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# Recent Developments: Tafflin v. Levitt: State Court Jurisdiction over Civil Rico Claims Not Preempted

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Appellant incurred some cost in complying with the generally applicable sales and use tax, the Court noted that Appellant is no more burdened by the imposition of such tax than it is by other generally applicable regulations, such as health and safety regulations, with which Appellant already complies. *Id.*

In its next argument, the Appellant contended that under *Lemon v. Kurtzman*, 403 U.S. 602 (1971), the imposition of the sales and use tax was violative of the Establishment Clause in that it "foster[ed] 'an excessive government entanglement with religion'. . . [by requiring] on-site inspections of appellant's evangelistic crusades, lengthy on-site audits, examinations of appellant's books and records, threats of criminal prosecution, and layers of administrative and judicial proceedings." *Id.* at 697 (quoting *Lemon*, 403 U.S. at 613). In addressing this contention, the Court focused on whether the imposition of the tax resulted in an "excessive 'involvement between appellant and the State and' continuing surveillance leading to an impermissible degree of entanglement," as provided under *Walz v. Tax Comm'n of New York City*, 397 U.S. 664 (1970); *Jimmy Swaggert Ministries*, 110 S. Ct. at 698. In holding that the spirit and values of the Establishment Clause were not even remotely at issue in this case, the Court noted that

the [tax] statutory scheme requires neither the involvement of state employees in, nor on-site continuing inspection of, appellant's day-to-day operations . . . [and] [m]ost significantly, [it] does not require the State to inquire into the religious content of the items sold or the religious motivation for selling or purchasing the items, because the materials are subject to the tax regardless of content or motive.

*Id.* at 699. Furthermore, the Court rejected Appellant's assertion that the collection and payment of the tax imposed upon it a severe accounting burden. The Court stated that this allegation was clearly unsupported by the record which showed that any such burden was significantly eased by Appellant's sophisticated accounting staff and computerized accounting system. Even if substantial, the Court added that such record-keeping and administrative burdens do not rise to a constitutionally significant level. *Id.* at 698.

Finally, the Appellant asserted that the use tax imposition violated the Commerce and Due Process Clauses because of and insufficient "nexus" between the State and itself as an out-of-state retailer. The Court, however, refused to address the merits of this claim due to the fact

that the claim was procedurally barred under California state law. Therefore, the Court concluded that the claim was not properly before it.

This case is significant in that it addresses a classical first amendment issue pertaining to religion and the free exercise thereof, yet adapts it to a more modernistic view. Today, more and more evangelists are themselves excessively entangling religious and commercial activities, thereby making it difficult to distinguish between the two. However, the Supreme Court has attempted to remedy this confusion by upholding tax impositions on the sale of both religious and non-religious materials; the determinative test being whether the tax can be neutrally imposed regardless of content, whether it acts as a prior restraint on religious liberty, and whether any State activities in imposing the tax can remain detached and neutral from the religious organization itself.

—Cathy A. Cooper

#### **Tafflin v. Levitt: STATE COURT JURISDICTION OVER CIVIL RICO CLAIMS NOT PREEMPTED**

In *Tafflin v. Levitt*, 110 S. Ct. 792 (1990), the United States Supreme Court determined that state courts have concurrent jurisdiction over civil actions brought under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-68.

Following the failure of Old Court Savings & Loan, Inc. (hereinafter "Old Court"), the petitioners, non-residents of Maryland holding unpaid certificates of deposit issued by Old Court, instituted an action in federal district court against the respondents, former officers and directors of Old Court, the Maryland Savings-Share Insurance Corporation (hereinafter "MSSIC"), former officers and directors of MSSIC, Old Court and MSSIC's law firm, and Old Court's accounting firm. In the complaint, the Petitioners alleged several state law claims, a claim under the Securities and Exchange Act of 1934 (hereinafter "Exchange Act"), and a civil claim under RICO. The Respondents filed a Motion to Dismiss which was granted by the district court for two reasons. First, the district court granted the Respondent's motion concluding that the Petitioners failed to state a claim under the Exchange Act. The district court also determined that the Petitioners' civil RICO claims would be disposed of in a pending state court action. Because the district court believed that state courts have concurrent jurisdiction over these claims, it determined that federal abstention was appropriate. The district court ruling was affirmed by the Fourth Circuit Court of

Appeals. *Tafflin v. Levitt*, 865 F.2d 595(4th Cir. 1989). The Supreme Court granted certiorari solely for the purpose of determining whether a state court has concurrent jurisdiction over civil RICO claims.

