Adjudication of Civil RICO Actions—State Courts Get an Offer They Can't Refuse: Lou v. Belzberg

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When a new cause of action is established through federal legislation, Congress may grant jurisdiction over its subject matter to both federal and state courts, or vest the courts of either system with exclusive jurisdiction. If Congress is silent on the issue, it is generally presumed that state courts share jurisdiction with federal courts. This presumption may, however, be rebutted in one of three ways: "by an explicit statutory directive, by unmistakable implication from legislative history, or by a clear incompatibility between state-court jurisdiction and federal interests." The Rack-
though the Act explicitly confers jurisdiction over civil RICO proceedings upon the federal courts, there has been considerable disagreement as to whether this authority is to be exercised concurrently with state courts. Recently, in Lou v. Belzberg, the United States Court of Appeals for the Ninth Circuit held that since the presumption in favor of concurrent jurisdiction was not adequately rebutted, state and federal courts share adjudicatory authority over private civil RICO actions.

In Belzberg, A. Jacques Lou, a shareholder of Ashland Oil Company ("Ashland"), filed a derivative action on behalf of Ash-

The statutory language neither mandates exclusive federal jurisdiction, nor provides that it be exercised concurrently by state and federal courts. See Brandenburg, 660 F. Supp. at 730-31; Kinsey, 604 F. Supp. at 1370; Cianci, 40 Cal. 3d at 910, 710 P.2d at 378, 221 Cal. Rptr. at 578. Furthermore, an examination of RICO's legislative history offers no insight into the intent of Congress regarding this issue. See Intel Corp., 662 F. Supp. at 1511; Kinsey, 604 F. Supp. at 1370; see generally Sedima, S.P.R.L. v. Imrex Co., 741 F.2d 482, 488-92 (2d Cir. 1984) (discussion of Act's legislative history), rev'd on other grounds, 473 U.S. 479 (1985); Blakey & Gettings, supra note 4, at 1014-21 (same). In fact, the principal draftsman of RICO has asserted that "to [his] knowledge no one even thought of the issue." Flaherty, Two States Lay Claim to RICO, Nat'l L.J., May 7, 1984, at 10, col. 2 (quoting Professor G. Robert Blakey).

The Ninth Circuit was the first federal appellate court to directly address this issue. See id. at 735; Intel Corp., 662 F. Supp. at 1509. Previously, the United States Court of Appeals for the Seventh Circuit, in County of Cook v. Midcon Corp., 773 F.2d 892 (7th Cir. 1985), voiced doubts as to whether RICO jurisdiction is exclusively federal, but failed to directly address the exclusivity issue. Id. at 905 n.4.

Belzberg, 834 F.2d at 738-39.
land and initiated a class action on behalf of certain Ashland shareholders in Los Angeles Superior Court. Lou alleged that the defendants manipulated the price of Ashland stock in order to earn extraordinary profits in violation of RICO and section 17(a) of the Securities Act of 1933. The defendants removed the proceeding to the United States District Court for the Central District of California. Lou then sought to remand the action, asserting that section 17(a) claims brought in state court are not removable. The district court denied the motion, holding that the pleadings had not adequately alleged a section 17(a) violation, and that plaintiff's RICO claims were "separate and independent" from her other claims, and thus removable.

On appeal, the Ninth Circuit affirmed the denial of Lou's motion to remand. First, the court noted that a private right of action does not exist under section 17(a). Addressing Lou's RICO claims, the court stated that a private RICO action is within the original jurisdiction of the federal courts, and thus removable.

