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CIVIL RICO: A CALL FOR A UNIFORM STATUTE OF LIMITATIONS

I. Introduction

Title IX of the Organized Crime Control Act of 1970 (OCCA),¹ entitled Racketeer Influenced and Corrupt Organizations (RICO),² provides criminal sanctions,³ a public civil remedy,⁴ and a private

1. Pub. L. No. 91-452, 84 Stat. 922-23 (1970).

2. 18 U.S.C. §§ 1961-1968 (1982).

3. Section 1963 provides:

(a) Whoever violates any provision of section 1962 of this chapter shall be fined not more than \$25,000 or imprisoned not more than twenty years, or both, and shall forfeit to the United States (1) any interest he has acquired or maintained in violation of section 1962, and (2) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which he has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962. (b) In any action brought by the United States under this section, the district courts of the United States shall have jurisdiction to enter such restraining orders or prohibitions, or to take such other actions, including, but not limited to, the acceptance of satisfactory performance bonds, in connection with any property or other interest subject to forfeiture under this section, as it shall deem proper. (c) Upon conviction of a person under this section, the court shall authorize the Attorney General to seize all property or other interest declared forfeited under this section upon such terms and conditions as the court shall deem proper. If a property right or other interest is not exercisable or transferable for value by the United States, it shall expire, and shall not revert to the convicted person. All provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the collector of customs or any other person with respect to the disposition of property under the customs laws shall be performed under this chapter by the Attorney General. The United States shall dispose of all such property as soon as commercially feasible, making due provision for the rights of innocent persons.

18 U.S.C. § 1963 (1982).

4. Section 1964 provides in pertinent part:

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from

civil remedy.⁵ RICO was designed to help thwart organized crime.⁶ Beginning in early 1981, however, private plaintiffs discovered that if RICO's statutory language is given a broad reading, a civil RICO claim⁷ may be joined in nearly any fraud action including those against so-called "legitimate" defendants.⁸ As the frequency of civil RICO litigation against these defendants has grown, many courts

engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons. (b) The Attorney General may institute proceedings under this section. In any action brought by the United States under this section, the court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper. . . . (d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

18 U.S.C. § 1964(a)-(b), (d) (1982).

5. Section 1964(c) of RICO, provides in pertinent part:

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.

18 U.S.C. § 1964(c) (1982).

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

It is the purpose of this Act to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime.

Id. See generally 1970 U.S. CODE CONG. & AD. NEWS 4007-91.

7. In this Note, "civil RICO" refers to private causes of action brought under 18 U.S.C. § 1964(c).

8. These "legitimate" defendants, which have been characterized as "rocketeers" for purposes of civil RICO actions, include: Lloyd's of London, Bear Stearns & Co., Merrill Lynch, Shearson/American Express, and E.F. Hutton & Co. See *Taylor v. Bear Stearns & Co.*, 572 F. Supp. 667 (N.D. Ga. 1983); *Austin v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 570 F. Supp. 667 (W.D. Mich. 1983); *Mauriber v. Shearson/American Express, Inc.*, 567 F. Supp. 1231 (S.D.N.Y. 1983); *Hokama v. E.F. Hutton & Co.*, 566 F. Supp. 636 (C.D. Cal. 1983); *Barker v. Underwriters at Lloyd's London*, 564 F. Supp. 352 (E.D. Mich. 1983); see also *Sedima, S.P.R.L. v. Imrex Co.*, 741 F.2d 482, 487 (2d Cir. 1984), *cert. granted*, 53 U.S.L.W. 3506 (U.S. Jan. 15, 1985) (No. 84-648).

As one commentary has suggested, "RICO threatens to become the most powerful weapon that a plaintiff may use against such [legitimate] corporate defendants." *Skinner & Tone, Civil RICO and the Corporate Defendant*, Nat'l L.J., Jan. 30, 1984, at 22, col. 3; see Noble, *Re-Examining Rackets Law*, N.Y. Times, Sept. 4, 1984, at D2, col. 1.

have suggested that this use of RICO is contrary to the intent of the Congress which enacted it.⁹ Two areas of confusion have arisen.

First, many courts have applied four substantive restrictions¹⁰ on the availability of civil RICO. The first restriction requires the plaintiff to allege that the defendant has a connection to organized crime.¹¹ The second limits standing to plaintiffs who allege a particular type of "injury."¹² The third restriction requires the plaintiff to allege an enterprise distinct from the pattern of racketeering or distinct from the defendant.¹³ Finally, a few courts, notably the second circuit, have permitted civil RICO actions only in instances

9. See *infra* notes 57-104 and accompanying text; e.g., *Sedima*, 741 F.2d at 496-504 (requiring prior conviction); *Hokama v. E.F. Hutton & Co.*, 566 F. Supp. 636, 643 (C.D. Cal. 1983) (requiring connection to organized crime); *North Barrington Dev., Inc. v. Fanslow*, 547 F. Supp. 207, 211 (N.D. Ill. 1980) (requiring "competitive" injury); *Waste Recovery Corp. v. Mahler*, 566 F. Supp. 1466, 1468-69 (S.D.N.Y. 1983) (requiring "racketeering" injury); *Barker v. Underwriters at Lloyd's London*, 564 F. Supp. 352, 357 (E.D. Mich. 1983) (requiring distinct enterprise).

10. See *infra* notes 63-104 and accompanying text for a discussion of the different restrictions which courts have applied to civil RICO claims.

For a discussion of civil RICO, see generally Blakey, *RICO Civil Fraud Action in Context: Reflections on Bennett v. Berg*, 58 NOTRE DAME L. REV. 237 (1982); Blakey & Gettings, *Racketeer Influenced and Corrupt Organizations (RICO): Basic Concepts—Criminal and Civil Remedies*, 53 TEMPLE L.Q. 1009 (1980) [hereinafter cited as *Basic Concepts*]; Bradley, *Racketeers, Congress, and the Courts: An Analysis of RICO*, 65 IOWA L. REV. 837 (1980); Bridges, *Private RICO Litigation Based upon "Fraud in the Sale of Securities"*, 18 GA. L. REV. 43 (1983); Campbell, *Civil RICO Actions in Commercial Litigation: Racketeer or Businessman?*, 36 SW. L.J. 925 (1982) [hereinafter cited as *Commercial Litigation*]; Dzivi, *Civil RICO: Pleading Fraud for Treble Damages*, 45 MONT. L. REV. 87 (1984) [hereinafter cited as *Pleading Fraud*]; MacIntosh, *Racketeer Influenced and Corrupt Organizations Act: Powerful New Tool of the Defrauded Securities Plaintiff*, 31 U. KAN. L. REV. 7 (1982); Tarlow, *RICO Revisited*, 17 GA. L. REV. 291 (1983); Wexler, *Civil RICO Comes of Age: Some Maturational Problems and Proposals for Reform*, 35 RUTGERS L. REV. 285 (1983); Note, *Civil RICO: The Temptation and Impropriety of Judicial Restriction*, 95 HARV. L. REV. 1101 (1982); Note, *Civil RICO and "Garden Variety" Fraud—A Suggested Analysis*, 58 ST. JOHN'S L. REV. 93 (1983); Note, *Putting A Halt To Judicial Limitations on Civil RICO*, 52 UMKC L. REV. 56 (1983).

