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COMMENTS

Civil RICO: The Resolution of the Racketeering Enterprise Injury Requirement

INTRODUCTION

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

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1. Pub. L. No. 91-452, 84 Stat. 922 (1970).
 2. 18 U.S.C. §§ 1961-1968 (1982). This act was enacted by Congress in 1970 and was supplemented in 1976. The statute provides in its relevant part:
 - (1) “Racketeering activity” means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472 and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions, section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments, section 1955 (relating to the prohibition of illegal gambling businesses), section 2314 and 2315 (relating to interstate transportation of stolen property), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations), or section 501(c) (relating to embezzlement from union funds), or (D) any offense involving fraud connected with a case under title 11, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States;
 - (3) “Person” includes any individual or entity capable of holding a legal or beneficial interest in property;
 - (4) “Enterprise” includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;
 - (5) “Pattern of Racketeering Activity” requires at least two acts of racketeering activity, one of which occurred, after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity.
- § 1962. Prohibited Activities
- (a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity . . . to use or

was enacted for the purpose of "seek[ing] the eradication of organized crime in the United States."³ RICO provides "enhanced sanctions"⁴ and new criminal⁵ and civil remedies⁶ to deal with the unlawful activities of those engaged in organized crime.⁷ The civil component⁸ of RICO (hereinafter "Civil RICO") supplements the traditional penal method of recourse by allowing victims of specific criminal activity to bring a civil cause of action against the RICO offender.

Civil RICO has stirred a storm of judicial controversy because a broad reading of the RICO statute⁹ would provide plaintiffs standing to sue in the federal courts for treble damages,¹⁰ attorney's fees, and court costs¹¹ almost any time they can allege injury caused by the commission of two or more of the racketeering acts listed in RICO.¹² Racketeering activity,¹³ referred to by the courts as "predicate acts," includes many state and federal offenses ranging from murder, kidnapping and drug trafficking to mail, wire and securi-

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

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

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

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

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

3. Pub. L. No. 91-452, 84 Stat. 922-23 (1970) (Statement of Findings and Purpose).

4. *Id.*

5. 18 U.S.C. § 1963 (1982). *See supra* note 2. For an excellent analysis of the criminal provisions of RICO, *see* Tarlow, *RICO Revisited*, 17 GA. L. REV. 291 (1983).

6. 18 U.S.C. § 1964(a)-(d) (1982). *See supra* note 2.

7. Pub. L. No. 91-452, 84 Stat. 922-23 (1970) (Statement of Findings and Purpose).

8. 18 U.S.C. § 1964(c) (1982). *See supra* note 2.

9. Specifically, it is a broad reading of 18 U.S.C. § 1964(c) (1982). *See supra* note 2.

10. Damages given by statute in certain cases, consisting of the single damages found by the jury, actually tripled in amount. BLACK'S DICTIONARY 1347 (rev. 5th ed. 1978).

11. 18 U.S.C. § 1964(c) (1982). *See supra* note 2.

12. 18 U.S.C. § 1961(1) (1982). *See supra* note 2.

13. *Id.*

ties fraud. The commission of any two predicate acts¹⁴ or two commissions of any one predicate act,¹⁵ done in furtherance of a business or an association¹⁶ invokes Civil RICO, providing anyone injured by such conduct a civil remedy.¹⁷ As a result of the inclusion of various frauds¹⁸ in the list of predicate acts, an unrestricted application of Civil RICO sweeps broadly, affecting not only members of organized crime but also ordinary white collar criminals. Consequently, judicial discomfort with the potential breadth of Civil RICO has prompted the courts to impose various standing requirements¹⁹ on those plaintiffs seeking damages. The standing requirements imposed on the Civil RICO plaintiff allow only those plaintiffs who allege a certain type of injury to sue in the federal courts²⁰ for treble damages. While the standing requirement²¹ employed by the court may differ as to the type of injury the plaintiff must allege, all have the same effect of restricting the application of Civil RICO to a limited class of defendants.

The judicially created standing requirements²² most frequently invoked by the courts are: an organized crime nexus,²³ a competi-

14. 18 U.S.C. § 1961(5) (1982) (Definition of "Pattern of Racketeering Activity").
See supra note 2.

15. *Id.*

16. 18 U.S.C. § 1961(4) (1982) (Definition of "Enterprise"). *See supra* note 2.

17. 18 U.S.C. § 1964(c) (1982). *See supra* note 2.

18. The courts consistently refer to mail, wire, and securities fraud collectively as "garden variety fraud." *See, e.g.,* Hulse v. Halle Farms Dev., 586 F. Supp. 120, 122 (D. Conn. 1984).

19. *See infra* notes 23-28 and accompanying text.

20. 18 U.S.C. § 1964(c) (1982). *See supra* note 2.

21. *See infra* notes 23-28 and accompanying text.

22. These standing requirements have also been referred to as a proximate cause requirement. *In re Catanella and E.F. Hutton & Co. Sec. Litig.*, 583 F. Supp. 1388, 1430 (E.D. Pa. 1984). *See also* Teltronics Serv., Inc. v. Anaconda-Ericsson, Inc., 587 F. Supp. 724, 732-33 (E.D. N.Y. 1984).

23. Although an organized crime nexus has not traditionally been considered a standing issue by the courts, the effect of this requirement is analogous to a standing requirement in that it requires the Civil RICO plaintiff to be injured "by reason of" organized crime. To satisfy this pleading requirement, the Civil RICO plaintiff must show an injury resulting from the defendant's affiliation with a criminal organization. The overwhelming majority of courts have rejected the organized crime nexus. *See, Sutcliff, Inc. v. Donovan Co.*, 727 F.2d 648, 654 (7th Cir. 1984); *Moss v. Morgan Stanley, Inc.*, 719 F.2d 5, 21 (2d Cir. 1983); *Bunker Ramo Corp. v. United Business Forms, Inc.*, 713 F.2d 1272, 1287-88 n.6 (7th Cir. 1983); *Schacht v. Brown*, 711 F.2d 1343, 1353 (7th Cir. 1983), *cert. denied*, 104 S. Ct. 509 (1983); *Cenco, Inc. v. Seidman & Seidman*, 686 F.2d 449, 457 (7th Cir. 1982), *cert. denied*, 459 U.S. 880 (1984); *Bennett v. Berg*, 685 F.2d 1053, 1063 (8th Cir. 1982), *aff'd en banc*, 710 F.2d 1361, 1364 (8th Cir. 1983), *cert. denied sub nom.*, Prudential Ins. Co. v. Bennett, 104 S. Ct. 527 (1983); *Jensen v. E.F. Hutton & Co.*, [Current] FED. SEC. L. REP. (CCH) ¶ 99, 674 at 97,713 (C.D. Cal. 1984); *Willamette Sav. & Loan v. Blake & Neal Fin. Co.*, 577 F. Supp. 1415, 1425-26 (D. Or. 1984); *Furman v. Cirrito*, 578 F. Supp. 1535, 1538-39 (S.D.N.Y. 1984); *B.F. Hirsch, Inc. v. Enright Fin. Co.*, 577 F. Supp. 339, 348 (D.N.J. 1983); *Yancoski v. E.F. Hutton & Co.*, 581 F. Supp. 88, 96 n.18 (E.D. Pa. 1983); *Slattery v. Costello*, 586 F. Supp. 162, 165 (D.D.C. 1983), *Mooney v. Fidelity Union Bank*, Nos. 82-3192, 82-

