICO requires threat of continuing racketeering activity against enterprise before remedial provisions of statute are applicable). RICO technically is not a recidivist statute since criminal conviction of racketeering activity is not a prerequisite to recovery under RICO. *See* USACO Coal Co. v. Carbomin Energy, Inc., 689 F.2d 94, 95 n.1 (6th Cir. 1982) (nothing in plain language of RICO suggests that § 1964(c) is applicable only to defendants already convicted or charged with criminal racketeering activity); 18 U.S.C. § 1964(c) (1982) (creating private right of action for treble damages and attorneys' fees for violations of § 1962); S. REP. No. 617, 91st Cong., 1st Sess. 158 (1969) (act of racketeering must be act violating independent statute subject to criminal prosecution).

122. *Compare* Moss v. Morgan Stanley, Inc. 719 F.2d 5, 22 (2d Cir. 1983) (RICO does not require enterprise to have separate existence from pattern of racketeering activity), *cert. denied*, 52 U.S.L.W. 3564 (U.S. Feb. 21, 1984) (No. 83-590) *and* 18 U.S.C. § 1961(4) (1982) (defining enterprise to include informal group of individuals) *with* Bennett v. Berg, 685 F.2d 1053, 1060 (8th Cir. 1982) (plaintiff must allege existence of enterprise apart from acts of racketeering) *and* United States v. Bledsoe, 674 F.2d 647, 664 (8th Cir.) (enterprise must have some structure separate from racketeering activity), *cert. denied*, 103 S. Ct. 456 (1982).

123. *See Moss*, 719 F.2d at 22 (broadly construing enterprise requirement); OCCA, Pub. L. No. 91-452, title IX, § 904(a), 84 Stat. 922, 946 (1970) (Congress mandated that courts liberally construe RICO).

124. *See Turkette*, 452 U.S. at 593 (RICO enterprise includes both legitimate and illegitimate enterprises); *Moss*, 719 F.2d at 21 (RICO not limited to members of organized crime); *Schacht*, 711 F.2d at 1353-55 (RICO is applicable in ordinary business fraud cases).

1964(c) of civil RICO is a showing by the plaintiff that the defendant's violation of RICO caused an injury to the plaintiff's business or property.[125] The causation aspect of section 1964(c) has been the focus of some courts' attempts to limit the standing of plaintiffs alleging RICO violations.[126] The language of section 1964(c) appears to require only that a RICO violation proximately cause a plaintiff's alleged injuries.[127] Notwithstanding the language of RICO, however, defendants have argued that only plaintiffs alleging either a competitive or a commercial injury have standing to sue under civil RICO.[128] Defendants have interpreted the language of section 1964(c) requiring a plaintiff to show injuries to the plaintiff's business or property as a statutory limitation of civil RICO to commercial injuries.[129] Defendants also have asserted

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125. *See* 18 U.S.C. § 1964(c) (1982) (providing private right of action to person injured in business or property "by reason of" violation of § 1962).

126. *See, e.g., In re* Action Indus. Tender Offer, 572 F. Supp. 846, 851-52 (E.D. Va. 1983) (limiting civil RICO to plaintiff alleging injuries caused by racketeering enterprise and not just by predicate acts of racketeering); Johnsen v. Rogers, 551 F. Supp. 281, 285 (C.D. Cal. 1982) (causation aspect of § 1964(c) requires plaintiff to show injury from activities of enterprise instead of from predicate acts of securities fraud); Harper v. New Japan Sec. Int'l, Inc., 545 F. Supp. 1002, 1007 (C.D. Cal. 1982) (same); Erlbaum v. Erlbaum, [1982 Transfer Binder] FED. SEC. L. REP. ¶ 98,772, p. 93,922-23 (E.D. Pa. 1982) (limiting § 1964(c) to injuries arising from marketplace activity); Van Schaick v. Church of Scientology of Cal., Inc., 535 F. Supp. 1125, 1137 (D. Mass. 1982) (limiting liability under § 1964(c) to business losses from racketeering activity since violation of § 1962 must cause injury to plaintiff's business or property); Landmark Savings & Loan v. Rhoades, 527 F. Supp. 206, 208-209 (E.D. Mich. 1981) (limiting § 1964(c) recovery to racketeering enterprise injury); *see also infra* notes 128-152 and accompanying text (discussion of cases interpreting § 1964(c)).

