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ENTERPRISE LIABILITY IN PRIVATE CIVIL RICO ACTIONS

In 1970 Congress enacted the Racketeering Influenced and Corrupt Organizations (RICO)[1] provisions of the Organized Crime Control Act.[2] In enacting RICO Congress intended to halt the infiltration of organized crime into the American economy.[3] Congress, therefore, provided in RICO new civil and criminal penalties as weapons in the war against organized crime.[4] One of the new weapons Congress provided in RICO was a private civil cause of action.[5] Unlike state law actions designed to combat organized crime and racketeering, the private civil RICO action allows plaintiffs injured by a person's violation of section 1962 of RICO to recover treble damages and attorney's fees.[6] Because of the attractive remedies available under RICO, plaintiffs increasingly have turned to RICO for compensation of injuries.[7] To bring a successful private civil RICO claim, a plaintiff must

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1. Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922, 941-48 (codified as amended at 18 U.S.C. §§ 1961-1968 (1982)). The Racketeering Influenced and Corrupt Organizations (RICO) provisions are Title IX of the Organized Crime Control Act. *Id.*

2. Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922.

3. *Id.*, 84 Stat. at 922-23 (Statement of Findings and Purpose). Although the Statement of Findings and Purpose precedes the Organized Crime Control Act rather than specifically preceding the RICO provisions, the Statement also applies to RICO because a similar statement accompanied Senate Bill 1861, the predecessor of RICO. STATEMENT OF FINDINGS AND STATEMENT OF POLICY OF S. 1861, 115 CONG. REC. 9568 (1969); *see* United States v. Thompson, 685 F.2d 993, 1003 (6th Cir. 1982) (Lively, J., dissenting) (stating that Statement of Findings and Purpose before Organized Crime Control Act has primary application to titles within Organized Crime Control Act); H.R. REP. No. 217, 91st Cong., 1st Sess. 83 (1969) (stating that Senate Bill 1861 was predecessor of RICO); Blakey, *The RICO Civil Fraud Action in Context: Reflections on* Bennett v. Berg, 58 NOTRE DAME L. REV. 237, 248 n.28 (1982) (stating that Statement of Findings and Purpose before Organized Crime Control Act applies to RICO).

4. Organized Crime Control Act, 84 Stat. at 922-23 (Statement of Findings and Purpose). The Statement of Findings and Purpose states that Congress designed the Organized Crime Control Act and RICO to provide new legal tools to supplement the existing tools available in the fight against organized crime. *Id.* Congress thought that the existing remedies were too limited in scope and impact, and, therefore, Congress enhanced the available evidence gathering procedures, civil and penal sanctions, and remedies. *Id.*

5. *See* 18 U.S.C. § 1964(c) (1982) (providing private parties with federal claim against persons who injure plaintiffs by violating § 1962 of RICO).

6. *See id.* (providing that plaintiff injured as result of RICO violation shall recover treble damages and attorney's fees).

7. *See* Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 481 (1985) (stating that although plaintiffs initially used civil RICO provisions infrequently, plaintiffs recently have increased dramatically use of RICO); Report of the Ad Hoc Civil RICO Task Force of the ABA Section of Corporation, Banking and Business Law 55 (1985) (noting that of 270 RICO decisions prior to 1985, courts decided 3% throughout the 1970's, 2% in 1980, 7% in 1981, 13% in 1982, 33% in 1983, and 43% in 1984).

prove that a person[8] acting in connection with an enterprise[9] whose activities affect interstate or foreign commerce has committed predicate acts[10] that constitute a pattern of racketeering activity,[11] and, additionally, that the racketeering activity injured the plaintiff.[12] Plaintiffs typically have alleged that by conducting the affairs of an enterprise through a pattern of racketeering, persons have violated section 1962(c) of RICO.[13] Federal courts, however, generally have held that both RICO's language and policy considerations prohibit courts from holding a business enterprise liable as a person under section 1962(c).[14] To avoid section 1962(c) of RICO, therefore,

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8. *See* 18 U.S.C. § 1962(a)-(c) (1982) (using term "person" to describe violator of acts proscribed under RICO); *id.* § 1961(3) (defining term "person" under RICO); *see also infra* notes 25-30 and accompanying text (discussing role of person under RICO).

9. *See* 18 U.S.C. § 1962(a)-(c) (1982) (describing relationship of person to enterprise in different activities prohibited by RICO); *id.* § 1961(4) (defining term "enterprise" under RICO); *see also infra* notes 30-33 and accompanying text (discussing role of enterprise under RICO).

10. *See* 18 U.S.C. § 1962(a)-(c) (1982) (prohibiting person from participating in racketeering activity); *id.* § 1961(1) (defining term "racketeering activity"). Section 1961(1) of RICO provides a list of offenses that constitute racketeering activity. *Id.* The list of racketeering activities includes, among other things, acts or threats involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in dangerous drugs, wire fraud, mail fraud, and securities fraud. *Id.*

11. *See id.* § 1962(a)-(c) (indicating that prohibited activity must constitute pattern of racketeering activity); *id.* § 1961(5) (defining term "pattern of racketeering activity" as at least two racketeering acts occurring within ten years of each other).

12. *See id.* § 1964(c) (requiring that plaintiff suffer injury in business or property before plaintiff may bring private civil RICO action).

13. *See* Note, *Judicial Efforts to Redirect an Errant Statute: Civil RICO and the Misapplication of Vicarious Corporate Liability*, 65 B. UNIV. L. REV. 561, 586 (1985) (recognizing that most civil RICO plaintiffs allege violations of § 1962(c)). Plaintiffs bring actions under section 1962(c) of RICO because section 1962(c) requires plaintiffs to show only that a person has conducted racketeering activity while participating in the affairs of an enterprise. *Id.* at 567-68; *see* United States v. Webster, 669 F.2d 185, 186-87 (4th Cir. 1982) (plaintiff alleging violation of § 1962(c) not required to show enterprise has financially benefitted from pattern of racketeering activity); 18 U.S.C. § 1962(c) (1982) (prohibiting person from conducting affairs of enterprise through pattern racketeering activity); *see also infra* note 23 (providing statutory language of § 1962(c)). Plaintiffs may allege violations of RICO section 1962(c) more frequently than sections 1962(a) and 1962(b) because, unlike sections 1962(a) and 1962(b), section 1962(c) does not require evidence of the source of the racketeering income or control of the enterprise. *See* Note, *supra*, at 567-68. Under section 1962(a) plaintiffs must show that a person has received racketeering income. *See* Schofield v. First Commodity Corp. of Boston, 793 F.2d 28, 31 n.2 (1st Cir. 1986) (stating that under § 1962(a) plaintiff must show source of racketeering income and prove that funds were channeled into enterprise); 18 U.S.C. § 1962(a) (1982) (prohibiting person from receiving income derived from racketeering activity); *see also infra* note 21 (providing statutory language of § 1962(a)). Under section 1962(b) plaintiffs must show that a person has acquired or maintained an interest in or control of an enterprise. *See* 18 U.S.C. § 1962(b) (1982) (prohibiting person from acquiring or maintaining interest in or control of enterprise through pattern of racketeering activity); *see also infra* note 22 (providing statutory language of § 1962(b)).

14. *See* Garbade v. Great Divide Mining & Milling Corp., 831 F.2d 212, 213 (10th Cir. 1987) (holding that same entity may not be simultaneously both enterprise and person liable

plaintiffs in civil RICO actions have attempted to reach the deep pocket of the business enterprise by alleging that the enterprise is liable under section 1962(a) or section 1962(b) of RICO.[15]

I. THE STRUCTURE OF THE RICO STATUTE

Section 1964 establishes the civil remedies available under RICO.[16] Section 1964(a) authorizes federal district courts to implement drastic civil remedial measures to prevent and restrain violations of section 1962 of RICO.[17] Section 1964(b) empowers the Attorney General to bring a civil cause of action under RICO.[18] Section 1964(c) creates a private civil RICO cause of action for any person whose business or property suffers injury resulting from a violation of section 1962.[19]

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under § 1962(c) of RICO); Bishop v. Corbitt Marine Ways, Inc., 802 F.2d 122, 123 (5th Cir. 1986) (same); Schofield v. First Commodity Corp. of Boston, 793 F.2d 28, 30-31 (1st Cir. 1986) (same); Bennett v. United States Trust Co. of N.Y., 770 F.2d 308, 314-15 (2nd Cir.) (same), *cert. denied* 107 S. Ct. 3266 (1985); B.F. Hirsch v. Enright Refin. Co., 751 F.2d 628, 633 (3d Cir. 1984) (same); Haroco, Inc. v. Am. Nat'l Bank & Trust Co. of Chicago, 747 F.2d 384, 399-401 (7th Cir. 1984) (same), *aff'd per curiam on other grounds*, 473 U.S. 606 (1985); Rae v. Union Bank, 725 F.2d 478, 481 (9th Cir. 1984) (same); Bennett v. Berg, 685 F.2d 1053, 1061-62 (8th Cir.) (same), *cert. denied*, 464 U.S. 1006 (1984); United States v. Computer Sciences Corp., 689 F.2d 1181, 1190 (4th Cir.) (same), *cert. denied*, 459 U.S. 1105 (1982). *But see* United States v. Hartley, 678 F.2d 961, 986-90 (11th Cir.) (holding that enterprise may be person under § 1962(c)), *cert. denied*, 459 U.S. 1170 (1982); *infra* note 63 (discussing Eleventh Circuit's decision in *United States v. Hartley* to hold enterprise as person under § 1962(c)); *infra* notes 65-89 and accompanying text (discussing Seventh Circuit's decision in *Haroco Inc. v. American National Bank & Trust Co. of Chicago* to prohibit enterprise from being person under § 1962(c)).

15. *See, e.g.*, Schreiber Distrib. Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1397 (9th Cir. 1986) (plaintiffs identify corporate enterprise as person under §§ 1962(a) and 1962(b), rather than under § 1962(c)); Rhoades v. Powell, 644 F. Supp. 645, 671 (E.D. Cal. 1986) (plaintiffs arguing that although enterprise may not be person under § 1962(c), enterprise may be person under § 1962(a)); Kredietbank v. Morris, No. 84-1903 (D.N.J. Jan. 9, 1986) (available on WESTLAW, allfeds database) (plaintiffs argue that enterprise may be person under § 1962(a) even though enterprise may not be person under § 1962(c)); H.J. Inc. v. Northwestern Bell Tel. Co., 648 F. Supp. 419, 427 (D. Minn. 1986) (same), *aff'd on other grounds*, 829 F.2d 648 (8th Cir. 1987).

16. 18 U.S.C. § 1964 (1982).

17. *Id.* § 1964(a). Section 1964(a) of RICO states that the federal district courts may prevent and restrain violations of section 1962 by issuing orders including, but not limited to, ordering any person to divest himself of an interest in any enterprise, imposing reasonable restrictions on the future activities or investments of any person, or ordering the dissolution or reorganization of any enterprise. *Id.* The courts must, however, make due provision for the rights of innocent parties not involved in the racketeering activity. *Id.*

18. *Id.* § 1964(b).

19. *Id.* § 1964(c). Section 1964(c) of RICO states as follows:

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

Id.

Section 1962 lists the activities proscribed by RICO.[20] Section 1962(a) forbids any person who has received income from a pattern of racketeering activity from investing the income in an enterprise.[21] Section 1962(b) prohibits any person from acquiring or maintaining control of an enterprise through a pattern of racketeering activity.[22] Section 1962(c) forbids any person employed by or associated with an enterprise from conducting the affairs of the enterprise through a pattern of racketeering activity.[23] Section 1962(d) prohibits any person from conspiring to violate subsections (a), (b), or (c) of section 1962.[24]

In proscribing different racketeering activities, section 1962 provides that only a person may be a defendant in a civil RICO action.[25] Section

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20. *Id.* § 1962; *see infra* notes 21-24 and accompanying text (discussing subsections of § 1962).