11. See, e.g., *Hokama v. E.F. Hutton & Co.*, 566 F. Supp. 636 (C.D. Cal. 1983). See *infra* notes 71-75 and accompanying text for a discussion of this case.

12. See, e.g., *North Barrington Dev., Inc. v. Fanslow*, 547 F. Supp. 207 (N.D. Ill. 1980) (requiring "competitive injury"); *Waste Recovery Corp. v. Mahler*, 566 F. Supp. 1466 (S.D.N.Y. 1983) (requiring "racketeering enterprise" injury). See *infra* notes 76-85 and accompanying text for a discussion of these cases.

13. See, e.g., *Bennett v. Berg*, 685 F.2d 1053 (8th Cir. 1982), cert. denied 104 S. Ct. 527 (1983) (enterprise distinct from defendant); *Barker v. Underwriters at Lloyd's London*, 564 F. Supp. 352 (E.D. Mich. 1983) (enterprise distinct from pattern of racketeering activity). See *infra* notes 86-94 and accompanying text for a discussion of these cases.

in which the defendants previously have been convicted of the predicate acts alleged in the civil complaint.¹⁴ These four restrictions have left civil RICO litigation in a state of confusion.¹⁵

The second area of confusion, which to date has produced inconsistent results, concerns the statute of limitations which applies to a civil RICO claim.¹⁶ Unlike some federal statutory causes of action, RICO does not contain an express statute of limitations.¹⁷ Thus far, courts deciding the timeliness of civil RICO actions have followed the Supreme Court's rule for determining the statute of limitations for federal causes of action without an express period.¹⁸ According to that rule, the forum state's limitations period for an analogous cause of action is generally—though not always—to be applied.¹⁹ Consideration of those cases which have applied the exception to the Supreme Court rule, however, suggests that the unanimity achieved thus far in the application of statutes of limitations to civil RICO actions might not be permanent. This Note proposes that analogous state limitations periods should not be applied and that Congress should resolve the confusion by enacting an express statute of limitations. Alternatively, in the absence of congressional action, courts should look to those cases which have adopted the exception to the Supreme Court rule and apply an analogous federal limitations period to civil RICO claims.²⁰

In reaching this conclusion, the Note reviews RICO²¹ and its history²² with emphasis on decisions which have considered the statute of limitations to be applied in civil RICO actions.²³ This Note suggests that because the Supreme Court's general rule²⁴ is

14. See, e.g., *Sedima, S.P.R.L. v. Imrex Co.*, 741 F.2d 482 (2d Cir. 1984), cert. granted, 53 U.S.L.W. 3506 (U.S. Jan. 15, 1985) (No. 84-648). See *infra* notes 95-102 and accompanying text for a discussion of this case.

15. Courts around the country are divided in their application of civil RICO. For a discussion of this division, see *infra* notes 57-104 and accompanying text.

16. Courts have taken different approaches when considering statute of limitations problems in civil RICO actions. See *infra* notes 133-77 and accompanying text for a discussion of these approaches.

17. See generally 18 U.S.C. §§ 1961-1968 (1982).

18. See *infra* notes 109-16 and accompanying text for a discussion of the Supreme Court's rule of applying the forum state's statute of limitations to federal causes of action which do not contain express statutes of limitations.

19. See *infra* notes 117-32 and accompanying text for a discussion of cases in which the Supreme Court has looked to an analogous federal statute of limitations.

20. See *infra* notes 178-207 and accompanying text.

21. See *infra* notes 27-41 and accompanying text.

22. See *infra* notes 42-56 and accompanying text.

23. See *infra* notes 133-77 and accompanying text.

24. See *infra* notes 109-16 and accompanying text.

inconsistent with RICO's history and purpose, it should not be applied.²⁵ The Note concludes that Congress could avoid the confusion by enacting a statute of limitations which would provide uniformity and predictability in civil RICO actions.²⁶

II. The Statute

A. Statutory Language

Section 1961²⁷ sets forth violations, known as "predicate acts,"²⁸ which are characterized as "racketeering activity."²⁹ Various state and federal violations are included,³⁰ and section 1961 provides that

25. See *infra* notes 167-86 and accompanying text.

26. See *infra* notes 178-207 and accompanying text.

27. 18 U.S.C. § 1961 (1982).

28. The term "predicate act" is used by the courts to describe those violations which are included in Section 1961, any two of which form the basis of a RICO claim.

29. 18 U.S.C. § 1961(1) (1982).

30. Section 1961(1) provides:

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), sections 2314 and 2315 (relating to interstate transportation of stolen property), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic); (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds); or (D) any offense involving fraud connected with a case under title 11, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States.

Id.

the commission of any two or more predicate acts within a ten-year period establishes a "pattern of racketeering activity."³¹ Section 1962³² prohibits any person from: (1) investing any income received from a pattern of racketeering activity in an enterprise engaged in interstate commerce;³³ (2) acquiring any interest in or control of an enterprise engaged in interstate commerce through a pattern of racketeering activity;³⁴ (3) participating, while employed by an enterprise engaged in interstate commerce, in the enterprise's affairs through a pattern of racketeering activity;³⁵ and (4) conspiring to commit any of these acts.³⁶

31. 18 U.S.C. § 1961(5) (1982). Section 1961(5) provides: (5) "'pattern of racketeering activity' requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity." *Id.*

32. 18 U.S.C. § 1962 (1982). Section 1962 provides:

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, 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. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

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

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

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

Id.

33. 18 U.S.C. § 1962(a) (1982). See *supra* note 32 for text of section 1962(a).