127. *See* 18 U.S.C. § 1964(c) (1982) (injuries must be "by reason of" proscribed conduct under § 1962). *See generally* Long, *supra* note 1, at 241-42 ("by reason of" language of § 1962(c) implies concept of proximate cause).

128. *See, e.g.*, Bankers Trust Co. v. Feldesman, 566 F. Supp. 1235, 1241 (S.D.N.Y. 1983) (limiting § 1964(c) to plaintiffs alleging competitive injury caused by defendant's racketeering activities); Johnsen v. Rogers, 551 F. Supp. 281, 285 (C.D. Cal. 1982) (limiting § 1964(c) to commercial injuries); North Barrington Dev., Inc., v. Fanslow, 547 F. Supp. 207, 211 (N.D. Ill. 1980) (limiting § 1964(c) to competitive injuries); Van Schaick v. Church of Scientology, 535 F. Supp. 1125, 1137 (D. Mass. 1982) (limiting § 1964(c) to business losses from racketeering activity); *infra* note 129 (discussing *Johnsen, Van Schaick*, and *Bankers Trust*). *But see infra* notes 131-143 and accompanying text (discussing courts that refuse to limit § 1964(c) to commercial or competitive injuries).

129. *See Bankers Trust*, 566 F. Supp. at 1241; *Johnsen*, 551 F. Supp. at 285; *Van Schaick*, 535 F. Supp. at 1137. In *Johnsen v. Rogers*, the plaintiffs purchased fractional interests in oil and gas leaseholds based upon alleged material misrepresentations regarding the potential productivity of the leaseholds. 551 F. Supp. at 283. The plaintiffs in *Johnsen* attempted to recover under § 1964(c) of RICO, claiming that the defendant sellers of the oil and gas leaseholds participated in an enterprise engaged in a scheme of securities fraud. *Id.; see* 18 U.S.C. §§ 1962(c), 1964(c) (1982). The *Johnsen* court held that the plaintiffs did not sufficiently allege a commercial injury caused by the conduct of an enterprise's affairs through a pattern of racketeering activity. 551 F. Supp. at 285. The court emphasized that § 1964(c) does not provide plaintiffs with an additional remedy for injuries already compensable under the federal securities laws. *Id.* The *Johnsen* court also interpreted RICO to require allegations of injury resulting from the racketeering enterprise instead of from the predicate acts of securities fraud. *Id.*

Notwithstanding the language of the statute requiring injury to a plaintiff's business or prop-

that civil RICO implicitly requires a plaintiff to show competitive injuries resulting from defendants' conduct because Congress patterned civil RICO after the remedial provisions of the antitrust laws relating to the preservation of competition.[130]

Two circuit courts recently have considered whether Congress intended section 1964(c) of RICO to remedy only commercial or competitive injuries caused by a defendant.[131] The Eighth Circuit in *Bennett v. Berg*[132] considered

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erty, the United States District Court for the District of Massachusetts in *Van Schaick v. Church of Scientology of Cal., Inc.* asserted that courts should confine the applicability of § 1964(c) to business losses from racketeering injuries. 535 F. Supp. at 1137. In *Van Schaick*, the corporate defendant allegedly induced the plaintiff to enter a program of psychotherapy guaranteed to achieve certain physical, mental, and social benefits. *Id.* at 1131. The plaintiff apparently sought to recovery bribery payments that she had made to the defendant after the defendant had threatened to disclose confidential information about the plaintiff. *Id.; see* 18 U.S.C. § 1961(1)(A) (1982) (state crime of bribery is predicate act of racketeering). Offering no analysis of the facts underlying the plaintiff's RICO claim, the court dismissed the plaintiff's claim for failure to allege a commercial injury under § 1964(c) of RICO. 535 F. Supp. at 1137.

