



PROGRAM MATERIALS

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## Civil RICO (federal Racketeer Influenced and Corrupt Organization) and Its Significance for Legal Professionals

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# **CLE Presentation: Civil RICO (federal Racketeer Influenced and Corrupt Organization) and Its Significance for Legal Professionals**

## **Submission Handout**

### **Table of Contents**

- I. Introduction
- II. Historical Development and Purpose of RICO
- III. Elements of a Civil RICO Claim
- IV. The Enterprise Requirement and Its Nuances
- V. Patterns of Racketeering Activity
- VI. Causation and Injury Requirements
- VII. Statute of Limitations, Remedies and Strategic Considerations
- VIII. A Deeper Dive Into Key Cases Shaping the Civil RICO Landscape
- IX. Application of Civil RICO in Commercial Litigation
- X. Conclusion: Challenges and Criticisms of the Civil RICO Framework
- XI. Case Summaries
- XII. References



## I. Introduction

The Racketeer Influenced and Corrupt Organizations Act (“RICO”)<sup>1</sup>, enacted in 1970, represents one of the most powerful and wide-ranging statutory frameworks in American law. Although originally designed as a prosecutorial tool against organized crime, its civil provisions have evolved into a powerful mechanism enabling private parties- both individuals and businesses, to seek damages for injuries arising from patterns of racketeering activity conducted by an enterprise. When it enacted RICO, Congress included a civil remedy provision that allows private parties to sue for injuries to their “business or property”.<sup>2</sup> The civil remedy provisions require a plaintiff to prove: (1) a violation of § 1964 prohibited act; (2) injury to business or property; and (3) that the defendant’s violation caused the injury.<sup>3</sup>

Civil RICO claims, authorized under 18 U.S.C. § 1964(c), offer plaintiffs not only the possibility of recovering treble damages but also the potential for attorney’s fees, thereby elevating the stakes of litigation for defendants and often influencing the contours of settlement negotiations. This presentation explores some essential elements, legal standards, and strategic implications of the civil RICO framework. Through an examination of the statutory language, jurisprudential developments, and key cases, this presentation provides legal professionals and forensic expert witnesses with a basic understanding of civil RICO’s complexities and practical significance.

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<sup>1</sup> Title IX, Organized Crime Control Act of 1970, 18 U.S.C. §§ 1961-1968. <https://www.justice.gov/jm/jm-9-110000-organized-crime-and-racketeering>

<sup>2</sup> *Id.* § 1964(c).

<sup>3</sup> *Holmes v. Securities Investor Protection Corporation*, 503 U.S. 258, 268-70 (1992). <https://supreme.justia.com/cases/federal/us/503/258/case.pdf>



## **II. Historical Development and Purpose of RICO**

RICO emerged from a congressional concern over the growing influence of an organized crime in the American economy. Initially tailored to dismantle the financial foundations of criminal syndicates, its statutory structure was drafted broadly, permitting application to a wide variety of unlawful conduct. The civil component- added with the intention of creating opportunities for private enforcement, soon became a vehicle for plaintiffs to pursue remedies for conduct far beyond the organized crime context.

Over time, the courts have dealt with defining the boundaries of civil RICO as plaintiffs increasingly applied it to commercial disputes. The Supreme Court consistently interpreted the statute broadly, emphasizing adherence to its text rather than the narrower organized-crime focus intended by some legislators. This interpretive stance opened the door for new legal applications, including claims involving fraud, business torts, and other misconduct traditionally addressed through common-law theories.

## **III. Elements of a Civil RICO Claim**

Civil RICO liability requires proof of several distinct elements, each of which imposes stringent requirements on plaintiffs and substantial challenges for defendants. The essential components include the existence of a RICO person, a RICO enterprise, a pattern of racketeering activity, and a causal relationship between the alleged racketeering conduct and the plaintiff's injury.

First, the plaintiff must identify the RICO "culpable person" (the defendant) who conducted the affairs of an enterprise through a racketeering activity or an "entity capable of



holding a legal or beneficial interest in property”. While this definition has been a source of some debate, courts have emphasized that the RICO person must be distinct from the enterprise itself, a foundational principle affirmed in cases such as *Cedric Kushner Promotions, Ltd. v. King*<sup>4</sup>. Although the distinctness requirement is conceptually straightforward, it often becomes a point of contention in cases involving corporate defendants, subsidiaries, or affiliated entities.

Second, the plaintiff must establish the existence of an "enterprise," which may include any individual or formal organizational structures like corporations, partnerships, and other legal entities, or “any union or group of individuals associated in fact although not a legal entity”. Additionally, the enterprise must exhibit continuity, structure, and a common purpose. The Supreme Court’s decision in *Boyle v. United States*<sup>5</sup> clarified that an association-in-fact enterprise need not possess a rigid hierarchy but must exhibit a discernible organizational framework. Courts have interpreted the term “enterprise” very broadly, and since most litigation involves some business entity or organization, the enterprise requirement poses little difficulty to the plaintiff who wishes to assert a RICO claim.