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10 Id. at 732.
11 Id. During early 1986, the defendants, members of the Belzberg family, accumulated 9.2 percent of Ashland common stock and offered to purchase the remaining outstanding shares. Id. As a result, the price of Ashland stock increased. Id. Ashland then announced that it had agreed to repurchase a portion of the stock from the Belzbergs, which caused the price of the stock to fall. Id. The Belzbergs realized a substantial profit from these transactions. Id.
13 15 U.S.C. § 77q(a) (1982). Section 17(a) makes it unlawful to offer or sell securities through interstate commerce with the aid of "any device, scheme, or artifice to defraud." Id. § 77q(a)(1).
14 Belzberg, 834 F.2d at 732. The Belzbergs' removal of Lou's claims was granted pursuant to 28 U.S.C. §§ 1441(a), (c) (1982). See id. Under section 1441(a), a civil action brought in state court may be removed by the defendant to a federal district court if it is an action over which the federal courts have original jurisdiction. 28 U.S.C. § 1441(a). Section 1441(c) provides that a "separate and independent" claim that would be removable if sued on alone, may still be removable even if joined with a nonremovable claim. Id. § 1441(c).
16 Belzberg, No. 86-2465, slip op. at 2. The district court specifically held that Lou had failed to allege she was a purchaser or seller of securities during the period in question. Id.
17 Id. at 3; see supra note 14 (discussion of statutory grounds for removal).
18 Belzberg, 834 F.2d at 741.
19 Id. at 734. The Belzberg court relied on Puchall v. Houghton, Cluck, Coughlin & Riley (In re Washington Pub. Power Supply Sys. Sec. Litig.), 823 F.2d 1349, 1358 (9th Cir. 1987) (en banc), which was decided after the Belzberg appeal had been filed. See Belzberg, 834 F.2d at 734.
20 Belzberg, 834 F.2d at 734; see supra note 14.
provided the state court from which the claim was removed had subject matter jurisdiction. The Ninth Circuit determined that the states share adjudicative authority over civil RICO actions with federal courts and, therefore, the Belzbergs' removal of Lou's RICO claims was permissible.

Writing for the court, Judge Boochever acknowledged the presumption favoring concurrent jurisdiction and then proceeded to address the three methods of its rebuttal. Looking first to the language of the provision which created this private right of action, section 1964(c) of the Act, the court found no explicit directive from Congress precluding state adjudication. Also, while the court noted that RICO's legislative history is silent as to jurisdictional requirements, it recognized that section 1964(c) of the Act was consciously modeled after section 4 of the Clayton Act, which has been consistently construed as conferring exclusive federal jurisdiction over private antitrust actions. Judge Boochever noted,

21 Belzberg, 834 F.2d at 734. The Belzberg court noted that the only potential bar to the removal of Lou's action was the derivative jurisdiction doctrine. Id. According to this doctrine, if a state court in which an action is originally brought has no jurisdiction, such as when it is determined that jurisdiction is exclusively federal, the federal court to which the action is removed also lacks jurisdiction and must dismiss the suit. C. WRIGHT, supra note 1, § 38, at 212; see, e.g., Intel Corp. v. Hartford Accident & Indem. Co., 662 F. Supp. 1507, 1512 (N.D. Cal. 1987) (jurisdiction over civil RICO exclusively federal, therefore case must be dismissed under derivative jurisdiction doctrine); Spence v. Flynt, 647 F. Supp. 1266, 1269 (D. Wyo. 1986) (same). However, this doctrine has been modified by amendment, and presently a federal court on removal is not precluded from adjudicating a claim simply because the state court from which it was removed lacked jurisdiction. See Pub. L. No. 99-336, § 3(a), 100 Stat. 637 (1986) (codified at 28 U.S.C.A. § 1441(e) (West Supp. 1987)). The amendment applies only to claims brought on or after June 19, 1986, id. § 3(b), and was therefore not applicable to this action. Belzberg, 834 F.2d at 734 n.1.

22 Belzberg, 834 F.2d at 738-39.
23 Id. at 739.
24 See id. at 735.
25 See id. at 735-39.
26 18 U.S.C. § 1964(c) (1982). For the text of the provision, see supra note 5.
27 See Belzberg, 834 F.2d at 736. The Belzberg court noted "that the mere grant of jurisdiction to a federal court does not operate to oust a state court from concurrent jurisdiction." See id. (quoting Gulf Offshore Co. v. Mobil Oil Corp., 453 U.S. 473, 479 (1981)).
28 Belzberg, 834 F.2d at 736.
29 Clayton Act, ch. 323, § 4, 38 Stat. 730, 731 (1914) (current version at 15 U.S.C. § 15(a) (1982)). The language of the two statutes, at the time of RICO's enactment, was virtually identical. See Belzberg, 834 F.2d at 736 n.5. Section 4 of the Clayton Act provided that "[a]ny person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States . . . and shall recover threefold the damages by him sustained." Clayton Act, ch. 323, § 4, 38 Stat. 730, 731 (1914) (current version at 15 U.S.C. § 15(a) (1982)).
30 See, e.g., Freeman v. Bee Mach. Co., 319 U.S. 448, 451 n.6 (1943) (state court has no
however, that the "mere borrowing of statutory language does not imply" that RICO was to be interpreted in conformance with the construction of the Clayton Act, especially in light of the congressional mandate that RICO is to be accorded liberal construction. Finally, the court conceded that there is a federal interest involved insofar as exclusive federal jurisdiction exists over various RICO predicate acts, but asserted that this interest would not be jeopardized by state court adjudication since the majority of RICO actions are based on state law fraud violations.