In *Bankers Trust Co. v. Feldesman*, the United States District Court for the Southern District of New York attempted to restrict § 1964(c) even further than *Van Schaick* by requiring a RICO plaintiff to allege an injury to competition. 566 F. Supp. at 1241. The plaintiff trust company in *Bankers Trust* claimed that the defendants concealed assets from the trustee in bankruptcy in attempting to obtain a discharge of debts. *Id.* at 1236-38. The court held that the alleged RICO violation involving bankruptcy fraud did not meet the requirements of § 1964(c). *Id.* at 1241; *see* 18 U.S.C. § 1961(1)(D) (1982) (listing fraud under Title 11 as predicate act of racketeering). Specifically, the *Bankers Trust* court found that Congress intended RICO to combat organized crime's harmful effects on competition. 566 F. Supp. at 1241; *see* OCCA, Pub. L. No. 91-452, § 1, 84 Stat. 922, 923 (1970) (Congress enacted RICO in part to prevent organized crime from interfering with free competition). In support of a limitation of civil RICO to competitive injuries, the court noted the similarity between the language of § 1964(c) and § 4 of the Clayton Act. 566 F. Supp. at 1241. *Compare* 18 U.S.C. § 1964(c) (1982) (providing private right of action for treble damages and attorneys' fees to plaintiff injured in his business or property due to RICO violation) *with* Clayton Act, § 4, 15 U.S.C. § 15(a) (1982) (providing private right of action for treble damages and attorneys' fees to plaintiff injured in his business or property due to antitrust violation). Since Congress aimed the antitrust laws at anticompetitive practices, the *Bankers Trust* court reasoned that civil RICO is applicable only to competitive injuries. 566 F. Supp. at 1241; *see* Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477, 489 (1977) (interpreting § 4 of Clayton Act to compensate only injuries caused by anticompetitive acts).

130. *See* OCCA, Pub. L. No. 91-452, § 1, 84 Stat. 922, 923 (1970) (Congress in part passed RICO to limit organized crime's effect on free competition); S. REP. No. 617, 91st Cong., 1st Sess. 76-81 (1969) (emphasizing organized crime's control over commercial and competitive practices of nation's free enterprise system); *id.* at 81 (recommending that Congress adapt civil remedies developed in antitrust area to problem of organized crime); 115 CONG. REC. S6994-95 (daily ed. Mar. 20, 1969) (report of Antitrust Section of American Bar Association) (endorsing legislative proposals to use antitrust remedies including treble damages in attempting to eradicate organized crime).

131. *See* Schacht v. Brown, 711 F.2d 1343, 1356-58 (7th Cir.) (rejecting competitive injury limitation of RICO since objectives of RICO and antitrust laws are different), *cert. denied*, 52 U.S.L.W. 3423 (U.S. Nov. 29, 1983) (No. 83-548); Bennett v. Berg, 685 F.2d 1053, 1058-59 (8th Cir. 1982) (recognizing that Congress borrowed tools of antitrust law to combat organized crime but rejecting limitation of RICO to antitrust objective of protecting competition); *see also infra* notes 133-143 and accompanying text (discussion of *Schacht* and *Bennett* courts' consideration of § 1964(c)).

132. 685 F.2d 1053 (8th Cir. 1982).

the commercial and competitive injury limitations to RICO as one issue since the defendants argued that the plaintiffs failed to allege an injury to property affecting the plaintiffs' commercial or competitive interests.[133] The Eighth Circuit concluded that an allegation of commercial or competitive injury is not a prerequisite to recovery under civil RICO.[134] The *Bennett* court cited legislative history indicating that Congress passed RICO to attack the property interests of organized crime notwithstanding the type of business or property injury alleged.[135] In determining that restrictive standing requirements applicable in the antitrust field are not consistent with the business or property language of RICO, the Eighth Circuit noted that Congress did not intend to limit RICO to the antitrust goal of preventing interference with free trade.[136] The Seventh Circuit in *Schacht v. Brown*[137] considered defendants' argument that civil RICO applies only to those injured as competitors of the defendants.[138] According to the defendants in *Schacht*, Congress patterned section 1964(c) of RICO after section 4 of the Clayton Act which provides treble damages and attorneys fees to private plaintiffs who prevail in antitrust actions.[139] While conceding the obvious similarities between section 1964(c) and section 4 of the Clayton Act, the Seventh Circuit nevertheless held that neither the plain language nor the legislative history of RICO warrants restricting section 1964(c) to competitive injures.[140] The *Schacht* court emphasized that Congress enacted RICO to attack organized crime and not restraints on competition.[141] In support of the Seventh Circuit's view that RICO is not the equivalent of an amendment to the antitrust laws, the *Schacht* court noted that prior to enacting RICO