Third, the plaintiff must demonstrate a pattern of racketeering activity, which requires at least two predicate acts, with the last of which occurred within a ten-year period of a prior act of racketeering activity. Predicate acts must fall within the categories specified in 18 U.S.C. § 1961(1), such as mail fraud, wire fraud, bribery, extortion and other. Beyond numerosity, the pattern requirement demands continuity and relatedness, a framework articulated in *H.J. Inc. v.*

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<sup>4</sup> *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 161 (2001).

<https://supreme.justia.com/cases/federal/us/533/158/case.pdf>

<sup>5</sup> *Boyle v. United States*, 556 U.S. 938, 944 (2009). <https://supreme.justia.com/cases/federal/us/556/07-1309/index.pdf>



*Northwestern Bell Telephone Co.*<sup>6</sup> Relatedness requires that predicate acts share similar purposes, participants, or methods, while continuity may be closed-ended, involving a finite series of acts over a substantial period, or open-ended, signifying a threat of an ongoing criminal activity.

It is critical to note that RICO applies only to an organized long-term criminal activity and should not apply to ordinary business disputes.<sup>7</sup> Courts have found it to be an abuse of the RICO statute to attempt to squeeze an ordinary business or contractual dispute into a civil RICO claim.

Fourth, the plaintiff must establish that the racketeering conduct proximately caused injury to an individual, business or property. This causation standard, refined in *Holmes v. Securities Investor Protection Corp.*<sup>8</sup> and subsequent cases, requires a direct relationship between the injury and the predicate acts. Courts routinely reject claims where the causal link is deemed too remote or derivative.

Fifth, the interstate commerce requirement must be satisfied, with either the activity of the enterprise or the predicate acts of racketeering affect interstate commerce. While courts have described the significance of interstate commerce required by RICO to be “minimal”, it must be alleged. Courts will dismiss RICO claims that do not adequately plead this requirement.

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<sup>6</sup> *H.J. Inc. v. NW Bell Tel. Co.*, 492 U.S. 229, 240-42 (1989).  
<https://supreme.justia.com/cases/federal/us/492/229/>

<sup>7</sup> *Calcasieu Marine Nat. Bank v. Grant*, 943 F.2d 1453, 1463 (5th Cir. 1991).  
<https://law.justia.com/cases/federal/appellate-courts/F2/943/1453/86248/>

<sup>8</sup> *Holmes v. Securities Investor Protection Corporation*, 503 U.S. 258, 268 (1992).



#### **IV. The Enterprise Requirement and Its Nuances**

The enterprise requirement sits at the center of civil RICO framework. Its definition shapes the scope of liability and the viability of claims. An enterprise may consist of individuals or entities associated-in-fact, functioning together to engage in a prohibited conduct. This flexibility distinguishes RICO from other statutory regimes and enables plaintiffs to target coordinated wrongdoing that transcends traditional organizational structures.

Association-in-fact enterprises have produced considerable litigation. The *Boyle v. U.S.* decision emphasized that an enterprise must have a shared purpose, relationships among associates, and longevity sufficient to pursue the enterprise's purpose. Although these criteria are minimal, they distinguish mere commercial relationships or parallel conduct from the collaborative coordination necessary for RICO enterprise liability.

Courts also examine whether the enterprise is distinct from the RICO person. Corporate defendants often challenge the enterprise requirement by asserting that the alleged enterprise is simply the corporation acting through its employees. *Cedric Kushner Promotions, Ltd. v. King* clarified that a corporation and its owner are distinct for RICO purposes, but complex corporate families or interrelated entities continue to test the limits of the distinctness doctrine.

#### **V. Patterns of Racketeering Activity**

Establishing a pattern of racketeering activity demands more than isolated or sporadic acts. Congress defined “racketeering activity” to include a variety of predicate crimes.<sup>9</sup> RICO covers four types of prohibited activities:

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<sup>9</sup> Title IX, Organized Crime Control Act of 1970, 18 U.S.C. § 1961(1).



(1) Section 1962(a) prohibits a person from investing in an enterprise any income derived from a pattern of racketeering activity;<sup>10</sup>

(2) Section 1962(b) prohibits a person from using a pattern of racketeering activity to acquire or maintain control over an enterprise;<sup>11</sup>

(3) Section 1962(c) prohibits a person from conducting the affairs of an enterprise through a pattern of racketeering;<sup>12</sup> and

(4) Section 1962(d) prohibits a person from conspiring to violate §§ 1962(a), (b), or (c).<sup>13</sup>

The Supreme Court in *H.J. Inc. v. NW Bell Tel. Co.* stressed that continuity and relatedness are essential. Relatedness typically presents a lower hurdle, as predicate acts involving similar goals and participants readily satisfy this requirement. Continuity, however, requires a more detailed analysis.

Closed-ended continuity requires a series of predicate acts lasting a substantial period. Courts generally decline to find closed-ended continuity for conduct lasting less than one year, although contextual factors may influence this evaluation. Open-ended continuity focuses on the threat of ongoing criminal conduct. This can be established where the predicate acts are part of a defendant's regular way of conducting business or where the nature of the scheme suggests potential repetition. Complaints involving long-term fraudulent schemes often satisfy this element, particularly where defendants operated through established channels or recurring conduct.