tive injury,²⁴ an infiltration injury,²⁵ or a racketeering enterprise in-

3193 slip op. at 5 (D.N.J. Mar. 22, 1983); *In re Longhorn Sec. Litig.*, 573 F. Supp. 255, 269 (W.D. Okl. 1983); *King v. Lasher*, 572 F. Supp. 1377, 1382-83 (S.D.N.Y. 1983); *Taylor v. Bear & Stearns & Co.*, 572 F. Supp. 667, 681-82 (N.D. Ga. 1983); *In re Action Indus. Tender Offer*, 572 F. Supp. 846, 850-51 (E.D. Va. 1983); *Guerrero v. Katzen*, 571 F. Supp. 714, 719-20 (D.D.C. 1983); *Durante Bros. & Sons, Inc. v. Flushing Nat'l Bank*, 571 F. Supp. 489, 495 (E.D.N.Y. 1983); *Austin v. Merrill Lynch, Inc.*, 570 F. Supp. 667, 669 (W.D. Mich. 1983); *Ralston v. Capper*, 569 F. Supp. 1575, 1578-79 (E.D. Mich. 1983); *Mauriber v. Shearson/Am. Express, Inc.*, 567 F. Supp. 1231, 1239-40, (S.D.N.Y. 1983); *Bankers Trust Co. v. Feldesman*, 566 F. Supp. 1235, 1239-40 (S.D.N.Y. 1983); *Eisenberg v. Gagnon*, 564 F. Supp. 1347, 1351 (E.D. Pa. 1983); *Windsor Assoc., Inc. v. Greenfield*, 564 F. Supp. 273, 278-79 (D. Md. 1983); *Hunt Int'l Resources Corp. v. Binstein*, 559 F. Supp. 601, 602 (N.D. Tex. 1982); *Lode v. Leonardo*, 557 F. Supp. 675, 680 (N.D. Ill. 1982); *Kaushal v. State of India*, 556 F. Supp. 576, 578 (N.D. Ill. 1983); *Crocker Nat'l Bank v. Rockwell Int'l Corp.*, 555 F. Supp. 47, 49 (N.D. Cal. 1982); *D'Iorio v. Adonizio*, 554 F. Supp. 222, 230-31 (M.D. Pa. 1982); *Meineke Discount Muffler Shops, Inc. v. Noto*, 548 F. Supp. 352, 354 (E.D. N.Y. 1982); *Hanna Mining Co. v. Noreen Energy Resources, Ltd.*, 574 F. Supp. 1172, [1982 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 98,742 at 93,737 (N.D. Ohio 1982); *Harper v. New Japan Sec., Int'l, Inc.*, 545 F. Supp. 1002, 1006 n.7 (C.D. Cal. 1982); *Maryville Academy v. Loeb Rhoades & Co.*, 530 F. Supp. 1061, 1069 (N.D. Ill. 1981); *Hellenic Lines, Ltd. v. O'Hearn*, 523 F. Supp. 244, 247-48 (S.D.N.Y. 1981); *Spencer Co. v. Agency Rent-a-Car*, [1981-82 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 98, 361 at 92,214 (D. Mass. Nov. 17, 1982); *Engl v. Berg*, 511 F. Supp. 1146, 1155 (E.D. Pa. 1981); *Heinold Commodities, Inc. v. McCarty*, 513 F. Supp. 311, 313 (N.D. Ill. 1979); *Farmers Bank v. Bell Mortgage Corp.*, 452 F. Supp. 1278, 1280 (D. Del. 1978); *Accord Blakey, The RICO Civil Fraud Action in Context: Reflections on Bennet v. Berg*, 58 NOTRE DAME L. REV. 237, 284-85 (1982) [hereinafter cited as *Blakey, Reflections*].

24. Some courts have required a Civil RICO plaintiff to show a competitive injury in order to attain standing. The term competitive injury is one borrowed from antitrust law. Those courts that apply a competitive injury requirement rely on the fact that the Civil RICO treble damage clause is patterned after antitrust law and they rely on the Statement of Findings and Purpose which prefaces RICO stating it was intended to protect "legitimate businesses from organized crime infiltration" and to preserve "free competition." Pub. L. No. 91-452, 84 Stat. 922 (1970). See also Note, *Civil RICO: The Temptation and Impropriety of Judicial Restriction*, 95 HARV. L. REV. 1101, 1109-12 (1982) [hereinafter cited as Note, *Civil RICO*]. The effect of the competitive injury requirement as applied to the Civil RICO plaintiff is to grant standing only to those injured indirectly as competitors and to deny standing to those injured directly from the predicate acts. *Schacht v. Brown*, 711 F.2d 1343, 1357 (7th cir. 1983).

However, the majority of courts and commentators have rejected the application of the competitive injury requirement to Civil RICO plaintiffs. See *Bunker Ramo Corp. v. United Business Forms, Inc.*, 713 F.2d 1272, 1288 (7th Cir. 1983); *Schacht v. Brown*, 711 F.2d 1343, 1358 (7th Cir. 1983); *Yancoski v. E.F. Hutton & Co.*, 581 F. Supp. 88, 92 (E.D. Pa. 1983); *Slattery v. Costello*, 586 F. Supp. 162, 165-66 (D.D.C. 1983); *Municipality of Anchorage v. Hitachi Cable, Ltd.*, No. 81-347, slip op. at 3-4 (March 18, 1983); *In re Longhorn Sec. Litig.*, 573 F. Supp. 255, 270 (W.D. Okl. 1983); *Ralston v. Capper*, 569 F. Supp. 1575, 1580 (E.D. Mich. 1983); *Wilkinson v. Paine, Webber, Jackson & Curtis, Inc.*, 585 F. Supp. 23, [1982-83 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 99,198 at 95,797 (N.D. Ga. 1983); *Mauriber v. Shearson/Am. Express, Inc.*, 567 F. Supp. 1231, 1240-41 (S.D. N.Y. 1983); *Eisenberg v. Gagnon*, 564 F. Supp. 1347, 1352-53 (E.D. Pa. 1983); *Gitterman v. Vitoulis*, 564 F. Supp. 46, 48 (S.D.N.Y. 1982); *Crocker Nat'l Bank v. Rockwell Int'l Corp.*, 555 F. Supp. 47, 49 (N.D. Cal. 1982); *D'Iorio v. Adonizio*, 554 F. Supp. 222, 230 n.5 (M.D. Pa. 1982); *Hanna Mining v. Noreen Energy Resources, Ltd.*, 574 F. Supp. 1172, [1982 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 98,742 at 93,737 (N.D. Ohio 1982); *State Farm Fire & Cas. Co. v. Estate of Caton*, 540 F. Supp. 673, 680 (D. Del. 1982); *Hellenic Lines, Ltd. v. O'Hearn*,

jury.²⁶ A majority of courts have rejected the first three standing requirements set out above,²⁷ and there remains a sharp division among the courts concerning the last standing requirement: a racketeering enterprise injury.²⁸

523 F. Supp. 244, 248 (S.D.N.Y. 1981); Blakey, *Reflections*, *supra* note 23, at 237 (1982).

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

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

25. Less than a handful of courts have held that standing is restricted to legitimate enterprises “infiltrated” through a pattern of racketeering activity. *Spencer Co. v. Agency Rent-a-Car, Inc.*, [1981-1982 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 98,361 (E.D. Mass. Nov. 17, 1982); *Erlbaum v. Erlbaum*, FED. SEC. L. REP. (CCH) ¶ 98, 772 (E.D. Pa. July 13, 1982).

26. Racketeering enterprise injury, aka “distinct injury,” “special injury,” “enterprise injury,” “racketeering injury” and “by reason of injury.”