21. 18 U.S.C. § 1962(a) (1982). Section 1962(a) of RICO states as follows:

> It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal . . . to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in the acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. . . .

Id.

22. *Id.* § 1962(b). Section 1962(b) of RICO states as follows:

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

Id.

23. *Id.* § 1962(c). Section 1962(c) of RICO states as follows:

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

Id.

24. *Id.* § 1962(d). To establish that a person has violated section 1962(d) of RICO, a party must show that the person agreed to participate in racketeering activity prohibited by sections 1962(a), 1962(b), or 1962(c) of RICO. United States v. Riccobene, 709 F.2d 214, 220-21 (3d Cir. 1983) , *cert. denied*, 464 U.S. 849 (1984); United States v. Elliot, 571 F.2d 880, 903 (5th Cir.), *cert. denied*, 439 U.S. 953 (1978). Courts have held, therefore, that if an enterprise may not be a person who violates sections 1962(a), 1962(b), or 1962(c), an enterprise may not be a person who violates section 1962(d) by conspiring to violate sections 1962(a), 1962(b), or 1962(c). *See, e.g*, Mohr v. Clair Ins. Agency, Inc., No. 86-2691 (E.D. Pa. May 20, 1987) (available on WESTLAW, allfeds database) (holding that because plaintiff's claims alleging enterprise as person fail under §§ 1962(a) and (c), plaintiff's claims alleging that enterprise conspired to violate §§ 1962(a) and 1962(c) in violation of RICO § 1962(d) fail also); Gilbert v. Prudential-Bache Securities, Inc., 643 F. Supp. 107, 110 (E.D. Pa. 1986) (holding that plaintiff, under § 1962(d) of RICO, may not show conspiracy to violate § 1962(c) of RICO without showing separate person and enterprise); Rush v. Oppenheimer & Co., Inc., 628 F. Supp. 1188, 1198 n.5 (S.D.N.Y. 1985) (holding that because enterprise may not be person who violates §§ 1962(a) or 1962(c) of RICO, enterprise may not conspire to violate §§ 1962(a) or 1962(c) of RICO).

25. *See* 18 U.S.C. § 1962(a)-(d) (1982) (prohibiting any person from violating subsections of § 1962).

1961(3) of RICO broadly defines the term "person" to include any individual or entity capable of holding a beneficial interest in property.[26] To violate RICO, the person must invest in,[27] acquire or maintain control of,[28] or conduct activity through[29] an enterprise.[30] Section 1961(4) of RICO defines the term "enterprise" to include any individual or legal entity, or any group of individuals associated in fact though not a legal entity.[31] To prove the existence of an enterprise, a RICO plaintiff must establish, first, that the entity exists as an ongoing organization, second, that those associated with the organization function as a continuing unit, and, third, that the enterprise exists separate from the pattern of racketeering in which the enterprise is engaging.[32] The enterprise, however, does not have to consist of a formal or legal organization.[33] Courts agree that an entity may be both a person

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26. *Id.* § 1961(3).

27. *Id.* § 1962(a); *see supra* note 21 and accompanying text (providing statutory language of § 1962(a)).

28. 18 U.S.C. § 1962(b) (1982); *see supra* note 22 and accompanying text (providing statutory language of § 1962(b)).

29. 18 U.S.C. § 1962(c) (1982); *see supra* note 23 and accompanying text (providing statutory language of § 1962(c)).

30. *See* 18 U.S.C. § 1962(a)-(c) (1982) (requiring existence of person and enterprise for violation of § 1962); *id.* § 1961(4) (defining term "enterprise" under RICO); *see also* United States v. Turkette, 452 U.S. 576, 583 (1981) (stating that existence of enterprise is necessary element of RICO claim).

31. 18 U.S.C. § 1961(4) (1982). Section 1961(4) of RICO states that an enterprise may be an individual, a partnership, a corporation, an association, or any other legal entity, or merely a union or group of individuals associated in fact though not a legal entity. *Id.*

32. *See* United States v. Turkette, 452 U.S. 576, 583 (1980) (stating criteria for showing that enterprise exists). An enterprise does not have to consist of the same individuals throughout its existence to satisfy the requirement that the enterprise function as a continuing unit. *See* United States v. Riccobene, 709 F.2d 214, 223 (3d Cir. 1983) (stating that individuals may leave enterprise and new individuals may join at later time), *cert. denied*, 464 U.S. 849 (1984); United States v. Bledsoe, 674 F.2d 647, 664-65 (8th Cir. 1982) (stating that different individuals may manage affairs of enterprise at different times), *cert. denied*, 459 U.S. 1040 (1983). An enterprise, however, must have some continuity of structure and personality. *See Riccobene*, 709 F.2d at 222 (finding that activities of individuals in loansharking and numbers operations indicated continuous hierarchical structure composed of leader, inner group of advisors, and unidentified lower level associates); *Bledsoe*, 674 F.2d at 664-65 (holding that two different associations with common members did not constitute single enterprise). To establish that an enterprise exists apart from the pattern of racketeering activity, a plaintiff does not need to show that the enterprise has some function unrelated to racketeering activity. *See Riccobene*, 709 F.2d at 223-24 (holding that organization that conducted loansharking and numbers operations constituted enterprise); *Bledsoe*, 674 F.2d at 665 (stating that prostitution ring may constitute enterprise). A plaintiff must show merely that the enterprise has functioned in some way apart from the alleged predicate racketeering acts. *See Riccobene*, 709 F.2d at 223-24 (finding that structure of loansharking and numbers operation had clearinghouse and coordination function above and beyond that necessary to carry out one of alleged predicate acts); *Bledsoe*, 674 F.2d at 665 (stating that proof of distinct structure could be demonstrated by evidence that organization engaged in diverse patterns of racketeering activity). Proof of an organization that regularly oversees and coordinates the commission of different racketeering activities would satisfy the separate existence requirement. *Riccobene*, 709 F.2d at 223-24.

33. *See* 18 U.S.C. § 1961(4) (1982) (providing that enterprise may be legal entity or

and an enterprise under the definitions provided in section 1961 of RICO.[34] Courts disagree, however, on whether an entity simultaneously may be a person and an enterprise under section 1962 of RICO.[35] Accordingly, courts disagree on whether a private civil plaintiff may recover from an enterprise as a person for injuries resulting from a violation of section 1962.[36]

The language of RICO specifically does not indicate whether Congress intended for enterprises to be liable to private civil plaintiffs for violations of section 1962.[37] When statutory language is plain, and when Congress gives no indication that courts should read a statute differently, courts should regard the language of the statute as conclusive and should literally construe the statute.[38] When statutory language is ambiguous, however, courts must probe the legislative history and policies behind the statute to derive Congress' intent.[39] Courts, therefore, must examine RICO's policy objectives to determine whether Congress intended for an enterprise to be liable as a person for violations of section 1962.

II. THE LEGISLATIVE POLICIES OF RICO

Congress designed RICO to inhibit the infiltration of legitimate businesses by organized crime.[40] In drafting RICO Congress considered the

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merely association in fact). Section 1961(4) of RICO describes two classes of enterprises. *Id.*; United States v. Turkette, 452 U.S. 576, 581 (1981). The first class of enterprise encompasses legal entities like corporations and partnerships. *Turkette*, 452 U.S. at 581. The second class of enterprise consists of a group of individuals who have no legally recognized structure but merely are an association in fact. *Id.* The United States Supreme Court has stated that the association in fact enterprise encompasses not only legal organizations, but also illegal organizations that control activities like illegal gambling and loansharking. *See Turkette*, 452 U.S. at 580-91 (holding that neither statutory language nor legislative history indicate that scope of enterprise should be limited to legal entities); *see also supra* note 32 and accompanying text (discussing criteria for determining whether entity qualifies as enterprise).

34. *See* Haroco, Inc. v. Am. Nat'l Bank & Trust Co. of Chicago, 747 F.2d 384, 400 (7th Cir. 1984) (holding that corporation may satisfy definitions of both person and enterprise under § 1961), *aff'd per curiam on other grounds*, 473 U.S. 606 1985); Schofield v. First Commodity Corp. of Boston, 793 F.2d 28, 29-30 (1st Cir. 1986) (same); *see* 18 U.S.C. § 1961(3) (1982) (providing definition of term "person"); *id.* § 1961(4) (providing definition of term "enterprise").

35. *See infra* notes 65-141 and accompanying text (discussing different interpretations of whether enterprise may be person under § 1962 of RICO).

36. *Compare* Schreiber Distrib. Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1398 (9th Cir. 1986) (holding that enterprise may be liable to private plaintiff as person for injuries resulting from violation of §§ 1962(a) or 1962(b)) *with* Mohr v. Clair Ins. Agency, Inc., No. 86-2691 (E.D. Pa. May 20, 1987) (holding that enterprise may not be liable as person under any subsection of § 1962).

37. *See* United States v. Local 560, Int. Bhd. of Teamsters, 581 F. Supp. 279, 283-86 (D.N.J. 1984) (stating that nothing in RICO statute indicates that person and enterprise elements must be mutually exclusive), *aff'd*, 780 F.2d 267, *cert. denied*, 106 S. Ct. 2247 (1985); Blakey, *supra* note 3, at 287-88 (stating that nothing on face of RICO statute compels conclusion that enterprise may not be person).

38. United States v. Turkette, 452 U.S. 576, 580 (1981); Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980).

39. *See* D. SANDS, SUTHERLAND STATUTORY CONSTRUCTION § 45.02 (4th ed. 1973) (stating that one should solve statutory ambiguity by examining legislative history of statute).

40. Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922, 922-23

existing penal sanctions available against individuals involved in organized crime inadequate to remove criminal influence from legitimate business endeavors.[41] Therefore, to attack the economic base through which organized criminals threatened the American economy, Congress fashioned new criminal and civil remedies.[42] Congress envisioned the civil provisions as the foundation of RICO,[43] from which the federal courts could fashion a broad range of relief to rid the enterprise infiltrated by organized crime of its criminal element.[44] The civil RICO provisions authorize the federal courts to issue a panoply of remedial orders, including divestiture of funds from persons involved in the infiltrated enterprise, imposition of restrictions on the activities of people involved in the racketeering activities of the enterprise, and dissolution or reorganization of the infiltrated enterprise.[45] Congress explicitly directed the courts to construe liberally any ambiguous language of RICO to effectuate the remedial goals of RICO.[46]

By providing private plaintiffs and attorneys general with the new civil remedies, Congress hoped to deter racketeering activity in situations in which criminal sanctions were either inadequate or impossible to impose.[47] Congress realized that the new civil remedies were more flexible, required a lesser standard of proof, and were more effective in actually removing organized crime from the infiltrated enterprise than existing criminal penalties.[48] Congress designed the civil remedies of RICO primarily to remove the corrupting element from legitimate businesses rather than to punish wrongdoers.[49]

(Statement of Findings and Purpose); *see* United States v. Turkette, 452 U.S. 576, 591 (1981) (stating that Congress primarily designed RICO to protect legitimate businesses from infiltration by racketeers).

41. Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922, 922-23 (Statement of Findings and Purpose). Congress designed RICO to provide new legal tools to deal with the unlawful activities of persons engaged in organized crime. *Id.*; *see supra* note 4 and accompanying text (indicating that Congress thought that before enactment of RICO, tools available to fight organized crime were inadequate).

42. S. REP. No. 617, 91st Cong., 1st Sess. 79 (1969); *see* 18 U.S.C. § 1963 (1982) (providing criminal penalties of fines up to $25,000 and imprisonment for up to 25 years for persons violating § 1962 of RICO); 18 U.S.C. § 1964 (1982) (providing attorney general and private parties with civil causes of action against persons violating § 1962); *see supra* notes 16-19 and accompanying text (discussing civil remedies of RICO statute).

43. *See* 115 CONG. REC. 6993 (1969) (statement of Sen. Hruska on Senate Bill 1861, a preliminary version of RICO) (stating that Congress intended criminal provisions of RICO primarily to be adjunct to civil provisions).