In concluding that the presumption favoring concurrent jurisdiction was not rebutted, the Ninth Circuit granted state courts the authority to assert subject matter jurisdiction over federal RICO claims, thus expanding the number of fora available to private litigants. Despite the Belzberg court's consideration and rejection of the methods of rebuttal, it is submitted that the presumption favoring concurrent jurisdiction over Clayton Act claims (citing Blumenstock Bros. Advertising Agency v. Curtis Publishing Co., 252 U.S. 436, 440 (1920); General Inv. Co. v. Lake Shore & Mich. So. Ry., 260 U.S. 261, 287 (1922) (federal antitrust claims under exclusive federal jurisdiction); see also Simpson Elec. Corp. v. Leucadia, Inc., 128 App. Div. 2d 339, 344, 515 N.Y.S.2d 794, 797 (2d Dep't) (Spatt, J., dissenting) (comparing RICO and antitrust analogue, court notes exclusive federal jurisdiction of the latter), appeal dismissed, 70 N.Y.2d 708, 513 N.E.2d 1310 (1987); E. Timberlake, Federal Treble Damage Antitrust Actions § 5.01, at 40-41 (1965) (federal courts vested with exclusive jurisdiction of private antitrust actions). But see Redish & Muench, supra note 2, at 316-17 (questioning rationale of courts finding exclusive federal antitrust jurisdiction).


Belzberg, 834 F.2d at 738; see supra note 4.

Belzberg, 834 F.2d at 738 (quoting HMK Corp. v. Walsey, 637 F. Supp. 710, 717 (E.D. Va. 1986), aff'd on other grounds, 828 F.2d 1071 (4th Cir. 1987), cert. denied, 108 S. Ct. 706 (1988)). The court in HMK Corp. noted that a state court adjudicating a RICO claim need only determine whether the alleged acts occurred and is thus not required to interpret the underlying federal statutes. See HMK Corp., 637 F. Supp. at 717.

Application of RICO to situations not expressly anticipated by Congress, such as "garden variety" fraud actions against so-called "legitimate" businesses, has resulted in criticism of the Act. See Sedima, 473 U.S. at 499-500. One survey has indicated that "of the 270 known civil RICO cases at the trial court level, 40% involved securities fraud, 37% common-law fraud in a commercial or business setting, and only 9% 'allegations of criminal activity of a type generally associated with professional criminals.'" Sedima, 473 U.S. at 499 n.16 (citing Report of the Ad Hoc Civil RICO Task Force, A.B.A. Sec. of Corp., Banking & Bus. L. 55-56 (1985) [hereinafter A.B.A. Report]).
tion of state authority to entertain actions created under the federal RICO statute is indeed rebutted. This Comment will discuss the unmistakable inference drawn from the Act’s legislative history foreclosing the exercise of state enforcement. In addition, it will suggest that the Belzberg court ignored the existence of an overwhelming federal interest which is incompatible with state court adjudication over civil RICO matters. Finally, this Comment will examine recent legislative proposals for the clarification of the Act’s civil provision.

THE CLAYTON ACT ANALOGY

As the court in Belzberg observed, the Act’s legislative history is silent as to whether RICO’s grant of jurisdiction to the federal district courts was intended to be exercised jointly with state courts. There is, however, compelling evidence from the Act’s legislative history that section 4 of the Clayton Act served as the model for RICO’s section 1964(c). By modeling RICO’s civil action after the Clayton Act, it is submitted that Congress evinced

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55 See Belzberg, 834 F.2d at 736; see also supra note 7 (discussing silence of legislative history on issue of jurisdiction).