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<sup>10</sup> *Id.* § 1962(a).

<sup>11</sup> *Id.* § 1962(b).

<sup>12</sup> *Id.* § 1962(c).

<sup>13</sup> *Id.* § 1962(d).





Among the predicate acts common to civil RICO are the following:

- Fraud: mail fraud, wire fraud, bank fraud, securities fraud, bankruptcy fraud;
- Bribery & Extortion: Hobbs Act<sup>14</sup> violations, bribery, extortion, loansharking;
- Theft & Property Crimes: interstate transportation of stolen property, theft, embezzlement;
- Drug Offenses: dealing in controlled substances, drug trafficking;
- Financial Crimes: money laundering, counterfeiting, tax evasion;
- Intellectual Property: copyright infringement, theft of trade secrets.

The expansive interpretation of predicate acts has contributed to RICO's broad reach.

Fraud-based predicates, especially mail and wire fraud, are common in civil litigation. However, courts scrutinize fraud allegations carefully, particularly given the heightened pleading requirements under Federal Rule of Civil Procedure 9(b).<sup>15</sup> Plaintiffs must allege fraud with specificity, detailing the time, place, and content of the mail or wire communication and must identify the parties to the communication.

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<sup>14</sup> The Hobbs Act (18 U.S.C. § 1951) prohibits actual or attempted robbery or extortion affecting interstate or foreign commerce. Section 1951 also proscribes conspiracy to commit robbery or extortion without reference to the conspiracy statute at 18 U.S.C. § 371. Although the Hobbs Act was enacted as a statute to combat racketeering in labor-management disputes, the statute is frequently used in connection with cases involving corruption and commercial disputes. <https://www.justice.gov/jm/jm-9-131000-hobbs-act-18-usc-1951>

<sup>15</sup> Federal Rules of Civil Procedure. Rule 9. Pleading Special Matters (b) Fraud or Mistake; Conditions of Mind. <https://statecodesfiles.justia.com/us/2021/title-28/appendix/federal-rules-of-civil-procedure/content-1141/rule-9/rule-9.pdf>



## VI. Causation and Injury Requirements

Civil RICO demands proof that the plaintiff suffered injury to business or property as a result of the defendant's racketeering conduct to make sure the Plaintiff meets RICO's standing requirements. To establish standing for a civil RICO claim, four factors must be satisfied: the Plaintiff must be (1) a "person" (2) who sustains injury (3) to his or her "business or property" (4) "by reason of defendant's violation of 18 U.S.C. § 1962."

It is critical to note that because standing requirement depends on injury from the "conduct constituting the violation," each section of RICO has a different injury requirement. Specifically, injury under 18 U.S.C. § 1962(a) must stem from the investment of racketeering income; injury under § 1962(b) must stem from the acquisition of an interest on or control over an enterprise; injury under § 1962(c) must stem from the predicate acts; and injury under § 1962(d) must stem from the covert acts committed in furtherance of the conspiracy (for instance, when the defendants knew that their predicate acts were part of a pattern of racketeering activity and agreed to the commission of those acts to further the schemes). For this reason, injuries stemming from each of the violations must be specifically enumerated.

The Supreme Court's decision in *Holmes v. Securities Investor Protection Corporation* established the "direct relation" test, barring recovery for injuries that are indirect, speculative, or derivative of harm to third parties. Subsequent cases, such as *Anza v. Ideal Steel Supply Corp.*<sup>16</sup> and *Hemi Group, LLC v. City of New York*,<sup>17</sup> reaffirmed the strict proximate causation standard.

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<sup>16</sup> *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451 (2006). <https://supreme.justia.com/cases/federal/us/547/04-433/index.pdf>

<sup>17</sup> *Hemi Group, LLC v. City of New York*, 559 U.S. 1 (2010). <https://supreme.justia.com/cases/federal/us/559/08-969/index.pdf>



In *Anza*, the Court held that a plaintiff alleging competitive injury from a competitor's tax fraud lacked the requisite directness, as the harm flowed from the state's lost tax revenue rather than directly from the defendant's conduct. *Hemi* case decision further narrowed the field, rejecting claims where the causal chain involved the independent actions of third parties. These decisions signal that while civil RICO has a high potential, its causation requirement serves as a significant gatekeeping mechanism.

## **VII. Statute of Limitations, Remedies and Strategic Considerations**

A plaintiff alleging RICO is facing the risk of its claim being barred by the four-year statute of limitations and should attempt to determine whether it can plead facts to support the equitable extension of the limitations period. This may require the plaintiff to plead facts showing that the defendant fraudulently concealed information needed to bring a RICO claim, and that the plaintiff could not have discovered those facts despite the exercise of reasonable due diligence.

One of civil RICO's most powerful features is its remedy scheme. 18 U.S.C. § 1964(c) authorizes plaintiffs to recover treble damages, attorney's fees, and costs of litigation. The prospect of tripled damages often creates substantial settlement pressure on defendants, even in cases where liability remains uncertain. Plaintiffs routinely leverage this exposure during negotiations, using the threat of RICO claims to compel favorable resolutions.