27. See *supra* notes 23-25 and accompanying text.

28. Roughly half of the courts dealing with the issue have rejected the racketeering enterprise injury requirement. Furthermore, it appears to be the trend to recognize the meaninglessness of the racketeering enterprise injury. See, e.g., *Haroco, Inc. v. Am. Nat'l Bank & Trust Co.*, 747 F.2d 384, 387-9 (7th Cir. 1984); *Alexander Grant & Co. v. Tiffany Indus., Inc.*, 742 F.2d 408, 413 (8th Cir. 1984); *Furman v. Cirrito*, 741 F.2d 524, 528 (2d Cir. 1984), *petition for cert. filed*; *Schacht v. Brown*, 711 F.2d 1343, 1359 (7th Cir. 1984); *Bennett v. E.F. Hutton*, 597 F. Supp. 1547 (N.D. Ohio, 1984); *Berg v. First Am. Bank Share, Inc.*, 599 F. Supp. 500, (D.D.C. 1984); *Joseph v. Algemene Bank Nederland*, 592 F. Supp. 141, 147 (W.D. Pa. 1984); *Chambers Dev. Co. v. Browning-Ferris Indus.*, 590 F. Supp. 1528, 1539 (W.D. Pa. 1984); *Wilcox v. Ho-Wing Sit*, 586 F.

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

Supp. 561, 569 (N.D. Cal. 1984); *Catanella*, 583 F. Supp. 1388, 1437 (E.D. Pa. 1984); *Morosani v. First Nat'l Bank*, 581 F. Supp. 945, 952 (N.D. Ga. 1984); *Swanson v. Wabash*, 577 F. Supp. 1308, 1319-20 (N.D. Ill. 1983); *Kirschner v. Cable/Tel. Corp.*, 576 F. Supp. 234, 244 (E.D. Pa. 1983); *Yancoski v. E.F. Hutton & Co.*, 581 F. Supp. 88, 97 (E.D. Pa. 1983); *Ralston v. Capper*, 569 F. Supp. 1575, 1581 (E.D. Mich. 1983); *Austin v. Merrill Lynch*, 570 F. Supp. 667, 669 (W.D. Mich. 1983); *Slattery v. Costello*, 586 F. Supp. 162, 167 (D.D.C. 1983); *Mauriber v. Shearson/Am. Express, Inc.*, 567 F. Supp. 1231, 1240 (S.D.N.Y. 1983); *Seville Indus. Mach. Corp. v. Southmost Mach. Corp.*, 567 F. Supp. 1146, 1157 (D.N.J. 1983); *Kimmel v. Peterson*, 565 F. Supp. 476, 495 (E.D. Pa. 1983); *Eisenberg v. Gagnon*, 564 F. Supp. 1347, 1352-53 (E.D. Pa. 1983); *Windsor Assoc., Inc. v. Greenfield*, 564 F. Supp. 273, 279 (D. Md. 1983); *Crocker Nat'l Bank v. Browning-Ferris Indus., Inc.*, 555 F. Supp. 47, 49-50 (N.D. Cal. 1982); *Meineke Discount Muffler Shops, Inc. v. Noto*, 548 F. Supp. 352, 354 (E.D.N.Y. 1982).

The courts that require the plaintiff to prove a racketeering enterprise injury are as follows: *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 574 F. Supp. 963 (E.D.N.Y. 1983), 741 F.2d 482, 494 (2d Cir. 1984), cert. granted, 53 U.S.L.W. 3506 (U.S. Jan. 14, 1985) (No. 84-648); *Bankers Trust Co. v. Rhoades*, 741 F.2d 511, 515-16 (2d Cir. 1984); *White v. Fosco*, No. 81-2500, slip op. (D.D.C. 1984) *Carbone, Inc. v. Proctor Ellison Co.*, 102 F.R.D. 951 (D. Mass. 1984); *Atlantic Fed. Sav. & Loan Ass'n v. Dade Sav. & Loan Ass'n*, 592 F. Supp. 1089, 1092-93 (S.D. Fla. 1984); *Gramercy 222 Residents Corp. v. Gramercy Realty Assoc.*, 591 F. Supp. 1408, 1414 (S.D.N.Y. 1984); *Rush v. Oppenheimer & Co.*, 592 F. Supp. 1108, 1113 (S.D.N.Y. 1984); *Lopez v. Dean Witter Reynolds, Inc.*, 591 F. Supp. 581, 588 (N.D. Cal. 1984); *Clute v. Davenport Co.*, 584 F. Supp. 1562, 1569 (D. Conn. 1984); *Margolis v. Republic Nat'l Bank*, 585 F. Supp. 595, 596 (S.D.N.Y. 1984); *Wilcox Dev. Co. v. First Interstate Bank*, 590 F. Supp. 445, 451 (D. Or. 1984); *Econo-Car Int'l, Inc. v. Agency Rent-a-Car, Inc.*, 589 F. Supp. 1368, 1376 (D. Mass. 1984); *Bruns v. Ledbetter*, 583 F. Supp. 1050, 1056 (S.D. Cal. 1984); *Freschi v. Grand Coal Venture*, 583 F. Supp. 780, 787 (S.D. N.Y. 1984); *Kaufman v. Chase Manhattan Bank*, 581 F. Supp. 350, 358 (S.D. N.Y. 1984); *Willamette Sav. & Loan v. Blake & Neal Fin. Co.*, 577 F. Supp. 1415, 1430 (D. Or. 1984); *Hudson v. Larouche*, 579 F. Supp. 623, 630 (S.D. N.Y. 1983); *In re Indus. Tender Offer*, 572 F. Supp. 846, 851 (E.D. Va. 1983); *Gitterman v. Vitoulis*, 579 F. Supp. 423, 428 (S.D. N.Y. 1983); *Dakis on behalf of Dakis Pension Plan v. Chapman*, 574 F. Supp. 757, 761 (N.D. Cal. 1983); *Guerrero v. Katzen*, 571 F. Supp. 714, 719 (D.D.C. 1983); *Waste Recovery Corp. v. Mahler*, 566 F. Supp. 1466, 1469 n.1 (S.D.N.Y. 1983); *Barker v. Underwriters at Lloyds*, 564 F. Supp. 352, 358 (E.D. Mich. 1983); *Bulkferts, Inc. v. Salatin, Inc.*, 574 F. Supp. 6, 9 n.4 (S.D.N.Y. 1983); *Johnsen v. Rogers*, 551 F. Supp. 281, 285 (C.D. Cal. 1982); *Harper v. New Japan Sec. Int'l, Inc.*, 545 F. Supp. 1002, 1007 (C.D. Cal. 1982).

29. 583 F. Supp. 1388 (E.D. Pa. 1984) cited with approval in *Alexander Grant & Co. v. Tiffany Indus.*, 742 F.2d 408, 413 (8th Cir. 1984) and in *Haroco, Inc. v. Am. Nat'l Bank & Trust Co.*, 747 F.2d 384, 391 (7th Cir. 1984).

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

I. THE EVOLUTION OF THE RACKETEERING ENTERPRISE INJURY REQUIREMENT

The evolution of the racketeering enterprise injury begins in Congress' attempt "to strike a mortal blow"³⁰ against organized crime through the enactment of Civil RICO. The aggressive measures taken by Congress reflect the realization that criminal organizations possess an overwhelming amount of money and power³¹ and are using these resources to infiltrate and corrupt legitimate businesses.³² Congress was concerned that our democratic and economic systems were gradually being subverted by these criminal forces.³³ In response to this threat, Congress acted drastically in its adoption of Civil RICO by providing the private civil litigant a powerful tool to attack the lifeline of organized crime—its profits.³⁴ Civil RICO operates to take the profit incentive out of organized crime by awarding the victim treble damages. This new remedy furthers Congress' goal, the eradication of organized crime,³⁵ by depleting the assets of criminal organizations and thereby impeding their ability to influence and corrupt society.