56 See Organized Crime Control: Hearings on S.30 and Related Proposals Relating to the Control of Organized Crime in the United States Before Subcomm. No. 5 of the House Comm. on the Judiciary, 91st Cong., 2d Sess. 538, 543-44 (1970) (statement of Sen. McClellan). RICO’s civil provision was added to Title IX in response to suggestions from the American Bar Association and legislators that there be a remedy “similar to the private damage remedy found in the antitrust laws.” Id. The then ABA president-elect, Edward L. Wright, suggested an amendment “to include the additional civil remedy of authorizing private damage suits based upon the concept of Section 4 of the Clayton Act.” Id. at 543. Representative Poff, the chief spokesman for the bill, described the civil provision of RICO as “another example of the antitrust remedy being adapted for use against organized criminality.” 116 CONG. REC. 35,295 (1970) (remarks of Rep. Poff).

its intention that the construction given the Clayton Act serve as a source of guidance in interpreting the civil RICO statute. Since the courts have uniformly acknowledged that the Clayton Act's jurisdictional provision confers exclusive jurisdiction over civil antitrust claims upon the federal courts, it can therefore be inferred that when the legislators enacted RICO, they were aware of the manner in which the Clayton Act had been construed. Furthermore, it would be anomalous to accord a different interpretation to language that is virtually identical to that of the Clayton Act.

The Belzberg court placed great emphasis on the decision of the United States Supreme Court in Sedima, S.P.R.L. v. Imrex Co., which rejected the antitrust analogy due to the "obstacles" it could create for potential RICO plaintiffs. The Sedima Court,
however, did not address the jurisdictional issue;\textsuperscript{42} its discussion was limited to the substantive, rather than procedural, elements of RICO.\textsuperscript{43} Indeed, \textit{Sedima} confirmed the fact that RICO was patterned after the Clayton Act.\textsuperscript{44} Therefore, it is submitted, \textit{Sedima} leaves unaffected the analogy between the procedural aspects of the Clayton Act and RICO since the "obstacles" to which the \textit{Sedima} Court referred were related solely to RICO's substantive coverage.

Moreover, it is suggested that the recent United States Supreme Court decisions in \textit{Agency Holding Corp. v. Malley-Duff & Associates}\textsuperscript{45} and \textit{Shearson/American Express, Inc. v. McMahon}\textsuperscript{46} have reaffirmed the validity of the analogy between the two statutes in construing the procedural dimensions of the civil actions which they created. Searching for the appropriate statute of limiting a "racketeering injury" requirement from antitrust law would create the same "obstacles" Congress sought to avoid. \textit{Id.} at 498-99.


\textsuperscript{42} See Simpson, 128 App. Div. 2d at 347, 515 N.Y.S.2d at 800.

\textsuperscript{43} Barker, supra note 41, at 36, col. 4. The Simpson court asserted that the only conclusion reached by the \textit{Sedima} Court's review of the legislative history of RICO "is that the antitrust principles defining the proximity between a plaintiff's injury and a defendant's antitrust violation were not intended by Congress to be grafted onto the [Act's] provisions." \textit{Simpson}, 128 App. Div. 2d at 347, 515 N.Y.S.2d at 800. Justice Marshall, dissenting in \textit{Sedima}, argued that at most, RICO's early legislative history may be interpreted as a refusal to perfunctorily adopt the standing requirements of antitrust plaintiffs. \textit{See Sedima, 473 U.S. at 512 (Marshall, J., dissenting). Justice Marshall went on to state that courts relying on RICO's legislative "history to bar any analogy to the antitrust laws simply read too much into the scant evidence available to us." Id. (Marshall, J., dissenting).}

\textsuperscript{44} \textit{See Barker, supra note 41, at 36, col. 4. The Sedima Court stated that the "clearest current" in the Act's legislative history is the reliance placed on the Clayton Act as a model. \textit{Sedima, 473 U.S. at 489. Professor Barker contends that the Court's confirmation of this factor "could be interpreted as an endorsement of the proposition that Congress adopted everything that went along with [the Clayton Act] procedurally, including court decisions on jurisdiction." Barker, supra note 41, at 36, col. 4. But see Rice v. Janovich, 109 Wash. 2d 48, 54, 742 P.2d 1230, 1234 (1984) (en banc) (according to \textit{Sedima}, "analogies to antitrust law should not be interpreted to limit the availability or scope of RICO actions").}

\textsuperscript{45} 107 S. Ct. 2759 (1987).

