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CAUSATION AND CIVIL RICO STANDING: WHEN IS A PLAINTIFF INJURED "BY REASON OF" A RICO VIOLATION?

LAURA GINGER*

INTRODUCTION

Among the remedies included by Congress in the Racketeer Influenced and Corrupt Organizations Act ("RICO"),¹ is a private right of action for treble damages available to "[a]ny person injured in his business or property by reason of a violation of section 1962"² of the Act. Thus, to have standing to sue under civil RICO, a private plaintiff must prove injury to business or property "by reason of" a RICO violation. This requirement poses a question of causation: what nexus between the plaintiff's injury and the defendant's RICO violation must exist before one can say that the injury occurred "by reason of" the violation?³

The meaning of the phrase "by reason of" in this context, has proved problematic. The statute provides no guidance as to its proper interpretation, and the courts have been unable to fashion a uniform or comprehensible definition. The United States Supreme Court's decision in *Sedima, S.P.R.L. v. Imrex Co.*,⁴ which dealt in part with civil RICO standing requirements, did not clearly identify the subsections of section 1962 to which its holding applied; it

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¹ 18 U.S.C. §§ 1961-1968 (1988 & Supp. 1990).

² *Id.* § 1964(c) (1988).

³ See *Norman v. Niagara Mohawk Power Corp.*, 873 F.2d 634, 636 (2d Cir. 1989) ("by reason of" requires causal connection between proscribed conduct and plaintiff's injury); *Ocean Energy II, Inc. v. Alexander & Alexander, Inc.*, 868 F.2d 740, 744 (5th Cir. 1989) (must employ traditional causation analysis in determining whether RICO plaintiff injured "by reason of" § 1962 violation); *Grantham & Mann, Inc., v. American Safety Prods., Inc.*, 831 F.2d 596, 606 (6th Cir. 1987) ("by reason of" language imposes causation requirement of conduct that violated § 1962 and directly or indirectly injured plaintiff's business or property).

⁴ 473 U.S. 479 (1985).

therefore left unanswered many important questions regarding standing.⁵ Moreover, the Court's recent denial of certiorari in a case presenting that precise issue avoided an opportunity to clarify the *Sedima* decision.⁶

Left to their own devices, the lower federal courts have differed as to the type of causal nexus between a plaintiff's injury and a defendant's racketeering activities which is required for civil RICO standing. Some courts have fashioned causation rules which apply generally to private civil RICO actions,⁷ while others have developed rules which apply only to certain classes of plaintiffs⁸ or to particular subsections of section 1962.⁹ As a result, the current state of the law in this area remains in an extreme state of chaos.

These conflicting lower court decisions have, in effect, restricted the class of private plaintiffs entitled to recover under RICO. This restriction neither comports with the language in *Sedima*¹⁰ nor satisfies those who would prefer to see civil RICO's current strength and availability preserved. However, other courts and commentators applaud the limitation of private civil RICO suits.¹¹ As a result, each of the conflicting approaches, if formally implemented, would have a significant, if differing, impact on the Act's standing requirements. Although few RICO reformers directly consider the requisite type of causation, various proposals have been made elsewhere to amend the Act's standing requirements.¹²

This Article will explore the issue of causation and civil RICO standing from several perspectives. In examining the various judicial interpretations of the statutory language, this Article will give particular attention to the Supreme Court's discussion in the *Sedima* case, as well as to the varying rules developed by the lower courts. Moreover, this Article will provide an analysis of current reform proposals and advocate that the RICO statute be amended to implement a definite and clear standing rule.

⁵ See *infra* notes 39-47 and accompanying text.

⁶ See *infra* notes 31-38 and accompanying text.

⁷ See *infra* notes 48-64 and accompanying text.

⁸ See *infra* notes 65-83 and accompanying text.

⁹ See *infra* notes 84-104 and accompanying text.

¹⁰ See *infra* note 24 and accompanying text.

¹¹ See *infra* notes 48-64, 100-02 and accompanying text.

¹² See *infra* notes 105-133 and accompanying text.

I. STATUTORY PROVISIONS ON STANDING: SECTION 1964(C)

Section 1964(c)¹³ creates a private civil right of action in favor of anyone who has been "injured in his business or property by reason of a violation of section 1962."¹⁴ Only those persons injured "by reason of a violation of section 1962" have standing to sue under civil RICO.¹⁵ The phrase "by reason of" generally has been interpreted to impose a requirement on plaintiffs¹⁶ to prove that the criminal conduct violating section 1962 proximately caused injury to the plaintiff's business or property.¹⁷

Civil RICO's standing requirement has proved elusive in its application. Courts have failed to agree upon the requisite causal link between the defendant's RICO violation and the plaintiff's

¹³ 18 U.S.C. § 1964(c) (1988). Section 1964(c) states: "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." *Id.*

¹⁴ *Id.*; see *id.* § 1962. Section 1962, containing RICO's criminal provisions, makes it unlawful for any person:

(a) . . . who has received any income derived . . . from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal . . . to use or invest . . . any part 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) . . . through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain . . . any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) . . . employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate . . . in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) . . . to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

Id.

¹⁵ See, e.g., *Sedima*, 473 U.S. at 496 (plaintiff has standing only if injury to business or property caused by conduct violating § 1962).

¹⁶ See, e.g., *Cullom v. Hibernia Nat'l Bank*, 859 F.2d 1211, 1214 (5th Cir. 1988) ("by reason of" in § 1964(c) imposes a proximate causation requirement on plaintiffs"); *Sperber v. Boesky*, 849 F.2d 60, 64 (2d Cir. 1988) ("both direct and indirect injuries must be proximately caused"); *Haroco, Inc. v. American Nat'l Bank & Trust Co.*, 747 F.2d 384, 398 (7th Cir. 1984) ("by reason of" language . . . simply imposes a proximate cause requirement on plaintiffs"), *aff'd*, 473 U.S. 606 (1985); see also *Report of the Ad Hoc Civil RICO Task Force*, A.B.A. SEC. CORP., BANKING & BUS. LAW 288 (1985) [hereinafter *Task Force Report*].

¹⁷ *Haroco*, 747 F.2d at 398; see *Grantham & Mann, Inc. v. American Safety Prods., Inc.*, 831 F.2d 596, 606 (6th Cir. 1987) (1962 violation must injure plaintiff's business or property); *Northern Trust Bank/O'Hare v. Inryco, Inc.*, 615 F. Supp. 828, 834 (N.D. Ill. 1985) (quoting *Haroco*, 747 F.2d at 398).

harm;¹⁸ nor have they uniformly resolved the kind of RICO violation necessary to cause the plaintiff's injury. Is it sufficient, for purposes of standing under civil RICO, for the plaintiff to suffer from the predicate acts alone? Must he be injured by the pattern of racketeering resulting from those acts? Must the injury occur through the use of that patterned racketeering activity in the particular way that section 1962 declares unlawful?¹⁹

Section 1964(c) of RICO does not directly answer any of these questions. Therefore, one must resort to the case law decisions interpreting section 1964(c) to resolve the issue of the standing necessary to file a civil RICO claim.

II. JUDICIAL INTERPRETATIONS OF SECTION 1964(C)

A. *The United States Supreme Court*

Sedima remains the Court's sole response to the question of civil RICO standing.²⁰ In particular, the Court examined two specific restrictions imposed by the circuit courts on RICO standing.

¹⁸ See *City of Milwaukee v. Universal Mortgage Corp.*, 692 F. Supp. 992, 996 (E.D. Wis. 1988).

¹⁹ See, e.g., *Grider v. Texas Oil & Gas Corp.*, 868 F.2d 1147, 1149-50 (10th Cir. 1989) (standing under § 1962(a) requires injury by use or investment of racketeering income, not merely injury caused by predicate acts, while standing under § 1962(c) requires only proof of injury caused by predicate acts), *cert. denied*, 110 S. Ct. 76 (1990); *Cullom*, 859 F.2d at 1215 (standing exists if plaintiff injured by "racketeering activities forbidden by § 1962") (footnote omitted); *Brandenburg v. Seidel*, 859 F.2d 1179, 1184, 1187, 1189 n.11 (4th Cir. 1988) (standing under all subsections of § 1962 requires injury caused by predicate acts); *Bankers Trust Co. v. Rhoades*, 859 F.2d 1096, 1100 (2d Cir. 1988) (standing under subsections of § 1962 requires injury from predicate acts), *cert. denied*, 109 S. Ct. 1642 (1989); *Environmental Tectonics v. W.S. Kirkpatrick, Inc.*, 847 F.2d 1052, 1067 (3d Cir. 1988) (standing under § 1962 requires injury caused by some or all of predicate acts), *aff'd*, 110 S. Ct. 701 (1990); *Town of Kearney v. Hudson Meadows Urban Renewal Corp.*, 829 F.2d 1263, 1268 (3d Cir. 1987) (injury which confers standing on RICO plaintiff is injury flowing from predicate act, not injury flowing from pattern of such acts); *City of Milwaukee*, 692 F. Supp. at 997 (recovery under RICO limited to injuries caused by predicate acts); *Mid-State Fertilizer Co. v. Exchange Nat'l Bank*, 693 F. Supp. 666, 672 (N.D. Ill. 1988) (same), *aff'd*, 877 F.2d 1333 (7th Cir. 1989); *P.M.F. Servs., Inc. v. Grady*, 681 F. Supp. 549, 556 (N.D. Ill. 1988) (specific subsection makes violation of racketeering activity alone, but use of racketeering activity in particular way subsection declares unlawful); *Jones v. Baskin, Flaherty, Elliot & Mannion, P.C.*, 670 F. Supp. 597, 599 (W.D. Pa. 1987) (standing hinges on plaintiff's suffering "direct injury" by conduct violating § 1962), *aff'd*, 897 F.2d 522 (3d Cir.), *cert. denied*, 111 S. Ct. 47 (1990); *Kouvakas v. Inland Steel Co.*, 646 F. Supp. 474, 477 (N.D. Ind. 1986) (plaintiff without standing because injuries did not flow from predicate acts); see also *Task Force Report*, *supra* note 16, at 288 & nn.439-40 (discussing both sides of issue); *infra* notes 47-50 and accompanying text.