44. *Id.*; *see* 18 U.S.C. § 1964(a), (c) (1982) (providing courts with power to grant injunctive and monetary relief).

45. 18 U.S.C. § 1964(a) (1982); *supra* note 17 and accompanying text (describing § 1964(a) of RICO).

46. Organized Crime Control Act of 1970, Pub. L. No. 91-452, § 904(a), 84 Stat. 947 (providing that courts should construe RICO liberally to effectuate RICO's remedial purposes).

47. *See* S. REP. No. 617, *supra* note 43, at 82 (noting advantages that RICO's civil provisions had over existing criminal statutes).

48. *See id.* (stating reasons why Congress hoped RICO's civil remedies would supplement existing methods of fighting racketeering).

49. *See id.* at 160 (stating that Congress designed RICO § 1964 to be remedial, rather

Although Congress established the civil remedies of RICO primarily to protect legitimate businesses from infiltration by persons conducting racketeering activity, Congress also enacted RICO's civil remedies to achieve other objectives.[50] Congress intended RICO also to provide compensation for parties injured as a result of violations of section 1962[51] and to achieve a broader goal of clearing the lanes of American commerce of racketeering activity.[52] Congress, therefore, hoped that the private civil remedy provided in section 1964(c) of RICO would both compensate the injured plaintiff and enhance the effectiveness of RICO's prohibitions against racketeering activity.[53]

When the business enterprise is the person who violates section 1962, however, the legislative goals of RICO of rehabilitating the infiltrated business and compensating the injured party can conflict.[54] Courts have recognized that by imposing liability on the enterprise for violations of section 1962, courts compensate the injured plaintiff.[55] The same courts have recognized, however, that by holding the enterprise liable for violations of section 1962, courts may contradict congressional intent by punishing the infiltrated enterprise for whose benefit Congress drafted RICO.[56] The conflict between the policies of compensating the injured plaintiff under section 1964(c) and of rehabilitating the enterprise infiltrated by organized crime has resulted in different interpretations concerning an enterprise's civil liability for violations of section 1962.[57] Some courts and commentators

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than punitive). Congress provided for punishment of individual violators of RICO in RICO's criminal provisions. *See* 18 U.S.C. § 1963 (1982) (providing criminal penalties for RICO violations); *supra* note 42 and accompanying text (discussing criminal penalties provided in RICO).

50. *See infra* notes 51-52 and accompanying text (stating that Congress enacted RICO to provide remedy for parties injured by racketeering activity and to eliminate racketeering influence from American economy).

51. *See* 18 U.S.C. § 1964(c) (1982) (providing treble damages and attorney's fees for individuals injured by reason of violation of § 1962).

52. United States v. Turkette, 452 U.S. 576, 585 (1981) (stating that RICO's civil provisions are useful in removing organized crime from American society).

53. *Hearings on S. 30, and Related Proposals, before Subcommittee No. 5 of the House Committee on the Judiciary*, 91st Cong., 2d Sess., 520 (1970) [hereinafter *Hearings on S. 30*] (remarks of Representative Steiger); *see* 116 CONG. REC. 25190 (1970) (remarks of Sen. McClellan, sponsor of RICO in Senate (stating that treble damages provision of § 1964(c) of RICO would be major tool in eliminating organized crime from American economy).

54. *See infra* notes 55-60 and accompanying text (noting that policies behind compensating plaintiff and rehabilitating enterprise may conflict).

55. *See* Haroco v. Am. Nat'l. Bank & Trust Co. of Chicago, 747 F.2d 384, 401-02 (7th Cir. 1984) (recognizing that allowing corporate enterprise liability for violations of § 1962 would provide deep pocket for private plaintiffs), *aff'd per curiam on other grounds*, 473 U.S. 606 (1985).

56. *See id.* (recognizing that corporate enterprise should not be liable for violation of § 1962 when enterprise is victim or passive instrument of racketeering activity).

57. *See id.* at 401 (indicating that competing policy arguments are responsible for different views on whether enterprise may be person under § 1962 of RICO); *infra* notes 66-141 and accompanying text (discussing different interpretations of whether private civil plaintiff may recover from enterprise for violation of § 1962 of RICO).

have found that because RICO specifically does not prohibit holding an enterprise liable as a person, the enterprise should be liable for injuries the enterprise causes from violations of section 1962.[58] Other courts have held that although RICO's language in section 1962(c) clearly envisions a mutually exclusive person and enterprise, some enterprises may be liable for violations of sections 1962(a) or 1962(b) without contravening congressional intent to rehabilitate the enterprise victimized by racketeering activity.[59] Still other courts have held that because holding the enterprise liable as a person would frustrate RICO's policy to rehabilitate the infiltrated enterprise, the language of all of section 1962 contemplates an enterprise different from the person.[60]

III. Cases Interpreting the Enterprise Liability Issue

In most private civil RICO claims plaintiffs have alleged violations of section 1962(c).[61] Courts, therefore, usually have examined whether an entity may be simultaneously an enterprise and a person under section 1962(c).[62] The overwhelming majority of courts have held that because section 1962(c) of RICO requires the person to be employed by or associated with the

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58. *See* United States v. Hartley, 678 F.2d 961, 986-90 (11th Cir.) (holding that neither statutory language nor congressional intent prevent enterprise from being person under § 1962 of RICO), *cert. denied*, 459 U.S. 1170 (1982); Blakey, *supra* note 3, at 286-325 (stating that because statutory language of RICO does not prohibit holding enterprise as person, courts should hold enterprises liable as persons for violating § 1962 to effectuate remedial purposes of RICO); *infra* note 64 (discussing *Hartley*). Professor Blakey describes the roles an enterprise may play in a violation of section 1962 of RICO as those of victim, prize, instrument, or perpetrator. Blakey, *supra* note 3, at 327. Professor Blakey states that the enterprise should not be civilly liable as a person for violations of RICO when the enterprise is a victim or prize. *Id.* at 307-23 Professor Blakey reasons that when the enterprise is a victim or prize the enterprise plays no active role in the racketeering activity. *Id.* at 307-23. Professor Blakey states, however, that when an enterprise acts as an instrument or perpetrator in violating section 1962 the enterprise should be civilly because the enterprise is involved in the racketeering activity. *Id.*

59. *See, e.g.*, Schofield v. First Commodity Corp. of Boston, 793 F.2d 28, 30-34 (1st Cir. 1986) (holding that enterprise may be person under § 1962(a), but not under § 1962(c)); Haroco, Inc. v. Am. Nat'l Bank & Trust Co. of Chicago, 747 F.2d 384, 400-02 (7th Cir. 1984) (same); Schreiber Distributing Co. v. Sev-Well Furniture Co., 806 F.2d 1393, 1396-98 (9th Cir. 1986) (holding that enterprise may be person under §§ 1962(a) or 1962(b), but not under § 1962(c)); *see infra* notes 65-89 and accompanying text (discussing *Haroco*); *infra* notes 92-109 and accompanying text (discussing *Schreiber*).

60. *See* Mohr v. Clair Ins. Agency, Inc., No. 86-2691 (E.D. Pa. May 20, 1987) (available on WESTLAW, allfeds database) (holding that enterprise may not be liable as person for violation of any subsection of § 1962 of RICO); CATV Support Serv., Inc. v. Magnavox CATV Syst., Inc., No. 86-2276 (S.D.N.Y. May 7, 1987) (available on WESTLAW, allfeds database) (same); Kredietbank v. Joyce Morris, Inc., No. 84-1903 (D.N.J. Jan. 9, 1986) (available on WESTLAW, allfeds database) (same).

61. *See supra* note 13 and accompanying text (noting that private civil RICO plaintiffs most frequently allege violations of §1962(c) of RICO).

62. *Id.*

enterprise, an enterprise may not be a person under section 1962(c).[63] These courts have reasoned that allowing an enterprise to be a person under 1962(c) would produce the anomalous result of having the enterprise employed by or associated with itself.[64] For example, in *Haroco, Inc. v. American National Bank & Trust Co. of Chicago*,[65] the United States Court of Appeals for the Seventh Circuit considered whether an enterprise may

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63. *See supra* note 14 and accompanying text (citing cases holding that enterprise may not be person under § 1962(c)). The First, Second, Third, Fourth, Fifth, Seventh, Eighth, Ninth, and Tenth Circuits have held that an enterprise may not be a person under section 1962(c) of RICO. *Id.* Only the Eleventh Circuit has held that an enterprise may be a person under section 1962(c). *See* United States v. Hartley, 678 F.2d 961, 986-90 (11th Cir.) (holding that corporation may be liable for violation of § 1962(c)), *cert. denied*, 659 U.S. 1170 (1982). In *Hartley* the government alleged that Treasure Isle, Inc. (Treasure Isle) and an officer and a manager of Treasure Isle violated RICO section 1962(c) by conducting a pattern of racketeering activity through the enterprise, Treasure Isle. *Id.* at 965-66. The government alleged, therefore, that Treasure Isle acted as both enterprise and person in violating section 1962(c). *Id.* at 988. The *Hartley* court noted that the statutory language of section 1962(c) of RICO does not specifically prohibit an enterprise from being a person. *Id.* at 987-88. In addition, the Eleventh Circuit noted that Congress mandated a liberal construction of RICO to effectuate RICO's remedial purposes. *Id.* The *Hartley* court then offered three rationales to support its conclusion that an entity can be both a person and an enterprise under section 1962(c) of RICO. *Id.* at 989-90. The Eleventh Circuit noted, first, that allowing a central figure engaged in a pattern of racketeering activity to escape liability under RICO merely because the complaint names the person as an enterprise would defy reason. *Id.* The Eleventh Circuit reasoned, second, that there would be no pleading problem if the government had charged the multiple defendants collectively as an association in fact, and charged Treasure Isle singly as the enterprise. *Id.* The Eleventh Circuit stated that because an independent enterprise element existed, the Eleventh Circuit was satisfied with the form of the charges against defendant. *Id.* The *Hartley* court noted, finally, that the court could have found the defendant was both enterprise and person if the court had pierced the corporate veil. *Id.* at 989. The Eleventh Circuit explained that although the corporate defendant qualified as a person under RICO, if the court had pierced the defendant's corporate veil, the court would find a group of individuals associated in fact that would satisfy the enterprise requirement. *Id.* The *Hartley* court held, therefore, that an enterprise may be a person under section 1962(c) of RICO. *Id.* at 990.

In stating its second reason for holding the enterprise as a person, the *Hartley* court apparently makes the mistake of thinking that an association in fact may qualify as a person under RICO. *Id.* An association in fact, however, is a type of enterprise rather than a person. *See supra* note 33 and accompanying text (discussing the association in fact as enterprise). An association in fact may not be a person because an association in fact may not hold an interest in property. *See* 18 U.S.C. § 1961(4) (1982) (indicating that person must be able to hold interest in property); Haroco, Inc. v. Am. Nat'l Bank & Trust Co. of Chicago, 727 F.2d 384, 401 (7th Cir. 1984) (noting that *Hartley* court mistakenly believed that an association in fact could be a person), *aff'd per curiam on other grounds*, 473 U.S. 606 (1985).

64. *See, e.g.*, United States v. DiCaro, 772 F.2d 1314, 1319 (7th Cir. 1985) (finding that corporate enterprise logically may not be employed by or associated with itself); B.F. Hirsch v. Enright Ref. Co., 751 F.2d 628, 633 (3d Cir. 1985) (same); Rhoades v. Powell 644 F. Supp. 645, 672 (E.D. Cal. 1986) (finding that enterprise may not be person under § 1962(c) because person must be employed by or associated with enterprise); Vietnam Veterans of Am., Inc. v. Guerdon Indus., 644 F. Supp. 951, 956 (D. Del. 1986) (same).