34. 18 U.S.C. § 1962(b) (1982). See *supra* note 32 for text of section 1962(b).

35. 18 U.S.C. § 1962(c) (1982). See *supra* note 32 for text of section 1962(c).

36. 18 U.S.C. § 1962(d) (1982). See *supra* note 32 for text of section 1962(d).

In addition to RICO's criminal and public civil remedies, section 1964³⁷ authorizes a private civil action by a person who is injured in his business or property "by reason of a violation of section 1962."³⁸ The injured plaintiff may sue for treble damages³⁹ and a reasonable attorney's fee.⁴⁰ Despite its explicit nature, RICO does not contain an express statute of limitations provision applicable to the criminal sanctions or either of the civil remedies.⁴¹

B. Legislative History

Before enacting RICO, Congress considered various factors surrounding organized crime and the need to strengthen the criminal prohibitions and civil remedies against its activities.⁴² RICO's incorporation in the OCCA occurred virtually without dissent.⁴³ However, a group of Congressmen,⁴⁴ echoing testimony before the House and Senate Committees,⁴⁵ did criticize various titles of the OCCA, including RICO.⁴⁶ Foreseeing the problems which have resulted in recent years from the application of RICO's apparently broad statutory language,⁴⁷ these critics warned that RICO was poorly drafted⁴⁸ and that its broad language made it ripe for abuse.⁴⁹

The criminal penalties did not distinguish between members of

37. 18 U.S.C. § 1964(c) (1982). See *supra* note 5 for text of section 1964(c).

38. *Id.*

39. *Id.*

40. *Id.*

41. See generally 18 U.S.C. §§ 1961-1968 (1982).

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

43. For Senate vote, see 166 CONG. REC. 972 (Yeas—73, Nays—1, Not voting—26). For House vote, see 116 CONG. REC. 35,363 (Yeas—341, Nays—26, Not voting—63).

44. Organized Crime Control Act of 1970, Pub. L. No. 91-452, 1970 U.S. CODE CONG. & AD. NEWS 4076-91 (Dissenting views of Representatives John Conyers, Jr., Abner Mikva, and William F. Ryan); see also S. REP. NO. 617, 91st Cong., 1st Sess. 215 (1969) (Views of Senators Philip A. Hart and Edward M. Kennedy).

45. Representatives Conyers, Mikva, and Ryan warned, in their statements to the House Judiciary Committee, that RICO was "pregnant with the potential for abuse." See 1970 U.S. CODE CONG. & AD. NEWS 4081. Senators Hart and Kennedy warned, in their statements to the Senate Judiciary Committee, that "the reach of [the OCCA] goes beyond organized criminal activity. Most of its features propose substantial changes in the general body of criminal procedure." See S. REP. NO. 617, 91st Cong., 1st Sess. 215 (1969).

46. See Organized Crime Control Act of 1970, Pub. L. No. 91-452, 1970 U.S. CODE CONG. & AD. NEWS 4081.

47. *Id.*

48. *Id.*

49. *Id.*

organized crime and ordinary defendants.⁵⁰ Moreover, civil RICO could be applied against "legitimate" businesses.⁵¹ The dissenting legislators urged that RICO not be enacted because, "[i]t both fails to do effectively what it sets out to do and succeeds in doing far too much what it should not do."⁵² Despite these predictions, RICO passed both Houses by wide margins and was signed into law as Title IX of the Organized Crime Control Act.⁵³

During its discussions of RICO, the House had the opportunity to include a statute of limitations,⁵⁴ and the Senate heard a proposal to amend RICO to include a statute of limitations.⁵⁵ However, the amendment never became part of the bill and was not enacted.⁵⁶

III. Problems with Statutory Interpretation

Courts have grappled with RICO's civil remedies and their potential application to so-called "legitimate" defendants.⁵⁷ A literal reading of the statutory language suggests that the commission of any two predicate acts⁵⁸ within a ten-year period constitutes a "pattern of racketeering activity"⁵⁹ and makes the violator liable for treble damages.⁶⁰ Courts have recognized civil RICO's potential for federalizing common law fraud actions⁶¹ and have taken different approaches⁶² when confronted with complaints which seem to raise this potential.

Some courts have refused to recognize any restrictions on what they find to be the plain language of RICO,⁶³ and, upon the allegation

50. *Id.* at 4083.

51. *Id.*

52. *Id.* at 4084.

53. Pub. L. No. 91-452, 116 CONG. REC. 37,264 (1970). See *supra* note 43 for the House and Senate vote.

54. See 116 CONG. REC. 35,346 (1970) (proposed floor amendment of Rep. Steiger); 116 CONG. REC. 31,914 (1970) (H.R. 19215—Representative Poff proposed a five-year statute of limitations).

55. 118 CONG. REC. 29,615 (1972) (Senators McClellan and Hruska's proposed amendment included statute of limitations; House never considered this amendment).

56. See *generally* 18 U.S.C. §§ 1961-1968 (1982).

57. See, e.g., *Sedima, S.P.R.L. v. Imrex Co.*, 741 F.2d at 487; see also Noble, *Re-Examining Rackets Law*, N.Y. Times, Sept. 4, 1984, at D2, col. 1; Skinner & Tone, *Civil RICO and the Corporate Defendant*, Nat'l L.J., Jan. 30, 1984, at 28, col. 1.

58. 18 U.S.C. § 1961(1) (1982). See *supra* note 30 for text of section 1961(1).

59. 18 U.S.C. § 1961(5) (1982). See *supra* note 31 for text of section 1961(5).

60. 18 U.S.C. § 1964(c) (1982). See *supra* note 5 for text of section 1964(c).