In reaching its decision, the Supreme Court began by emphasizing the deep rooted presumption in favor of concurrent state court jurisdiction. This presumption is rebuttable only upon a showing that: (1) there is an explicit congressional statute granting exclusive federal court jurisdiction; (2) there is an unmistakable implication from legislative history demonstrating Congressional intent to grant exclusive jurisdiction to the federal courts; or (3) there is a clear incompatibility between state court jurisdiction and federal interests. *Tafflin*, 110 S. Ct. at 795 (quoting *Gulf Offshore Co. v. Mobile Oil Corp.*, 453 U.S. 473, 478 (1981)).

Applying the *Gulf Offshore* factors, the Court rejected the idea that state courts have been divested of jurisdiction over civil RICO actions "by an explicit statutory directive." *Id.* at 795, (quoting *Gulf Offshore*, 453 U.S. at 478). Further, as the Petitioners conceded, there was no express language in RICO granting exclusive federal jurisdiction over civil RICO claims. The jurisdictional grant in RICO provides: "[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor [sic] in any appropriate United States district court . . ." *Id.* at 796 (quoting 18 U.S.C. § 1964(c)) (emphasis in original). The Court found Congress' use of "may" in RICO persuasive and noted that "[i]t is black letter law . . . that the mere grant of jurisdiction to a federal court does not operate to oust a state court from concurrent jurisdiction over the cause of action." *Id.* (quoting *Gulf Offshore*, 453 U.S. at 479). Accordingly, the Court found the grant of federal jurisdiction over RICO cases to be permissive, not mandatory. *Id.*

Next, the Court considered the legislative history of RICO. The Court found no evidence that Congress considered the question of concurrent state court jurisdiction over civil RICO claims, much less any suggestion of congressional intent to confer exclusive jurisdiction on the federal courts. The Petitioners posed two arguments. First they contended that if Congress had addressed the issue it would have granted the federal courts exclusive jurisdiction. The Court rejected this argument refusing to speculate as to Congress' intent. *Id.*

Alternatively, the Petitioners relied on dicta in *Sedima, S.P.R.V.L. v. Imrex Co.*, 473 U.S. 479 (1985) and *Agency Holding*

*Corp. v. Malley-Duff & Assoc.*, 483 U.S. 143 (1987), where the Court noted that Congress fashioned RICO after § 4 of the Clayton Act, 15 U.S.C. § 15(a). Relying on dicta, Petitioners asserted that because § 4 of the Clayton Act has been interpreted to confer exclusive jurisdiction on the federal courts, it should be inferred that Congress intended, by the use of similar language in RICO, that the Court interpret RICO the same way. The Court rejected this argument and pointed out that "the question is not whether any intent at all may be divined from legislative silence on the issue, but whether Congress in its deliberations may be said to have affirmatively or unmistakably intended jurisdiction to be exclusively federal." *Tafflin*, 110 S. Ct. at 797.

Additionally, the petitioners argued that to permit concurrent state court jurisdiction over civil RICO claims would be incompatible with federal interests. The petitioners first maintained that federal interests in a uniform interpretation of federal criminal law would be frustrated if state courts were permitted to hear civil RICO claims. *Id.* Further, they contended that for a state court to decide a civil RICO claim would require states to determine which federal crimes constitute "racketeering activity" under RICO and would thereby create a diverse body of precedent interpreting those crimes. *Id.* at 798. The Court rejected both of Petitioner's arguments.

The Court explained that there would be no danger of inconsistent interpretation of federal crimes because, pursuant to 18 U.S.C. § 3231, federal courts would retain "full authority and responsibility for the interpretation of federal criminal law." *Id.* The Court also stated that the federal courts would not be bound by state court interpretations of federal law. Because this case involved civil RICO claims, there was no danger of non-uniform imposition of federal criminal sanctions. Finally, the Court indicated that it had "full faith in the ability of state courts to handle the complexities of civil RICO actions, particularly since many RICO cases involve asserted violations of state law, such as state fraud claims, over which state courts presumably have greater expertise. *Id.*

The Court briefly addressed the petitioners' final contention that RICO's procedural mechanisms are applicable only to federal court actions. The petitioners maintained that RICO provides for extended venue and out of state service of process which the state court systems could not properly handle. In response, the Court pointed out that it had "previously found concurrent jurisdiction even where federal law provided for special procedural mechanisms similar to those contained in RICO." *Id.* at

799 (citations omitted). The Court found no merit in the Petitioners' procedural argument. Thus, the Court concluded that state courts have concurrent jurisdiction over civil RICO claims.