While the intended purpose of Civil RICO was the abolition of organized crime,³⁶ Congress was aware that a law targeted solely at organized crime would be unconstitutional.³⁷ Representative Poff³⁸ argued that any statute aimed at the status of an individual would be constitutionally suspect in light of the Supreme Court's consistent invalidation of statutes that create status offenses or that make it unlawful to be a member of certain organizations. The amendment proposed by Representative Biaggi³⁹ suggesting that the bill

30. 116 CONG. REC. 602 (1970) (Statement of Sen. Hruska).

31. Pub. L. No. 91-452, 84 Stat. 922-23 (1970) (The Statement of Findings and Purpose).

32. *Id.* See also 115 CONG. REC. 6993 (1969) (Sen. Hruska).

33. *Id.*

34. S. REP. NO. 617, 91st Cong. 1st Sess. 79 (1969) (Sen. McClellan)

What is needed . . . are new approaches that will deal not only with individuals, but also with an economic base to which those individuals constitute such a serious threat to the economic well-being of the nation . . . [a]n attack must be made on their source of economic power itself, and the attack must take place on all available fronts.

35. Pub. L. No. 91-452, 84 Stat. 922-923 (1970) (The Statement of Findings and Purpose).

36. *Id.*

37. See *infra* notes 38-39 and accompanying text.

38. 116 CONG. REC. 35, 293 (1970) (Statement of Rep. Poff).

39. 116 CONG. REC. 35, 343 (1970) (Statement of Rep. Biaggi).

be tailored to outlawing membership in the Mafia or in La Cosa Nostra was rejected by Congress. Accordingly, the enactment of Civil RICO did not create a status offense but rather created a conduct offense. A statute aimed at conduct affects all individuals equally who, regardless of their affiliations, engage in the proscribed activity. Further evidence that Civil RICO is a law geared toward conduct is the fact that it was enacted over specific objections that its reach went far beyond organized crime.⁴⁰ These objections were voiced by Senators Philip A. Hart and Edward M. Kennedy when the predicate acts listed in RICO were expanded to include mail, wire, and securities fraud.⁴¹ These predicate acts bring ordinary white collar criminals within the scope of Civil RICO. Therefore, Congress' intent not to limit the application of Civil RICO to organized crime is evidenced by the express language of Civil RICO and by the comments of those who did not fully support the bill.

Despite the clear legislative intent to extend the application of Civil RICO beyond members of organized crime, some courts have been reluctant to do so.⁴² These courts are hesitant to inflict treble damages upon defendants who are not typically considered members of criminal organizations. To alleviate their judicial discomfort in applying Civil RICO to white collar criminals, these courts have imposed stringent standing requirements⁴³ on plaintiffs seeking to sue under Civil RICO. The court's imposition of one such standing requirement, the racketeering enterprise injury,⁴⁴ requires the plaintiff to allege injury from the enterprise instead of merely alleging injury from the predicate acts.⁴⁵

The court's requirement of a racketeering enterprise injury is the most frequently litigated issue⁴⁶ regarding the application of Civil RICO today. The opposing views are: those who advocate restricting the use of Civil RICO by requiring a racketeering enterprise injury and those who oppose limiting the application of Civil RICO and instead require only injury from the predicate acts.

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

40. See *infra* note 41.

41. S. REP. NO. 617, 91st Cong. 1st Sess. 215 (1969).

42. See *supra* notes 23-28 and accompanying text.

43. *Id.*

44. See *supra* note 26.

45. For an example, see *infra* notes 84-87 and accompanying text.

46. See *supra* note 28.

racketeering enterprise injury by those courts requiring such an injury.

II. THE DEFINITIONS OF A RACKETEERING ENTERPRISE INJURY

No court has offered a practical or tangible definition of what is meant by a racketeering enterprise injury.⁴⁷ Moreover, very few courts have even attempted to define this nebulous requirement.⁴⁸ One court appropriately stated that a racketeering enterprise injury is a "slippery concept whose definition has eluded even those courts professing to recognize it."⁴⁹

To illustrate this point, in *Willamette Savings & Loan v. Blake & Neal Finance Co.*,⁵⁰ the court conceded that it was a difficult task to define a racketeering enterprise injury, but nevertheless proclaimed that courts will recognize "a racketeering enterprise injury when they see one."⁵¹ Justice Stewart's well known observation regarding pornography was relied upon by the *Willamette* court:

I shall not attempt to further define the kind of material I understand to be embraced within the shorthand description (i.e., hardcore pornography); and perhaps I could never succeed in intelligently doing so. But I know it when I see it, and the motion picture involved in this case is not it.⁵²

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

47. Some courts have imposed a racketeering enterprise injury requirement on civil RICO plaintiffs without explaining what is meant by the requirement. See *Hudson v. Larouche*, 579 F. Supp. 1535, 1539-41 (S.D.N.Y. 1984), *aff'd*, No. 84-7113, slip op. (2d Cir. July 27, 1984); *King v. Lasher*, 572 F. Supp. 1377, 1382 (S.D.N.Y. 1983); *Guerrero v. Katzen*, 571 F. Supp. 714, 718-19 (D.D.C. 1983); *Barker v. Underwriters at Lloyd's*, 564 F. Supp. 352, 358 (E.D. Mich. 1983).

48. See *Catanella*, 583 F. Supp. 1388, 1436 (E.D. Pa. 1984) (racketeering enterprise injury is a "catch-all" term); *Willamette Sav. & Loan v. Blake & Neal Fin. Co.*, 577 F. Supp. 1415, 1430 (D. Or. 1984) (courts will recognize a racketeering enterprise injury when they see one); *Bankers Trust Co. v. Feldesman*, 566 F. Supp. 1235, 1241 (S.D.N.Y. 1983) (racketeering enterprise injury is a competitive injury); *Johnson v. Rogers*, 551 F. Supp. 281, 285 (C.D. Cal. 1982) (a racketeering enterprise injury is a commercial injury); *Landmark Sav. Loan v. Loeb Rhoades & Co.*, 527 F. Supp. 206, 208-09 (E.D. Mich. 1981) (defined racketeering enterprise injury by way of an example).

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

50. 577 F. Supp. 1415, 1430 (D. Or. 1984).

51. *Id.* See also *Waste Recovery Corp. v. Mahler*, 566 F. Supp. 1466, 1468 (S.D.N.Y. 1983).

52. *Willamette Sav. & Loan v. Blake & Neal Fin. Co.*, 577 F. Supp. 1415, 1430 (D. Or. 1984) (quoting from *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964)).

RICO plaintiff to gain standing to sue should be consistent throughout the United States. Injury "by reason of"⁵³ should not be a subjective determination based on a pliable, evolving standard, but should be an objective determination applied to the facts of each case. Thus, analogizing a RICO injury⁵⁴ to the definition of pornography results in the illusory requirement of a racketeering enterprise injury being used to deny standing to the direct victims of racketeering activity.