61. See, e.g., *Sedima*, 741 F.2d at 486; see also Brodsky, *RICO*, N.Y.L.J., Feb. 15, 1984, at 1, col. 1.

62. See *infra* notes 63-102 and accompanying text.

63. See, e.g., *Schacht v. Brown*, 711 F.2d 1343, 1358 (7th Cir. 1983); see also

that the defendant committed at least two predicate acts,⁶⁴ have permitted civil RICO actions to proceed beyond the pleading stage.⁶⁵ For example, in *Schacht v. Brown*,⁶⁶ the court considered a civil RICO claim based on fraud in the insurance industry.⁶⁷ In *Schacht*, the court rejected the application of any restrictions to RICO's express language.⁶⁸ The *Schacht* court recognized the restrictions which other courts had applied to civil RICO claims⁶⁹ but expressly rejected them.⁷⁰

Other courts have held that only defendants who have a nexus to organized crime may be reached under civil RICO.⁷¹ In *Hokama v. E. F. Hutton & Co.*,⁷² for example, the court considered a civil RICO claim based on alleged securities law violations.⁷³ Considering the defendants' motion to dismiss, the court held that the civil RICO claim must fail because the "plaintiffs must allege some link to organized crime, however defined."⁷⁴ The court recognized that proving an organized crime nexus would be difficult but reasoned that a connection to organized crime was necessary to prevent civil RICO's application to causes of action which already provide other remedies.⁷⁵

B. F. Hirsch v. Enright Bros. Co., 577 F. Supp. 339 (D.N.J. 1983); Kimmel v. Peterson, 565 F. Supp. 476 (E.D. Pa. 1983).

64. 18 U.S.C. § 1961(1) (1982). See *supra* note 30 for text of section 1961(1).

65. To date, only one case has proceeded to a judgment for plaintiff after trial. See B. F. Hirsch v. Enright Bros. Co., 577 F. Supp. 339 (D.N.J. 1983).

In *Enright*, the court considered a civil RICO claim based on alleged breach of contract and fraudulent misrepresentation. The court gave a broad reading to RICO and awarded treble damages and a reasonable attorney's fee. *Id.*; see also Brodsky, *RICO*, N.Y.L.J., Feb. 15, 1984, at 1.

66. 711 F.2d 1343 (7th Cir. 1983).

67. *Id.* at 1345-46.

68. *Id.* at 1359.

69. See generally *id.* at 1353-59.

70. *Id.* at 1359.

71. See, e.g., *Hokama v. E.F. Hutton & Co.*, 566 F. Supp. 636, 643 (C.D. Cal. 1983); *Waterman S.S. Corp. v. Avondale Shipyards, Inc.*, 527 F. Supp. 256, 260 (E.D. La. 1981); *Adair v. Hunt Int'l Resources Corp.*, 526 F. Supp. 736, 747 (N.D. Ill. 1981); *Noonan v. Granville-Smith*, 537 F. Supp. 23, 29 (S.D.N.Y. 1981). But see *Moss v. Morgan Stanley, Inc.*, 719 F.2d 5, 21 (2d Cir. 1983), *cert. denied sub nom. Moss v. Newman*, 104 S. Ct. 1280 (1984); *Bunker Ramo Corp. v. United Business Forms, Inc.*, 713 F.2d 1272, 1287 n.6 (7th Cir. 1983); *Schacht v. Brown*, 711 F.2d 1343, 1356 (7th Cir.), *cert. denied sub nom. Arthur Andersen & Co. v. Schmidt*, 104 S. Ct. 508 (1983); *Mauriber v. Shearson/American Express, Inc.*, 567 F. Supp. 1231, 1239 (S.D.N.Y. 1983); *Noland v. Gurley*, 566 F. Supp. 210, 217 (D. Colo. 1983).

72. 566 F. Supp. 636 (C.D. Cal. 1983).

73. *Id.* at 640.

74. *Id.* at 643.

75. *Id.* These other remedies include the various statutory and common law violations set forth in section 1961(1) as "racketeering activity." See *supra* note 30 for text of section 1961(1).

Some courts have required civil RICO plaintiffs to allege a particular type of injury. While some courts have held that a plaintiff must plead a "competitive" injury,⁷⁶ others have required a "racketeering enterprise" injury.⁷⁷ In *North Barrington Development, Inc. v. Fanslow*,⁷⁸ the court considered a civil RICO action based on alleged fraud in a real estate development project.⁷⁹ The court dismissed the civil RICO count finding that the plaintiff had failed to allege some type of injury to his business or property.⁸⁰ In holding that civil RICO required some type of "competitive" injury, the court noted that "the purpose of [section] 1964(c) was not to transform state law violations into federal violations, but to prevent interference with free competition."⁸¹

In *Waste Recovery Corp. v. Mahler*,⁸² the court considered a civil RICO claim based on fraud in the sale of certain waste oil refineries.⁸³ In dismissing the plaintiffs' civil RICO action, the court held that although the businesses in question may have been operated as a "racketeering enterprise,"⁸⁴ the plaintiff had failed to establish that the injury suffered was proximately caused by the sale of these businesses.⁸⁵

76. See *Bankers Trust Co. v. Feldesman*, 566 F. Supp. 1235, 1241 (S.D.N.Y. 1983), *aff'd on other grounds sub nom. Bankers Trust Co. v. Rhoades*, 741 F.2d 511 (2d Cir. 1984); *North Barrington Dev., Inc. v. Fanslow*, 547 F. Supp. 207, 211 (N.D. Ill. 1980). *But see Bunker Ramo Corp. v. United Business Forms, Inc.*, 713 F.2d 1272, 1288 (7th Cir. 1983); *Schacht v. Brown*, 711 F.2d 1343, 1358 (7th Cir.), *cert. denied sub nom. Arthur Andersen & Co. v. Schmidt*, 104 S. Ct. 508 (1983); *Bennett v. Berg*, 685 F.2d 1053, 1059 (8th Cir. 1982), *aff'd in part*, 710 F.2d 1361 (8th Cir.) (en banc), *cert. denied sub nom. Prudential Ins. Co. of Am. v. Bennett*, 104 S. Ct. 527 (1983).

Recently, a Second Circuit opinion, although affirming a district court opinion which required the allegation of a "competitive injury," held that the injury need not be "competitive," but must be some type of "proprietary injury." See *Bankers Trust Co. v. Rhoades*, 741 F.2d 511, 516 n.6 (2d Cir. 1984).

77. See *Waste Recovery Corp. v. Mahler*, 566 F. Supp. 1466, 1468-69 (S.D.N.Y. 1983); *Barker v. Underwriters at Lloyd's London*, 564 F. Supp. 352, 358 (E.D. Mich. 1983); *Johnson v. Rogers*, 551 F. Supp. 281, 285 (C.D. Cal. 1982); *Harper v. New Japan Secs. Int'l, Inc.*, 545 F. Supp. 1002, 1007 (C.D. Cal. 1982); *Landmark Sav. & Loan v. Loeb Rhoades, Hornblower & Co.*, 527 F. Supp. 206, 208-09 (E.D. Mich. 1981). *But see Mauriber v. Shearson/American Express, Inc.*, 567 F. Supp. at 1240; *Windsor Associates, Inc. v. Greenfeld*, 564 F. Supp. at 278-79.