Defendants, for their part, often pursue early dispositive motions to challenge the sufficiency of RICO allegations. Motions to dismiss commonly assert failures to plead



continuity, relatedness, enterprise distinctness, or proximate causation. Given the intricacy of RICO doctrine, many claims falter at the pleading stage.

Despite the statute's broad sweep, courts have imposed meaningful constraints. The Supreme Court in *Reves v. Ernst & Young*<sup>18</sup> introduced the "operation or management" test, requiring that the defendant participate in the operation or management of the enterprise's affairs. This standard precludes liability for mere aiding and consulting, shielding certain professional advisors who do not direct enterprise operations.

### **VIII. A Deeper Dive Into Key Cases Shaping the Civil RICO Landscape**

Civil RICO jurisprudence has been shaped by a series of Supreme Court decisions that define the statute's substantive limits and articulate the standards governing enterprise structure, racketeering patterns, and proximate causation. A deeper understanding of these cases is indispensable for legal professionals navigating the contours of the civil RICO.

It should be noted that RICO law is constantly changing. While this presentation covers only some of the most significant recent RICO applications and court decisions, it should serve as a basis and starting point for the legal professionals' follow-up research before filing a RICO complaint or any other related legal motion.

As referenced above, the Supreme Court's decision in *H.J. Inc. v. Northwestern Bell Telephone Co.*,<sup>19</sup> represents the foundational articulation of the pattern requirement under 18 U.S.C. § 1961(5). The Court rejected attempts by lower courts to add extra-textual requirements

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<sup>18</sup> *Reves v. Ernst & Young*, 507 U.S. 170, 184-185 (1993).

<https://supreme.justia.com/cases/federal/us/507/170/case.pdf>

<sup>19</sup> *H.J. Inc. v. NW Bell Tel. Co.*, 492 U.S. 229 (1989).



linking RICO exclusively to organized crime, holding that the statute's broad language must govern. The Court emphasized that a "pattern of racketeering activity" requires both relatedness and continuity, concepts grounded in legislative intent but refined through judicial interpretation. Relatedness is satisfied when predicate acts share similar purposes, participants, victims, or methods, while continuity may be established through either a finite series of acts extending over a "substantial period of time" (closed-ended continuity) or conduct that by its nature poses a threat of future repetition (open-ended continuity). Post-*H.J. Inc.* jurisprudence generally disfavors closed-ended continuity for schemes lasting less than one year, though some circuits consider contextual factors such as the number of victims or complexity of the scheme (see *Vicom, Inc. v. Harbridge Merchant Servs., Inc.*)<sup>20</sup>

The enterprise requirement was significantly clarified in *Boyle v. United States*. In *Boyle*, the Court held that an association-in-fact enterprise under § 1961(4) requires only three structural features: a common purpose, relationships among associates, and longevity sufficient to permit pursuit of the enterprise's purpose. The Court expressly rejected rigid structural prerequisites such as hierarchical decision-making or formal roles. This decision broadened enterprise theory substantially, enabling plaintiffs to allege informal associations as enterprises so long as minimal structural criteria are met. Post-*Boyle* decisions have emphasized that enterprise structure may be inferred from a coordinated activity, though courts continue to scrutinize allegations to ensure that the enterprise is not merely a re-labeled description of the racketeering acts themselves. For

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<sup>20</sup> *Vicom, Inc. v. Harbridge Merchant Servs., Inc.*, 20 F.3d 771, 781–83 (7th Cir. 1994).  
<https://law.justia.com/cases/federal/appellate-courts/F3/20/771/523280/>



instance, *United States v. Turkette*<sup>21</sup> distinguished between the enterprise and the pattern of racketeering activity.

Questions concerning the scope of liability were addressed in *Reves v. Ernst & Young*, which established the influential “operation or management” test. Under this framework, a defendant must have participated in directing the enterprise’s affairs to be liable under § 1962(c). The Court held that liability does not extend to all participants who merely assist or facilitate racketeering activity; instead, the statute covers only those who play some part in the operation or management of the enterprise. This test has shielded many indirect actors, including auditors, lawyers, and consultants, who provide services but do not exercise managerial control. For legal professionals defending consultants or advisors, *Reves* provides an essential doctrine limiting expansive theories of liability.

The person-enterprise distinction was clarified in *Cedric Kushner Promotions, Ltd. v. King*, where the Court held that a corporation and its sole owner constitute distinct entities for purposes of § 1962(c). The case involved boxing promoter Don King, whose wholly owned corporation was alleged to be the enterprise. The Court concluded that the formal legal distinction between the individual and the corporation was sufficient to satisfy RICO’s distinctness requirement, even where the individual exercised near-total control. This decision has been important in cases involving corporate families, as it allows plaintiffs to allege enterprises composed of related entities so long as formal separateness exists. In cases

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<sup>21</sup> *United States v. Turkette*, 452 U.S. 576 (1981). <https://supreme.justia.com/cases/federal/us/452/576/>



like *Riverwoods Chappaqua Corp. v. Marine Midland Bank, N.A.*<sup>22</sup>, where the person and enterprise are the same corporate entity, such distinctness is not satisfied.