Another court⁵⁵ attempted to define a racketeering enterprise injury by way of an illustration: "An injury might be found where a Civil RICO defendant's ability to harm the plaintiff is enhanced by infusion of money from a pattern of racketeering activity into the enterprise."⁵⁶

This example does nothing by way of providing a concrete definition of a racketeering enterprise injury and "does even less in terms of limiting the statute's reach since almost every defendant's ability to inflict harm on a plaintiff would be enhanced by the fruits of racketeering activity."⁵⁷ It seems any plaintiff that alleges a violation of section 1962⁵⁸ and an accompanying injury would satisfy this example. In effect, this purported illustration of a racketeering enterprise injury is consistent with the reading of Civil RICO employed by the courts that reject a special injury requirement.

Other courts⁵⁹ have defined a racketeering enterprise injury as a "different sort of injury than injury from the predicate acts";⁶⁰ other courts have defined it as an injury which possesses "something more than the injury resulting from the . . . predicate acts."⁶¹ These courts, however, have failed to explain what is meant by a "different sort of injury"⁶² or what constitutes "something more"⁶³ than injury resulting from the predicate acts. In sum, the only feature of a racketeering enterprise injury which the courts have been able to articulate is that a racketeering enterprise injury does not

53. "Injury by reason of" a violation of § 1962 as proscribed by 18 U.S.C. § 1964(c) (1982). *See supra* note 2.

54. In other words, a "racketeering enterprise injury."

55. *Landmark Sav. & Loan v. Loeb Rhoades & Co.*, 527 F. Supp. 206, 208-09 (E.D. Mich. 1981). The court also noted that racketeering enterprise injuries and competitive injuries are not identical; however, it conceded to the existence of an overlap between the two types of injuries. *Id.* at 209.

56. *Id.*

57. *Furman v. Cirrito*, 741 F.2d 524, 530 (2d Cir. 1984).

58. 18 U.S.C. § 1962 (1982). *See supra* note 2.

59. *See infra* note 64.

60. *K-N Energy, Inc. v. Gulf Interstate Co.*, [Current] FED. SEC. L. REP (CCH) ¶ 99,423 at 96, 429 (D. Colo. June 30, 1983).

61. *King v. Lasher*, 572 F. Supp. 1377, 1382 (S.D.N.Y. 1983).

62. *See supra* note 60.

63. *See supra* note 61.

include injuries flowing from the commission of the predicate acts.⁶⁴ Since these courts cannot sufficiently define a racketeering enterprise injury it becomes necessary to examine how these courts justify the imposition of a racketeering enterprise injury requirement.

III. THE JUSTIFICATIONS GIVEN BY THE COURTS FOR REQUIRING A RACKETEERING ENTERPRISE INJURY

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

The first justification given by some courts for requiring a racketeering enterprise injury is based on a general analogy to antitrust law. The legislative history of Civil RICO⁶⁷ makes reference to an-

64. *Kaufman v. Chase Manhattan Bank*, 581 F. Supp. 350, 358 (S.D.N.Y. 1984) (racketeering enterprise injury is "something more than direct injury from the predicate acts"); *K-N Energy, Inc. v. Gulf Interstate Co.*, [Current] FED. SEC. L. REP. (CCH) ¶ 99, 423 at 96,429 (D. Colo. June 30, 1983) (racketeering enterprise injury requires "a different sort of injury than injury from the predicate acts"); *King v. Lasher*, 572 F. Supp. 1377, 1382 (S.D.N.Y. 1983) ("the injury which triggers RICO must be something more than the injury resulting from the alleged underlying predicate acts"); *Erlbaum v. Erlbaum*, [1982 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 98, 772 (E.D. Pa. 1982) ("must allege something more than an injury from racketeering activity"); *Landmark Sav. & Loan v. Loeb Rhoades & Co.*, 527 F. Supp. 206, 208 (E.D. Mich. 1981) ("standing to bring a Civil RICO damage action [requires] an allegation that the plaintiff has suffered a racketeering enterprise injury, i.e., something more or different than injury from the predicate acts").

65. 18 U.S.C. § 1964(c) (1982). See *supra* note 2.

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

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

67. At 115 CONG. REC. 6993 (1969) Senator Hruska states: "Patterned closely after the Sherman Act (RICO) provides for private treble damage suits prospective injunctive relief, discovery procedures and all the other devices which bring to bear the

titrust principles, for example, the Civil RICO treble damage clause⁶⁸ was modeled after the Clayton Antitrust Act.⁶⁹ A few courts⁷⁰ have seized upon these antitrust references as evidence that Congress intended to impose on Civil RICO plaintiffs standing requirements which are similar to those required of antitrust plaintiffs. In order for a plaintiff to gain standing under the Clayton Act, the plaintiff must prove an "antitrust injury," which is to say "injury of the type the antitrust laws were intended to prevent."⁷¹ In light of Civil RICO's adoption of the antitrust treble damage language, some courts maintain that the plaintiff must demonstrate a distinct "RICO injury" in order to state a Civil RICO claim, in other words, "the type of injury RICO was intended to prevent."⁷² Accordingly, the requirement for a distinct injury, different from the injury resulting from the predicate acts, was created.⁷³ Further, these courts contend there is nothing in Civil RICO's legislative history that suggests Congress did not intend to create analogous standing barriers to Civil RICO by using the "injury by reason of" language. Consequently, these courts conclude that standing should only be granted to those who have suffered a racketeering enterprise injury.⁷⁴

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

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

68. 18 U.S.C. § 1964(c) (1982). *See supra* note 2.

69. Section 4 of the Clayton Act, 15 U.S.C. § 15.

70. *See infra* note 72.

71. *Brunswick Corp. v. Pueblo Bowl-o-Mat, Inc.*, 429 U.S. 477, 489 (1977).

72. *Bruns v. Ledbetter*, 583 F. Supp. 1050, 1056 (S.D. Cal. 1984) (a racketeering enterprise injury is required; injury "of the sort that RICO was enacted to remedy and deter"); *Guerrero v. Katzen*, 571 F. Supp. 714, 718-19 (D.D.C. 1983) ("a plaintiff must allege not only injury arising from the predicate acts, but injury of the type that RICO was intended to prevent"); *Johnson v. Rogers*, 551 F. Supp. 281, 285 (C.D. Cal. 1982); *Harper v. New Japan Sec. Int'l, Inc.*, 545 F. Supp. 1002, 1007-08 (C.D. Cal. 1982) (plaintiff must allege "injury the type that the RICO statute was intended to prevent").

73. *Johnsons v. Rogers*, 551 F. Supp. 281, 285 (C.D. Cal. 1982); *Harper v. New Japan Sec. Int'l, Inc.*, 545 F. Supp. 1002, 1007 (C.D. Cal. 1982); *Landmark Sav. & Loan v. Loeb Rhoades & Co.*, 527 F. Supp. 206, 208 (E.D. Mich. 1981) (Although RICO does not require competitive injury, as defined by antitrust cases, the plaintiff must allege a racketeering enterprise injury).

74. The legislative history has been read to support both sides of the argument. This is in part attributable to the fact that the addition of the private right of action to the preliminary draft of the RICO statute did not generate discussion in either the House or Senate. *Clute v. Davenport Co.*, 584 F. Supp. 1562, 1573 (D. Conn. 1984). *See Note, Civil RICO, supra* note 24, at 1101, 1112 n.62 (1982). *See also supra* note 66.

of the antitrust treble damage clause⁷⁵ is the requirement of an indirect injury.⁷⁶ Therefore, an analogy to the Clayton Act, based on this clause, could only yield an indirect injury requirement. The majority of courts, in addressing Civil RICO, have rejected the indirect injury requirement⁷⁷ because Congress did not intend to limit Civil RICO by antitrust concepts such as “competitive,” “commercial,” “direct or indirect” injury.⁷⁸ The application of antitrust principles to Civil RICO, “flies in the face” of legislative intent.⁷⁹

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

In addition to being vague, ambiguous and contrary to legislative intent, the distinct injury requirement will lead to the anomalous result of denying relief to direct victims of organized crime.⁸³ For example, members of organized crime who infiltrate an enterprise⁸⁴ and who conduct the affairs of the enterprise to defraud their cus-

75. *Brunswick Corp. v. Pueblo Bowl-o-Mat, Inc.*, 429 U.S. 477, 489 (1977).