78. 547 F. Supp. 207 (N.D. Ill. 1980).

79. *Id.* at 208.

80. *Id.* at 211.

81. *Id.* at 210.

82. 566 F. Supp. 1466 (S.D.N.Y. 1983).

83. *Id.* at 1467-68.

84. *Id.* at 1469.

85. *Id.*

Still other courts have required that a plaintiff allege the existence of an enterprise distinct from the pattern of racketeering activity⁸⁶ or distinct from the defendants.⁸⁷ In *Barker v. Underwriters at Lloyd's London*,⁸⁸ the court considered a civil RICO claim based on allegations of mail fraud in the failure to pay insurance claims for certain fire losses.⁸⁹ In dismissing the civil RICO claim, the court found that the plaintiffs had failed to "assert an enterprise with a separate economic existence from the alleged pattern of racketeering."⁹⁰ In *Bennett v. Berg*,⁹¹ the court considered a civil RICO claim based on common law fraud in the operation of a retirement village.⁹² In dismissing the civil RICO claim, the court held that the complaint failed to allege an enterprise distinct from the defendants.⁹³ In *Bennett*, the plaintiff simply failed to allege an "enterprise" which was distinct "from the 'person' who 'associated with' an enterprise for purposes of racketeering."⁹⁴

Finally, the second circuit recently has held that a plaintiff may maintain a civil RICO action only where the defendant previously has been convicted of the underlying predicate acts.⁹⁵ In *Sedima, S.P.R.L. v. Imrex Co.*,⁹⁶ the court considered a civil RICO claim based on fraud in the operation of an exporting business.⁹⁷ The court held that the plaintiff must allege not only a "racketeering injury,"⁹⁸ but also that the defendant previously had been convicted

86. See *Barker v. Underwriters at Lloyd's London*, 564 F. Supp. 352, 357 (E.D. Mich. 1983); see also *Bennett v. Berg*, 685 F.2d 1053, 1059-61 (8th Cir. 1982); *Moss v. Morgan Stanley*, 553 F. Supp. 1347, 1360 (S.D.N.Y.), *aff'd on other grounds*, 719 F.2d 5 (2d Cir. 1983).

87. See *Bennett v. Berg*, 685 F.2d at 1061-62; see also *Barker v. Underwriters at Lloyd's London*, 564 F. Supp. 352, 357 (E.D. Mich. 1983); *Parnes v. Heinold Commodities, Inc.*, 548 F. Supp. 20, 24 (N.D. Ill. 1982); *Van Schaick v. Church of Scientology of Calif.*, 535 F. Supp. 1125, 1137 (D. Mass. 1982).

88. 564 F. Supp. 352 (E.D. Mich. 1983).

89. *Id.* at 354.

90. *Id.* at 357.

91. 685 F.2d 1053 (8th Cir. 1982).

92. *Id.* at 1056-57.

93. *Id.* at 1061-62.

94. *Id.* at 1061.

95. See *Furman v. Cirrito*, 741 F.2d 524 (2d Cir. 1984); *Sedima, S.P.R.L. v. Imrex Co.*, 741 F.2d 482 (2d Cir. 1984); see also *Flaherty, A RICO Crisis*, Nat'l L.J., Aug. 13, 1984, at 1, col. 3; *LaRossa & Mitchell, 'Mother of Mercy, Is This The End of RICO?'*, N.Y.L.J., Aug. 13, 1984, at 1, col. 3. *But see Haroco v. Am. Nat'l Bank*, 747 F.2d 384 (7th Cir. 1984), *cert granted*, 53 U.S.L.W. 3506 (U.S. Jan. 15, 1985) (No. 84-822).

96. 741 F.2d 482 (2d Cir. 1984), *cert granted*, 53 U.S.L.W. 3506 (U.S. Jan. 15, 1985) (No. 84-648).

97. *Id.* at 484-85.

98. *Id.* at 495-96.

of the underlying predicate acts.⁹⁹ The *Sedima* court echoed others when it stated that it was not Congress' intent to permit a treble damages recovery for anyone injured by the underlying predicate acts.¹⁰⁰ Accordingly, to bring a civil RICO action, "there must be a 'violation,' that is, criminal convictions on the underlying predicate offenses."¹⁰¹ This requirement has been followed in subsequent cases decided by the second circuit.¹⁰²

Generally, courts applying one or more of these four substantive restrictions have noted the explosion of civil RICO litigation and the need to curb what they perceive to be its abuse.¹⁰³ Given the conflicts among the circuits, the Supreme Court has decided to hear the issue.¹⁰⁴

99. *Id.* at 496.

100. *Id.* at 503.

101. *Id.*

102. The *Sedima* decision was followed by two other Second Circuit civil RICO cases decided by different panels. The day after *Sedima* was handed down, in *Bankers Trust Co. v. Rhoades*, 741 F.2d 511 (2d Cir. 1984), the court affirmed a district court's dismissal of a civil RICO claim holding that the plaintiff had failed to allege "proprietary injury." *Id.* at 516. The court noted *Sedima*, but specifically did not reach the question of whether an actionable civil RICO claim required the prior conviction of the predicate offenses. *Id.* at 516 n.5.

The following day, a different panel of the Second Circuit upheld the requirement of prior convictions of the predicate offenses in *Furman v. Cirrito*, 741 F.2d 524 (2d Cir. 1984). The *Furman* court's opinion strongly disagreed with the Circuit's position as set forth in *Sedima*, but held that the case was controlling. *Id.* at 525.

A recent District of Columbia court adopted the *Sedima* holding; see *Berg v. First Am. Bankshares, Inc.* [Current Binder], FED. SEC. L. REP. (CCH) ¶ 91,826, at 90,162 (D.D.C. Oct. 19, 1984).

For a discussion of the Second Circuit cases and their effect on civil RICO decisions, see Flaherty, *A RICO Crisis*, Nat'l L.J., Aug. 13, 1984, at 1, col. 3; LaRossa & Mitchell, 'Mother of Mercy, Is This The End of RICO?', N.Y.L.J., Aug. 13, 1984, at 1, col. 4. Most recently, the Second Circuit limited the application of the *Sedima* requirement of a prior conviction of the underlying predicate acts. In *Durante Bros. & Sons v. Flushing Nat'l Bank*, No. 84-7221, slip op. at 1721 (2d Cir. Feb. 5, 1985), the court refused to apply the prior conviction requirement to a civil RICO claim based on the collection of an unlawful debt. *Id.* at 1738.