65. 727 F.2d 384 (7th Cir. 1984), *aff'd per curiam on other grounds*, 473 U.S. 606 (1985).

be a person under section 1962(c) of RICO.[66] The plaintiffs in *Haroco* were several businesses that borrowed money from American National Bank & Trust Co. of Chicago (ANB).[67] The plaintiffs brought a private civil action in the United States District Court for the Northern District of Illinois against ANB, an officer and director of ANB, and the parent corporation of ANB.[68] The plaintiffs alleged that by using the mails in furtherance of a scheme to defraud the plaintiffs by overstating the plaintiffs' interest rates, the defendants had conducted a pattern of racketeering activity.[69] The plaintiffs also alleged that the plaintiffs suffered injury by having to pay excessive interest rates to ANB.[70] The plaintiffs claimed that ANB was both a person and an enterprise because ANB had conducted its own affairs through a pattern of racketeering activity in violation of section 1962(c) of RICO.[71] The district court, however, did not consider whether ANB could be both a person and an enterprise under section 1962(c) because the district court dismissed the complaint on other grounds.[72] The plaintiffs subsequently appealed to the Seventh Circuit.[73]

On appeal the Seventh Circuit rejected the district court's grounds for dismissal and considered ANB's defense that ANB could not be simultaneously a person and an enterprise under section 1962(c).[74] The Seventh Circuit acknowledged that a corporation could qualify as both a person and an enterprise under section 1961 of RICO.[75] The Seventh Circuit also recognized that Congress expressly instructed courts to construe liberally the provisions of RICO.[76] The *Haroco* court found, however, that RICO's language in section 1962(c) requiring the liable person to be employed by or associated with the enterprise indicates that a person must be distinct from the enterprise.[77] The Seventh Circuit reasoned that because the statutory language is so clear, the court would not stretch the liberal construction principle of RICO to reach the enterprise as a person under section 1962(c).[78]

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66. Haroco, Inc. v. Am. Nat'l Bank & Trust Co. of Chicago, 727 F.2d 384, 385 (7th Cir. 1984), *aff'd per curiam on other grounds*, 473 U.S. 606 (1985).

67. *Id.*

68. *Id.*

69. *Id.* at 385-86. In *Haroco* the plaintiffs alleged that the defendants violated section 1962(c) of RICO by conducting a pattern of mail fraud through the enterprise, American Bank & Trust Co. of Chicago (ANB). *Id.* at 385; *see* 18 U.S.C. § 1961(1)(B) (1982) (listing mail fraud as racketeering activity).

70. *Haroco*, 727 F.2d at 385.

71. *Id.* at 385-86.

72. *Id.* at 386. The district court in *Haroco* dismissed the plaintiffs' claim because the plaintiffs failed to allege that the plaintiffs had suffered a racketeering injury in addition to the predicate acts of mail fraud. *Id.*

73. *Id.* at 384.

74. *See id.* at 387-99 (holding that RICO claim does not require racketeering injury).

75. *Id.* at 400.

76. *Haroco*, 727 F.2d at 400; *see supra* note 46 and accompanying text (discussing Congress' mandate to construe liberally provisions of RICO).

77. *Haroco*, 727 F.2d at 400.

78. *Id.*

The Seventh Circuit held, therefore, that ANB could not be liable for damages arising out of a violation of section 1962(c).[79]

Although deciding that an enterprise could not be a person under section 1962(c), the *Haroco* court recognized the competing policy considerations of compensating the injured plaintiff on one hand and protecting the victimized enterprise on the other.[80] The Seventh Circuit reasoned that by determining enterprise liability according to the role the enterprise plays in the racketeering activity, courts could strike a balance between the competing policy considerations.[81] The *Haroco* court stated that when the enterprise is the perpetrator or central figure in the racketeering activity, the enterprise should be liable as a person for injuries the enterprise causes.[82] The Seventh Circuit stated, however, that the enterprise should not be liable when the enterprise is a victim or a passive instrument through which others perpetrate racketeering activity.[83]

In considering the competing policy considerations, the Seventh Circuit found that the language of section 1962 allows courts to resolve enterprise liability according to the relationship the enterprise has with the prohibited activity.[84] The Seventh Circuit stated that, unlike section 1962(c), section 1962(a) of RICO does not require the person to be employed by or associated with the enterprise.[85] The Seventh Circuit noted that, instead, section 1962(a) prohibits a person from receiving income derived from a pattern of racketeering activity and using that income to establish or operate an enterprise.[86] The Seventh Circuit reasoned, therefore, that when the enterprise uses the proceeds of racketeering activity in its operations, an enterprise could be a person under section 1962(a).[87] The Seventh Circuit stated that if courts

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79. *Id.*

80. *Id.* at 401-02. The *Haroco* court noted that the plaintiffs argued that corporate enterprises should be liable for violations of section 1962(c) because Congress intended to create a deep pocket for plaintiffs when corporate agents engage in a pattern of racketeering that benefits the corporation. *Id.* at 401. The *Haroco* court also noted, however, that another court had held that a corporate enterprise should not be liable as a person under section 1962(c) of RICO because the enterprise may be merely a passive instrument or victim of racketeering activity. *Id.*; *see* Parnes v. Heinold Commodities, Inc., 548 F. Supp. 22, 23-24 (N.D. Ill. 1982) (holding that corporate enterprise should not be liable for violating § 1962(c) of RICO when corporation is victim of racketeering activity).

81. *Haroco*, 747 F.2d at 401; *see infra* note 82-83 and accompanying text (discussing when enterprise should be liable for violation of § 1962 of RICO). The *Haroco* court recognized that under section 1962 of RICO, an enterprise may be either a victim, a prize, an instrument, or perpetrator. *Haroco*, 747 F.2d at 401; *see supra* note 58 (discussing Professor Blakey's description of RICO enterprise as victim, prize, instrument, or perpetrator).

82. *Haroco*, 747 F.2d at 401.

83. *Id.*

84. *Id.* at 401-02.

85. *See id.* at 401-02.

86. *Id.*; *see supra* note 21 (providing statutory language of § 1962(a) of RICO).

87. *Haroco*, 727 F.2d at 402. The Seventh Circuit in *Haroco* did not hold specifically that an enterprise may be a person under section 1962(a) of RICO because plaintiffs only alleged that the enterprise violated section 1962(c). *Id.* The Seventh Circuit, however, subse-

allowed enterprise liability under section 1962(a), courts would find the enterprise liable under RICO only when the enterprise is actually the beneficiary of the racketeering activity, and not merely when the enterprise is the victim of the racketeering activity.[88] The *Haroco* court also stated that by allowing enterprise liability under section 1962(a), courts would promote the primary purpose of RICO by reaching those persons who ultimately profit from racketeering activity, rather than the persons who are victims of racketeering activity.[89]

Most courts considering whether an enterprise may be liable for a RICO violation have agreed with the *Haroco* court that although an enterprise may not be a person under section 1962(c), an enterprise may be liable for a violation of section 1962(a).[90] Additionally, some courts have extended the reasoning of *Haroco* to impose liability on the enterprise under section 1962(b) of RICO as well as under section 1962(a).[91] For example, in *Schreiber Distributing Co. v. Serv-Well Furniture Co.*[92] the United States Court of Appeals for the Ninth Circuit considered whether an enterprise may be a culpable person under sections 1962(a) and 1962(b) of RICO.[93] In *Schreiber*

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quently adopted the position advanced in *Haroco*. *See* Masi v. First City Bank & Trust Co., 779 F.2d 397, 402-03 (7th Cir. 1985) (holding that enterprise may be person under § 1962(a) of RICO if enterprise is direct or indirect beneficiary of racketeering activity).

88. *See Haroco*, 747 F.2d at 402 (stating that enterprise may be liable under § 1962(a) when enterprise uses proceeds from pattern of racketeering activity).

89. *Id.*

90. *See, e.g.*, Petro-Tech, Inc. v. Western Co. of N. Am., 824 F.2d 1349, 1358-61 (3d Cir. 1987) (holding that although enterprise may not be liable under § 1962(c), enterprise may be liable under § 1962(a) if enterprise is beneficiary of pattern of racketeering activity); Garbade v. Great Divide Mining & Milling Corp., 831 F.2d 212, 213-14 (10th Cir. 1987) (same); Schofield v. First Commodity Corp. of Boston, 793 F.2d 28, 29-34 (1st Cir. 1986) (same); Schreiber Distrib. Co. v. Serv-well Furniture Co., 806 F.2d 1393, 1396-98 (9th Cir. 1986) (same); Klapper v. Commonwealth Realty Trust, 657 F. Supp. 948, 954-57 (D. Del. 1987) (same); Roche v. E.F. Hutton & Co., 658 F. Supp. 315, 320-21 (M.D. Pa. 1986) (same); Pennsylvania v. Derry Constr. Co., 617 F. Supp. 940, 943-44 (W.D. Pa. 1985) (same). *But see, e.g.*, United States v. Computer Science Corp., 689 F.2d 1181, 1189-91 (4th Cir. 1982) (holding that enterprise may not be person under §§ 1962(a) or 1962(c)); H.J. Inc. v. Northwestern Bell Tel. Co., 648 F. Supp. 418, 426-28 (D. Minn. 1986) (same), *aff'd on other grounds*, 829 F.2d 648 (8th Cir. 1987); Rush v. Oppenheimer & Co., 628 F. Supp. 1188, 1194-98 (S.D.N.Y. 1985) (same).

91. *See, e.g.*, Schreiber Distrib. Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1396-98 (9th Cir. 1986) (holding that enterprise may be person under §§ 1962(a) and 1962(b) of RICO); Vietnam Veterans of Am., Inc. v. Guerdon Indus. Inc., 644 F. Supp. 951, 955-57 (D. Del. 1986) (same); Pennsylvania v. Derry Constr. Co., 617 F. Supp. 940, 943-44 (W.D. Pa. 1985) (same). *But see, e.g.*, Robinson v. City Colleges of Chicago, 656 F. Supp. 555, 560-61 (N.D. Ill. 1987) (holding that enterprise may be person under § 1962(a), but not under §§ 1962(b) and 1962(c)); Medallion TV Enter. Inc. v. Select TV of California, Inc., 627 F. Supp. 1290, 1294-95 (C.D. Cal. 1986) (holding that enterprise may not be person under §§ 1962(b) or 1962(c)); Bruss Co. v. Allnet Communications Serv., Inc., 606 F. Supp. 401, 407 (N.D. Ill. 1985) (holding that enterprise may be person under § 1962(a), but not under §§ 1962(b) and 1962(c)).

92. 806 F.2d 1393 (9th Cir. 1986).

93. Schreiber Distrib. Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1396-98 (9th Cir. 1986).

the plaintiff sued Landmark Development Co. (Landmark), Serv-Well Development Co. (Serv-Well), and officers and owners of Landmark and Serv-Well in the United States District Court for the Central District of California.[94] The plaintiff alleged that the defendants had violated section 1962(a) by receiving income derived from a pattern of racketeering activity and using that income to operate the enterprises, Serv-Well and Landmark.[95] The plaintiff alleged also that the defendants had violated section 1962(b) by maintaining an interest in or control of Serv-Well and Landmark through a pattern of racketeering activity.[96] The plaintiff's complaint, thus, identified Serv-Well and Landmark as both persons and enterprises under sections 1962(a) and 1962(b) of RICO.[97] The district court, however, dismissed the plaintiff's RICO claims because the plaintiff failed to allege an enterprise separate and distinct from the persons involved in the alleged racketeering activity.[98] The plaintiff subsequently appealed to the Ninth Circuit.[99]

On appeal the *Schreiber* court noted that courts generally have held that an enterprise may not be a person under section 1962(c).[100] The *Schreiber* court stated, however, that sections 1962(a) and 1962(b) do not prohibit identity between persons and enterprises because, unlike section 1962(c), sections 1962(a) and 1962(b) do not require the entities to be mutually exclusive.[101] The Ninth Circuit noted that an enterprise receiving income from a pattern of activity in which the enterprise has engaged as a principal clearly could invest that income in its own operations and thus violate section 1962(a).[102] Agreeing with the reasoning of the Seventh Circuit in *Haroco*, the *Schreiber* court held, therefore, that when an enterprise engaging in racketeering activity is the direct or indirect beneficiary of the pattern of racketeering activity, the enterprise may be liable under section 1962(a).[103]

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94. *Id.* at 1395. In *Schreiber* the plaintiff was the exclusive distributor of Chambers appliances in the 48 contiguous States. *Id.* The plaintiff alleged that defendants attempted to by-pass the plaintiff as exclusive distributor by using Landmark Development Corporation (Landmark) to divert goods to Serv-Well Furniture Company (Serv-Well). *Id.* To by-pass the plaintiff, the defendants represented to Chambers that Landmark wished to distribute Chambers goods in Canada and Alaska. *Id.* Because Landmark could distribute Chambers products in Canada and Alaska without violating the distributorship agreement with the plaintiff, Chambers sent its products to Landmark. *Id.* Landmark purchased the products with money provided by Serv-Well, and then sent the products to Serv-Well for sale in the Los Angeles area. *Id.* The plaintiff alleged that the defendants' use of mail fraud and wire fraud to carry out the diversion scheme constituted a pattern of racketeering activity. *Id.*

95. *Id.* at 1396.