²⁰ *Sedima*, 473 U.S. at 479.

One required the RICO plaintiff to establish a so-called "racketeering injury" in addition to an injury resulting from the predicate acts.²¹

The Supreme Court, however, disagreed. It ruled that a civil RICO plaintiff need not additionally prove, for standing purposes, an indirect "racketeering injury" not immediately resulting from the commission of the predicate acts, once having proved a direct injury caused by the predicate acts.²² In so doing, the Court arguably expanded standing under RICO by including both plaintiffs suffering a direct injury from the predicate acts and those suffering an indirect injury.²³

The *Sedima* Court addressed only the specific requirements of section 1962(c) standing, stating that "[w]here the plaintiff alleges each element of the violation, the compensable injury necessarily is the harm caused by predicate acts sufficiently related to constitute a pattern Any recoverable damages occurring by reason of a violation of § 1962(c) will flow from the commission of the

²¹ *Id.* at 485. The district court in *Sedima* held that a RICO complaint must allege an injury apart from that resulting directly from the predicate acts alleged. *Sedima*, S.P.R.L. v. Imrex Co., 574 F. Supp. 963, 965 (S.D.N.Y. 1983). A divided panel of the Court of Appeals for the Second Circuit affirmed; the plaintiff's complaint failed to allege an injury both "different in kind from that occurring as a result of the predicate acts themselves," and "caused by an activity which RICO was designed to deter." *Sedima*, S.P.R.L. v. Imrex Co., 741 F.2d 482, 496 (2d Cir. 1984).

²² *Sedima*, 473 U.S. at 495.

²³ *See, e.g.*, Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit at 14, 43-45, *Diamond v. Reynolds*, 853 F.2d 917 (3d Cir. 1988) (decision without published opinion), *cert. denied*, 488 U.S. 955 (1988) [hereinafter Petition for Certiorari]. The Court, in denying review stated that its *Sedima* decision granted RICO standing to those victims directly injured by the predicate acts. "But all nine justices agreed that those victims injured indirectly by the racketeering; i.e., those with 'racketeering injury,' 'indirect injury,' or 'competitive injury' had standing, and would continue to have standing, under RICO." *Id.* at 12. One district court has interpreted *Sedima* in the following manner:

While the defendants assert that the indirect injuries alleged by the [plaintiff] . . . are not the type of injury contemplated by section 1964(c), there is no indication of such a limitation in the *Sedima* case. Indeed, the issue confronted in *Sedima* was not whether indirect injury from the racketeering enterprise was recoverable but whether direct injury from the predicate acts was sufficient to allow recovery. *The Court implicitly accepted the premise that the injurious consequences of the enterprise other than the injury directly attributable to the fraudulent acts themselves would be recoverable.*

Philatelic Found. v. Kaplan, No. 85-8571 (S.D.N.Y. May 9, 1986) (LEXIS, Genfed library, Dist file) (citing *Sedima*, 473 U.S. at 497 & n.15) (emphasis added), *rev'd on other grounds*, 647 F. Supp. 1344 (S.D.N.Y. 1986); *see also infra* notes 48-49 and accompanying text (cases upholding "directly or indirectly" related business injuries).

predicate acts."²⁴ Its broad language, however, can easily be applied to violations of *any* subsection of section 1962.²⁵

The Court in *Sedima* seems to have included injuries caused either directly or indirectly by the predicate acts in its definition of "recoverable damages," for it states that "[s]uch damages include, but are not limited to, the sort of competitive injury for which the dissenters would allow recovery."²⁶ The majority's reference alludes to the examples offered by dissenting Justice Marshall²⁷ in an effort to illustrate the significance and necessity of a "racketeering injury," which the dissenters would have additionally required for RICO standing. However, the Court found fault with the dissent's reasoning:

Under the dissent's reading of the statute, the harm proximately [directly] caused by the forbidden conduct is not compensable, but that ultimately and indirectly flowing therefrom is. We reject this topsy-turvy approach, finding no warrant in the language or the history of the statute for denying recovery thereunder to "the direct victims of the [racketeering] activity," *post*, at 522, while preserving it for the indirect.²⁸

²⁴ *Sedima*, 473 U.S. at 497.

²⁵ See *Mid-State Fertilizer Co. v. Exchange Nat'l Bank*, 693 F. Supp. 666, 671 (N.D. Ill. 1988) (broad language in *Sedima* opinion indicates injury caused by predicate racketeering acts is "sufficient for any type of § 1962 violation"), *aff'd*, 877 F.2d 1333 (7th Cir. 1989).

²⁶ *Sedima*, 473 U.S. at 497 n.15; see *Bass v. Campagnone*, 838 F.2d 10, 12 (1st Cir. 1988). The *Bass* court explained that the Supreme Court "made clear that damages could be recovered for those injuries indirectly caused by predicate acts, as well as those directly caused by them." *Id.*

²⁷ *Sedima*, 473 U.S. at 521-22 (Marshall, J., dissenting). The "racketeering injuries" mentioned in the examples appear to illustrate primarily anticompetitive effects of racketeering. They include being forced out of business by monopolization resulting from threats, arson, and assault; being forced to pay more for the monopolist's goods or services, resulting in added costs of doing business; being forced to pay protection money, purchase certain goods, or hire certain workers, resulting in added costs; being displaced as an investor in a legitimate business by a racketeer who gains control of the business through racketeering; and losing competitive position to an enterprise which enhances its profits or its economic power, and therefore its competitive position, through racketeering. *Id.* (Marshall, J., dissenting). Justice Marshall would permit recovery for such indirect "racketeering injury," but would deny recovery for any of the injuries resulting directly from the predicate acts perpetrated by the racketeers in his examples. *Id.* (Marshall, J., dissenting). He would not permit recovery, for instance, for the cost of the building burned in the arson, for injury resulting from the threats or assault, or for monetary injuries suffered by the customers or investors in the racketeer-infiltrated business. *Id.* (Marshall, J., dissenting). Under his scheme, the direct targets and victims of the predicate acts "could recover for damages flowing from the predicate acts themselves, but under state or perhaps other federal law, not RICO." *Id.* at 521 (Marshall, J., dissenting).

²⁸ *Id.* at 497 n.15. A number of courts have agreed with the Supreme Court's analysis in

Sedima, therefore, can appropriately be understood as holding that plaintiffs injured *either directly or indirectly* by racketeering activity have standing to bring a private civil RICO suit. The Court has, in its broad interpretation, expanded RICO standing to include those plaintiffs suffering direct injury alone, as well as those suffering indirect injuries.²⁹

One should not view the majority's ruling in *Sedima* as affecting the standing of those suffering indirect injury. The lower federal courts, however, sharply disagree on whether the *Sedima* decision stripped "indirect injury" RICO victims of standing.³⁰ The Supreme Court, unfortunately, declined an opportunity to settle this conflict and clarify its *Sedima* ruling. In November of 1988, the Court denied certiorari in *Diamond v. Reynolds*,³¹ a case which squarely presented the issue of whether that Court's expansion of RICO standing in *Sedima* simultaneously eliminated RICO standing for those who had suffered indirect injury.³² In *Diamond*, a former corporate chief financial officer alleged that he was fired because he opposed the plan of certain corporate directors to control the corporation through illegal racketeering activities in violation of RICO.³³

The district court held that the plaintiff "did not have standing under *Sedima*, as he was not injured . . . 'by the conduct constituting the [RICO] violation.'" ³⁴ In reaching this conclusion, the court reasoned that the discharge in itself cannot be considered "conduct constituting a violation of RICO," and that the shareholders, as the persons injured by the racketeering acts, "alone have standing to bring a RICO action containing the type of allegations made by plaintiff."³⁵

Sedima. See, e.g., *Pandick, Inc. v. Rooney*, 632 F. Supp. 1430, 1433 (N.D. Ill. 1986) (RICO action limited to "direct victims" of predicate acts would ignore essence of RICO violation).

²⁹ See Petition for Certiorari, *supra* note 23, at 14.

³⁰ *Id.* at 16. Some courts have interpreted the Court's language arguably in error, to grant RICO standing *only* to those suffering direct injury. See, e.g., *National Enters. Inc. v. Mellon Fin. Servs.*, 847 F.2d 251, 253 (5th Cir. 1988) (whether indirect injury sufficient for standing is contested question among federal courts); *Williams v. Hall*, 683 F. Supp. 639, 641 (E.D. Ky. 1988) (division of authority reflects disagreement among circuits).

³¹ 488 U.S. 955 (1988).

³² Petition for Certiorari, *supra* note 23, at i.