103. See, e.g., *Sedima*, 741 F.2d at 486-88.

104. *Sedima*, S.P.R.L. v. Imrex, Co., cert. granted, 53 U.S.L.W. 3506 (U.S. Jan. 15, 1985) (No. 84-648); *American Nat'l Bank & Trust Co. v. Haroco*, cert. granted, 53 U.S.L.W. 3506 (U.S. Jan. 15, 1985) (No. 84-822); see also Greenhouse, *Court to Rule on Private RICO Suits*, N.Y. Times, Jan. 15, 1985, at D5, col. 1; Lauter, *High Court Accepts Two Civil RICO Appeals*, Nat'l L.J., Jan. 28, 1985, at 5, col. 1; Wiermiel, *Justices to Consider Business Lawsuits Brought Under Anti-Racketeering Act*, Wall St. J., Jan. 15, 1985, at 10, col. 1; *Justices to Decide Issue of Damages in RICO Cases*, N.Y.L.J., Jan. 15, 1985, at 1, col. 3.

The Supreme Court has considered RICO. In *United States v. Turkette*, 452 U.S. 576 (1981), the Court held that RICO applied to legitimate as well as illegitimate enterprises. The Court stressed that RICO must be "liberally construed to effectuate its remedial purposes." *Id.* at 587 (quoting Organized Crime Control Act of 1970,

IV. Statute of Limitations

RICO does not include an express statute of limitations.¹⁰⁵ To date, courts considering the limitations question in civil RICO actions have applied the limitations period for an analogous action under the law of the forum state.¹⁰⁶ These courts have thus followed a line of Supreme Court decisions holding that where a federal civil cause of action contains no express statute of limitations, courts generally should apply the limitations period for the most closely analogous state cause of action.¹⁰⁷ The Supreme Court has also held, however, that a court should not blindly apply a state limitations period when application would be contrary to the policy behind the federal statute.¹⁰⁸

A. The Supreme Court's General Rule

The Supreme Court has long held that where a federal statute fails to include an express statute of limitations, courts generally should look to the law of the forum state for the applicable lim-

Pub. L. No. 91-452, § 904(a), 84 Stat. 922, 947 (1970)); *see also* *Russello v. United States*, 104 S. Ct. 296 (1983) (insurance proceeds held to constitute "interest" within meaning of forfeiture provision of RICO).

105. *See generally* 18 U.S.C. §§ 1961-1968 (1982).

106. *See* *Compton v. Ide*, 732 F.2d 1429, 1433 (9th Cir. 1984); *Alexander v. Perkin Elmer Corp.*, 729 F.2d 576, 577 (8th Cir. 1984); *Nelson v. Chapman & Cutler*, [Current Binder], FED. SEC. L. REP. (CCH) ¶ 91,808, at 90,077 (N.D. Ill. July 12, 1984); *Victoria Oil Co. v. Lancaster Corp.*, 587 F. Supp. 429, 431-32 (D. Colo. 1984); *Teltronics Servs., Inc. v. Anaconda-Ericsson, Inc.*, 587 F. Supp. 724, 733 (E.D.N.Y. 1984); *Burns v. Ersek*, 591 F. Supp. 837, 843 (D. Minn. 1984); *Estee Lauder, Inc. v. Harco Graphics, Inc.*, No. 82 Civ. 8188 (S.D.N.Y. March 21, 1984) (available Sept. 2, 1984, on LEXIS, Genfed library, Dist file); *Umstead v. Durham Hosiery Mills, Inc.*, 578 F. Supp. 342, 347-48 (M.D.N.C. 1984); *Creamer v. General Teamsters Local Union 326*, 579 F. Supp. 1284, 1289 (D. Del. 1984); *Seawell v. Miller Brewing Co.*, 576 F. Supp. 424, 427 (M.D.N.C. 1983); *Kirschner v. Cable/Tel Corp.*, 576 F. Supp. 234, 241 (E.D. Pa. 1983); *Durante Bros. & Sons v. Flushing Nat'l Bank*, No. 84-7221, slip op. at 1721 (2d Cir. Feb. 5, 1985); *Noland v. Gurley*, 566 F. Supp. 210, 216 (D. Colo. 1983); *Eisenberg v. Gagnon*, 564 F. Supp. 1347, 1354 (E.D. Pa. 1983); *D'Iorio v. Adonizio*, 554 F. Supp. 222, 231-32 (M.D. Pa. 1982); *Gilbert v. Bagley*, [1982-1983 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 99,483, at 96,795-96 (M.D.N.C. Sept. 17, 1982); *State Farm Fire & Cas. Co. v. Estate of Caton*, 540 F. Supp. 673, 683-84 (N.D. Ind. 1982); *Willcutts v. Jefferson Trust & Savs. Bank of Peoria*, No. 84-2006 (C.D. Ill. April 21, 1982) (available Sept. 2, 1984, on LEXIS, Genfed library, Dist file); *Ingram Corp. v. J. Ray McDermott & Co.*, 495 F. Supp. 1321, 1324 n.4 (E.D. La. 1980).

107. *See infra* notes 109-16 and accompanying text. For a discussion of the borrowing of statutes of limitations in federal actions, *see* Note, *Limitation Borrowing in Federal Courts*, 77 MICH. L. REV. 1127 (1979).

108. *See infra* notes 117-32 and accompanying text.

itations period.¹⁰⁹ In *Johnson v. Railway Express Agency, Inc.*,¹¹⁰ the petitioner sued his employer and union in a Tennessee federal district court for alleged employment discrimination.¹¹¹ The Court held that Tennessee's one-year statute of limitations period for statutory penalties¹¹² barred that portion of the discrimination action brought under section 1981.¹¹³ The Court reasoned that although any limitations period is "necessarily arbitrary,"¹¹⁴ the time period selected reflects the state's judgment of the point at which the interests in prohibiting stale claims outweighs the interests in bringing valid claims.¹¹⁵ This rationale has been followed by the Court in subsequent cases.¹¹⁶

109. See *Board of Regents v. Tomanio*, 446 U.S. 478, 483-84 (1980) (Civil Rights Act of 1871); *Occidental Life Ins. Co. v. EEOC*, 432 U.S. 355, 367 (1977) (Civil Rights Act of 1964); *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 462 (1975); *UAW v. Hoosier Cardinal Corp.*, 383 U.S. 696, 703-04 (1966) (§ 301 of Labor Management Relations Act); *Chattanooga Foundry & Pipe Works v. City of Atlanta*, 203 U.S. 390, 397 (1906) (Sherman Antitrust Act); *McCluney v. Silliman*, 28 U.S. (3 Pet.) 270, 277 (1830).