96. *Id.*

97. *Id.* at 1397.

98. *Id.* at 1395.

99. *Id.* at 1393.

100. *Id.* at 1396-97.

101. *Id.* at 1397-99.

102. *Id.* at 1398.

103. *See* Haroco, Inc. v. Am. Nat. Bank & Trust Co. of Chicago, 747 F.2d 384, 402 (7th Cir. 1984) (stating that language of § 1962(a) allows enterprise to be person liable for violation because enterprise receives income derived from racketeering activity under § 1962(a)).

After holding that an enterprise may be liable as a person under section 1962(a), the *Schreiber* court stated, further, that section 1962(b) of RICO was analogous to section 1962(a).[104] The *Schreiber* court explained that whereas section 1962(a) prohibits persons from using money derived from racketeering activity to acquire an interest in an enterprise, section 1962(b) prohibits persons from engaging in racketeering activity to acquire or maintain an interest in an enterprise.[105] The Ninth Circuit noted that the enterprise under section 1962(b), like the enterprise under section 1962(a), necessarily must be the direct or indirect beneficiary of the racketeering activity to qualify as a person.[106] The Ninth Circuit reasoned, therefore, that by imposing liability on the enterprise under sections 1962(a) and 1962(b), courts reach those persons who profit from racketeering without harming innocent enterprises that are merely victims of racketeering activity.[107] Accordingly, the *Schreiber* court held that an entity may be both an enterprise and a person under both sections 1962(a) and 1962(b) of RICO.[108]

Unlike the *Haroco* and *Schreiber* courts, several courts have held that, as with section 1962(c), the statutory language and congressional intent of RICO prevent an enterprise from being a person under sections 1962(a) or 1962(b) or both.[109] For example, in *Rush v. Oppenheimer & Co.*[110] the United States District Court for the Southern District of New York considered whether an enterprise may be a person under sections 1962(a) and 1962(c).[111] In *Rush* the plaintiff brought suit against a securities brokerage firm, Oppenheimer & Co. (Oppenheimer), and an employee of Oppenheimer for violating sections 1962(a) and 1962(c) of RICO .[112] The plaintiff alleged that the defendants had conducted a pattern of racketeering activity by using mail fraud and wire fraud to make excessive trades on the plaintiff's account at Oppenheimer and to make knowingly unsuitable recommendations to the plaintiff concerning the purchase of stocks.[113] The plaintiff

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104. *Schreiber*, 806 F.2d at 1398.

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *See, e.g.*, United States v. Computer Science Corp., 389 F.2d 1181, 1189-91 (4th Cir.) (holding that enterprise may not be person under §§ 1962(a) or 1962(c)), *cert. denied*, 459 U.S. 1170 (1982); Mohr v. Clair Ins. Agency, Inc., No. 86-2691 (E.D. Pa. May 20, 1987) (available on WESTLAW, allfeds database) (holding that enterprise may not be person under any part of § 1962); CATV Support Serv., Inc. v. Magnavox CATV Sys., Inc., No. 86-2276 (S.D.N.Y. May 7, 1987) (available on WESTLAW, allfeds database) (holding that corporate enterprise may not be person under §§ 1962(a), 1962(b), or 1962(c) of RICO); Bruss Co. v. Allnet Communications Serv., Inc., 606 F. Supp. 401, 407 (N.D. Ill. 1985) (holding that enterprise may not be person under §§ 1962(b) or 1962(c)); *see infra* notes 133-41 (discussing court's reasoning in *Bruss Co. v. Allnet Communications Serv., Inc.*)

110. 628 F. Supp. 1188 (S.D.N.Y. 1985).

111. Rush v. Oppenheimer & Co., 628 F. Supp. 1188, 1193-98 (S.D.N.Y. 1985).

112. *Id.* at 1193.

113. *Id.* at 1189-90. In *Rush* the employee of Opperheimer & Co. (Oppenheimer) that allegedly defrauded the plaintiff was a stockbroker and a registered representative of Oppen-

named Oppenheimer as both an enterprise and a person in the RICO claim.[114] The plaintiff alleged that by receiving income derived from the employee's pattern of racketeering activity and using the proceeds of the racketeering activity to operate Oppenheimer, Oppenheimer violated section 1962(a).[115] The plaintiff alleged, further, that by conducting its own affairs through a pattern of racketeering, Oppenheimer violated section 1962(c).[116] The *Rush* court, however, dismissed the section 1962(c) claim for two reasons.[117] First, the district court found that the statutory language of section 1962(c) clearly prohibits an enterprise from being a person.[118] Second, the district court found that Congress did not intend for courts to hold liable under section 1962(c) enterprises that may be passive instruments or victims of racketeering activity.[119]

In considering the plaintiff's section 1962(a) claim, the *Rush* court stated that courts should not examine, ad hoc, an enterprise's role in a racketeering scheme because Congress designed RICO to punish the perpetrators of racketeering acts rather than the enterprises through which those persons conduct their racketeering activity.[120] In finding that an enterprise may not be a person under section 1962(a), the *Rush* court specifically rejected the reasoning of the *Haroco* court.[121] The *Rush* court gave three reasons for rejecting the Seventh Circuit's reasoning that an enterprise may be liable for violations of section 1962(a).[122] The court noted, first, that although a person must operate through an enterprise to violate section 1962(c), section 1962(a) does not require any relationship between the person and the enterprise.[123] The *Rush* court stated that the enterprise even may be the bounty of the racketeering activity through which the perpetrator launders racketeering income.[124] The *Rush* court reasoned, therefore, that if an enterprise may not be liable as a person under section 1962(c), an enterprise should not be liable as a person under section 1962(a) when the enterprise may have no relation to the racketeering acts.[125] The district court noted, second, that the use of the terms "person" and "enterprise" in sections 1962(a) and 1962(c) indicates that the relation between the two entities

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heimer. *Id.* at 1189. The plaintiff alleged that the defendants' untrue investment advice and brokerage commissions cost him in excess of $300,000 in investment losses. *Id.* at 1190.

114. *Id.* at 1193.

115. *Id.* at 1193, 1196.

116. *Id.* at 1193.

117. *Id.* at 1193-96; *see infra* notes 119-20 and accompanying text (discussing reasons why *Rush* court dismissed § 1962(c) claim against Oppenheimer).

118. *Id.* at 1194.

119. *Id.*

120. *Id.* at 1196-97.

121. *Id.* at 1197.

122. *Id.*; *see infra* notes 124-28 (discussing *Rush* court's reasons not to hold enterprise as a person under § 1962(a)).

123. 628 F. Supp. at 1197.

124. *Id.*

125. *Id.*

should be the same under both sections.[126] The *Rush* court noted, finally, that by allowing an enterprise to be a person under section 1962(a), courts only would aggravate the use of the civil RICO statute for purposes other than Congress' intended purpose of removing organized crime from legitimate enterprises.[127] The *Rush* court indicated that an entity should be liable as a person for racketeering acts only if the plaintiff can show that the entity has infiltrated an enterprise.[128] Thus, the *Rush* court held that an enterprise could not be a person under either sections 1962(a) or 1962(c) of RICO.[129]

Several courts have extended the reasoning of the *Rush* court to exclude the enterprise from RICO liability under section 1962(b), in addition to sections 1962(a) and 1962(c).[130] Some courts, however, have distinguished section 1962(b) from section 1962(a).[131] These courts have allowed enterprise liability under section 1962(a), but have excluded the enterprise from liability under section 1962(b).[132] For example, in *Bruss Co. v. Allnet Communication Services, Inc.*,[133] the United States District Court for the Northern District of Illinois considered whether an enterprise may be a person under sections 1962(a), 1962(b), and 1962(c).[134] The plaintiffs in *Bruss* alleged that Allnet Communication Services, Inc. (Allnet) and Allnet's executives, officers, and directors violated sections 1962(a), 1962(b), and 1962(c) of RICO while implementing a scheme to overcharge the plaintiffs for the long distance telephone service that Allnet supplied to the plaintiffs.[135] The plaintiffs claimed that Allnet acted as both a person and the enterprise for each alleged violation of section 1962.[136] Agreeing with the *Haroco* court, the *Bruss* court held that an enterprise may not be a person under section

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126. *Id.*

127. *Id.*

128. *Id.* at 1197-98.

129. *Id.*

130. *See, e.g.*, Mohr v. Clair Ins. Agency, Inc., No. 86-2691 (E.D. Pa. May 20, 1987) (available on WESTLAW, allfeds database) (holding that enterprise may not be person under any subsection of § 1962); CATV Support Serv., Inc. v. Magnavox CATV Syst., Inc., No. 86-2276 (S.D.N.Y. May 7, 1987) (available on WESTLAW, allfeds database) (same); Kredietbank v. Joyce Morris, Inc., No. 84-1903 (D.N.J. Jan. 9, 1986) (available on WESTLAW, allfeds database) (same).

131. *See* Robinson v. City Colleges of Chicago, 656 F. Supp. 555, 560-61 (N.D. Ill. 1987) (holding that enterprise may be person under § 1962(a) of RICO, but not under §§ 1962(b) and 1962(c)); Bruss Co. v. Allnet Communications Serv., Inc., 606 F. Supp. 401, 407 (N.D. Ill. 1985) (same).

132. *See* Robinson v. City Colleges of Chicago, 656 F. Supp. 555, 560-61 (N.D. Ill. 1987) (holding that enterprise may be person under § 1962(a) of RICO, but not under §§ 1962(b) and 1962(c)); Bruss Co. v. Allnet Communications Serv., Inc., 606 F. Supp. 401, 407 (N.D. Ill. 1985) (same).

133. 606 F. Supp. 401, 407 (N.D. Ill. 1986).

134. Bruss Co. v. Allnet Communications Serv., Inc., 606 F. Supp. 401, 406-07 (N.D. Ill. 1985).

135. *Id.* at 403-04.

136. *Id.* at 406.

1962(c), but that an enterprise may be a person under section 1962(a).[137] In considering whether an enterprise may be a person under section 1962(b), the *Bruss* court stated that the language in section 1962(b) is similar to the language in section 1962(c).[138] The district court noted that although section 1962(b) does not contain the language of section 1962(c) requiring the person to be employed by or associated with the enterprise, section 1962(b) does require that the person acquire or maintain an interest in or control of an enterprise.[139] The *Bruss* court reasoned, therefore, that section 1962(b), like section 1962(c), contemplates an enterprise that is the victim, rather than the perpetrator, of the racketeering activity.[140] The *Bruss* court held, accordingly, that an enterprise may be liable as a person under section 1962(a), but is immune from liability under sections 1962(b) and 1962(c).[141]

IV. Reaching the Enterprise Under Section 1964(c) of RICO

The federal courts inconsistently have determined whether a private civil RICO plaintiff may recover from an enterprise for injuries resulting from a violation of section 1962 because the statutory language does not specifically indicate Congress' intent on the issue.[142] Unfortunately, the legislative history of RICO also provides courts with little specific guidance of Congress' intent in providing the private civil RICO remedy of section 1964(c).[143] In proposing the private civil damages provision, however, proponents of section 1964(c) intended to enhance the effectiveness of RICO's prohibitions against racketeering activity.[144] Congress also stated that courts should construe liberally provisions of RICO to effectuate RICO's remedial purposes.[145] Courts thus should read section 1964(c) along with the other civil

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137. *Id.* at 407.