Proximate causation under civil RICO has been shaped by a trilogy of Supreme Court cases that collectively impose significant constraints on plaintiffs. In *Holmes v. Securities Investor Protection Corporation*, the Court adopted a “direct relation” test, holding that civil RICO plaintiffs must demonstrate a direct causal link between the predicate acts and injury to business or property. Injuries that are speculative, derivative, or dependent on the actions of third parties are insufficient. The Court reaffirmed this principle in *Anza v. Ideal Steel Supply Corp.*, where the plaintiff alleged that a competitor’s tax fraud allowed it to lower prices unfairly. The Court held that any harm to the plaintiff was derivative of harm to the state’s tax revenue, rendering the causal chain too attenuated. Finally, in *Hemi Group, LLC v. City of New York*, the Court rejected claims premised on the failure of out-of-state cigarette sellers to file customer information with the city, holding that the causal chain depended on independent decisions of third-party consumers. These cases collectively function as formidable barriers to expansive theories of civil RICO causation.

Together, these decisions form the core analytical framework governing civil RICO claims. Courts routinely invoke these precedents to dismiss insufficiently pled claims, making mastery of their nuances essential for any attorney litigating civil RICO matters.

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<sup>22</sup> *Riverwoods Chappaqua Corp. v. Marine Midland Bank, N.A.*, 30 F.3d 339, 344–45 (2d Cir. 1994). <https://law.justia.com/cases/federal/appellate-courts/F3/30/339/470812/>



## **IX. Application of Civil RICO in Commercial Litigation**

Beyond organized crime, civil RICO has become a factor in commercial litigation. Plaintiffs increasingly allege RICO violations in disputes involving contractual breaches, fiduciary misconduct, or corporate wrongdoing. Although courts frequently scrutinize such claims with skepticism, relevance of an “enterprise” and predicate acts, along with the availability of treble damages renders RICO an attractive strategic option.

Businesses facing RICO allegations encounter reputational risks, heightened litigation costs, and the potential for significant financial exposure. These pressures often influence defense strategy, prompting aggressive challenges to the sufficiency of pleadings and careful evaluation of early settlement possibilities.

Civil RICO claims also arise in contexts involving complex corporate fraud, real estate fraud, medical and healthcare fraud, Ponzi schemes, and multi-party conspiracies. In such cases, the enterprise structure may encompass networks of individuals, affiliated companies, or professional advisors. Courts assess whether these entities collectively functioned to facilitate the alleged misconduct, applying the principles articulated in *Boyle* and other related cases.

Given the impact of treble damages, plaintiffs frequently deploy civil RICO claims as leverage during settlement discussions. Even the threat of a viable RICO claim can influence negotiations. Defendants, aware of the substantial risks associated with trial, may opt to resolve disputes earlier than they otherwise might.

However, courts have cautioned against the misuse of RICO claims as mere litigation tactics. Frivolous or inadequately supported RICO allegations may expose plaintiffs to sanctions.





As result, experienced litigators should approach RICO strategically, ensuring that claims rest on a solid factual and legal foundation.

## **X. Conclusion: Challenges and Criticisms of the Civil RICO Framework**

Civil RICO remains one of the most impactful enforcement mechanisms available in American civil litigation. Its broad reach, coupled with the availability of treble damages and attorney's fees, renders it a powerful tool for plaintiffs and a daunting challenge for defendants.

At the same time, civil RICO remains a subject of debate among legal scholars and practitioners. Critics argue that its broad language encourages overuse, creating inefficiencies and fostering litigation overreach. Defendants often contend that RICO claims distort ordinary business disputes into federal racketeering cases.

Supporters counter that RICO's flexibility is essential to combat sophisticated schemes that evade traditional legal remedies. The availability of treble damages, they argue, deters misconduct and empowers victims who might otherwise lack the resources for lengthy litigation.

Judicial interpretations continue to refine the boundaries of civil RICO, balancing the statute's remedial purpose against concerns about excessive litigation. The Supreme Court's proximate causation jurisprudence, in particular, signals an intent to limit recovery to genuinely direct injuries.

The described above statute's complexities demand careful navigation and understanding of its elements, interpretive doctrines, and strategic implications. As courts continue to refine the statute's boundaries, attorneys must remain vigilant and adopt a methodical and detail-oriented approach. For plaintiffs, success hinges on developing factual evidence that establishes the



existence of an enterprise, substantiates a pattern of predicate acts, and demonstrates direct injury. Thorough investigation, use of forensic expert witnesses with solid expertise in RICO, precise pleading, and strategic case framing are essential.

For defendants, early motion practice is a critical tool. Counsel often focus on the enterprise requirement, the distinctness principle, and causation standards as avenues for dismissal. Given the statute's complexity, courts frequently dismiss deficient complaints with leave to amend, offering plaintiffs opportunities to refine their claims.

Litigators must also consider the broader strategic context. Civil RICO's power lies not only in its substantive provisions but also in its procedural and psychological dimensions. Understanding how judges perceive RICO claims, how opposing counsel may leverage them, and how clients respond to the risks involved is vital to legal professionals.