\textsuperscript{46} 107 S. Ct. 2332 (1987).
tions for civil RICO actions, the Court in *Agency Holding* noted the similarities in purpose and structure between the statutes and concluded that the Clayton Act offers the "closest analogy" to civil RICO. Thus, in order to resolve disagreement among the courts as to the appropriate limitations period governing civil RICO actions, the *Agency Holding* Court adopted the Clayton Act's four-year statute of limitations. Similarly, in *Shearson*, the

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47 See *Agency Holding*, 107 S. Ct. at 2762. RICO does not provide an express statute of limitations to govern suits brought under its civil enforcement provision. See id.; see also Blakey & Gettings, supra note 4, at 1047 (discussing statute of limitations applicable to RICO actions). In the absence of a specific limitations period governing a federal cause of action, the federal courts usually apply the most analogous state statute of limitations. Id.; see Board of Regents v. Tomanio, 446 U.S. 478, 483-84 (1980). But see Occidental Life Ins. Co. v. EEOC, 432 U.S. 355, 367 (1977) (analogous state statute of limitations will not be borrowed if its application fails to comport with federal policies underlying statute). Prior to *Agency Holding*, federal courts had been unable to agree upon a consistent approach to selecting the most analogous state statute of limitations for RICO claims. See *Agency Holding*, 107 S. Ct. at 2763; see also Note, Civil RICO: Searching for the Appropriate Statute of Limitations in Actions Under Section 1964(c), 14 Loy. U. CHL L.J. 765, 782-88 (1983) (discussion of inconsistent approaches taken by the courts). The *Agency Holding* Court sought to resolve this conflict by establishing a uniform limitations period for civil RICO. See *Agency Holding*, 107 S. Ct. at 2771.

48 See *Agency Holding*, 107 S. Ct. at 2764-65. In discussing the similarities in purpose of the two statutes, Justice O'Connor, writing for the majority, stated:

Both RICO and the Clayton Act are designed to remedy economic injury by providing for the recovery of treble damages, costs, and attorney's fees. Both statutes bring to bear the pressure of "private attorneys general" on a serious national problem for which public prosecutorial resources are deemed inadequate; the mechanism chosen to reach the objective in both the Clayton Act and RICO is the carrot of treble damages. Moreover, both statutes aim to compensate the same type of injury; each requires that a plaintiff show injury "in his business or property by reason of" a violation.

Id. at 2764.

49 Id. The *Agency Holding* Court asserted that the Clayton Act offered a closer analogy to civil RICO than the criminal prosecution provisions of RICO and, therefore, declined to adopt the five-year limitations period provided in RICO's criminal provisions. Id. at 2767; see 18 U.S.C. § 3282 (1982).


Supreme Court relied on analogous antitrust precedent in determining that RICO claims are arbitrable. It is submitted, therefore, that the Belzberg court's analysis is flawed in light of the Supreme Court's recent affirmation of the relationship between the procedural aspects of civil RICO and the Clayton Act.

In addition, several courts and commentators have utilized Clayton Act precedent as guidance in construing other aspects of the Act, including RICO's venue provision, the measure of damages available in a civil RICO suit, and the availability of equitable relief to a private RICO litigant. It is suggested that this authority supports the viability of the analogy between RICO and the Clayton Act and that this relationship, and its recognition by the promulgators of RICO, provide an unmistakable inference that

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52 See Shearson, 107 S. Ct. at 2344-46. The parties in Shearson had entered a pre-dispute arbitration agreement. Id. at 2335. Such agreements are valid and enforceable based on the Federal Arbitration Act, 9 U.S.C. § 2 (1982), absent some evidence of congressional intent excepting a particular statutory claim from the Arbitration Act or an irreconcilable conflict between arbitration and a statute's underlying purpose. See Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 628 (1985). Justice O'Connor, writing for the Court, found nothing in RICO's language or legislative history prohibiting arbitration of civil RICO claims. See Shearson, 107 S. Ct. at 2343-44. In determining whether arbitration conflicts with RICO's purposes, the Shearson Court reasoned that its resolution of this question with regard to the antitrust laws, in Mitsubishi, was applicable. See id. at 2344-46. The Court concluded that in accordance with its decision in Mitsubishi, agreements to arbitrate claims brought as RICO suits are enforceable. See id. at 2345-46.