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *Compare* Haroco v. American Nat'l Bank & Trust Co. of Chicago, 747 F.2d 384, 401-02 (7th Cir. 1984), *aff'd per curiam on other grounds*, 473 U.S. 606 (1985) (stating that language of RICO § 1962(a) allows courts to hold enterprise liable as person); *supra* notes 65-89 and accompanying text (discussing Seventh Circuit's decision in *Haroco*) *with* Rush v. Oppenheimer & Co., Inc., 628 F. Supp. 1188, 1196-97 (S.D.N.Y. 1985) (stating that language of § 1962(a) indicates need for distinct enterprise and person); *supra* notes 110-29 and accompanying text (discussing district court's decision in *Rush*).

143. *See* Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 498 (1985) (noting that Congress made few legislative statements concerning civil remedy provisions of RICO with specific reference to § 1964(c)); Haroco, Inc. v. Am. Nat'l Bank & Trust Co. of Chicago, 747 F.2d 384, 390 (7th Cir. 1984) (noting that legislative history of RICO contains little material on § 1964(c)).

144. *Hearings* on S. 30, *supra* note 53, at 520 (remarks of Rep. Steiger); *see* 116 Cong. Rec. 25190 (1970) (remarks of Sen. McClellan, sponsor of S. 30) (stating that treble damage remedy would be major tool in eliminating organized crime.

145. *See* Organized Crime Control Act of 1970, Pub. L. No. 91-452, § 904(a), 84 Stat. 947 (stating that courts should construe liberally provisions of RICO to effectuate RICO's remedial purpose); *supra* note 46 and accompanying text (discussing RICO's liberal construction clause).

remedies provided in section 1964 as part of Congress' initiative against racketeering activity, and should construe section 1964(c) in ways that effectuate RICO's remedial initiative.[146] Therefore, if the statutory language of RICO does not prohibit enterprise liability and if holding the enterprise liable would promote the remedial purposes of RICO, courts should hold the enterprise liable to the private plaintiff for injuries resulting from violations of section 1962.[147]

The statutory language of RICO requires that a private civil plaintiff must show that the defendant has conducted activity prohibited by section 1962 to recover under section 1964(c).[148] The term "person" in section 1962 describes the perpetrator or the defendant in the private civil action.[149] The term "enterprise" in section 1962 describes the entity with which the person must have some type relation.[150] Because section 1962 clearly provides that only a person may violate RICO, an enterprise may be liable to a private civil RICO plaintiff only if the enterprise also is a person.[151]

An enterprise clearly may be a person under section 1961 of RICO.[152] Section 1961 merely requires that a person be an entity capable of holding an interest in property.[153] Section 1962, however, requires that an entity have a certain relation to an enterprise to qualify as a person who violates RICO.[154] An enterprise, therefore, must be able to hold an interest in

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146. *See* Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 498 (1985) (stating that courts should read private civil remedy provision as one of the novel remedies Congress provided in RICO to fight organized crime on all fronts); *supra* notes 50-53 and accompanying text (discussing purposes of remedial provisions of RICO).

147. *See* Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 499-500 (1985) (stating that courts should not eliminate RICO's private damage remedy in situations in which Congress provided remedy).

148. *See* 18 U.S.C. § 1964(c) (1982) (providing that any person injured in business or property from violation of § 1962 may recover treble damages and attorney's fees under RICO).

149. *See id.* § 1962(a)-(c) (prohibiting any person from performing enumerated activities); *supra* notes 21-24 (describing different activities proscribed by § 1962 of RICO).

150. *See* 18 U.S.C. § 1962(a)-(c) (1982) (requiring that person invest in, acquire or maintain control of, or conduct activity through enterprise to violate RICO); *see supra* notes 31-33 (describing characteristics of enterprise under RICO).

151. *See supra* note 25 and accompanying text (stating that only person may be defendant in civil RICO action).

152. *Compare* 18 U.S.C. § 1961(3) (1982) (defining term "person" to include any individual capable of holding beneficial interest in property) *with id.* § 1961(4) (defining term "enterprise" to include any individual, partnership, corporation, association, or other legal entity, and any group of individuals associated in fact). *See supra* note 34 and accompanying text (noting that courts agree that entity may be both enterprise and person under definitions provided in § 1961 of RICO).

153. *See* 18 U.S.C. § 1961(3) (1982) (defining term "person" under RICO).

154. *See id.* § 1962(a) (requiring that person receive money obtained through racketeering activity and use or invest that money in enterprise to establish RICO violation); *id.* § 1962(b) (requiring that person acquire or maintain interest in or control of enterprise to establish RICO violation); *id.* § 1962(c) (requiring that person employed by or associated with enterprise conduct affairs of enterprise through pattern of racketeering activity to establish RICO violation).

property and must have a specific relation to itself to be a person liable for violating section 1962.[155]

Sections 1962(a), 1962(b), and 1962(c) each describe different types of persons having different types of relationships with their respective enterprises.[156] Section 1962(c) requires that a person be employed by or associated with the enterprise and, additionally, that the person conduct or participate in the affairs of the enterprise through a pattern of racketeering activity.[157] The language of section 1962(c) clearly indicates that the drafters of RICO envisioned a mutually exclusive person and enterprise in section 1962(c).[158] Allowing an enterprise to be a person under section 1962(c) would place the enterprise in the anomalous position of being employed by or associated with itself.[159] Because an enterprise cannot be employed by or associated with itself, an enterprise may not be a person liable for injuries resulting from violations of section 1962(c).[160]

Unlike the language in section 1962(c), RICO's language in sections 1962(a) and 1962(b) does not prevent an enterprise from being a person.[161] Section 1962(a) states that a person violates RICO if the person receives income from a pattern of racketeering activity and uses or invests that income to acquire, establish, or operate an enterprise.[162] Although an enterprise may not establish itself, an enterprise certainly may receive income and use that income to acquire an interest in or operate itself.[163] For example, a corporation may receive income derived from a pattern of

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155. *See supra* notes 153-54 (stating requirements for enterprise to qualify as person under §§ 1961 and 1962 of RICO).

156. *See supra* note 154 (describing relationships of persons to enterprises under §§ 1962(a), 1962(b), and 1962(c) of RICO).

157. 18 U.S.C. § 1962(c) (1982); *see supra* note 23 (providing text of § 1962(c)).

158. *See* Petro-Tech, Inc. v. Western Co. of N. Am., 824 F.2d 1349, 1359 (3d Cir. 1987) (stating that language of § 1962(c) indicates that Congress intended person and enterprise to be distinct entities under § 1962(c)); Bennett v. United States Trust Co. of N.Y., 770 F.2d 308, 313 (2d Cir.) (stating that language of § 1962(c) clearly envisions separate entities as person and enterprise), *cert. denied*, 464 U.S. 1008 (1985).

159. *See* Schofield v. First Commodity Corp. of Boston, 793 F.2d 28, 31 (1st Cir. 1986) (stating that corporation may not be employed by or associated with itself under § 1962(c) of RICO); Haroco, Inc. v. Am. Nat'l Bank & Trust Co. of Chicago, 747 F.2d 384, 400 (7th Cir. 1984) (stating that use of terms "employed by" and "associated with" requires that enterprise must be distinct from person), *aff'd per curiam on other grounds*, 473 U.S. 606 (1985).

160. Schofield v. First Commodity Corp. of Boston, 793 F.2d 28, 31 (1st Cir. 1986); Haroco, Inc. v. Am. Nat'l Bank & Trust Co. of Chicago, 747 F.2d 384, 400-02 (7th Cir. 1984), *aff'd per curiam on other grounds*, 473 U.S. 606 (1985).

161. *See infra* notes 162-70 and accompanying text (explaining why statutory language of §§ 1962(a) and 1962(b) of RICO allows enterprise to be person).

162. 18 U.S.C. § 1962(a) (1982); *see supra* note 21 and accompanying text (providing text of § 1962(a) of RICO).

163. *See* Schreiber Distrib. Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1398 (9th Cir. 1986) (stating that corporation may invest income derived from racketeering activity in its own operations); Pennsylvania v. Derry Constr. Co., 617 F. Supp. 940, 944-45 (W.D. Pa. 1985) (stating that logic dictates that corporation receiving income from pattern of racketeering activity can invest that income in its own operations).

racketeering activity and use that income to acquire its own stock or run its own operations.[164] Consequently, the statutory language of section 1962(a) does not prohibit an enterprise from being liable to a private civil plaintiff.[165]

Section 1962(b) is similar to section 1962(a) because section 1962(b) prohibits a person from acquiring or maintaining an interest in or control of an enterprise through a pattern of racketeering activity.[166] Section 1962(b), however, does not require that a person affect the enterprise by receiving income derived from racketeering activity.[167] An enterprise could acquire or maintain an interest in or control of itself through a pattern of racketeering activity without using funds derived from the activity.[168] For example, a labor union could violate section 1962(b) by using extortion to acquire or maintain control of its own operations.[169] Therefore, as with section 1962(a), the statutory language of section 1962(b) does not prohibit an enterprise from being a person liable for damages under section 1964(c).[170]

Although the statutory language of sections 1962(a) and 1962(b) does not prohibit the enterprise from being liable to the private civil RICO plaintiff, courts should not hold enterprises liable if by holding enterprises liable courts would frustrate the remedial purposes for which Congress designated RICO.[171] Four policy considerations, however, support the view that courts should hold enterprises liable for violations of sections 1962(a) and 1962(b) to effectuate the remedial purposes of RICO. First, section 1964(a) specifically indicates that Congress intended for enterprises to be susceptible to civil sanctions.[172] Indeed, section 1964(a) authorizes the courts to dissolve or reorganize an enterprise to prevent or restrain violations of

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164. *See* Schreiber Distrib. Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1398 (9th Cir. 1986) (holding that corporation may be liable as person under § 1962(a) for obtaining income from pattern of racketeering activity and using those funds in its operations); Masi v. Ford City Bank & Trust Co., 772 F.2d 397, 401-02 (7th Cir. 1985) (holding that bank may be liable under § 1962(a) for using income derived from racketeering activity); *see also supra* notes 92-108 (discussing *Schreiber*).

165. *See supra* notes 162-65 and accompanying text (discussing why enterprise may be person under § 1962(a) of RICO).

166. *Compare supra* note 22 (providing text of § 1962(b)) *with supra* note 21 (providing text of § 1962(a)).

167. 18 U.S.C. § 1962(b) (1982); *see supra* note 22 (providing text of § 1962(b)).

168. *See* Schreiber Distrib. Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1398 (9th Cir. 1986) (stating that, unlike § 1962(a), § 1962(b) does not require showing of use money to establish RICO violation).

169. *See* United States v. Local 560, Int. Bhd. of Teamsters, 581 F. Supp. 279, 336-37 (D.N.J. 1984) (finding that Teamsters Local 560 used extortion to maintain control of its own operations in violation of § 1962(b) of RICO), *aff'd*, 780 F.2d 267 (3d Cir. 1985), *cert. denied*, 106 S. Ct. 2247 (1986).

170. *Id.* at 329-30 (stating that nothing on face of § 1962(b) supports finding that person and enterprise must be mutually exclusive).

171. *See* Organized Crime Control Act of 1970, Pub. L. No. 91-452, § 904(a), 84 Stat. 947 (stating that courts should construe liberally the provisions of RICO to effectuate RICO's remedial purposes).