³³ *Diamond v. Reynolds*, No. 31580 at 86 (D. Del. July 15, 1986) (WESTLAW, Allfeds library); Petition for Certiorari, *supra* note 23, at 6-10.

³⁴ *Diamond*, No. 31580 at 87 (quoting *Sedima*, 473 U.S. at 496); Petition for Certiorari, *supra* note 23, at 11.

³⁵ *Diamond*, No. 31580 at 87.

The United States Court of Appeals for the Third Circuit affirmed the district court's decision on the basis of its own reading of *Sedima*, and stated:

[W]hether Diamond was discharged in retaliation for objecting to the alleged conspiracy or to prevent him from reporting the conspiracy, he does not have RICO standing. Diamond was not a target—either directly or indirectly—of the alleged criminal conduct, and his discharge cannot provide the basis for RICO standing. The district court properly held that Diamond's discharge was not sufficiently linked to the predicate acts that comprised the pattern of racketeering activity.³⁶

Diamond petitioned the United States Supreme Court for review, arguing that the differing interpretations among the circuits required resolution.³⁷ The Court, however, denied certiorari,³⁸ leaving *Sedima* as the only guidance to the lower courts.

B. Standing After *Sedima* in the Federal Courts

Some federal courts have regarded *Sedima*'s standing ruling as applicable to any and all subsections of section 1962 of RICO,³⁹ while other courts would restrict that holding to cases involving claims based on subsection 1962(c).⁴⁰ This confusion has led to differing standards among the courts which promotes neither clarity, uniformity, nor predictability in the law.

In addition, the substance of the *Sedima* Court's standing ruling remains unclear. For example, the Court's requirement that recoverable damages "flow from the commission of the predicate acts"⁴¹ does not articulate the meaning of the phrase "flow from."

³⁶ Petition for Certiorari, *supra* note 23, app. A, at 9-10 (citations and footnote omitted).

³⁷ *Id.* at 14. Diamond asserted that certiorari should be granted to resolve the conflict among nine circuits as to whether victims with "racketeering injury," also known as "indirect injury," have RICO standing; because the decision below holding that *Sedima* restricted RICO standing conflicts with this Court's decision in *Sedima*; and because the fact pattern in this case, an employee fired for opposing RICO violations, is being frequently presented to the federal courts and is resulting in conflicting decisions. *Id.* at 14, 37.

³⁸ *Diamond v. Reynolds*, 488 U.S. 955 (1988).

³⁹ *See, e.g.,* *Mid-State Fertilizer Co. v. Exchange Nat'l Bank*, 693 F. Supp. 666, 671 (N.D. Ill. 1988) ("injury caused by predicate racketeering acts is sufficient for any type of § 1962 violation), *aff'd*, 877 F.2d 1333 (7th Cir. 1989).

⁴⁰ *See, e.g.,* *Grider v. Texas Oil & Gas Corp.*, 868 F.2d 1147, 1150 (10th Cir.) (criteria required for standing to bring claim under § 1962(c) different from that required under § 1962(a)), *cert. denied*, 110 S. Ct. 76 (1989).

⁴¹ *Sedima*, 473 U.S. at 497.

Since the gist of the Court's standing ruling in *Sedima* was to confer RICO standing on those alleging only a direct injury from the predicate acts,⁴² it seems that "flow from" should include damages directly resulting from the predicate acts. Furthermore, the Court's next statement that these damages "include, but are not limited to"⁴³ damages from competitive injury, indicates that damages indirectly caused by the predicate acts are also recoverable. The obvious issue left open by the *Sedima* Court is the degree to which a relationship between the plaintiff's damages and the defendant's predicate acts may be indirect and still confer civil RICO standing on the plaintiff.

Moreover, the Court's statements concerning compensable injury⁴⁴ and the essential violation⁴⁵ imply that perhaps standing exists only for those injured by the pattern of racketeering,⁴⁶ or by the use of that racketeering activity in the particular way declared unlawful by the subsection of section 1962 at issue in a particular case.⁴⁷

The uncertainty bred by the *Sedima* decision has resulted in a proliferation of RICO standing rules in the lower federal courts. Some courts have developed standing rules of general applicability, while others have devised rules applicable specifically to certain recurring fact patterns, or to particular subsections of section 1962. Thus, the allegations and proof required to obtain civil RICO standing depend to a large extent upon the jurisdiction in which one commences his RICO action.

⁴² *Id.* at 497 n.15.

⁴³ *Id.*

⁴⁴ *Id.* at 497 ("harm caused by predicate acts sufficiently related to constitute a pattern").

⁴⁵ *Id.* ("essence of the violation is the commission of those acts in connection with the conduct of an enterprise").

⁴⁶ *See, e.g.,* Yancoski v. E.F. Hutton & Co., 581 F. Supp. 88, 96 (E.D. Pa. 1983) (§ 1964(c) requires plaintiff to be injured by at least two acts—pattern of racketeering activity). *Contra* Town of Kearney v. Hudson Meadows Urban Renewal Corp., 829 F.2d 1263, 1268 (3d Cir. 1987) (injury must flow from commission of predicate act, not pattern of such acts); Marshall & Ilsley Trust Co. v. Pate, 819 F.2d 806, 810 (7th Cir. 1987) (illogical to require plaintiff to show all acts equalling pattern causing injury).

⁴⁷ *See, e.g.,* P.M.F. Servs., Inc. v. Grady, 681 F. Supp. 549, 556 (N.D. Ill. 1988) ("specific subsection of Section 1962 makes the violation not the conduct of racketeering activity alone, but rather the use of that racketeering activity in the particular way the subsection declares unlawful").

1. Generally Applicable Theories of Causation

a. *The direct-indirect injury test*

Although most federal courts consider whether the defendant's predicate acts injured plaintiff directly, some courts grant standing on the basis of either direct or indirect injury. For example, the United States Court of Appeals for the Seventh Circuit has held that for standing to exist, "[t]he criminal conduct in violation of section 1962 must, *directly or indirectly*, have injured the plaintiff's business or property."⁴⁸ It would appear that an indirect injury is sufficient to grant RICO standing and some courts have agreed with this view.⁴⁹ However, a clear majority of the courts has held that only plaintiffs directly injured by the predicate acts have standing to sue under civil RICO.⁵⁰

⁴⁸ *Haroco, Inc. v. American Nat'l Bank & Trust Co.*, 747 F.2d 384, 398 (7th Cir. 1984) (emphasis added), *aff'd*, 473 U.S. 606 (1985). This language was cited with approval by the same court in *Flip Side Prods., Inc. v. Jam Prods., Ltd.*, 843 F.2d 1024, 1035 (7th Cir.), *cert. denied*, 488 U.S. 909 (1988).

⁴⁹ *See, e.g.*, *Sperber v. Boesky*, 849 F.2d 60, 63 (2d Cir. 1988) (some kinds of indirect injury are recoverable, including "'racketeering' injury, 'competitive injury' or injury caused by the total effect of the pattern of racketeering in the enterprise"); *Grantham & Mann, Inc. v. American Safety Prods., Inc.*, 831 F.2d 596, 606 (6th Cir. 1987) ("criminal conduct in violation of section 1962 must, directly or indirectly, have injured plaintiff's business or property") (quoting *Haroco*, 747 F.2d at 398); *Roeder v. Alpha Indus., Inc.*, 814 F.2d 22, 29 (1st Cir. 1987) (recovery not limited to direct victims); *Miller v. Glen & Helen Aircraft*, 777 F.2d 496, 498-99 (9th Cir. 1985) (sufficient causal connection allegation that investigator conspiracy caused portion of insurance proceeds to be paid to investigator, thereby depleting final settlement to plaintiff); *Terre du Lac Ass'n v. Terre du Lac, Inc.*, 772 F.2d 467, 472 (8th Cir. 1985) (standing exists even where plaintiff not alleged target of racketeering activity only alleges indirect injury), *cert. denied*, 475 U.S. 1082 (1986); *Haroco*, 747 F.2d at 398 (criminal conduct must, directly or indirectly, injure plaintiff's business or property); *Alexander Grant & Co. v. Tiffany Indus., Inc.*, 742 F.2d 408, 411 (8th Cir. 1984) (accounting firm's lost fees, expenses of investigation, and loss of business reputation sufficient to confer RICO standing), *cert. denied*, 474 U.S. 1058 (1986); *Lewis v. Lhu*, 696 F. Supp. 723, 727 (D.D.C. 1988) (standing only requires allegation that plaintiffs' injuries "flowed, directly or indirectly, from defendants' fraudulent acts"); *Williams v. Hall*, 683 F. Supp. 639, 642 (E.D. Ky. 1988) (indirect injury sufficient basis under § 1962(a) or (c)); *Wooten v. Loshbough*, 649 F. Supp. 531, 535 (N.D. Ind. 1986) (no statutory requirement that plaintiff be victim of predicate acts); *Acampora v. Boise Cascade Corp.*, 635 F. Supp. 66, 69 (D.N.J. 1986) (standing extended to employee discharged for discovering manager's thefts because "[h]er injury, however, flowed from defendant's commission of a pattern of racketeering activity in connection with the conduct of an enterprise"); *Pandick, Inc. v. Rooney*, 632 F. Supp. 1430, 1433 (N.D. Ill. 1986) (extending standing only to direct victims of predicate racketeering activities would be to ignore essence of RICO violation); *SJ Advanced Technology v. Junkunc*, 627 F. Supp. 572, 576 (N.D. Ill. 1986) (injured competitor had standing even though predicate acts directed at third parties).