54 See Parnon, supra note 36, at 350-51 (intent of Congress that Clayton Act measure of damages apply in civil RICO cases). The legislative history of the Act gives no specific indication as to how RICO damages should be measured. Id. at 348 n.4.

subject matter jurisdiction under the Act is exclusively federal.

THE ACT IS INCOMPATIBLE WITH CONCURRENT JURISDICTION

Another factor to be considered in determining whether jurisdiction over a statute should be vested exclusively in federal courts is the federal interest in the uniform application and interpretation of federal law. This factor will only be considered, however, if it is first determined that the particular statute in question requires uniformity. If the nature of a statute is such that it is "sufficiently detailed in its scope" then it is less likely that its provisions will be subject to divergent judicial interpretations. Conversely, if a federal statute provides the judiciary with "wide latitude" in its development, the attainment of the requisite uniformity of interpretation would be difficult. If particular legislation demands a uniform construction to be effective, then jurisdiction over its subject matter should be vested exclusively within the federal courts, since the danger of its inconsistent construction "will vary directly with the number of courts independently interpreting" its provisions.

RICO has been described as one of the most sophisticated statutes ever enacted by Congress. Due to its complex nature, the Act has produced significant conflicting opinion regarding the ap-

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56 See Gulf Offshore Co. v. Mobil Oil Corp., 453 U.S. 473, 483-84 (1981); see also supra note 3 (discussion of federal interests). It has been noted that this interest is so overwhelming that it calls into question the continuing vitality of the presumption favoring concurrent jurisdiction. See Redish & Muench, supra note 2, at 315.
57 See Redish & Muench, supra note 2, at 331-32.
58 Id. at 331. One court has determined that RICO’s elements are “indisputably detailed and clear,” and that the Act’s legislative history provides “sufficient guidance to limit the scope of judicial gloss.” Cianci v. Superior Court, 40 Cal. 3d 903, 915, 710 P.2d 375, 381, 221 Cal. Rptr. 575, 580-81 (1985) (citing Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496 n.4 (1985)). The Cianci court thus concluded that RICO does not require uniformity in its interpretation and application. Id. at 914, 710 P.2d at 380, 221 Cal. Rptr. at 580. It is submitted that the Cianci court’s conclusion is erroneous in light of the divergence of opinion that has resulted from the judiciary’s attempts to construe the many ambiguous provisions of RICO. See infra notes 61-72 and accompanying text.
59 Redish & Muench, supra note 2, at 331-32.
60 Id. at 332.
61 See Blakey & Gettings, supra note 4, at 1014. Due to RICO’s “various terms of art” and “numerous cross-references,” one court has observed that the Act “is constructed on the model of a treasure hunt.” Sutliff, Inc. v. Donovan Cos., 727 F.2d 648, 652 (7th Cir. 1984); see Note, The Second Circuit Sedima Trilogy: Judicial Impatience with Private Civil RICO, 51 BROOKLYN L. REV. 1037, 1047 (1985).
ADJUDICATION OF CIVIL RICO

It is submitted that the emergence of varied constructions of the Act indicates the need for a more uniform approach to the interpretation of the civil RICO statute.

In order to maintain a RICO suit under section 1964(c), a private litigant must allege that he has been injured in his business or property as a result of a violation of section 1962 of the Act. Violation of RICO's section 1962 may be summarized as requiring the acquisition or maintenance of an enterprise through a "pattern of racketeering activity." A "pattern" may be established by the commission of at least two of the acts specified in section 1961 of RICO as constituting "racketeering activity." There are, however, conflicting interpretations of the definition of "pattern," specifically the operative language requiring "at least two acts." For example, certain courts have maintained that two related acts of racketeering activity within a single scheme form a "pattern." Yet, other courts have required not only a relationship between the

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63 See 18 U.S.C. § 1964(c) (1982); supra note 5 (quoting language of the provision).


65 See 18 U.S.C. § 1961(5) (1982) (definition of "pattern of racketeering activity"). While "racketeering activity" is specifically defined in section 1961(1) of the Act, the term "pattern" is not separately defined and is thus susceptible to various interpretations. See id. § 1961(1); Moran, The Meaning of Pattern in RICO, 62 Chi.-Kent L. Rev. 139, 144 (1985).