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

77. *See supra* note 24.

78. Blakey, *Reflections*, *supra* note 23, at 237, 255 n.52. (1982).

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

80. *United States v. Turkette*, 452 U.S. 576, 591 (1981).

81. *See supra* note 23.

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

83. *Seville Indus. Mach. Corp. v. Southmost Mach. Corp.*, 567 F. Supp. 1146, 1157 (D.N.J. 1983)

84. For example, the enterprise might be a brokerage firm or a store.

tomers may produce injury only to such customers. Based on the antitrust analogy, these customers would be denied standing to sue in those courts requiring a racketeering enterprise injury⁸⁵ since they would not have sustained an injury "distinct or different" from the injury resulting from the predicate acts.⁸⁶ However, such conduct would "violate RICO and lie near the center of Congress' concern."⁸⁷ Section 1964(c)⁸⁸ was specifically adopted by Congress to deter this very type of criminal activity and it is the responsibility of the judicial system not to "create cracks through which the targeted behavior will slip."⁸⁹ Therefore, the standing requirement of a racketeering enterprise injury, based on any analogy to the antitrust treble damage clause, should be rejected.

The second justification offered by some courts for requiring a racketeering enterprise injury is that Congress, in drafting Civil RICO, did not intend to federalize pre-existing state laws.⁹⁰ These courts⁹¹ refuse to allow standing to plaintiffs injured directly from the predicate acts because they fear that Civil RICO will transform traditional state offenses into federal offenses.⁹²

However, the language of Civil RICO⁹³ and its legislative history⁹⁴ reveal that "Congress was well aware that it was entering a new domain of federal involvement through the enactment of

85. Civil RICO provisions would be limited to indirect victims, if there were any, such as the extortionists' competitors. However, "we suspect that competing extortionists would be unlikely to sue under Civil RICO." *Haroco, Inc. v. American Nat'l Bank & Trust Co.*, 747 F.2d 384, 391 n.10 (7th Cir. 1984).

86. *Mauriber v. Shearson/Am. Express, Inc.*, 567 F. Supp. 1231, 1240 (S.D.N.Y. 1983).

87. *Id.*

88. 18 U.S.C. § 1964(c) (1982). *See supra* note 2.

89. *Catanella*, 583 F. Supp. 1388, 1434 (E.D. Pa. 1984).

90. *United States v. Forsythe*, 560 F.2d 1127, 1135 (3d Cir. 1977) ("RICO not designed to punish state law violations"); *Johnson v. Rogers*, 551 F. Supp. 281, 284 (C.D. Cal. 1982) ("Congress . . . did not intend to provide an additional remedy for an already compensatable injury"); *Harper v. New Japan Sec. Int'l, Inc.*, 545 F. Supp. 1002, 1007-08 (C.D. Cal. 1982) ("no evidence that [RICO] was meant to pre-empt or supplement the remedies already provided by those statutes which define a predicate RICO offense"); *Van Schaick v. Church of Scientology, Inc.*, 535 F. Supp. 1125, 1136 (D. Mass. 1982) (courts have restricted RICO in fear that a literal application of the statute "would escort into federal court what have traditionally been civil actions pursued in state court"); *Adair v. Hunt Resources Corp.*, 526 F. Supp. 736, 747 (N.D. Ill. 1981) ("Congress did not envision RICO as an alternative and cumulative remedy").

91. *See supra* note 90.

92. *Id.*

93. 18 U.S.C. § 1961(1)(a) (1982) provides: "[A]ny act or threat involving murder, kidnapping, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under *State law*." *Id.* (Emphasis added)

94. 116 CONG. REC. 35,217 (1970) (statements of Rep. Eckhardt). *See also id.* at 35,205 (statements of Rep. Mikva); *Id.* at 35,213 (statements of the American Civil Liberties Union); Hearing on Organized Crime Control before Subcommittee No. 5 of the House Committee on the Judiciary, 91st Cong. 2d Sess., 329, 370 (1970) (statement of Sheldon H. Eisen on behalf of the Association of the Bar of the City of New York).

[RICO].”⁹⁵ The evil ramifications of organized crime motivated Congress to adopt a sweeping statute that “moves large substantive areas formerly within the police power of the state into the federal realm.”⁹⁶ Since Congress has considered this effect, the judiciary should not be allowed to restrict Civil RICO in the name of federalism.

Another related argument made by courts in support of a racketeering enterprise injury requirement is that Congress did not intend to supplement the substantive statutes⁹⁷ constituting racketeering activity. These courts⁹⁸ refuse to grant standing to plaintiffs injured directly from the predicate acts because they maintain it is illogical to provide a private right of action for treble damages⁹⁹ for exactly the same conduct punishable by the substantive statutes.¹⁰⁰ One court stated: “It is incomprehensible that a plaintiff suing under securities law would receive one third the damages of a plaintiff suing under RICO for the same injury.”¹⁰¹

These courts ignore that the mere commission of a predicate offense does not trigger the application of Civil RICO.¹⁰² The reasoning used by these courts¹⁰³ is deficient because it ignores the primary elements constituting a Civil RICO cause of action: a “pattern of racketeering activity”¹⁰⁴ and the existence of an “enterprise.”¹⁰⁵ To establish a pattern of racketeering activity,¹⁰⁶ the plaintiff must prove the defendant committed two or more predicate acts¹⁰⁷ in a certain manner¹⁰⁸ and within a specific time

95. *United States v. Turkette*, 452 U.S. 576, 586 (1981).

96. *Id.* at 586-87.

97. 18 U.S.C. § 1961(1) (1982). *See supra* note 2.

98. Generally, this argument is made by the courts to deny standing to a victim of “garden variety fraud,” e.g., mail, wire and securities fraud. *Moss v. Morgan Stanley, Inc.*, 553 F. Supp. 1347, 1361 (S.D.N.Y. 1983) (“it was clearly established at the time that RICO was enacted that there was no private right of action for violations of the mail fraud statute”); *Harper v. New Japan Sec. Int’l, Inc.*, 545 F. Supp. 1002, 1007-08 (C.D. Cal. 1982) (Congress could not have intended to provide treble damage causes of action to persons whose injury stems directly from the predicate acts alone); *See also Guerrero v. Katzan*, 511 F. Supp. 714, 719 (D.D.C. 1983).

99. *See supra* note 98.

100. 18 U.S.C. § 1961(1) (1982). *See supra* note 2.

101. *Guerrero v. Katzan*, 571 F. Supp. 714, 719 (D.D.C. 1983).

102. *See United States v. Forsythe*, 560 F.2d 1127, 1135 (3d Cir. 1977).

103. *See supra* note 90.

104. 18 U.S.C. §§ 1962(a)-(d) (1982). *See supra* note 2.

105. *Id.*

106. 18 U.S.C. § 1961(5) (1982). *See supra* note 2.

107. 18 U.S.C. § 1961(1) (1982). *See supra* note 2.