⁵⁰ *See, e.g.*, *Norman v. Niagara Mohawk Power Corp.*, 873 F.2d 634, 636 (2d Cir. 1989) (no standing without causal connection between plaintiff's refusal to participate in predicate

Several circuit courts have disapproved of using the direct-indirect injury dichotomy to frame the RICO standing question. In *Alexander Grant & Co. v. Tiffany Industries*,⁵¹ the Eighth Circuit held that an accounting firm claiming that its former client falsified audit data had standing based on injury it suffered from the costs attendant to a Securities and Exchange Commission investigation, lost fees, and injury to its business reputation.⁵² The court disapproved of the Seventh Circuit's narrow construction of RICO standing because of the lack of legislative history supporting the direct-indirect dichotomy.⁵³ On remand, the court readopted this standing ruling and commented on the impact of the *Sedima* decision, which had been rendered in the interim, stating that "[t]he brief mention of causation in *Sedima* cannot fairly be interpreted as reading into section 1964(c) a direct injury versus indirect injury

acts and alleged constructive discharge); *Burdick v. American Express Co.*, 865 F.2d 527, 529 (2d Cir. 1989) (plaintiff must show damage to business or property resulted from predicate acts constituting violation); *Cullom v. Hibernia Nat'l Bank*, 859 F.2d 1211, 1215, 1217 (5th Cir. 1988) (whistleblowers fired for reporting RICO violation or for refusing to participate in RICO violation lack standing because discharge does not "flow from predicate acts"); *National Enters., Inc. v. Mellon Fin. Servs.*, 847 F.2d 251, 254-55 (5th Cir. 1988) (creditor of RICO victim lacked standing because alleged injury not caused by predicate acts); *Pujol v. Shearson/American Express, Inc.*, 829 F.2d 1201, 1205 (1st Cir. 1987) (whistleblower plaintiff lacks standing because acts that injured him not caused by alleged predicate acts); *Crocker v. Federal Deposit Ins. Corp.*, 826 F.2d 347, 352 (5th Cir. 1987) (minority shareholders of defunct bank injured by decline in value of bank stock lack standing in non-derivative action without direct, personal injury distinct from corporation's), *cert. denied*, 485 U.S. 905 (1988); *Nodine v. Textron, Inc.*, 819 F.2d 347, 349 (1st Cir. 1987) (plaintiff fired for reporting illegal scheme lacks standing because discharge not violation; RICO provides no cause of action to "individuals injured by acts other than criminal RICO violations"); *Marshall & Ilsley Trust Co. v. Pate*, 819 F.2d 806, 810 (7th Cir. 1987) (plaintiff must prove direct injury from at least one of predicate acts constituting RICO pattern); *NCNB Nat'l Bank v. Tiller*, 814 F.2d 931, 937 (4th Cir. 1987) (corporation not stockholders have standing because "indirectly injured party should look to the recovery of the directly injured party, not the wrongdoer for relief"); *Rand v. Anaconda-Ericsson, Inc.*, 794 F.2d 843, 849 (2d Cir.) (shareholders lacked standing because RICO action is corporate asset), *cert. denied*, 479 U.S. 987 (1986); *Carter v. Berger*, 777 F.2d 1173, 1176 (7th Cir. 1985) (taxpayers paying higher county taxes lack standing to recover for defendant's bribery of county officials); *Warren v. Manufacturers Nat'l Bank*, 759 F.2d 542, 545 (6th Cir. 1985) (shareholder and discharged employee of corporation forced into bankruptcy by RICO violations lacked standing because only corporation suffered injuries directly caused by RICO violations).

⁵¹ 742 F.2d 408 (8th Cir. 1984), *vacated and remanded for further consideration in light of Sedima and Haroco*, 473 U.S. 922 (1985), *standing ruling readopted on remand*, 770 F.2d 717, 719 (8th Cir. 1985), *cert. denied*, 474 U.S. 1056 (1986).

⁵² *Id.* at 411-12.

⁵³ *Id.* at 412; see *Cenco v. Seidman & Seidman*, 686 F.2d 449, 459 (7th Cir.), *cert. denied*, 459 U.S. 880 (1982).

distinction."⁵⁴

The First Circuit, in *Bass v. Campagnone*,⁵⁵ has questioned the validity of the direct-indirect distinction for the following reason

Sedima, then, establishes a broad standard for determining when a person is injured "by reason of" a section 1962 violation: the inquiry in [sic] not whether the plaintiff has alleged a direct or indirect injury, but rather whether he or she has alleged an injury that "flows from" the predicate acts.⁵⁶

Neither the *Alexander Grant* nor the *Bass* court, however, proposed an alternative to the rejected direct-indirect injury test. The *Alexander Grant* court merely stated that the plaintiff, Grant, had standing to allege its claims.⁵⁷ The *Bass* court similarly failed to elaborate upon its statement that the plaintiff's injury must "flow from" the predicate acts.⁵⁸

b. Proximate cause

The Fifth Circuit also rejected the direct-indirect injury test, but suggested an alternative proximate causation analysis. In *Zervas v. Faulkner*,⁵⁹ the court rejected a strictly direct nexus between the injury and a predicate as "overly restrictive."⁶⁰ However, the weight of authority did not support mere "but for causation." After discussing the decisions of several other circuits that impose a requirement of proximate causation, the Fifth Circuit in *Zervas* explicitly adopted proximate cause as an additional requirement.⁶¹ Similarly, many other courts extend civil RICO standing only to those plaintiffs whose injuries were proximately caused by the defendant's predicate acts.⁶² Indeed, in *Sedima*, the Supreme Court

⁵⁴ *Alexander Grant*, 770 F.2d at 719 (interpreting *Sedima*).

⁵⁵ 838 F.2d 10 (1st Cir. 1988).

⁵⁶ *Id.* at 12.

⁵⁷ *Alexander Grant*, 770 F.2d at 719.

⁵⁸ *Bass*, 838 F.2d at 12.

⁵⁹ 861 F.2d 823 (5th Cir. 1988).

⁶⁰ *Id.* at 833.

⁶¹ *Id.* at 834-35.

⁶² See *Ocean Energy II, Inc. v. Alexander and Alexander, Inc.*, 868 F.2d 740, 744 (5th Cir. 1989) (plaintiff harmed "by reason of" RICO violation must prove proximate causation between predicate acts and injury); *Old Time Enters. v. International Coffee Corp.*, 862 F.2d 1213, 1218 (5th Cir. 1989); *Cullom v. Hibernia Nat'l Bank*, 859 F.2d 1211, 1214 (5th Cir. 1988); *Brandenburg v. Seidel*, 859 F.2d 1179, 1189 (4th Cir. 1988); *Sperber v. Boesky*, 849 F.2d 60, 64 (2d Cir. 1988); *National Enters. v. Mellon Fin. Serv. Corp.*, 847 F.2d 251, 254

implicitly approved of a proximate cause requirement by allowing recovery for direct injuries "proximately caused by the forbidden conduct."⁶³

A number of federal courts have refined their analyses of directness or proximity of the plaintiff's injury by examining whether the plaintiff was the actual target or victim of the defendant's predicate acts. Under that analysis, a plaintiff's standing will turn on his ability to establish his status as an actual target or victim of the predicate acts.⁶⁴

2. Type of Plaintiff

An examination of the case law reveals that the grant of or denial of standing under RICO often corresponds to the type of plaintiff bringing the suit. The treatment commonly falls into five separate categories of plaintiffs.

a. Creditors of RICO victims

Several different classes of creditors of RICO victims have been denied civil RICO standing because their injuries were merely derivative of the injuries suffered by the direct RICO victim. For

(5th Cir. 1988); *Haroco, Inc. v. American Nat'l Bank & Trust Co.*, 747 F.2d 384, 398 (7th Cir. 1984), *aff'd*, 473 U.S. 606 (1989). *But see* *Bankers Trust Corp v. Rhoades*, 859 F.2d 1096, 1100 (2d Cir. 1988) ("by reason of" language contains no special standing limitation; plaintiff only required to suffer "injury in fact"), *cert. denied*, 109 S. Ct. 1642 (1989).

⁶³ See *Sedima*, 473 U.S. at 497 n.15.

⁶⁴ See, e.g., *Ocean Energy II*, 868 F.2d at 747 (plaintiff "clearly" target and victim of alleged scheme); *Burdick v. American Express Co.*, 865 F.2d 527, 529 (2d Cir. 1989) (plaintiff lacked standing because complaint devoid of allegations of injury to business or property by predicate acts); see also *Sperber*, 849 F.2d at 65 (since plaintiff was "neither the target of the racketeering enterprise nor the competitors nor the customers of the racketeer" claims too attenuated); *Pujol v. Shearson/American Express, Inc.*, 829 F.2d 1201, 1205 (1st Cir. 1987) (since "not a defrauded client or investor and was not a target of any of the acts pleaded" plaintiff lacked standing); *Hecht v. Commerce Clearing House, Inc.*, 713 F. Supp. 72, 75 (S.D.N.Y. 1989) (no standing as whistleblower or nonparticipant unless plaintiff was target), *aff'd*, 897 F.2d 21 (2d Cir. 1990).