66 See International Data Bank v. Zepkin, 812 F.2d 149, 154-55 (4th Cir. 1987); Moran, supra note 65, at 153-58. Judge Pratt, in an effort to illustrate the conflict which exists, enumerated recent district court decisions within the Second Circuit that have attempted to construe the term "pattern." See Furman, 828 F.2d at 908-09 (Pratt, J., dissenting). In fact, the Second Circuit recently ordered the en banc rehearing of two unrelated RICO cases in order "to clarify Second Circuit law" on the requirements of a "pattern of racketeering activity." Beauford v. Helmsley, 848 F.2d 103, 110 (2d Cir. 1988); see N.Y. Times, June 20, 1988, at B3, col. 5.

acts, but also a series of separate schemes or episodes.\textsuperscript{68} This inconsistency in defining the term “pattern” has permitted the application of RICO to situations not intended by Congress.\textsuperscript{69} Similarly, courts have disagreed as to the elements necessary to determine when a group of individuals engaged in illegal activities would constitute an “enterprise.”\textsuperscript{70} There are also irreconcilable decisions concerning the availability of equitable relief for a private RICO litigant,\textsuperscript{71} and the survival of treble damage actions subsequent to the death of an alleged wrongdoer.\textsuperscript{72} The injection of


\textsuperscript{69} See Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 500 (1985); Cianci v. Superior Court, 40 Cal. 3d 903, 929-30, 710 P.2d 375, 391-92, 221 Cal. Rptr. 574, 591 (1985) (Lucas, J., dissenting). Due to the failure of the courts to develop a meaningful concept of “pattern,” many civil RICO actions are being brought against legitimate businesses. Id. at 930, 710 P.2d at 391-92, 221 Cal. Rptr. at 591 (Lucas, J., dissenting); see supra note 34 (noting majority of civil RICO actions brought against legitimate businesses). RICO has been used for the purposes of harassment and extortion of legitimate businesses and such businesses “have a strong interest in settling even meritless cases” in order to avoid ruinous financial exposure which may result by operation of RICO’s treble damage provision. Cianci, 40 Cal. 3d at 929-30, 710 P.2d at 391-92, 221 Cal. Rptr. at 591.

\textsuperscript{70} See United States v. Bledsoe, 674 F.2d 647, 665 (8th Cir.) (“enterprise” must exist for common purpose, function as continuing unit, and have ascertainable structure), cert. denied, 459 U.S. 1040 (1982); United States v. Griffin, 660 F.2d 996, 999 (4th Cir. 1981) (there must be evidence of common purpose), cert. denied, 454 U.S. 1156 (1982); see also Brown, RICO Repercussions: Sedima and Haroco, 21 CAL. W.L. REV. 282, 286 (1985) (discussing “enterprise” concept); Note, supra note 61, at 1089-92 (same). The Act defines the term “enterprise” as “any individual, partnership, corporation, association, or other legal entity” with any interest in settling even meritless cases in order to avoid ruinous financial exposure which may result by operation of RICO’s treble damage provision. Cianci, 40 Cal. 3d at 929-30, 710 P.2d at 391-92, 221 Cal. Rptr. at 591.


\textsuperscript{72} Compare Summers v. Federal Deposit Ins. Corp., 592 F. Supp. 1240, 1243 (W.D. Okla. 1984) (treble damages are penal, therefore action does not survive death) with State
state courts into this fray of discordant interpretation would only compound an already complex situation. Concurrent jurisdiction increases the likelihood of further inconsistent interpretations of RICO, and encourages forum shopping. Furthermore, RICO's application will become encumbered by an unworkable body of law, thereby defeating its remedial purpose.

It is suggested that the Belzberg court failed to recognize the compelling federal interest in the uniform interpretation of the Act when it determined that state and federal courts share jurisdiction over civil RICO claims. Moreover, this overwhelming federal interest is clearly incompatible with state court adjudication of RICO actions, since exclusive federal jurisdiction would ensure a more uniform approach to the construction and application of the Act.

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Farm Fire and Casualty Co. v. Estate of Caton, 540 F. Supp. 673, 682 (N.D. Ind. 1982) (treble damages are remedial in nature and therefore action survives death).