172. 18 U.S.C. § 1964(a) (1982); *see supra* note 17 (discussing § 1964(a)).

section 1962.[173] Congress, therefore, intended for courts to discipline enterprises to effectuate the remedial purposes of RICO.[174] Accordingly, to effectuate RICO's remedial purpose of compensating parties injured by persons conducting racketeering activity, courts should hold enterprises liable for plaintiffs' injuries resulting from enterprises' violations of sections 1962(a) and 1962(b).[175]

Second, in addition to compensating the injured party, Congress intended the private civil remedy to have a deterrent effect on racketeering activity.[176] In creating RICO's private civil damages provision, Congress intended private parties to act as private attorneys general in the fight against racketeering activity.[177] If courts allow enterprises to escape private civil liability, courts significantly will diminish the private attorney general function of section 1964(c).[178] If courts prevent plaintiffs from serving as private attorneys general against enterprises conducting racketeering activity, many guilty persons may escape liability for their racketeering acts.[179] To promote the deterrent purposes of RICO, courts, therefore, should allow private civil damages against enterprises when enterprises violate sections 1962(a) or 1962(b) of RICO.[180]

Third, in enacting RICO Congress intended to create dramatic new measures to deal with racketeering activity in areas in which Congress

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173. 18 U.S.C. § 1964(a) (1982).

174. *See* U.S. v. Turkette, 452 U.S. 576, 585 (1981) (stating that Congress designed RICO's civil remedies to divest enterprise of fruits of racketeering activity). The United States Supreme Court has held that Congress designed the civil remedies provided in section 1964(a) of RICO to control the activities of both legitimate and criminal enterprises involved in racketeering activity. *Id.* at 591-93; *see also* 116 CONG. REC. 35,193 (1970) (remarks of Rep. Poff, manager of Organized Crime Control Act in House) (stating that Congress intended RICO to deal not only with individuals, but also with economic enterprises through which individuals conduct racketeering activity).

175. *See* Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 498 (1985) (stating that providing remedy for parties injured by racketeering activity is as important as any other remedial provision of RICO); *supra* note 174 and accompanying text (indicating that holding enterprises liable for violations of § 1962 coincides with remedial purposes of RICO).

176. *See* Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 497 (1985) (stating that Congress designed RICO to deter racketeering activity); United States v. Turkette, 452 U.S. 576, 593 (1981) (stating that Congress designed RICO to have preventive effect on organized crime); 116 CONG. REC. 25,190 (1970) (remarks of Senator McClellan, sponsor of Organized Crime Control Act in Senate) (stating that § 1964(c) of RICO would have great effect in eliminating organized crime from American economy).

177. *See* Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 493 (1985) (stating that Congress designed § 1964(c) as private attorney general provision of RICO). The United States Supreme Court has stated that Congress intended the treble damages provision of section 1964(c) to be an incentive for private parties to litigate against persons conducting racketeering activity. *Id.*

178. *See id.* (stating that without private attorney general provisions like § 1964(c), racketeers might escape punishment completely).

179. *Id.*

180. *See supra* notes 176-77 and accompanying text (discussing how RICO's private civil action is designed to deter racketeering activity).

thought state laws were inadequate.[181] Consequently, Congress fashioned RICO using broad, inclusive language to reach those persons participating in racketeering activity who previously might have escaped criminal or civil liability.[182] Further, Congress instructed the courts to construe liberally the broad language of RICO to effectuate RICO's remedial purposes.[183] In enacting RICO Congress was aware of the far-reaching effects that RICO might have on the federal courts' involvement in dealing with organized crime.[184] Indeed, Congress passed RICO's broad, sweeping measures over the objections of some legislators who wished to limit RICO's scope.[185] Consequently, the breadth of RICO has allowed plaintiffs to seek relief from racketeers in ways not expressly anticipated by Congress.[186] A court, however, should not limit a RICO plaintiff's access to private civil remedies in situations in which Congress has provided such a remedy merely because the court believes that Congress did not envision such a broad reading of

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181. *See* Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922, 922-23 (Statement of Findings and Purpose) (stating that Congress designed RICO to provide new tools to supplement ineffective existing methods in fight against organized crime); Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 498 (1985) (stating that RICO was aggressive initiative designed to supplement old remedies and develop new methods for fighting crime); Russello v. United States, 464 U.S. 16, 26-28 (1983) (RICO designed to provide new weapons of unprecedented scope to enhance existing remedies in fight against organized crime); *supra* note 4 and accompanying text (discussing Congress' intent to supplement existing state laws with RICO provisions).

182. *See* Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 498-98 (1985) (stating that Congress consciously used expansive language in adopting RICO); United States v. Turkette, 452 U.S. 576, 586 (1981) (stating that statutory language and legislative history indicate that in enacting RICO, Congress intentionally increased federal involvement to address previously neglected problem of organized crime); Haroco, Inc. v. Am. Nat. Bank & Trust Co. of Chicago, 747 F.2d 384, 390 (7th Cir. 1984) (stating that Congress deliberately chose broad language for RICO's provisions to avoid loopholes through which clever defendants might slip), *aff'd per curiam on other grounds*, 473 U.S. 606 (1985).

183. *See* Organized Crime Control Act of 1970, Pub. L. No. 91-452, § 904(a), 84 Stat. 947 (providing that courts should construe RICO liberally to effectuate RICO's remedial purposes).

184. *See* 116 CONG. REC. 35,217 (1970) (remarks of Representative Eckhardt) (stating that enacting RICO would move areas formerly totally within police power of states into federal realm); *see also* United States v. Turkette, 452 U.S. 576, 586 (1981) (stating that Congress knew it was entering new domain of federal involvement in enacting RICO).

185. *See* S. REP. No. 617, *supra* note 42, at 215 (expressing concern that reach of Organized Crime Control Act went beyond organized criminal activity). RICO's opponents expressed concern that the broad scope of RICO might allow abuse of RICO as a weapon against innocent businessmen. *See* H.R. REP. No. 1549, 91st Cong. 2d Sess. 187 (1970) (stating that disgruntled competitors might use RICO to harass innocent businessmen engaged in interstate commerce).

186. *See* Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 499-500 (1985) (stating that plaintiffs are using § 1964(c) of RICO in ways not envisioned by RICO's drafters); Haroco, Inc. v. Am. Nat. Bank & Trust Co. of Chicago, 747 F.2d 384, 397 (7th Cir. 1984) (stating that Congress probably did not anticipate application of civil RICO to improperly calculated interest rates by commercial bank), *aff'd per curiam on other grounds*, 473 U.S. 606 (1985).

RICO.[187] Only Congress properly may limit the scope of RICO.[188]

Finally, although Congress adopted the broad language of RICO primarily to eliminate the infiltration of legitimate enterprises by persons conducting racketeering activity, Congress did not intend to confine the reach of RICO's remedial provisions to benefit exclusively the infiltrated enterprises.[189] In addition to benefitting the infiltrated enterprise, Congress designed RICO to benefit both particular parties injured as a result of racketeering activity and the American economy in general.[190] However, a court that excludes from private civil RICO liability enterprises that, acting as persons, violate sections 1962(a) or 1962(b) frustrates the remedial purposes of RICO for the individual plaintiff and the American economy.[191] By not imposing liability on enterprises, the court may leave the plaintiff injured by the racketeering activity of the enterprise with no effective remedy for the injury.[192] Furthermore, by allowing persons participating in racketeering activity to go unpunished and thus to continue their activity to the detriment of American commerce, the court may deprive the American economy of its remedy.[193] Moreover, courts that exclude enterprises from private civil liability for violating sections 1962(a) or 1962(b) do not protect the legitimate enterprise that is the victim of racketeering activity and for whose benefit Congress drafted RICO.[194] Instead, these courts protect only

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187. *See* Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 499-500 (1985) (stating that judiciary should not limit private civil RICO action merely because plaintiffs are taking advantage of § 1964(c) in ways unforeseen by Congress); Schofield v. First Commodity Corp. of Boston, 793 F.2d 28, 32 (1st Cir. 1986) (stating that when RICO's language permits liability against culpable entity, courts should find that such liability exists); Haroco, Inc. v. Am. Nat. Bank & Trust Co. of Chicago, 747 F.2d 384, 399 (7th Cir. 1984) (stating that because Congress deliberately chose to adopt broad language of RICO statute, in absence of constitutional prohibitions, parties should direct complaints concerning breadth of RICO to Congress rather than to the courts), *aff'd per curiam on other grounds*, 473 U.S. 606 (1985); Moss v. Morgan Stanley, Inc., 719 F.2d 5, 21 (2d Cir. 1983) (stating that judiciary should not reassess Congress' balance of costs and benefits of RICO).

188. *See* Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 499 (1985) (stating that only Congress may correct any defects that might exist in RICO statute).

189. *See supra* notes 50-52 and accompanying text (discussing Congress' three reasons for adopting RICO's civil remedies).

190. *Id.*

191. *See infra* notes 192-94 (discussing effect that disallowing enterprise liability would have on private parties and the American economy).

192. *See* Haroco, Inc. v. Am. Nat'l Bank & Trust Co. of Chicago, 747 F.2d 384, 421 (7th Cir. 1984) (stating that deep pocket of enterprise should be available to plaintiff when enterprise is perpetrator of acts in violation of § 1962(a)), *aff'd per curiam on other grounds*, 473 U.S. 606 (1985).

193. *See* Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 493 (1985) (stating that guilty parties may escape RICO liability altogether if courts prevent parties from acting as private attorneys general under § 1964(c)).

194. *See* Schreiber Distrib. Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1398 (9th Cir. 1986) (stating that holding enterprise liable for violations of §§ 1962(a) and 1962(b) does not affect enterprises victimized by racketeering activity); *Haroco*, 747 F.2d at 402 (stating that allowing enterprise liability under § 1962(a) reaches only enterprises that participate in and

those enterprises that are also persons condemned by RICO.[195]

To determine whether an enterprise is a person that should be liable to a plaintiff for violating sections 1962(a) or 1962(b) of RICO, some plaintiffs have urged courts to apply the agency principle of *respondeat superior*, or vicarious liability.[196] The doctrine of vicarious liability provides that the master is strictly liable for the tortious acts that the master's servant commits while acting within the scope of his employment.[197] The doctrine imputes liability for the acts of the servant to the master because the master generally is able to compensate the injured party better than the servant, and because the master may spread the risks of his activities to a larger portion of the population.[198] The extent to which a federal statute embraces common law agency principles depends, however, on the extent to which the principles support the language and policies of the statute.[199] Although courts holding an enterprise vicariously liable for its agent's violation of sections 1962(a) or 1962(b) of RICO would provide a remedy for injured parties, courts would directly contravene Congress' primary intent to benefit the enterprise infiltrated by racketeers by applying the doctrine of vicarious liability.[200]

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profit from racketeering rather than those enterprises that are victims of racketeering); *see also supra* notes 92-108 and accompanying text (discussing *Schreiber*); *supra* notes 65-89 and accompanying text (discussing *Haroco*).

195. *See* Schreiber Distrib. Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1398 (9th Cir. 1986) (stating that holding enterprise liable as person under §§ 1962(a) and 1962(b) of RICO accords with congressional intent reaching those who ultimately benefit from racketeering activity); *Haroco*, 747 F.2d at 402 (stating that Congress intended for enterprise to be liable under § 1962(a) because under § 1962(a) enterprise is liable only if enterprise is person who ultimately profits from racketeering).

196. *See* Petro-Tech, Inc. v. Western Co. of N. Am., 824 F.2d 1349, 1357 n.7 (3d Cir. 1987) (plaintiffs alleging that enterprise is liable for violating §§ 1962(a) and 1962(c) under doctrine of *respondeat superior*); Schofield v. First Commodity Corp. of Boston, 793 F.2d 28, 29 (1st Cir. 1986) (plaintiff alleging that corporation is liable for violating § 1962(c) of RICO under doctrine of *respondeat superior*).