133. *Id.* at 1059; *see supra* notes 100-109 and accompanying text (discussion of *Bennett*). In *Bennett*, the defendants argued that language in § 1964(c) limiting a private right of action to injuries to a plaintiff's property combined with the similarity between § 1964(c) and § 4 of the Clayton Act suggest that injury to property under RICO means injury to commercial or competitive interests. 685 F.2d at 1058. The *Bennett* court rejected a commercial or competitive injury limitation of RICO, interpreting Congress' passage of RICO apart from the Sherman Act as an implicit rejection of the standing requirements that apply in the antitrust context. *Id.* at 1059.

134. 685 F.2d at 1059.

135. *Id.; see* 116 CONG. REC. S602 (daily ed. Jan. 21, 1970) (remarks of Sen. Hruska) (purpose of RICO is to attack property interests of organized crime).

136. 685 F.2d at 1059; *see* S. REP. No. 617, 91st Cong., 1st Sess. 81-82 (1969) (objectives of RICO are distinct from goals of antitrust laws).

137. 711 F.2d 1343 (7th Cir.), *cert. denied*, 52 U.S.L.W. 3423 (U.S. Nov. 29, 1983) (No. 83-548).

138. *Id.* at 1356; *see supra* note 55 (discussion of *Schacht*).

139. 711 F.2d at 1356-57; Clayton Act, § 4, 15 U.S.C. § 15(a) (1982).

140. 711 F.2d at 1358. The *Schacht* court argued that the structural similarity between § 1964(c) of RICO and § 4 of the Clayton Act does not necessarily imply that antitrust considerations of market efficiency are applicable in the context of organized crime. *Id.* In rejecting a competitive injury limitation of civil RICO, the Seventh Circuit in *Schacht* concluded that the policies underlying RICO and the antitrust laws are distinct. *Id.*

141. *Id.* at 1358; *see* 18 U.S.C. § 1964(c) (1982) (limiting private action under civil RICO to plaintiff alleging injury to his business or property caused by RICO violation); OCCA, Pub. L. No. 91-452, § 1, 84 Stat. 922, 923 (1970) (in enacting RICO, Congress noted that organized crime not only interferes with free competition but also weakens stability of nation's economic system, harms innocent investors, and undermines general welfare of nation).

Congress considered but rejected a bill that would have amended the antitrust laws to cover organized criminal activity.[142] The *Schacht* court, therefore, concluded that Congress enacted RICO as a separate tool to combat organized crime.[143]

While analogizing civil RICO to the antitrust laws would seem to be contrary to the legislative intent, defendants nevertheless have argued that courts should limit section 1964 of RICO to racketeering enterprise injuries in the same way that courts limit section 4 of the Clayton Act to antitrust injuries.[144] In *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*,[145] the Supreme Court required the plaintiffs to prove "antitrust injury" which the Court defined as the type of injury that Congress intended the antitrust laws to prevent.[146] The *Brunswick* court noted that Congress aimed the antitrust laws at anticompetitive practices.[147] RICO defendants have borrowed the concept of antitrust injury from *Brunswick* in attempting to persuade courts to limit RICO, not to competitive injuries as in the antitrust area, but to racketeering enterprise injuries of the type Congress intended RICO to prevent.[148]

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142. *See* 711 F.2d at 1357 & n.16; S. 2048, 90th Cong., 1st Sess., 113 CONG. REC. S17,999 (daily ed. June 29, 1967) (amending antitrust laws to provide private treble damages remedy in organized crime context). The Senate Judiciary Committee did not report S. 2048 with the Organized Crime Control Act. *See* S. REP. No. 617, 91st Cong., 1st Sess. 1 (1969).