110. 421 U.S. 454 (1975).

111. Petitioner, a black employee of defendant shipping company, filed a complaint with the E.E.O.C. charging defendant with employment discrimination. After more than two years, the E.E.O.C. completed its investigation and issued a right to sue letter. In his subsequent suit, petitioner added a charge of discrimination based on 42 U.S.C. § 1981. *Id.* at 455-57. Section 1981 provides:

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C. § 1981 (1982).

112. TENN. CODE ANN. § 28-3-104 (1980). Section 28-3-104(a) provides:

Actions for libel, for injuries to the person, false imprisonment, malicious prosecution, criminal conversation, seduction, breach of marriage promise, actions and suits against attorneys for malpractice whether said actions are grounded or based in contract or tort, civil actions for compensatory or punitive damages, or both, brought under the federal civil rights statutes, and actions for statutory penalties shall be commenced within one (1) year after the cause of action accrued.

Id.

113. The court found that the E.E.O.C.'s administrative remedy and the federal statutory remedy (under Section 1981) were "truly independent." 421 U.S. at 466. Thus, the statute of limitations for the section 1981 action was not tolled by the filing of petitioner's complaint with the E.E.O.C. Moreover, the court could find no reason to excuse petitioner's failure to take the precautions necessary to preserve his claim by filing his Section 1981 action in a timely manner. *Id.* at 465-67. In short, petitioner had "slept on his § 1981 rights." *Id.* at 466.

114. *Id.* at 463.

115. *Id.* at 463-64.

116. See *Board of Regents v. Tomanio*, 446 U.S. 478, 485 (1980); see also *DelCostello v. International Bhd. of Teamsters*, 103 S. Ct. 2281 (1983).

The Supreme Court has consistently held, however, that state limitations periods should not be "mechanically applied"¹¹⁷ to federal actions where a limitations period is absent in the federal statute.¹¹⁸ In *Occidental Life v. EEOC*,¹¹⁹ the Equal Employment Opportunity Commission (EEOC) sued Occidental for alleged violations of Title VII of the Civil Rights Act of 1964.¹²⁰ The Court rejected the petitioner's argument that the forum state's statute of limitations should be applied.¹²¹ Although acknowledging its general rule,¹²² the Court reasoned that state law is not to be the exclusive guide in questions regarding federal statutes which do not contain express statutes of limitations.¹²³ "State legislatures do not devise their limitations periods with national interests in mind, and it is the duty of the federal courts to assure that the importation of state law will not frustrate or interfere with the implementation of national policies."¹²⁴ Accordingly, the Court held that state limitations periods should not be applied in federal statutory actions if their application is "inconsistent" with the statute's underlying policy.¹²⁵ The Court determined that Congress did not intend that state limitations periods restrict the ability of the EEOC to file federal enforcement actions.¹²⁶

Recently, in *DelCostello v. International Brotherhood of Teamsters*,¹²⁷ the Court, although reaffirming its position concerning the application of state limitations periods to federal statutory actions, applied an analogous federal limitations period to the federal sta-

117. See *Occidental Life Ins. Co. v. EEOC*, 432 U.S. 355, 367 (1977).

118. See *DelCostello v. International Bhd. of Teamsters*, 103 S. Ct. at 2289; *Occidental Life Ins. Co. v. EEOC*, 432 U.S. at 367; *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 465 (1977); *UAW v. Hoosier Cardinal Corp.*, 383 U.S. 696, 704 (1966).

119. 432 U.S. 355 (1977).

120. Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, 86 Stat. 103 (1972) (codified at 42 U.S.C. §§ 2000e to 2000e-17 (1976 & Supp. III 1979)).

In *Occidental Life*, an employee of petitioner's company had filed a complaint with the E.E.O.C. charging the company with sex discrimination. After approximately three and one-half years, subsequent to the failure of conciliation efforts by the E.E.O.C., the E.E.O.C. brought this enforcement action. 432 U.S. at 357-58.

121. *Id.* at 368-69. Specifically, petitioners argued that California's one-year statute of limitations (see CAL. CIV. PROC. CODE § 340(3) (West 1982)), should be applied to the E.E.O.C.'s action. 432 U.S. at 358.

122. See *supra* notes 109-16 and accompanying text.

123. 432 U.S. at 367.

124. *Id.*

125. *Id.*, citing *Johnson*, 421 U.S. at 465; see also *Hoosier*, 383 U.S. at 706-07.

126. 432 U.S. at 369-72.

127. 103 S. Ct. 2281 (1983).

tutory claim.¹²⁸ *DelCostello* involved two separate claims brought by employees against their employer and their union under section 301 of the Labor Management Relations Act.¹²⁹ In determining the appropriate limitations period, the Court rejected the shorter state limitations periods and adopted the longer period for claims brought under section 10(b) of the National Labor Relations Act.¹³⁰ Adopting the analogous federal provision, the Court stated that "resort to state law remains the norm for borrowing of limitations periods."¹³¹ The Court stressed, however, that the rule was not applicable in all circumstances.

[W]hen a rule from elsewhere in federal law clearly provides a closer analogy than available state statutes, and when the federal policies at stake and the practicalities of litigation make the rule a significantly more appropriate vehicle for interstitial lawmaking, [the Court has] not hesitated to turn away from state law.¹³²

B. Application of the General Rule in Civil RICO Litigation

1. Looking to the Predicate Acts

Courts which have considered statute of limitations problems in civil RICO cases have followed the general Supreme Court rule and applied the limitations period for the analogous state cause of action.¹³³ In so doing, the majority of courts have looked to the

128. 103 S. Ct. at 2293. The Court applied an analogous limitations period, section 10(b) of the National Labor Relations Act, codified at 29 U.S.C. § 160(b) (1982).

129. 103 S. Ct. at 2285-87. Section 301 of the Labor Management Relations Act is codified at 29 U.S.C. § 185 (1982).