However, another group of cases stands for the opposite proposition—that a plaintiff is not required to have been a target or victim of the predicate acts to have standing to bring a civil RICO suit. See, e.g., *Terre du Lac Ass'n, Inc. v. Terre du Lac, Inc.*, 772 F.2d 467, 472 (8th Cir. 1985), *cert. denied*, 475 U.S. 1082 (1986); *Alexander Grant*, 742 F.2d at 411 n.8; *Lewis v. Lhu*, 696 F. Supp. 723, 727 (D.D.C. 1988); *Wooten v. Loshbough*, 649 F. Supp. 531, 535 (N.D. Ind. 1986); *Beck v. Manufacturers Hanover Trust Co.*, 645 F. Supp. 675, 680 (S.D.N.Y. 1986); *Pandick, Inc. v. Rooney*, 632 F. Supp. 1430, 1443 (N.D. Ill. 1986); *SJ Advanced Technology & Mfg. Corp. v. Junkunc*, 627 F. Supp. 572, 576 (N.D. Ill. 1986); *Callan v. State Chemical Mfg. Co.*, 584 F. Supp. 619, 623 (E.D. Pa. 1984).

example, creditors of a bankruptcy estate have been barred from bringing a RICO claim for monies owed to the estate; only the bankruptcy trustee has standing to pursue such a claim.⁶⁵ Similarly, guarantors of corporate debt, whose primary obligor becomes a RICO victim and defaults on its obligations, are generally denied civil RICO standing; their injuries are considered too remote and derivative.⁶⁶

b. Shareholders of RICO victims

The requirement that RICO plaintiffs be injured in their *own* business or property by a RICO violation has operated to deny standing to shareholders who allege injury to the corporation.⁶⁷ Courts have generally applied state statutory and common law to determine whether an action is derivative or individual in nature. An injury that falls equally on all shareholders "is a corporate asset, and shareholders cannot bring [suit] in their own names without impairing the rights of prior claimants to such assets."⁶⁸ For a shareholder to have standing under RICO in a non-derivative action, he must "show either an injury distinct from that to other

⁶⁵ See, e.g., *Ocean Energy II*, 868 F.2d at 746; *Warren v. Manufacturers Nat'l Bank*, 759 F.2d 542, 545 (6th Cir. 1985); *Carlton v. BAWW, Inc.*, 751 F.2d 781, 785 (5th Cir. 1985); *Dana Molded Prods., Inc. v. Brodner*, 58 Bankr. 576, 579 (N.D. Ill. 1986). *But see Bankers Trust*, 859 F.2d at 1101 (debtor's creditor injured by bankruptcy fraud has standing to bring RICO claim against debtor's officers); *ANR Ltd. v. Chattin*, 89 Bankr. 898, 902 (D. Utah 1988) (action against corporate insiders by creditors specifically harmed by wrongful conduct).

⁶⁶ See, e.g., *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 640 (9th Cir. 1988) (plaintiffs denied standing since harm suffered derivative of corporation's); *National Enters.*, 847 F.2d at 255 (creditor of RICO victim typically lacks standing); *Mid-State Fertilizer Co. v. Exchange Nat'l Bank*, 693 F. Supp. 666, 673 (N.D. Ill. 1988) (guarantors without standing if merely claiming indirect injury because principal obligor suffered RICO injury); *Continental Illinois Nat'l Bank & Trust Co. v. Windham*, 668 F. Supp. 578, 585-86 (E.D. Tex. 1987) (corporation president who guaranteed business loan lacked standing to assert corporation's RICO claim); *Grant v. Union Bank*, 629 F. Supp. 570, 573 (D. Utah 1986) (shareholder derivative action inappropriate to redress corporation's injuries).

⁶⁷ See, e.g., *Grant*, 629 F. Supp. at 573 (shareholders lack standing to assert individual RICO claims because harm suffered derived from corporation's injury); *Leach v. Federal Deposit Ins. Corp.*, 860 F.2d 1266, 1273-74 (5th Cir. 1988) (minority shareholders lack standing without injury distinct from corporation's), *cert. denied*, 109 S. Ct. 3186 (1989); see also *Crocker v. Federal Deposit Ins. Corp.*, 826 F.2d 347, 352 (5th Cir. 1987) (diminution of stock value is not personal injury distinct from that of corporation), *cert. denied*, 485 U.S. 905 (1988); *Roeder v. Alpha Indus.*, 814 F.2d 22, 29 (1st Cir. 1987) (shareholder cannot sue in own right for injury to corporation and consequent decline in stock price affecting shareholders generally).

⁶⁸ *Rand v. Anaconda-Ericsson, Inc.*, 794 F.2d 843, 849 (2d Cir. 1986), *cert. denied*, 479 U.S. 987 (1986).

shareholders or a special duty" between himself and the RICO defendant.⁶⁹ If the action is derivative, only the corporation itself or a shareholder suing on its behalf can bring suit.⁷⁰

c. *Taxpayers*

Taxpayer plaintiffs are generally subject to the same principles applied to shareholder plaintiffs. In *Carter v. Berger*,⁷¹ county taxpayers brought suit under section 1964, seeking recovery for increased taxes due to the defendant's illegal conduct. The plaintiffs alleged that the defendant's bribery of county employees permitted his clients to obtain lower tax assessments for their property, and consequently pay less taxes to the county.⁷² The Seventh Circuit affirmed the district court's denial of standing, finding that the taxpayers were only derivatively and indirectly injured when the county raised their taxes due to the defendant's action.⁷³ Because the taxpayers did not "act for or in the right of the county," their suit was rightfully dismissed.⁷⁴

d. *Union members*

The shareholder case analysis has been used to deny standing to union members attempting to bring RICO actions against persons who allegedly committed predicate acts against the union. In one case, the Fifth Circuit analogized union members to shareholders, and concluded that individual members of a union injured by racketeering activity did not suffer any injury to their own property.⁷⁵ The court therefore held that they lacked standing because they "suffered only indirect injuries as union members."⁷⁶

The First Circuit also relied upon the shareholder case analysis to conclude that individual union members could not seek redress under RICO for an injury to the union as a whole.⁷⁷ However, the First Circuit expressly rejected use of the direct-indirect injury

⁶⁹ *Sparling*, 864 F.2d at 640.

⁷⁰ *Roeder v. Alpha Indus.*, 814 F.2d 22, 29 (1st Cir. 1987); *Rand*, 794 F.2d at 849.

⁷¹ 777 F.2d 1173 (7th Cir. 1985).

⁷² *Id.* at 1174.

⁷³ *Id.* at 1178.

⁷⁴ *Id.* at 1176-78.

⁷⁵ See *Adams-Lundy v. Association of Professional Flight Attendants*, 844 F.2d 245, 250 (5th Cir. 1988).

⁷⁶ *Id.*

⁷⁷ *Bass*, 838 F.2d at 12-13.

test; instead, it determined that the proper inquiry was whether the plaintiff had "alleged an injury that 'flows from' the predicate acts."⁷⁸

e. Whistleblowers

The conflict among the lower federal courts on the issue of whether plaintiffs injured indirectly have civil RICO standing is magnified in their treatment of whistleblowers—those employees who are discharged as a result of their vocal opposition to their employers' allegedly illegal activities.⁷⁹ Although loss of employment or employment opportunities qualifies as "injury to business or property,"⁸⁰ because the statute fails to mention specifically wrongful discharge either as a predicate act⁸¹ or as a full-blown RICO violation,⁸² the connection between the discharge and its RICO-sanctioned cause is necessarily indirect.

Consequently, courts have resorted to a direct-indirect injury analysis to determine the whistleblower's standing. A majority of the lower courts limit standing to those plaintiffs suffering direct injury; thus, only four district court panels have recognized the right of whistleblowers to bring a civil RICO suit.⁸³

3. Causation Theories Applied to Subsections of Section 1962

Civil RICO limits standing to those persons injured in their business or property "by reason of a violation of section 1962."⁸⁴ Accordingly, some courts have devised complicated standing rules for each of section 1962's subsections. Section 1962(a) provides that it is:

⁷⁸ *Id.* at 12.

⁷⁹ For a more technical definition and examples of whistleblowing, see Dworkin & Near, *Whistleblowing Statutes: Are They Working?*, 25 AM. BUS. L.J. 241, 243-44 (Summer 1987).

⁸⁰ See, e.g., *Nodine v. Textron, Inc.*, 819 F.2d 347, 348 (1st Cir. 1987) (assuming "discharge from employment is injury to business or property"); *Acampora v. Boise Cascade Corp.*, 635 F. Supp. 66, 69 (D.N.J. 1986) ("loss of job is clearly injury to business or property"); *Hunt v. Weatherbee*, 626 F. Supp. 1097, 1101 (D. Mass. 1986) ("loss of employment constitutes an injury to one's business or property") (quoting *McNulty v. Borden, Inc.* 474 F. Supp. 1111, 1116 (E.D. Pa. 1979)).

⁸¹ See 18 U.S.C. § 1961(1) (1988 & Supp. 1990).

⁸² See *id.* § 1962.

⁸³ See *Williams v. Hall*, 683 F. Supp. 639, 641-42 (E.D. Ky. 1988); *Komm v. McFlicker*, 662 F. Supp. 924, 928 (W.D. Mo. 1987); *Acampora*, 635 F. Supp. at 69; cf. *Hunt*, 626 F. Supp. at 1101.