143. 711 F.2d at 1357. Congress enacted RICO apart from the antitrust laws to avoid confusing the goal of eradicating organized crime with the goal of regulating competition. *See* 115 Cong. Rec. S9567 (daily ed. Apr. 18, 1969) (remarks of Sen. McClellan) (maintaining that OCCA does not import complexities of antitrust law into area of organized crime control); *see also* 115 CONG. REC. S6995 (daily ed. Mar. 20, 1969) (report of Antitrust Section of American Bar Association) (recommending that Congress enact organized crime control legislation as separate statute from Sherman Act since amending antitrust laws to combat organized crime would create standing requirements appropriate only in antitrust context).

144. *See, e.g.*, Furman v. Cirrito, No. 82-4428, slip op. at ____ (S.D.N.Y. Jan. 6, 1984) (dismissing plaintiff's RICO claim for failure to allege racketeering enterprise injury analogous to antitrust injury); *In re* Action Indus. Tender Offer, 572 F. Supp. 846, 852 (E.D. Va. 1983) (same); Harper v. New Japan Sec. Int'l. Inc., 545 F. Supp. 1002, 1006-1008 (C.D. Cal. 1982) (same); Landmark Savings & Loan v. Rhoades, 527 F. Supp. 206, 208-209 (E.D. Mich. 1981) (same); *see also* Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477, 489 (1977) (limiting § 4 of Clayton Act providing private right of action for treble damage and attorneys' fees to plaintiffs proving injury to competition, or antitrust injury).

In *Landmark Savings & Loan v. Rhoades*, the United States District Court for the Eastern District of Michigan considered whether § 1964(c) envisions ordinary securities fraud violations. 527 F. Supp. at 207-209. The plaintiff in *Landmark* alleged that the defendant corporation engaged in a scheme of churning involving the plaintiff's account for the purpose of earning transaction commissions. *Id.* at 207-208. The *Landmark* court dismissed the plaintiff's RICO claim since the plaintiff failed to allege a racketeering enterprise injury distinct from an injury based upon the predicate acts of racketeering. *Id.* at 208-209. Although the *Landmark* court did not define the scope of the racketeering enterprise injury concept, the court indicated that the concept required proof of an enterprise separate from the acts of racketeering. *See id.* at 208 (noting that plaintiff's complaint does not distinguish between enterprise and defendants who engaged in racketeering activity).

145. 429 U.S. 477 (1977).

146. *Id.* at 489.

147. *Id.* at 488-89.

148. *See In re* Longhorn Sec. Litigation, 573 F. Supp. 255, 269-70 (W.D. Okla. 1983) (re-

Federal courts that have considered the racketeering enterprise injury concept have defined the concept to require proof of injury arising from the relationship between the enterprise and the pattern of racketeering activity, cognizable both under section 1962 and the treble damages provision contained in section 1964(c), rather than injury arising merely from the predicate offenses enumerated in section 1961.[149] The Eighth Circuit in *Bennett* recognized that the racketeering enterprise injury concept essentially is an indirect way of stating that the enterprise must have a separate existence from the pattern of racketeering activity.[150] While declining to address the racketeering enterprise issue, the Second Circuit in *Moss* concluded that an overly narrow interpretation of the enterprise requirement as well as the creation of standing requirements that preclude application of RICO in many securities fraud cases is inconsistent with both the express language and the legislative history of RICO.[151] Courts property have rejected the commercial, competitive, and racketeering enterprise injury standing requirements in civil RICO actions since such requirements are inconsistent with the broad scope of the statute.[152]

Similarly, courts should reject any attempt to limit RICO by narrowly interpreting the statute's provisions since Congress directed courts to construe liberally the language of the statute.[153] Reading additional standing requirements into RICO appears to be not only contrary to principles of statutory construction but also inconsistent with RICO's legislative history indicating that RICO is applicable outside the context of organized crime.[154] Notwithstanding criticisms of RICO suggesting that the statute turns ordinary securities fraud claims into treble damage actions, courts should adhere to the strict language of the statute, particularly when the legislature intentionally cast RICO in

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jecting defendant's contention that showing of racketeering enterprise injury is prerequisite to recovery under § 1964(c) since antitrust laws and RICO serve different purposes); *In re* Action Indus. Tender Offer, 572 F. Supp. 846, 851 (E.D. Va. 1983) (accepting defendant's argument that plaintiff must allege type of injury that Congress designed RICO to prevent).