108. *United States v. Stofsky*, 409 F. Supp. 609, 614 (S.D.N.Y. 1973) (racketeering activities may not be isolated, disconnected incidents, but must be connected with each other by some common scheme, plan or motive). *But see United States v. Elliot*, 571 F.2d 880, 899 (5th Cir. 1978) (racketeering activities must be related to conduct of the enterprise but not necessarily related to each other).

frame.¹⁰⁹ Furthermore, the existence of the “enterprise” is the *sine qua non*¹¹⁰ of a Civil RICO claim, and “at all times remains a separate element that must be proved.”¹¹¹

The third justification given by some courts for requiring a racketeering enterprise injury is the courts’ concern over their already overcrowded dockets.¹¹² Due to the recent discovery of Civil RICO, there has been an explosion of litigation.¹¹³ Consequently, these courts reason that if they allow standing to plaintiffs alleging injury solely from the predicate acts, they will be inundated with Civil RICO suits.

The additional burden of proving a racketeering enterprise injury, however, contradicts the legislative intent behind Civil RICO. When drafting Civil RICO, Congress realized that it was creating revolutionary federal civil remedies in a field traditionally occupied by state law.¹¹⁴ In fact, Congress deliberately extended the potential scope of Civil RICO in disregard of the specific objections made which raised the issue of crowded court dockets.¹¹⁵ It is not the role of the judicial system to stymie the broad reach of Civil RICO¹¹⁶ in order to alleviate their own administrative burden. Therefore, the crowded court docket rationale requiring a racketeering enterprise injury should be accorded no weight.

The fourth justification given by some courts for requiring a racketeering enterprise injury is based on the plain language of Civil RICO. The plain meaning of Civil RICO has been interpreted by some courts to necessitate a racketeering enterprise injury.¹¹⁷ These courts¹¹⁸ read section 1964(c)¹¹⁹ as requiring “something more” than merely an injury from the predicate acts. Section 1964(c)¹²⁰ provides a civil remedy to “[a] person injured . . . by reason of a violation of Section 1962.”¹²¹ These courts¹²² find this language to mean that the Civil RICO plaintiff must be injured not solely from

109. 18 U.S.C. § 1961(5) (1982). *See supra* note 2.

110. “That without which the thing cannot do. An indispensable requisite or condition.” BLACK’S LAW DICTIONARY 1242 (5th ed. 1978).

111. *United States v. Turkette*, 452 U.S. 576, 583 (1981).

112. Standing requirements imposed on antitrust plaintiffs have also been justified on the ground that opening the doors to more suits would put too much of an administrative burden on the courts. *Illinois Brick Co. v. Illinois*, 431 U.S. 720, 741 (1977).

113. The civil remedy was largely ignored for nearly a decade.

114. *United States v. Turkette*, 452 U.S. 576, 586 (1981).

115. *Id.* at 587.

116. *Id.* at 586.

117. *Bankers Trust Co. Rhoades*, 741 F.2d 511, 516 (2d Cir. 1984); *Haroco v. American Nat’l Bank & Trust Co.*, 577 F. Supp. 111, 113-14 (N.D. Ill. 1983).

118. *Id.*

119. 18 U.S.C. § 1964(c) (1982). *See supra* note 2.

120. *Id.*

121. 18 U.S.C. § 1962(a)-(d) (1982). *See supra* note 2.

122. *See supra* note 117.

the predicate acts,¹²³ but from the behavior proscribed in Section 1962.¹²⁴ In very general terms, Section 1962¹²⁵ prohibits a “person”¹²⁶ from engaging in two predicate acts to obtain an interest in or to operate an enterprise.¹²⁷ Since Section 1962¹²⁸ requires the existence of an enterprise, these courts conclude an injury “by reason of a violation of Section 1962”¹²⁹ must be an injury from the enterprise, the racketeering enterprise injury. Moreover, if Congress had intended Section 1964(c)¹³⁰ to compensate victims directly injured by the predicate acts, it could have made reference to the list of predicate acts¹³¹ in addition to Section 1962.¹³²

The better reasoned view is that the plain meaning of Civil RICO does not require a racketeering enterprise injury. Concededly, an injury sustained “by reason of a violation of Section 1962”¹³³ necessarily involves two predicate acts¹³⁴ and the existence of an enterprise.¹³⁵ The requirement for the existence of an enterprise,¹³⁶ however, is vastly different from the requirement that the plaintiff’s injury must result from or through the enterprise.¹³⁷ The simple answer is that Congress did not write Civil RICO to require an injury from or through an enterprise.¹³⁸ In most cases, the plaintiff’s injury will flow from the predicate acts as “the enterprise is merely the means or vehicle through which those acts are accom-

123. 18 U.S.C. § 1961(1) (1982). *See supra* note 2.

124. 18 U.S.C. § 1962(a)-(d) (1982). *See supra* note 2.

125. *Id.*

126. 18 U.S.C. § 1961(3) (1982). *See supra* note 2.

127. 18 U.S.C. § 1962(a)-(d) (1982). *See supra* note 2.

128. *Id.*

129. 18 U.S.C. § 1964(c) (1982). *See supra* note 2.

130. *Id.*

131. 18 U.S.C. § 1961(1) (1982). *See supra* note 2.

132. 18 U.S.C. § 1962 (1982). *See Comment, Reading the “Enterprise” Element Back Into RICO Section 1962 and 1964(c)*, 76 N.W. L. REV. 100, 125-33 (1981).

133. 18 U.S.C. § 1964(c) (1982). *See supra* note 2.

134. 18 U.S.C. § 1961(1) (1982). *See supra* note 2.

135. The concept of the enterprise may be divided into four broad categories: (1) commercial entities (corporations, partnerships, sole proprietorships); (2) benevolent organizations (unions, benefit funds, schools); (3) governmental units (the office of a governor, a state legislator, a court, a prosecutor’s office, a police or sheriff department, or an executive department or agency); or (4) associations in fact (licit or illicit). *See Blakey, Reflections, supra* note 23, at 237, 297-99 (1982).

136. 18 U.S.C. § 1962(a)-(d) (1982). *See supra* note 2.

137. *See supra* note 24.

138. Professor G. Robert Blakey points out that there seems to be two views of 18 U.S.C. § 1964(c)—that of Congress’ and that of some defense counsel and courts’ (the latter has interpreted § 1964(c) to read: “any person *competitively* injured by *organized crime* in his business or property by reason of a violation of Section 1962 of this chapter *distinct from any injury sustained from the commission of any racketeering activity* . . . shall . . . recover threefold damages . . . court costs and attorney’s fees”) Blakey, *RICO From Genesis to 1984 The Birth and Maturation of the Statute in RICO SECOND STAGE*, Tab N, 23 (1984) (hereinafter cited as RICO SECOND STAGE). (emphasis added).

plished.”¹³⁹ Congress provided in Section 1964(c)¹⁴⁰ unambiguous language which is controlling in the absence of “a clearly expressed legislative intent to the contrary.”¹⁴¹ Section 1964(c)¹⁴² grants private civil relief for “injury, which logically includes any injury,” by reason of a violation of Section 1962.¹⁴³ Therefore, Section 1964(c)¹⁴⁴ should be read as simply requiring a Civil RICO plaintiff to allege injury from the predicate acts to attain standing¹⁴⁵ to sue. It is appropriate to examine *In re Catanella & E.F. Hutton & Co., Inc. Securities Litigation*¹⁴⁶ which represents and supports the views expressed above.