197. E. SELL, AGENCY § 95 (1975).

198. *Id.*

199. *See* Am. Soc'y of Mechanical Eng'r v. Hydrolevel Corp., 456 U.S. 556, 569 (1982) (stating that, absent indications that Congress did not intend antitrust law to reach so far, antitrust cause of action is as broad as right to sue under apparent authority principles); Petro-Tech, Inc. v. Western Co. of N. Am., 824 F.2d 1349, 1356-58 (3d Cir. 1987) (holding that doctrine of *respondeat superior* applies under RICO only when structure of RICO statute does not forbid it); Schofield v. First Commodity Corp. of Boston, 793 F.2d 28, 32-33 (1st Cir. 1986) (declining to apply *respondeat superior* principles to hold enterprise as person under § 1962(c) because language of RICO limits application of agency principles under § 1962(c)); Bernstein v. IDT Corp., 582 F. Supp. 1079, 1083 (D. Del. 1984) (stating that normal rules of agency law apply to RICO absent some indication that Congress had contrary intent).

200. *See* Schofield v. First Commodity Corp. of Boston, 793 F.2d 28, 31-34 (1st Cir. 1986) (stating that courts should not use vicarious liability to accomplish indirectly what RICO statute directly denies); Rush v. Oppenheimer, 628 F. Supp. 1188, 1194-95 (S.D.N.Y. 1985) (stating that plaintiff may not use *respondeat superior* principles to impute liability to enterprise when enterprise is mere conduit for racketeering activities); Dakis v. Chapman, 574 F. Supp. 757, 760 (N.D. Cal. 1983) (holding that enterprise may be liable as person under § 1962 only if enterprise is actively engaged in racketeering activity rather than mere victim or conduit).

Therefore, instead of making enterprises vicariously liable for the acts of other persons, courts should hold enterprises liable only when enterprises directly participate in activities that violate RICO sections 1962(a) or 1962(b).[201]

In determining whether enterprises should be liable as a person to private plaintiffs for injuries resulting from violations of sections 1962(a) or 1962(b) of RICO, courts should use direct liability principles similar to the principles used to determine the culpability of a corporation for criminal

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Some courts have held that *respondeat superior* principles should apply to hold enterprises liable for violations of section 1962(c) of RICO. *See* Bernstein v. IDT Corp., 582 F. Supp. 1279, 1283 (D. Del. 1984) (stating that *respondeat superior*, "at least in most instances," will further statutory goals of RICO); Morley v. Cohen, 610 F. Supp. 798, 811 (D. Md. 1985) (holding that *respondeat superior* principles impute to enterprise liability for violation of § 1962(c) by agent). Courts that have held that enterprises should be vicariously liable for their agent's violation of section 1962(c) have failed to consider that the statutory language of section 1962(c), which requires the person to be employed by or associated with the enterprise, prohibits enterprise liability under section 1962(c). *See* Schofield v. First Commodity Corp. of Boston, 793 F.2d 28, 32 (1st Cir. 1986) (stating that concept of vicarious liability is directly at odds with congressional intent behind § 1962(c)); *supra* notes 157-60 and accompanying text (indicating that statutory language of § 1962(c) prohibits enterprise from being person); *supra* note 14 and accompanying text (indicating that courts generally hold that enterprise may not be person under § 1962(c)).

201. *See* Schreiber Distrib. Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1398 (9th Cir. 1986) (holding that enterprise may be liable as person under §§ 1962(a) and 1962(b) if enterprise has engaged in predicate acts of racketeering and is direct or indirect beneficiary of racketeering activity); *supra* notes 92-108 and accompanying text (discussing *Schreiber*). Some courts have suggested that the language of sections 1962(a) and 1962(b) clearly indicates that a person must be an active participant in the pattern of racketeering to be liable under RICO. *See id.* (stating that under both §§ 1962(a) and 1962(b), enterprise must participate in racketeering acts and be beneficiary of those acts). Haroco, Inc. v. Am. Nat'l Bank & Trust Co. of Chicago, 747 F.2d 384, 422 (7th Cir. 1984) (holding that person under § 1962(a) is perpetrator of racketeering activity), *aff'd per curiam on other grounds*, 473 U.S. 606 (1985); United States v. Loften, 518 F. Supp. 839, 851 (S.D.N.Y. 1981) (noting that requirement that person must participate as principal to violate § 1962(a) shields innocent recipients of racketeer's investments from liability). One commentator has noted that because section 1962(a) states that only a principal may be liable for receiving funds derived from racketeering activity, and because sections 1962(b) and 1962(c) require a person to acquire control of or conduct an enterprise through racketeering, that only active participants should be directly liable for racketeering activity. Note, *supra* note 13, at 596 (stating that language of §§ 1962(a), 1962(b), and 1962(c) require person to actively participate in racketeering activity to be liable under RICO). This commentator argues that direct liability should extend to enterprises for violations of section 1962(c) of RICO. *Id.* at 596-605. The commentator failed to recognize, however, that because a person must be employed by or associated with an enterprise under section 1962(c), an enterprise may not be liable as a person under section 1962(c). *See* Schofield v. First Commodity Corp. of Boston, 743 F.2d 28, 30-31 (1st Cir. 1986) (holding that enterprise may not be directly liable as person under § 1962(c)); *supra* note 151 and accompanying text (stating that enterprise may be liable for RICO violation only if enterprise is person); *supra* notes 157-60 and accompanying text (indicating that statutory language of § 1962(c) prohibits enterprise from being person); *supra* note 14 and accompanying text (indicating that courts generally hold that enterprise may not be person under § 1962(c)); *supra* note 199 and accompanying text (stating that common law principles only apply to federal statutes insofar as principles support language and policy of statutes).

violations.[202] Courts use direct liability principles in criminal proceedings because criminal proceedings require a level of intent to establish guilt.[203] The corporation's culpability is not dependent on the criminal guilt or innocence of its employee.[204] Indeed, a corporation may be guilty of a criminal violation despite the innocence of its agent who performs the illegal act.[205] Instead, the court must determine whether the corporation had the requisite intent to perform the illegal act and whether the evidence shows that the corporation deliberately and knowingly performed the elements of the offense.[206] Courts find corporate enterprises criminally liable for the illegal acts of their employees when the acts are, first, related to and committed within the course of employment, second, committed in furtherance of the business of the corporation, and, third, authorized by or acquiesced in by the corporation.[207]

If courts use direct liability principles to determine enterprise liability for violations of RICO sections 1962(a) and 1962(b), courts will impose liability only on the enterprise that is the active perpetrator of the racketeering activity.[208] Courts that hold liable for private civil RICO damages enterprises that directly violate sections 1962(a) and 1962(b) of RICO will promote congressional intent by providing a remedy for parties injured by

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202. *See* Schofield v. First Commodity Corp. of Boston, 793 F.2d 28, 31-34 (1st Cir. 1986) (using direct liability principles to hold that enterprise may be liable for violation of § 1962(a)); Schreiber Distributing Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1398 (9th Cir. 1986) (holding that enterprise may be liable as person under §§ 1962(a) and 1962(b) if enterprise engages in racketeering activity and benefits from that activity); Haroco, Inc. v. Am. Nat'l Bank & Trust Co. of Chicago, 747 F.2d 384, 402 (7th Cir. 1984) (holding that enterprise may be liable under § 1962(a) if enterprise is perpetrator of racketeering activity), *aff'd per curiam on other grounds*, 473 U.S. 606 (1985); Note, *supra* note 13, at 596-605 (reasoning that courts should use direct, rather than vicarious, liability principles to hold enterprises liable for violations of §§ 1962(a), 1962(b), and 1962(c)); 10 W. FLETCHER, FLETCHER CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS § 4942 at 664-66 (1986) (discussing criminal liability of corporations); *supra* note 201 and accompanying text (noting that enterprise may not be directly liable as person for violation of § 1962(c) because enterprise may not be person under § 1962(c)).

203. *See* W. FLETCHER, *supra* note 202, § 4942 st 665 (stating that courts must establish requisite level of intent to hold corporations liable for criminal violation); *see also* Standard Oil Co. of Texas v. United States, 307 F.2d 120, 127 (5th Cir. 1962) (stating that corporation may be guilty of criminal acts only if corporations deliberately performed those acts).

204. *See* W. FLETCHER, *supra* note 202, at § 4942 at 664-66 (stating that corporation may be liable for crime regardless of whether corporation's agents are themselves liable for crime for which corporation is charged); United States v. General Motors Corp., 121 F.2d 376, 411 (7th Cir.) (same), *cert. denied*, 314 U.S. 618 (1941).

205. *See* United States v. General Motors Corp., 121 F.2d 376, 411 (7th Cir.) (noting that corporation may be guilty of conspiracy although its agents are innocent), *cert. denied*, 314 U.S. 618 (1941).

206. *See* Standard Oil Co. of Texas v. United States, 307 F.2d 120, 127 (5th Cir. 1962) (stating that corporation may be criminally liable for acts of its agents only if corporation knows its agents are performing acts on its behalf).

207. W. FLETCHER, *supra* note 202, at § 4942 at p. 664.

208. *See supra* notes 203-07 and accompanying text (stating that direct liability theory requires that enterprise knowingly and willingly participate in racketeering activity, rather than imputing liability for acts of agent to enterprise).

the enterprise's racketeering activity and by helping to deter violations of RICO by enterprises.[209] Furthermore, the enterprise that is the passive victim of racketeering infiltration that Congress designed RICO to protect will not be liable under direct liability principles.[210]

V. Conclusion

Federal courts generally agree that a private civil plaintiff may not recover from an enterprise for injuries resulting from a violation of section 1962(c) of RICO.[211] The federal courts disagree, however, on whether a private civil plaintiff may recover from an enterprise under sections 1962(a) or 1962(b) of RICO.[212] Unlike the language of section 1962(c), the statutory language of sections 1962(a) and 1962(b) does not prohibit an enterprise from being a person liable to a private civil plaintiff.[213] Moreover, the legislative history and policy considerations of RICO indicate that Congress intended for an enterprise to be liable to the private civil plaintiff when an enterprise directly participates in racketeering activity prohibited by sections 1962(a) and 1962(b) of RICO.[214] If courts hold liable for private civil damages only enterprises that are directly responsible for violating sections 1962(a) or 1962(b), courts will satisfy congressional intent by compensating injured parties and deterring racketeering activity without harming enterprises that are victims of racketeering activity.[215] Courts, therefore, should allow private civil plaintiffs to recover damages from an enterprise when the enterprise injures the plaintiff by directly violating section 1962(a) or 1962(b) of RICO.

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209. *See supra* notes 191-97 (stating that courts should hold enterprises liable for violations of §§ 1962(a) and 1962(b) to compensate plaintiffs and to help remove racketeering influence from American economy).

210. *See* Schreiber Distributing Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1398 (9th Cir. 1986) (stating that holding enterprises liable for violations of §§ 1962(a) and 1962(b) of RICO will reach persons who actually benefit from racketeering activity, rather than those parties that are victims of racketeering activity); Haroco, Inc. v. First Am. Nat'l Bank & Trust Co. of Chicago, 747 F.2d 384, 402 (7th Cir. 1984) (stating that holding enterprise liable under § 1962(a) will achieve Congress' intent to reach parties who profit from racketeering activity, rather than victims of racketeering); *supra* note 40 and accompanying text (stating that primary purpose of RICO is to protect victim enterprise that is infiltrated by racketeers).

211. *See supra* note 14 and accompanying text (noting that vast majority of federal circuit courts have held that enterprise may not be person under § 1962(c)).

212. *See supra* notes 65-141 (discussing different interpretations of whether enterprise may be liable as person for violations of §§ 1962(a) and 1962(b)).

213. *See supra* notes 161-65 (stating that § 1962(a) does not prohibit person from being enterprise); *supra* notes 166-70 (stating that § 1962(b) does not prohibit person from being enterprise).

214. *See supra* notes 172-95 (discussing policy reasons for holding enterprise liable to private plaintiff for injuries resulting from violations of §§ 1962(a) and 1962(b)).

215. *See supra* notes 194-95 and accompanying text (stating that holding enterprise civilly liable to private plaintiff will compensate plaintiff and reduce racketeering activity without harming legitimate enterprises infiltrated by racketeers).