It is suggested that the possibility of forum shopping is further compounded by the fact that 27 states have enacted their own "little RICO" statutes. See 133 Cong. Rec. E3351 (daily ed. Aug. 7, 1987). For a compilation and description of most of these statutes, see Cohen, State RICO Statutes, 4 RICO L. Rep. 660, 660-62 (1986). Some courts have reasoned that a state's enactment of its own "little RICO" statute is evidence that the state itself does not believe its courts have concurrent jurisdiction over cases involving the federal RICO statute. See Kinsey v. Nestor Exploration Ltd., 604 F. Supp. 1365, 1370 (E.D. Wash. 1985). It is submitted, however, that this argument is not persuasive since some "little RICO" statutes do not provide a civil remedy. See Cohen, supra, at 660-62.

See Bertz, Pursuing a Business Fraud RICO Claim, 21 Cal. W.L. Rev. 246, 247-48 (1985); cf. Blakey & Gettings, supra note 4, at 1047 (discussing need for uniform limitations period). The United States Supreme Court has recognized that RICO's "‘remedial purposes’ are nowhere more evident than in the provision of a private action for those injured by racketeering activity." Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 498 (1985).

The only federal interest recognized by the Belzberg court was that federal courts have exclusive jurisdiction over several of RICO's predicate acts. See Belzberg, 834 F.2d at 738.
LEGISLATIVE PROPOSALS FOR THE CLARIFICATION OF RICO

In recent years, several proposals for the amendment of RICO have been introduced in Congress. Two of these proposals, H.R. 5290 and H.R. 3240, have included provisions mandating exclusive federal jurisdiction over civil RICO actions. H.R. 5290 was introduced in 1986, but was not enacted into law. It is submitted, however, that Congress’ failure to enact this bill cannot be construed as a rejection of exclusive federal jurisdiction. The focus of the proposed bill was not on establishing RICO jurisdiction solely within the federal courts, but on other, more controversial, suggestions for reform. H.R. 3240, which is entitled the “Racketeer Influenced and Corrupt Organizations Act of 1987,” was introduced by Representative Conyers and is presently under consideration by the House Committee on the Judiciary. Significantly, Representative Conyers has described the section of the bill which provides that jurisdiction be exclusively assigned to the federal courts as assuring that “the proper construction of RICO will not continue to be in dispute.”

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78 H.R. 5290, 99th Cong., 2d Sess. § 5 (1986). Section 5 of H.R. 5290 provided that: “The United States district courts shall have exclusive original jurisdiction of civil actions under this subsection.” Id. § 5(c)(6). For a reproduction of the bill, see Goldsmith, supra note 77, at 896-99.
79 H.R. 3240, 100th Cong., 1st Sess. § 7, 133 CONG. REC. E3351 (daily ed. Aug. 7, 1987). H.R. 3240 states that: “Chapter 96 of title 18, United States Code, shall not be construed . . . (3) to confer jurisdiction to hear a criminal or civil proceeding or action under its provisions on a judicial or other forum of a State or local unit of government.” Id. § 7(3).
80 See Goldsmith, supra note 77, at 849.
81 See id. at 896-99. The proposed amendment contained provisions which would have adopted a two-year statute of limitations period, defined “pattern,” and allowed only an actual damage recovery under civil RICO. See id.
Conclusion

The rebuttable presumption favoring concurrent jurisdiction recognizes both the legitimate role of state courts in enforcing federally granted rights, and the authority of Congress to preempt this role by providing, either explicitly or implicitly, for such rights to be protected exclusively within the federal court system. Paramount to proper application of this presumption is the correct ascertainment of congressional intent, and the three accepted methods of rebutting the presumption appropriately focus the judicial inquiry upon such intent. Despite the appropriateness of the analytical framework adopted by the Belzberg court, however, its resolution of the case remains deeply flawed in that the application of the presumption of concurrent jurisdiction yields, in the context of civil RICO actions, a result directly contrary to that intended by Congress. The passage of legislation such as that currently before the House of Representatives is therefore highly recommended. Until the passage of such clarifying legislation, or an overruling of Belzberg by the Supreme Court, state court adjudication of civil RICO claims can be expected to increase, and will thus increasingly prevent the successful eradication of the evils RICO was intended to combat.

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