IV. THE RACKETEERING ENTERPRISE INJURY REJECTED

*Catanella*¹⁴⁷ is the most significant and well reasoned case to date addressing the racketeering enterprise injury.¹⁴⁸ *Catanella*¹⁴⁹ provides a thorough analysis of a racketeering enterprise injury and rejects it as “vague and artificial.”¹⁵⁰ The case concludes that injury from the predicate acts is sufficient for a plaintiff to gain standing to sue in the federal courts.¹⁵¹

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

139. *Furman v. Cirrito*, 741 F.2d 524, 529 (2d Cir. 1984).

140. 18 U.S.C. § 1964(c) (1982). *See supra* note 2.

141. *United States v. Turkette*, 452 U.S. 576, 580 (1981).

142. 18 U.S.C. § 1964(c) (1982). *See supra* note 2.

143. *Furman v. Cirrito*, 741 F.2d 524, 528 (2d Cir. 1984).

144. 18 U.S.C. § 1964(c) (1982). *See supra* note 2.

145. *Mauriber v. Shearson/Am. Express, Inc.*, 567 F. Supp. 1231, 1240 (S.D.N.Y. 1983). (“I can imagine no construction of [1964(c)] which would exclude from [its coverage] the primary victims . . . and which would render . . . defendants immune from civil sanctions”).

146. *Catanella*, 583 F. Supp. 1388 (E.D. Pa. 1984).

147. *Id.*

148. Prof. G. Robert Blakey stated that *Catanella* provides “an excellent analysis of the most recent district court arguments.” RICO SECOND STAGE, *supra* note 138, at Tab N, 26.

149. *Catanella*, 583 F. Supp. 1388 (E.D. Pa. 1984).

150. *Id.*

151. *Id.*

152. *Id.* at 1392.

153. *Id.*

154. *Id.*

anticipated in the affairs of an “enterprise”—E.F. Hutton & Co. through a “pattern of racketeering”—multiple acts of fraud.¹⁵⁵ As a defense to the Civil RICO charge, the defendants asserted that the plaintiffs failed to allege the appropriate type of injury to establish an injury “by reason of a violation of Section 1962.”¹⁵⁶ The defendant maintained that the injuries sustained were only those flowing from the commission of the predicate acts.¹⁵⁷ Further, they contended “some additional injury”; was required, and they advocated the necessity of either an injury resulting from organized crime, a competitive injury or a racketeering enterprise injury.¹⁵⁸ The *Catanella* court addressed and rejected each of the judicially imposed standing barriers.¹⁵⁹ Most importantly, the *Catanella* court refused to engraft the elusive racketeering enterprise injury requirement onto a Civil RICO cause of action.¹⁶⁰ It is necessary to probe this court’s rationale for renouncing the racketeering enterprise injury requirement.

The *Catanella* court described a racketeering enterprise injury as an “umbrella concept” or a “catch-all” term possibly encompassing competitive, commercial, and infiltration injuries.¹⁶¹ Yet, the court was cognizant that this enlarged definition, including any form of indirect injury, did not remedy the basic flaw: a direct/indirect dichotomy “harkens back to an antitrust analogy”¹⁶² which is “untenable in light of RICO language and purpose.”¹⁶³ The court exposed this basic flaw by way of an example:

Consider . . . threats made to induce a small grocer to pay. . . for “protection services.” The grocer is not in competition with the vendors of this service . . . [n]o attempt is made to infiltrate . . . the grocer’s business. Nor is the grocer hampered in his ability to compete. Imposition of an [indirect] injury requirement would prevent the grocer from suing under section 1964(c). . . . The grocer in the example is a direct victim of racketeering activity.¹⁶⁴

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

155. *Id.* at 1430.

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.* at 1426-37.

160. *Id.* at 1434-37.

161. *Id.* at 1436.

162. *Id.*

163. *Id.*

164. *Id.* at 1433.

terprise injury would bar the grocer from recovering. The *Catanello* court found this result inconsistent with the nature and purposes behind the Civil RICO legislation.¹⁶⁵ First, “targeted behavior would go unpunished and the protection ring would not be divested of its ill-gotten gains.”¹⁶⁶ Second, by demanding injuries that are greater or different from those sustained by the predicate acts “is to imply that the damages must be indirect.”¹⁶⁷ It is clear from the legislative history that Civil RICO was not to be limited by the pre-established body of law restricting the standing of antitrust plaintiffs.¹⁶⁸

Lastly, the *Catanello* court made two meritorious observations regarding the racketeering enterprise injury: first, those courts requiring a racketeering enterprise injury have not defined the “parameters of this concept and it . . . [is] impossible to apply that which defies definition;”¹⁶⁹ and second, perhaps the “most telling fact about a racketeering enterprise injury is that none of the courts requiring this special injury have found it to exist in any of the cases before them.”¹⁷⁰ In other words, these courts have not adhered to the broad sweep Congress intended Civil RICO to have, but have succumbed to the temptation of substituting their own views as to when the statute should be applied.

CONCLUSION

The judicial curtailing of Civil RICO stems from the courts’ discomfort with inflicting treble damages upon defendants who are not involved in organized crime. The courts experiencing this uneasiness have focused on the problem that gave rise to the Civil RICO legislation—organized crime—rather than focusing on the statute as promulgated by Congress.¹⁷¹ What these courts have overlooked is that the scope of Civil RICO was intentionally expanded by Congress to include white collar crime when Civil RICO was designed to deter all conduct that endangers the legitimate functioning of businesses.¹⁷² Today, due to the pervasiveness of white collar crime, and to the serious threat it poses to the economy, the far-ranging application of Civil RICO has come of age. The courts, therefore, should stop trying to thwart Civil RICO’s potential im-

165. *Id.*

166. *Id.*

167. *Id.* at 1434-35.

168. *See supra* note 24 and accompanying text.

169. *Catanello*, 583 F. Supp. 1388, 1437 (E.D. Pa. 1984).

170. *Id.*

171. 18 U.S.C. §§ 1961-1968 (1982). *See supra* note 2.

172. *See supra* notes 38-41 and accompanying text.

pact by narrowly construing Section 1964(c)¹⁷³ to require a racketeering enterprise injury.

Moreover, a growing number of courts have come to recognize the meaninglessness of the racketeering enterprise injury requirement as a standing barrier¹⁷⁴ to the Civil RICO plaintiff. A racketeering enterprise injury is unprincipled, impossible to define and has been arbitrarily applied. Justifications given in support of it are premised on forced analogies to antitrust law; misunderstandings of Civil RICO's legislative intent and purposes; judicial overreactions to crowded court dockets; and twisted interpretations of the statutory language of Civil RICO.

There is not a scintilla of evidence in Civil RICO's expressed language, nor in its legislative history, indicating that Congress envisioned a racketeering enterprise injury requirement. Courts straining to find such a requirement should start applying Civil RICO instead of trying to redesign it. Civil RICO demands broad judicial interpretation¹⁷⁵ by mandating a liberal construction to effectuate its remedial purpose.¹⁷⁶ To honor the liberal construction clause, Section 1964(c)¹⁷⁷ should be read by the courts to require no more than an allegation of injury from the predicate acts for the Civil RICO plaintiff to gain standing to sue in the federal courts.

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173. 18 U.S.C. § 1964(c) (1982). *See supra* note 2.

174. *Wilcox v. Ho-Wing Sit*, 586 F. Supp. 561, 569 (N.D. Cal. 1984).

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

176. *Organized Crime Control Act*, 1970, Pub. L. 91-452, § 904(a), 84 Stat. 922, 947 (1970). The complete text states: "The provisions of this title shall be liberally construed to effectuate its remedial purposes."

177. 18 U.S.C. § 1964(c) (1982). *See supra* note 2.