149. *See* Furman v. Cirrito, No. 82-4428, slip op. at ____ (S.D.N.Y. Jan. 6, 1984) (plaintiff failed to allege racketeering enterprise injury distinct from injury arising out of racketeering activity); *In re* Action Indus. Tender Offer, 572 F. Supp. 846, 852 (E.D. Va. 1983) (same); *see also* 18 U.S.C. §§ 1961-1962 & 1964(c) (1982).

150. Bennett v. Berg, 685 F.2d 1053, 1059 (8th Cir. 1982).

151. *See Moss*, 719 F.2d at 22; *supra* notes 111-117 and accompanying text (discussion of *Moss* court's treatment of enterprise requirement). The *Moss* court declined to reach the precise issue of whether § 1964(c) requires a plaintiff to allege racketeering enterprise injury. 719 F.2d at 20 n.16.

152. *See supra* notes 128-151 (discussing commercial, competitive, and racketeering enterprise injury standing limitations of RICO).

153. *See* OCCA, Pub. L. No. 91-452, title IX, § 904(a), 84 Stat. 922, 947 (1970) (directing courts to construe broadly RICO's provisions).

154. *See* Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980) (unambiguous language of statute is controlling unless clearly contradicted by express legislative intent), *cited with approval in* United States v. Turkette, 452 U.S. 576, 580 (1981); *see also* S. REP. No. 617, 91st Cong., 1st Sess. 158 (1969) (RICO applies to activities characteristic of organized crime); McClellan, *supra* note 22, at 142-43 (Congress passed RICO notwithstanding criticisms of RICO that statute extends outside context of organized crime).

general terms to reach the diverse ways in which organized crime operates.[155] Moreover, the Supreme Court in *Turkette* emphasized that Congress was well aware of RICO's broad scope.[156] *Turkette* supports the notion that courts are without authority to restrict the application of RICO's powerful provisions.[157] The legislature and not the courts should consider the appropriateness of limiting the scope of RICO.[158] Until Congress decides to limit RICO's scope, federal courts should follow *Turkette, Moss*, and *Schacht* and resist the temptation to deviate from the strict application of the statutory provisions of RICO.[159]

ROBERT W. RAY

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155. *See* McClellan, *supra* note 22, at 143 (noting difficulty of drafting statute effective against organized crime that does not also include offenses committed by defendants outside context of organized crime).

156. United States v. Turkette, 452 U.S. 576, 586-87, 593 (1981).

157. *See* United States v. Turkette, 452 U.S. 576, 587 (1981); *see also* Frankfurter, *Some Reflections on the Reading of Statutes*, 47 COLUM. L. REV. 527, 533, 539 (1947) (judiciary should not go beyond interpreting meaning of language of statute since legislative intent is embedded in statutory language). *But see* Note, *Intent, Clear Statements, and the Common Law: Statutory Interpretation in the Supreme Court*, 95 HARV. L. REV. 892, 894 (1982) (criticizing courts for invoking literal reading of statutory language as surrogate for actual legislative intent).

158. *See* Griffin v. Oceanic Contractors, Inc., 102 S. Ct. 3245, 3250, 3252 (1982) (courts should give effect to plain meaning of statute notwithstanding litigants' efforts to convince courts to exercise judicial discretion); *Impropriety of Judicial Restriction, supra* note 32, at 1121.

159. *See supra* notes 32-35, 49, 55-57, 85-91, 111-124 & 138-143 (discussion of *Turkette, Moss*, and *Schacht*).