## **XI. Case Summaries**

*H.J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229 (1989). The Supreme Court clarified that a "pattern of racketeering activity" requires relatedness and continuity. Relatedness exists when predicate acts share similar characteristics. Continuity may be closed-ended or open-ended. The Court rejected limiting civil RICO to organized crime.

*Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258 (1992). The Court established RICO's proximate causation standard: plaintiffs must show a "direct relation" between the predicate acts and the injury.



*Reves v. Ernst & Young*, 507 U.S. 170 (1993). The Court developed the “operation or management” test, limiting liability to those who direct the enterprise’s affairs, not merely those providing services.

*Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158 (2001). The Court held that a corporation and its sole shareholder are distinct for RICO purposes, satisfying the person-enterprise distinctness requirement.

*Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451 (2006). The Court rejected a claim involving competitive injury because the harm to the plaintiff derived from harm to the state, rendering the causal link too remote.

*Boyle v. United States*, 556 U.S. 938 (2009). The Court held that an association-in-fact enterprise must possess a common purpose, relationships among members, and sufficient longevity, but need not have a formal hierarchy or structure.

*Hemi Group, LLC v. City of New York*, 559 U.S. 1 (2010). The Court again emphasized directness, rejecting claims requiring reliance on independent third-party actions.

## **XII. References**

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### **Rules of Procedure**

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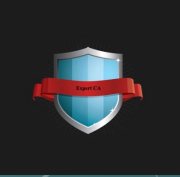
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## Expert CA

# Civil RICO (Federal Racketeer Influenced and Corrupt Organization) and Its Significance for Legal Professionals

- Live Webcast CLE Presentation | Celesq AttorneysED Center | January 21, 2026
- Prepared by Alex Kulikov, MS, CFCI, CFCS, GAAP, PMP

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- Certified Financial Crimes Investigator and Forensic Expert Witness;
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# **CIVIL RICO (FEDERAL RACKETEER INFLUENCED AND CORRUPT ORGANIZATION) AND ITS SIGNIFICANCE FOR LEGAL PROFESSIONALS**

- What are the learning objectives?
- What is RICO history and purpose?
- What are the elements of a civil RICO claim?
- What are the types of prohibited activities?
- What are some common predicate acts?
- What is RICO enterprise?
- What is a pattern of racketeering activity?
- What are the causation requirements?
- What are the remedies under civil RICO?
- What are some strategic considerations?
- What are some notable civil RICO cases?
- Q&A

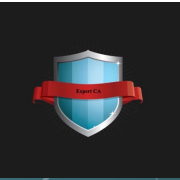


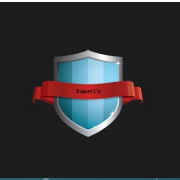


## LEARNING OBJECTIVES



- Identify and explain the statutory elements of a civil RICO claim;
- Distinguish among types of RICO enterprises, including association-in-fact structures as recognized by the Supreme Court;
- Analyze continuity and relatedness under the pattern of racketeering requirement;
- Apply proximate-causation standards to assess RICO liability risks;
- Interpret key case law defining enterprise structure, operation or management participation, and pattern requirements.





## WHAT IS RICO HISTORY AND PURPOSE?

The Racketeer Influenced and Corrupt Organizations Act (RICO), enacted by Congress as Title IX of the Organized Crime Control Act in 1970

- Widely regarded as one of the most powerful civil enforcement mechanisms in U.S. law;
- Conceived as a tool to target the infiltration of legitimate businesses by organized criminal groups , with the statutory text broadly drafted;
- The Supreme Court repeatedly affirmed that the statute must be interpreted in accordance with its text, not the narrower organized-crime focus referenced in legislative debates;
- Its civil provisions under 18 U.S.C. §§ 1961-1964 quickly evolved into an expansive litigation mechanism used by plaintiffs in a wide range of commercial disputes.



## WHAT ARE THE ELEMENTS OF A CIVIL RICO CLAIM?

- ✓ "culpable person" (the defendant) who conducted the affairs of an enterprise through racketeering activity or an "entity capable of holding a legal or beneficial interest in property;
- ✓ "enterprise," which may include any individual or formal organizational structures like corporations, partnerships, and other legal entities, or "any union or group of individuals associated in fact although not a legal entity" exhibiting continuity and common purpose;
- ✓ "pattern of racketeering activity", which requires at least two predicate acts, with the last of which occurred within a ten-year period of a prior act of racketeering activity;
- ✓ "interstate commerce" requirement must be satisfied, with either the activity of the enterprise or the predicate acts of racketeering affect interstate commerce;
- ✓ "injury" to an individual, business or property, with direct relationship with the predicate acts.

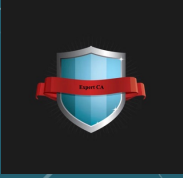
## WHAT ARE THE TYPES OF PROHIBITED ACTIVITIES UNDER RICO?