In the first of two concurring opinions, Justice White agreed with the majority's holding but wrote separately to express his fear that permitting concurrent jurisdiction over civil RICO actions would inevitably result in diverse state court interpretation of federal criminal law. Justice White, however, did not believe the possibility of non-uniform construction warranted a finding of exclusive federal jurisdiction. *Id.* at 800.

Justice Scalia, joined by Justice Kennedy, also wrote a concurring opinion. Both Justice Scalia and Justice Kennedy agreed with the majority's finding that a civil RICO claim does not meet any of the three *Gulf Offshore* factors, and, therefore, that state court jurisdiction was not preempted. However, neither Justice Scalia nor Justice Kennedy believed that the *Gulf Offshore* factors should be the sole criteria for evaluation to determine whether state court jurisdiction had been preempted.

Despite some minor disagreement among the Justices in *Tafflin*, a unanimous Court agreed that Congress had not intended to preempt state court jurisdiction over civil RICO claims. Not only does the *Tafflin* precedent confer greater power to the states, but it serves as a model for evaluating whether state court jurisdiction had been preempted.

—David B. Applefeld

***Victor v. Proctor & Gamble Mfg. Co.:*  
VOLUNTARILY RETIRED CLAIMANT  
ENTITLED TO TEMPORARY TOTAL  
DISABILITY BENEFITS AFTER RETIREMENT**

In *Victor v. Proctor & Gamble Mfg. Co.*, 318 Md. 624, 569 A.2d 697 (1990), the Court of Appeals of Maryland held that a claimant who voluntarily retires is entitled to the temporary total disability benefits under the Worker's Compensation Act ("the Act"). In so holding, the court reversed the trial court's ruling, and upheld the decision of the Workers' Compensation Commission.

Edward Victor, a Proctor and Gamble employee, sustained a disability resulting from an accidental personal injury arising out of and in the course of his employment. He was first awarded total disability, and later, granted a supplemental award for permanent partial disability. Although Victor was physically able to work at the time, he voluntarily retired from Proctor & Gamble. Subsequently, his work-related condition worsened, causing temporary total disability.

Because of his worsening condition, the Workers' Compensation Commission reopened Victor's case and awarded him a continuation of his temporary total disability benefits. The Commission, however, ordered that the payment of the award be suspended pending any appeal because it questioned whether such benefits, which are ordinarily awarded until maximum medical improvement is achieved, are available to a retired claimant. On Proctor & Gamble's appeal to the Circuit Court for Baltimore City, the trial court reversed the Commission's ruling, stating that the Act's purpose is not to provide additional retirement benefits to a claimant who voluntarily removes himself from the work force. The court of appeals certified the case before a ruling by the court of special appeals.

In this case of first impression, the court began its analysis by looking to the Act's purpose. As it had recognized in previous cases concerning the Act, the court reiterated that "[t]he general purpose of the Workmen's Compensation Act [is] to provide compensation for loss of earning capacity resulting from accidental injuries sustained in industrial employment." *Id.* at 630, 569 A.2d at 700 (quoting *Bethlehem Shipyard v. Damasiwicz*, 187 Md. 474, 480, 50 A.2d 799, 802 (1947) (emphasis added by the *Victor* court). Furthermore, the Act must be interpreted and construed to effectuate this purpose. *Id.* at 628, 569 A.2d at 699. The court also noted that there exists a legislatively required presumption in favor of injured employees that their claims fall within the Act's provisions. *Id.* at 628-29, 569 A.2d at 700.

The Act itself, the court noted, establishes the duties that employers owe to their employees, providing, in part, that the employer shall pay or provide compensation "[f]or the disability or death of his employee resulting from an accidental personal injury sustained by the employee arising out of and in the course of his employment . . ." *Id.* at 626 n.1, 569 A.2d at 698 n.1 (quoting Md. Ann. Code art. 101 § 15 (1985 & Supp. 1989) (emphasis added)). Such compensation and benefits are referenced to disability throughout the statute. Thus, the court reasoned, it is the "disability" arising from the injury that calls for the compensation and benefits, yet "disability" is not explicitly defined in the Act with respect to an injury arising from an industrial accident. *Id.* at 629, 569 A.2d at 700.

Thus, relying again on the Act's general purpose and the mandate of a liberal construction in favor of injured employees, the court set forth to define the legislative intent of an industrial accident