⁸⁴ 18 U.S.C. § 1964(c) (1988) (emphasis added).

unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity . . . to use or 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.⁸⁵

Although there is disagreement concerning the appropriate interpretation of subsection (a), most courts agree that the plaintiff must allege injury by reason of the actual investment of the racketeering income.⁸⁶ A significant minority of courts, however, requires a plaintiff only to prove injury from the underlying activity (the predicate acts) that generated the income to be invested.⁸⁷

Subsection (b) of section 1962 of RICO provides that it is

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.⁸⁸

A majority of courts has held that it is insufficient merely to plead that a defendant has committed predicate acts that contribute to the acquisition or control of an enterprise. These courts hold that a plaintiff must demonstrate injury by reason of the acquisition or control.⁸⁹ Other courts echo the minority position in section

⁸⁵ *Id.* § 1962(a).

⁸⁶ *See, e.g.,* Craighead v. E.F. Hutton & Co., 899 F.2d 485, 494 (6th Cir. 1990); Quakine v. MacFarlane, 897 F.2d 75, 82-83 (2d Cir. 1990); Rose v. Bartle, 871 F.2d 331, 357-58 (3d Cir. 1989) (most courts require allegation of "income use or investment injury"); Grider v. Texas Oil & Gas Corp., 868 F.2d 1147, 1151 (10th Cir.) (plaintiff denied standing for failing to show injury from "the use or investment of racketeering income"), *cert. denied*, 110 S. Ct. 76 (1989); Litton Indus. v. Lehman Bros. Kuhn Loeb, Inc., 709 F. Supp. 438, 451 (S.D.N.Y. 1989) ("crime lies in the use or the investment of the income derived from that activity").

⁸⁷ *See, e.g.,* Busby v. Crown Supply, Inc., 896 F.2d 833, 837 (4th Cir. 1990); Capalbo v. Paine Webber Inc., 694 F. Supp. 1315, 1320-21 (N.D. Ill. 1988) ("party injured by the racketeering activity itself should have a cause of action 'lest odd consequences result'"); Avirgan v. Hull, 691 F. Supp. 1357, 1362 (D. Fla. 1988) (plaintiff can be injured by "operation of the enterprise in which the defendant used or invested the income or proceeds"); Blue Cross v. Nardone, 680 F. Supp. 195, 197-98 (W.D. Pa. 1988) ("plaintiff can recover under 1962(a) if 'injured by the operation of the company in which defendant invested the proceeds'"); Mix v. E.F. Hutton, No. 85-3108 (D.D.C. Sept. 29, 1986) (LEXIS, Genfed library, Dist file) (plaintiff injured in business or property by reason of defendants violation of RICO is sufficient).

⁸⁸ 18 U.S.C. § 1962(b) (1988).

⁸⁹ *See, e.g.,* Litton Indus., 709 F. Supp. at 452 (plaintiff "must establish a causal con-

1962(a) cases, holding that a plaintiff need only show injury from the predicate acts that contributed to the violation.⁹⁰

Subsection (d) of section 1962 of RICO provides that it is "unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section."⁹¹ Standing analysis under this RICO conspiracy provision is in flux. In *Torwest DBC, Inc. v. Dick*,⁹² the Tenth Circuit stated that "the object of a RICO conspiracy must be to violate a substantive RICO provision," that is, to violate either section 1962(a), (b), or (c).⁹³ The Tenth Circuit later extended this logic, ruling that standing to assert a claim for damages based upon an alleged conspiracy to violate section 1962(a) requires the plaintiff to allege injury from the use or investment of racketeering income in violation of section 1962(a).⁹⁴ The net effect of these decisions is that section 1962(d) standing requires the plaintiff to allege that the conspiracy functioned to violate another subsection of section 1962 and that the plaintiff actually has been injured by that violation.

The Second and Ninth Circuits recently have addressed the section 1962(d) standing issue and have reached results in accord with the Tenth Circuit. In *Hecht v. Commerce Clearing House, Inc.*,⁹⁵ the Second Circuit held that standing under section 1962(d) "may be founded only upon injury from overt acts that are also section 1961 predicate acts, and not upon any and all overt acts furthering a RICO conspiracy."⁹⁶ The Ninth Circuit found the

nection between defendant's interest or control and its injuries"); *Leonard v. Shearson Lehman/American Express, Inc.*, 687 F. Supp. 177, 181 (E.D. Pa. 1988) ("plaintiff must plead injury which he suffered as a result of 1962(a)"); *P.M.F. Servs., Inc. v. Grady*, 681 F. Supp. 549, 556-57 (N.D. Ill. 1988) (plaintiff "offered no authority" that defendant maintained sufficient interest to satisfy statute); *Airlines Reporting Corp. v. Barry*, 666 F. Supp. 1311, 1315 (D. Minn. 1987) ("plaintiff must allege injury 'by reason of a violation of' a substantive RICO provision"); *Cincinnati Gas & Elec. Co. v. General Elec. Co.*, 656 F. Supp. 49, 85-86 (D. Ohio 1986) (plaintiffs sufficiently alleges casual connection between defendant's interest or control and plaintiff's injuries).

⁹⁰ See, e.g., *In re National Mortgage Equity Corp. Pool Certificates Sec. Litig.*, 682 F. Supp. 1073, 1081 (C.D. Cal. 1987) (no separate standing requirement for § 1962(a) required); *Snider v. Lone Star Art Trading Co.*, 659 F. Supp. 1249, 1256 (E.D. Mich. 1987) (plaintiff proved causation by investment).

⁹¹ 18 U.S.C. § 1962(d) (1988 & Supp. 1990).

⁹² 810 F.2d 925 (10th Cir. 1987).

⁹³ *Id.* at 927 n.2 (quoting *United States v. Hampton*, 786 F.2d 977, 978 (10th Cir. 1986)).

⁹⁴ *Grider v. Texas Oil & Gas Corp.*, 868 F.2d 1147, 1151 (10th Cir. 1989), *cert. denied*, 110 S. Ct. 76 (1989).

⁹⁵ 897 F.2d 21 (2d Cir. 1990).

⁹⁶ *Id.* at 25.

Hecht reasoning persuasive, and adopted its rule in *Reddy v. Litton Industries*.⁹⁷ However, a Third Circuit decision has taken a different tack. In *Shearin v. E.F. Hutton Group, Inc.*,⁹⁸ the court held that standing may exist even though the plaintiff's injury was caused by an overt act of conspiracy that was not a defined racketeering act.⁹⁹

District courts have devised several novel approaches to the issue. Two district court panels addressing the causation required to sue under section 1962(d) drew analogies to common-law civil conspiracy. At common law, a *criminal* conspiracy could be prosecuted and punished as a crime in itself, separate from the crime that was the object of the conspiracy, because it "pose[d] distinct dangers quite apart from those of the substantive offense."¹⁰⁰ However, common-law *civil* conspiracy is conditioned upon the plaintiff showing individual harm caused by the conspiracy.¹⁰¹

Applying this rationale to the civil RICO situation, one district court has ruled that a plaintiff must show "one or more overt acts causing injury to the plaintiff or 'his business or property' under section 1964(c)."¹⁰² Thus, "without overt acts causing injury," there can be no section 1964(d) violation on which to base a claim under section 1962(c).¹⁰³ Another district court has supplemented this rule by holding that a plaintiff has standing to sue under section 1962(d) even if the overt acts which injured him were not in fact RICO predicate acts.¹⁰⁴ Thus, a plaintiff proving a section 1962(d) conspiracy has standing to recover under section 1964(c) if he can establish an injury caused by overt acts undertaken in the course of the conspiracy.

III. IN SEARCH OF A CLEAR RULE FOR RICO STANDING

It seems fair to say that the issue of standing to bring a RICO suit is far from settled. The United States Supreme Court has provided little guidance in this area, and as a result, the courts are far

⁹⁷ 912 F.2d 291, 295 (9th Cir. 1990).

⁹⁸ 885 F.2d 1162 (3d Cir. 1989).

⁹⁹ *Id.* at 1166-68.

¹⁰⁰ *Iannelli v. United States*, 420 U.S. 770, 777-79 (1975) (combination of persons increases likelihood of commission of more complex and far-reaching crimes).

¹⁰¹ See *Medallion TV Enters. v. SelecTV of Cal., Inc.*, 627 F. Supp. 1290, 1298 (D. Cal. 1986), *aff'd*, 833 F.2d 1360 (9th Cir. 1987), *cert. denied*, 109 S. Ct. 3241 (1989).

¹⁰² *Id.*

¹⁰³ *Id.* at 1300.

¹⁰⁴ See *Williams v. Hall*, 683 F. Supp. 639, 642 (E.D. Ky. 1988).

from uniform in their approaches to civil RICO standing. They have developed a variety of standing rules, which has resulted in a restriction of the availability of the private civil RICO remedy; that remedy, therefore, is dependent upon the circuit in which the plaintiff's complaint is filed.