Title IX, Organized Crime Control Act of 1970, 18 U.S.C. on types of prohibited activities:

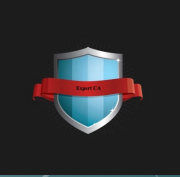
- (1) § 1962(a) prohibits a person from investing in an enterprise any income derived from a pattern of racketeering activity;
- (2) § 1962(b) prohibits a person from using a pattern of racketeering activity to acquire or maintain control over an enterprise;
- (3) § 1962(c) prohibits a person from conducting the affairs of an enterprise through a pattern of racketeering;
- (4) § 1962(d) prohibits a person from conspiring to violate §§ 1962(a), (b), or (c).





## WHAT ARE SOME COMMON PREDICATE ACTS?

- Fraud: mail fraud, wire fraud, bank fraud, securities fraud, bankruptcy fraud;
- Bribery & Extortion: Hobbs Act violations, bribery, extortion, loansharking;
- Theft & Property Crimes: interstate transportation of stolen property, theft, embezzlement;
- Drug Offenses: dealing in controlled substances, drug trafficking;
- Financial Crimes: money laundering, counterfeiting, tax evasion;
- Intellectual Property: copyright infringement, theft of trade secrets.



## WHAT IS RICO ENTERPRISE?

- The enterprise requirement sits at the center of civil RICO framework;
- may consist of individuals or entities associated in fact, functioning together to engage in prohibited conduct;
- must have a shared purpose, relationships among associates, collaborative coordination, and longevity sufficient to pursue the enterprise's purpose;
- distinguished from mere commercial relationships or parallel conduct;
- need not possess a rigid hierarchy but must exhibit a discernible organizational framework.



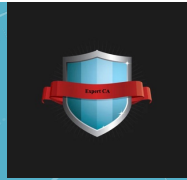
# WHAT IS A PATTERN OF RACKETEERING ACTIVITY?

## **RELATEDNESS:**

- ✓ Predicate acts involving similar goals and participants.

## **CONTINUITY:**

- ✓ Closed-ended:
  - Series of predicate acts lasting a substantial period (generally lasting over one year).
- ✓ Open-ended:
  - Ongoing criminal conduct where predicate acts are part of a regular way of conducting business (suggesting potential repetition such as long-term fraudulent schemes).





## WHAT ARE THE CAUSATION REQUIREMENTS?

Standing Requirement – “Direct Relation Test”:

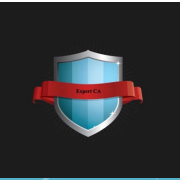
- show proof that the plaintiff suffered injury to business or property as a result of the defendant’s racketeering conduct;
- recovery for injuries that are indirect, speculative, or derivative of harm to third parties is prohibited;
- depends on injury from the “conduct constituting the violation” for each 18 U.S.C. section of RICO:
  - ✓ for § 1962(a) must stem from the investment of racketeering income;
  - ✓ for § 1962(b) must stem from the acquisition of an interest in or control over an enterprise;
  - ✓ for § 1962(c) must stem from the predicate acts;
  - ✓ for § 1962(d) must stem from the covert acts committed in furtherance of the conspiracy.

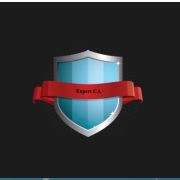


## WHAT ARE THE REMEDIES UNDER CIVIL RICO?



- a four-year statute of limitation or proof of fraudulent concealment of the information needed to bring a RICO claim;
- 18 U.S.C. § 1964(c) authorizes plaintiffs to recover treble damages, attorney's fees, and costs of litigation;
- Out-of-pocket damages – most common type of damages;
- Restitution damages – to put the parties back where they were before the activity occurred;
- Consequential damages (some courts allow them and some don't)- such as lost wages, lost business reputation, lost goodwill, lost profits, business interruption, must come directly from RICO violations;
- NOT allowed are punitive damages, derivative injuries (such as damages passed along to third parties) or personal injury damages (such as mental suffering).





## WHAT ARE SOME STRATEGIC CONSIDERATIONS?

- ✓ leverage treble damages, attorney's fees, and costs of litigation exposure during negotiations, using the threat of RICO claims to compel favorable resolutions;
- ✓ motions to dismiss commonly assert failures to plead continuity, relatedness, enterprise distinctness, or proximate causation;
- ✓ success hinges on developing factual evidence that establishes the existence of an enterprise, substantiates a pattern of predicate acts, and demonstrates direct injury;
- ✓ thorough investigation, use of forensic expert witnesses with solid expertise in RICO, precise pleading, and strategic case framing are essential;
- ✓ defendant must participate in the operation or management of the enterprise's affairs;
- ✓ liability does not extend to all participants who merely assist or facilitate racketeering activity.

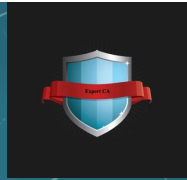
## WHAT ARE SOME NOTABLE CIVIL RICO CASES?