A. *Proposed RICO Reforms Regarding Standing*

Several commentators and legislators have proposed changes to civil RICO. While none of their proposals is designed to deal specifically with the issue of civil RICO standing, all of the proposals would affect the availability of the civil RICO remedy for individual plaintiffs. For example, Chief Justice Rehnquist has made a general call for Congress to reduce the kinds of lawsuits—including civil RICO actions—that can be filed in the federal courts due to what he perceives to be a serious case overload.¹⁰⁵ Law professor Norman Abrams, an advocate of limiting the availability of private civil RICO, suggested at a May 8, 1989 conference on "Crime and Punishment in Business Law" that the RICO statute be amended to establish a central authority in the Department of Justice to screen all private civil RICO claims and bar those that fail to meet certain minimal standards.¹⁰⁶

In support of his position, Abrams noted that the purpose of the availability of private suits under RICO is to encourage individuals to enforce the racketeering law when the government has neither the time nor the resources to bring criminal charges based on the same accusations—this is the so-called private attorney general function of the RICO statute.¹⁰⁷ However, Abrams stated that private individuals often sue under RICO in cases in which the

¹⁰⁵ See Civ. RICO Rep. (BNA) No. 36 (Feb. 14, 1989). In early 1989, Chief Justice Rehnquist told the American Bar Association's House of Delegates that Congress must give serious attention to curtailing federal jurisdiction by eliminating some of the bases for bringing suit in federal court. See *id.* at 4. He included RICO actions among the five types of civil cases, which he stated, could either be handled in state courts rather than federal courts, or severely limited in the federal courts. See *id.* In a Brookings Institute conference, the Chief Justice elaborated:

I think that the time has arrived for Congress to enact amendments to civil RICO to limit its scope to the sort of wrongs that are connected to organized crime, or have some other reason for being in federal court.

Rehnquist, *Get RICO Cases Out of My Courtroom*, Wall St. J., May 1989, at A14, col. 4. (emphasis added).

¹⁰⁶ 4 Civ. RICO Rep. (BNA) No. 49, at 5 (May 16, 1989).

¹⁰⁷ See Adler & Cohen, *Clearance of Private RICO Suits Proposed*, Wall St. J., May 9, 1989, at B8, col. 1.

government would not bring criminal charges even if it had sufficient resources. In light of that fact, he suggested that his proposal would preserve private RICO suits as a deterrent to crime, while protecting defendants from the high cost of defending meritless suits.¹⁰⁸

1. The American Bar Association

Institutional commentators also have made themselves heard. A report issued in 1985 by an American Bar Association task force studying civil RICO sought to determine the scope of injury for which the civil standing provision of the statute, section 1964(c), ought to allow a recovery.¹⁰⁹ Out of its concern regarding the great amount of civil RICO litigation, the task force attempted to devise an amendment to RICO which would clarify and limit the types of injuries conferring civil RICO standing. After reviewing the various positions taken by members of the bench and bar, the task force recommended that where the RICO enterprise¹¹⁰ is a perpetrator¹¹¹ of the predicate offenses, any person with injury proximately caused by the RICO violations or the underlying criminal acts should have standing to sue under civil RICO.¹¹² The task force proposed that "injury compensable under civil RICO should include competitive injury,¹¹³ infiltration injury,¹¹⁴ injury caused by

¹⁰⁸ *Id.*

¹⁰⁹ *Task Force Report, supra* note 16, at 283-320.

¹¹⁰ 18 U.S.C. § 1961(4) (1988). "Enterprise" is defined for RICO purposes as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." *Id.* It has been interpreted by the United States Supreme Court as including legitimate groups as well as illegitimate "associations-in-fact." *Russello v. United States*, 464 U.S. 16, 24 (1983); *United States v. Turkette*, 452 U.S. 576, 587 (1981).

¹¹¹ The meaning of "perpetrator" is clear in the case of human actors. However, the task force considered a corporation to be a "perpetrator" for purposes of treble damages civil RICO liability only where there was direct criminal involvement in the commission of the predicate acts of either high-level managerial agents or top officers or directors, or where such high-level officials or managerial agents had knowledge of the criminal activities of their low-level agents and employees (unless the situation involved a distinct RICO injury for which no compensation was available in claims based upon the individual criminal acts that constituted the predicate offenses). *Task Force Report, supra* note 16, at 320 n.498, 364-65.

¹¹² See Weissman, *Overview of the Report of the ABA Ad Hoc Task Force On Civil RICO*, reprinted in MATHEWS, PRENTICE HALL LAW & BUSINESS FIFTH ANNUAL INSTITUTE: RICO LITIGATION UPDATE 488, 490-91 (1989).

¹¹³ See *Task Force Report, supra* note 16, at 292 n.449.

¹¹⁴ See *id.* at 292-93 n.450.

the predicate offenses themselves, and any additional injury wholly distinct from that caused directly by the predicate offenses." Because many injuries not directly caused by the predicate acts would be included, civil RICO standing would be expanded in those courts currently employing more restrictive tests.

Soon after the report was released, the American Bar Association's Criminal Justice Section issued a report proposing amendments to RICO.¹¹⁵ That section's RICO Cases Committee wrote a model state RICO statute with majority and minority commentary;¹¹⁶ it directly addressed the issue of the type of injury that could give rise to civil RICO standing. In the analog to section 1964(c), the Committee proposed the following:

(b) Any person, *directly or indirectly*, [sic] injured by conduct constituting a violation by any person of the provisions of Paragraph 6 shall, in addition to any other relief under this Subparagraph, have a cause action [sic] . . . for threefold the actual damages he sustained. Damages shall not include pain and suffering. *Damages under this Subparagraph are not limited to competitive injury or distinct injury.* In an action under this Subparagraph, where the plaintiff substantially prevails, the plaintiff shall also recover reasonable attorney fees in the trial and appellate courts and costs of investigation and litigation reasonably incurred. . . .¹¹⁷

The proposed provision "sets out the basic authority of persons injured to institute civil proceedings to recover for damages."¹¹⁸ In its commentary upon this provision, the Committee clearly indicated its desire to eliminate most court-imposed limitations on civil RICO standing:¹¹⁹

The language in the provision, "direct or indirect," precludes application of the unduly restrictive holding in *Cenco, Inc. v. Seidman & Seidman*. The Committee agrees that *Alexander Grant & Co. v. Tiffany Industries* reflects an appropriate definition of the scope of RICO-type legislation. The "direct or indirect" language is not, however, intended to change existing law regarding proximate causation, which should be applied in civil RICO suits as in

¹¹⁵ See *A Comprehensive Perspective on Civil and Criminal RICO Legislation and Litigation*, Report of the RICO Cases Committee, A.B.A. CRIM. JUSTICE SEC. 16 (1985) [hereinafter *A Comprehensive Perspective*].

¹¹⁶ See *id.* at 16-178 (entire text of model statute and commentaries therein).

¹¹⁷ *Id.* at 115-16 (emphasis added).

¹¹⁸ *Id.* at 116.

¹¹⁹ *Id.* at 123-25.

other civil actions. The language in the provision, "not limited to competitive or distinct injury," precludes the application of such unduly restrictive limitations as the so-called "competitive" or "distinct" injury limitations, also called "racketeering enterprise injury," "racketeering injury," or "by reason of injury." The Committee agrees with the careful analysis rejecting those limitations of the Seventh Circuit in *Haroco* and *Schacht v. Brown*.¹²⁰

Thus, the Committee would grant standing to bring a civil RICO suit to any person who had suffered an injury to his business or property which was proximately caused, either directly or indirectly, by any conduct prohibited by section 1962 of the federal RICO statute. This conduct presumably includes the predicate acts and a pattern of such acts, as well as any of the particular uses of a pattern of such acts specifically prohibited by the section.

2. The Congress

As for the nation's legislators, the focus has been on the private civil remedy provided under RICO. One recent RICO reform bill, and its accompanying Senate committee report, seeks "to eliminate its past and possible future misuse in ordinary civil disputes."¹²¹ The bill was introduced by Senator Howard Metzenbaum in 1987¹²² and was amended and favorably reported on by the Senate Judiciary Committee in 1988.¹²³

The bill as introduced does not specifically address the kind of causation that ought to be required for civil RICO standing. It does, however, seek to amend RICO's civil standing provision by eliminating treble damages in most civil RICO cases—an action which would make the civil RICO remedy much less appealing to plaintiffs. The committee sought the passage of this bill "to facilitate the use of civil RICO by the Government and consumers who sustain injury due to organized criminal conduct or white-collar crime proscribed by RICO and to discourage the misuse of civil

¹²⁰ *Id.* at 123-24 (citing *Cenco, Inc. v. Seidman & Seidman*, 686 F.2d 449, 457 (7th Cir.), *cert. denied*, 459 U.S. 880 (1982)); see *Haroco, Inc. v. American Nat'l Bank & Trust*, 747 F.2d 384, 398 (7th Cir. 1984), *aff'd*, 473 U.S. 606 (1985); *Alexander Grant*, 742 F.2d at 413; *Schacht v. Brown*, 711 F.2d 1343, 1353-58 (7th Cir.), *cert. denied*, 464 U.S. 1002 (1983).

¹²¹ STAFF OF SENATE COMM. ON THE JUDICIARY, 100th CONG., 2D SESS., AMENDING THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT 2 (Comm. Print 1988) [hereinafter SENATE COMM.].

¹²² S. 1523, 100th Cong., 1st Sess., 133 CONG. REC. S10,501 (1987).

¹²³ SENATE COMM., *supra* note 121, at 7.