- *H.J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229 (1989). The Supreme Court clarified that a “pattern of racketeering activity” requires relatedness and continuity.
- *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258 (1992). The Court established RICO’s proximate causation standard: plaintiffs must show a “direct relation” between the predicate acts and the injury.
- *Reves v. Ernst & Young*, 507 U.S. 170 (1993). The Court developed the “operation or management” test, limiting liability to those who direct the enterprise’s affairs, not merely those providing services.
- *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158 (2001). The Court held that a corporation and its sole shareholder are distinct for RICO purposes, satisfying the person-enterprise distinctness requirement.
- *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451 (2006). The Court rejected a claim involving competitive injury because the harm to the plaintiff derived from harm to the state, rendering the causal link too remote.
- *Boyle v. United States*, 556 U.S. 938 (2009). The Court held that an association-in-fact enterprise must possess a common purpose, relationships among members, and sufficient longevity, but need not have a formal hierarchy or structure.

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**Thank you.**

**Questions?**





## **EXPERT CA:**

## **CIVIL RICO WEBINAR – CLE SUBMISSION PACKET**

**Prepared for:** Celesq, AttorneysED Center

**Prepared by:** Alex Kulikov, Expert CA / MS / CFCI / CFCS / GAAP / Forensic Expert

**Date:** January 2, 2026

### **PROGRAM TITLE**

Civil RICO (Racketeer Influenced and Corrupt Organization) and Its Significance for Legal Professionals

### **PROGRAM DESCRIPTION**

This Continuing Legal Education (CLE) program provides a foundation analysis of the civil provisions of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1964. Although originally enacted to combat organized crime, civil RICO has evolved into a powerful litigation mechanism used in modern commercial disputes and complex litigation.

The Civil RICO framework allows individuals and businesses to pursue action for damages from a pattern of racketeering activity by an enterprise. Its significance for legal professionals lies in its application beyond organized crime to various commercial disputes and its powerful remedies like treble damages and attorney's fees. This makes it a potent tool for plaintiffs but complex one to defend against, requiring a deep understanding of its stringent requirements and broad scope.

The program explores the doctrinal elements of civil RICO- including enterprise theory, patterns of racketeering activity, predicate acts, and proximate causation, and analyzes the Supreme Court cases that shape its modern application. Participants will learn some practical insights for litigating RICO in state and federal courts.



## LEARNING OBJECTIVES

By the end of the program, participants will be able to:

1. Identify and explain the statutory elements of a civil RICO claim.
2. Distinguish among types of RICO enterprises, including association-in-fact structures as recognized by the Supreme Court.
3. Analyze continuity and relatedness under the pattern of racketeering requirement.
4. Apply proximate-causation standards set forth in *Holmes*, *Anza*, and *Hemi Group* to assess RICO liability risks.
5. Interpret key case law defining enterprise structure, operation or management participation, and pattern requirements.

## TIMED AGENDA (60-Minute CLE Program)

00:00 - 10:00 - Introduction and Overview

- Learning objectives
- Purpose of RICO
- Expansion beyond organized crime
- Remedies and litigation impact

10:00 - 20:00 - History of RICO and Statutory Foundations

- Organized Crime Control Act of 1970
- Key statutory provisions (18 U.S.C. §§ 1961-1964)
- Evolution through Supreme Court interpretation

20:00 - 30:00 - Elements of a Civil RICO Claim

- RICO person
- RICO enterprise (legal entity or association-in-fact)
- Pattern of racketeering activity
- Predicate acts
- Proximate causation

30:00 - 40:00 – Legal Strategy Considerations

- Challenges for plaintiffs: pleading standards, enterprise distinctiveness
- Challenges for defendants: early dismissal, narrowing discovery
- Using treble damages for settlement leverage





- Dealing with fraud-based predicate acts under Federal Rules of Civil Procedure, Rule 9(b)

40:00 - 55:00 – Notable Civil RICO Cases

- *Holmes v. SIPC* on direct relation test;
- *Anza v. Ideal Steel* rejecting derivative injuries;
- *Hemi Group v. City of New York* on intervening third-party conduct;
- *Boyle v. United States* on the structure of enterprise
- *Reves v. Ernst & Young* on operation-or-management test

55:00 - 60:00 - Q&A and Wrap-Up

## **PRESENTER BIOGRAPHY**

Mr. Alex Kulikov is a Master of Science, Certified Financial Crimes Investigator, and Principle of Expert CA, with nearly 30 years of experience in forensic examination, white-collar crime investigations, and complex financial analysis. As a trusted consulting expert across financial services, real estate, fintech, construction, healthcare, technology and other sectors, Mr. Kulikov has provided expert testimony in state and federal courts and served over 200 clients worldwide in matters related to internal and external fraud risk assessments, due diligence, money-trail reconstruction, cryptocurrency fraud analysis, contract dispute assessments, corruption investigations, and more. Mr. Kulikov has contributed to the advancement of financial crime prevention through advisory board service, frequent speaking engagements, and serving on the Executive Board as the Vice President and Chairman of the Education Committee of the National Forensic Expert Witness Association.

## **COURSE MATERIALS INCLUDED**

Participants will receive the following supplementary materials:

- Full Civil RICO CLE Submission Handout (19 pages, double-spaced)
- Case Summaries and Key Supreme Court Analyses
- References Section and Table of Authorities
- 17-Page RICO Presentation Slide Deck





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