RICO in ordinary civil disputes."¹²⁴ By "detraining the relief recoverable," the bill attempted to curb the frivolous use of the civil RICO statute. It retained an actual damages, costs, and fees remedy "for those who are injured by conduct prohibited by RICO."¹²⁵

These remarks and the actual provisions of the bill, as approved for passage by the committee, seem to evince an intent to limit those who would have standing to bring a private civil RICO action. However, the only change proposed in the actual language of section 1964(c) is from giving a remedy to "any person injured in his business or property by reason of a violation of section 1962 of this chapter" (the current wording of the standing provision), to language giving a remedy to either a "governmental entity" or "[a] person whose business or property is injured by conduct in violation of section 1962 of this title."¹²⁶

The bill was later blocked by lawmakers concerned with provisions which sought to apply it retroactively to pending RICO suits.¹²⁷ However, a nearly identical bill was introduced in the House on February 22, 1989,¹²⁸ and in the Senate on February 23, 1989.¹²⁹ Known together as the RICO Reform Act of 1989, these two pieces of legislation seek to limit the scope of civil RICO by retroactively limiting treble damages actions to cases brought by federal, state, and local governments, and those in which a defendant already has been convicted of a RICO violation, the commission of a predicate act, or a state or federal felony growing out of the course of conduct alleged in the RICO complaint.¹³⁰

In February of 1990, the Senate version of the bill was approved by the Senate Judiciary Committee.¹³¹ The House Judici-

¹²⁴ *Id.* at 3; Weissman, *supra* note 112, at 524.

¹²⁵ SENATE COMM., *supra* note 120, at 5.

¹²⁶ S. 1523, 100th Cong., 1st Sess., 133 CONG. REC. S10,502 (1987).

¹²⁷ 4 Civ. RICO Rep. (BNA) No. 20, at 1-2 (Oct. 18, 1988).

¹²⁸ H.R. 1046, 101st Cong., 1st Sess., 135 CONG. REC. H369 (1989); 4 Civ. RICO Rep. (BNA) No. 38, at 2 (Feb. 28, 1989).

¹²⁹ S. 438, 101st Cong., 1st Sess., 135 CONG. REC. S1642 (1989); 4 Civ. RICO Rep. (BNA) No. 38, at 2 (Feb. 28, 1989).

¹³⁰ 4 Civ. RICO Rep. (BNA) No. 38, at 2 (Feb. 28, 1989). The legislation would also eliminate treble damages where state or federal securities laws provide a remedy for the type of conduct on which the case is based except in certain instances, such as cases involving allegations of insider trading. Plaintiffs in business and commercial lawsuits could still bring civil RICO claims, but would be entitled to recover only actual damages. Consumers, victims of insider trading, and government agencies would be allowed to bring lawsuits for fraud and recover actual damages plus discretionary punitive damages of up to twice the actual damages in limited situations. *Id.*

¹³¹ McMillan, *Push for RICO Reform Continues*, 76 A.B.A. J. 109 (April 1990).

ary Committee approved H.R. 5111, sponsored by William T. Hughes, chairman of the House Judiciary Subcommittee on Crime, in September of 1990.¹³² Two amendments, one that would preclude the application of the Bill to pending cases, and one that mitigates the impact of the bill's "gatekeeper provision" to civil RICO suits over failed savings and loan institutions, were adopted by the committee.¹³³ It remains to be seen whether this bill will pass in the entire House.

B. *A Proposed Causation Requirement for Civil RICO Standing*

An amendment to civil provisions of RICO appears to be the only viable alternative to resolve judicial confusion regarding the type of causation required to confer civil RICO standing on private plaintiffs. It should explicitly adopt what is implicit in *Sedima*: that persons injured, either directly or indirectly, by violations of the statute have standing to file a civil suit under section 1964(c), provided that their injuries are proximately caused by those violations. Moreover, the amendment should indicate precisely that standing is present whether the person is injured by the commission of a predicate act or acts, by the pattern of these predicate racketeering act or acts, or by the particular use of the pattern of racketeering activity explicitly prohibited in one of the subsections of section 1962. Plaintiffs injured by efforts to facilitate, cover up, or perpetuate such activity should also have standing to sue under civil RICO.

Under such a rule, a plaintiff would have standing to bring a treble damages suit if he could allege and ultimately prove that his injury was proximately caused (a) by one or more of the predicate criminal offenses included in RICO's definition of "racketeering activity";¹³⁴ or (b) by a "pattern of racketeering activity" made up of two or more of these criminal offenses occurring after the effective date of the Act and within ten years of each other;¹³⁵ or (c) by the acquisition, establishment, operation, or maintenance of an enterprise in interstate commerce through a pattern of racket-

¹³² *House Judiciary Committee Approves Legislation to Curb RICO*, Banking Rep. (BNA) No. 12, at 468 (September 24, 1990).

¹³³ *Id.* "The 'gatekeeper' test requires the plaintiff to demonstrate either that the defendant has already been criminally convicted for conduct underlying the civil claim, or that civil RICO treble damages are needed to deter further 'egregious conduct.'" *Id.*

¹³⁴ See 18 U.S.C. § 1961(1) (1988) (definition of "racketeering activity").

¹³⁵ *Id.* § 1961(5).

ering activity; or (d) by a conspiracy to acquire, establish, operate, or maintain an enterprise in interstate commerce through a pattern of racketeering activity.¹³⁶ Other activities, such as a retaliatory discharge, designed to contribute to the success of the defendant's racketeering scheme, would also give rise to standing to bring a treble damages suit.

The proposed amendment would read as follows:

(c) Any person suffering an injury to his business or property which is proximately caused by an act of "racketeering activity," as defined in section 1961(1) of this chapter; a "pattern of racketeering activity," as defined in section 1961(5) of this chapter; or a "prohibited activity," as defined in 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. Such proximate causation shall also include actions designed to facilitate, conceal, or perpetuate any act of "racketeering activity," "pattern of racketeering activity," or "prohibited activity," as enumerated above, despite the fact that such facilitation, concealment, or perpetuation is not itself a violation of this chapter.

The use of a proximate cause standard has wide support; the judiciary and at least two bar association groups favor it.¹³⁷

The Fourth Circuit, in *Brandenburg v. Seidel*,¹³⁸ wrote an excellent exposition of the nature and propriety of using a proximate cause inquiry to determine civil RICO standing:

[A] cause-in-fact connection, standing alone, does not suffice to establish liability. Civil RICO is of course a statutory tort remedy—simply one with particularly drastic remedies. Causation principles generally applicable to tort liability must be considered applicable. These require not only cause-in-fact, but 'legal' or 'proximate' cause as well, the latter involving a policy rather than a purely factual determination: 'whether the conduct has been so significant and important a cause that the defendant should be

¹³⁶ See *id.* § 1962(a)-(d).

¹³⁷ See *supra* notes 59-64 and accompanying text (discussing lower courts' promulgation of proximate cause standard). For example, the Second Circuit has asserted that "legal liability should not extend as far as factual causation," and "that both direct and indirect injuries must be proximately caused." *Sperber v. Boesky*, 849 F.2d 60, 63-64 (2d Cir. 1988). The court also acknowledged that cause-in-fact and foreseeability were necessary but not sufficient to establish proximate cause, noting that the question of proximate cause also involved "social policy decisions based on shared principles of justice." *Id.* at 65.

¹³⁸ 859 F.2d 1179 (4th Cir. 1988).

held responsible.' . . . As such, the legal cause determination is properly one of law for the court, taking into consideration such factors as the foreseeability of the particular injury, the intervention of other independent causes, and the factual directness of the causal connection.¹³⁹

In conjunction with the proximate cause inquiry, a court will also have to determine the precise type of RICO violation giving rise to civil RICO standing. Though there has been some confusion to date in the courts as to whether the plaintiff must allege injury from the predicate acts, from the pattern of predicate acts, or from a specific violation of section 1962 of the RICO statute, the *Sedima* Court assumed that injuries beyond those caused by the predicate acts were actionable—that damages other than those directly attributable to the fraudulent acts themselves would be recoverable.¹⁴⁰

RICO, under the proposed amendment, would ensure that anyone injured by a defendant's racketeering activity, attempted racketeering activity, or efforts to facilitate, cover up, or perpetuate racketeering activity, has a remedy. This result comports with Congress' directive that the provisions of the RICO statute "shall be liberally construed to effectuate its remedial purposes."¹⁴¹

CONCLUSION

The issue of when a plaintiff is injured "by reason of" a RICO violation in a manner sufficient to confer upon him civil RICO standing continues to bedevil the federal courts. The United States Supreme Court appears unresponsive, as does the RICO reform legislation currently before Congress. Therefore, an amendment to the statute specifically designed to spell out the type of causation sufficient for civil RICO standing is both necessary and appropriate. The proposed amendment would ensure redress for business and property injuries proximately caused by a wide variety of rack-

¹³⁹ *Id.* at 1189 (quoting PROSSER & KEETON ON TORTS § 42, at 272 (5th ed. 1984)).

¹⁴⁰ *Sedima*, 473 U.S. 479, 497 & n.15). An American Bar Association task force has also taken an expansive view of the racketeering injuries which give rise to civil RICO standing, stating that "injury compensable under civil RICO should include competitive injury, infiltration injury, injury caused by the predicate offenses themselves, and any additional injury wholly distinct from that caused directly by the predicate offenses." *Task Force Report*, *supra* note 16, at 320.

¹⁴¹ Organized Crime Control Act of 1970, Pub. L. No. 91-452, § 904(a), 84 Stat. 922, 947 (1970) (codified as amended at 18 U.S.C. §§ 1961-1968 (1988 & Supp. 1990)).

eteering behaviors. Moreover, the amendment would stem the tide of judicial restrictions on the availability of the private civil RICO remedy.