130. 103 S. Ct. at 2293-94. The Court rejected the application of a 30-day Maryland statute and a 90-day New York statute, both state-established limitations periods for the vacation of arbitration awards. *Id.* at 2286. Instead, the Court adopted a uniform 6-month period, under section 10(b) of the National Labor Relations Act, for the bringing of unfair labor practice charges. *Id.* at 2293-94. The Court reasoned that section 10(b) accommodated a "balance of interests" similar to that at stake in the case before it. *Id.*

131. *Id.* at 2294.

132. *Id.* For a discussion of the *DelCostello* decision, see Note, *A New Federal Statute of Limitations for Section 301/Fair Representations Claims: Should It Have Retroactive Application?*, 12 FORDHAM URB. L.J. 591 (1984).

133. See *Compton v. Ide*, 732 F.2d 1429, 1433 (9th Cir. 1984) (three years); *Alexander v. Perkin Elmer Corp.*, 729 F.2d 576, 577 (8th Cir. 1984) (five years); *Nelson v. Chapman & Cutler*, [Current Binder] FED. SEC. L. REP. (CCH) ¶ 91,808, at 90,077 (N.D. Ill. July 12, 1984); *Victoria Oil Co. v. Lancaster Corp.*, 587 F.

alleged predicate acts, rather than to RICO itself, to determine the most appropriate state limitations period. For instance, in *Kirschner v. Cable Tel Corp.*,¹³⁴ investors brought an action against several investment analysts and ten cable television companies.¹³⁵ The plaintiffs' civil RICO count alleged predicate acts of common law fraud and fraud in the sale of securities.¹³⁶ Ruling on the defendants' motion to dismiss the civil RICO claim, the court considered whether the claim was time-barred.¹³⁷ Because the limitations period had been effectively tolled, the court did not reach the question whether a state two-year or six-year statute of limitations applied.¹³⁸ However, the court followed previous decisions on this issue¹³⁹ and determined that when a civil RICO claim is based on predicate acts of wire fraud, mail fraud or fraud in the sale of securities, the court should apply the general limitations period for fraud actions, as the claim

Supp. 429, 431-32 (D. Colo. 1984) (three years); *Teltronics Servs., Inc. v. Anaconda-Ericsson, Inc.*, 587 F. Supp. 724, 733 (E.D.N.Y. 1984) (three years); *Burns v. Ersek*, 591 F. Supp. 837, 843 (D. Minn. 1984) (three years); *Estee Lauder, Inc., v. Harco Graphics, Inc.*, No. 82 Civ. 8188 (S.D.N.Y. Mar. 21, 1984) (available Sept. 2, 1984, on LEXIS, Genfed library, Dist file) (six years); *Umstead v. Durham Hosiery Mills, Inc.*, 578 F. Supp. 342, 347-48 (M.D.N.C. 1984); *Creamer v. General Teamsters Local Union 326*, 579 F. Supp. 1284, 1289-90 (D. Del. 1984) (three years); *Seawell v. Miller Brewing Co.*, 576 F. Supp. 424, 427 (M.D.N.C. 1983) (three years); *Kirschner v. Cable/Tel Corp.*, 576 F. Supp. 234, 241 (E.D. Pa. 1983); *Durante Bros. & Sons v. Flushing Nat'l Bank*, No. 84-7221, slip op. at 1721 (2d Cir. Feb. 5, 1985) (three years); *Noland v. Gurley*, 566 F. Supp. 210, 216 (D. Colo. 1983) (three years); *Eisenberg v. Gagnon*, 564 F. Supp. 1347, 1353 (E.D. Pa. 1983) (six years); *D'Iorio v. Adonizio*, 554 F. Supp. 222, 231-32 (M.D. Pa. 1982) (six years); *Gilbert v. Bagley*, [1982-1983 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 99,483, at 96,795-96 (M.D.N.C. Sept. 17, 1982) (two years); *State Farm Fire & Cas. Co. v. Estate of Caton*, 540 F. Supp. 673, 683-84 (N.D. Ind. 1982) (six years); *Willcutts v. Jefferson Trust & Savs. Bank of Peoria*, No. 84-2006 (C.D. Ill. April 21, 1982) (available Sept. 2, 1984, on LEXIS, Genfed library, Dist file) (five years); *Ingram Corp. v. J. Ray McDermott & Co.*, 495 F. Supp. 1321, 1324 n.4 (E.D. La. 1980) (one year).

134. 576 F. Supp. 234 (E.D. Pa. 1983).

135. *Id.* at 238.

136. *Id.* Plaintiffs had purchased interests in a business enterprise consisting of ten cable television companies. Plaintiffs alleged that the owners of these companies made a number of fraudulent representations in connection with the sale. Defendants raised the statute of limitations as one defense to plaintiff's charges. *Id.*

137. *Id.* at 240-41.

138. *Id.* at 241. As the RICO allegation was based on fraud, the action did not arise until the fraud was revealed or should have been revealed in the exercise of due diligence. As the fraud was discovered within two years of the date the complaint was filed, the court did not have to choose which fraud statute should be applied. *Id.*

139. See *Eisenberg*, 564 F. Supp. at 1354; *D'Iorio*, 554 F. Supp. at 232; *State Farm*, 540 F. Supp. at 685.

“depend[s] upon the existence of a scheme or artifice to defraud.”¹⁴⁰

Similarly, *Burns v. Ersek*¹⁴¹ involved a civil RICO complaint alleging predicate acts of mail fraud and fraud in the sale of securities.¹⁴² In deciding whether to apply the analogous state limitations period for securities fraud or the provision for common law fraud, the court, citing *Kirschner*¹⁴³ and other cases,¹⁴⁴ declined to apply the general fraud provision, and instead applied the securities fraud provision.¹⁴⁵ Although the court found that the predicate acts did necessarily involve a scheme or artifice to defraud, the court looked to the complaint and found that “securities fraud is the significant predicate act.”¹⁴⁶ Thus, the court applied the shorter three-year statute of limitations to bar the plaintiff’s RICO claim.¹⁴⁷

2. Uniformity Within Jurisdictions

Some courts have rejected the approach of applying the state statute of limitations applicable to the predicate acts, reasoning that this approach has the potential of permitting the application of different limitations periods to civil RICO actions within the same state.¹⁴⁸ Instead, they have chosen a uniform statute of limitations to be applied in all civil RICO actions brought within their jurisdictions. For instance, in *Victoria Oil v. Lancaster Corp.*,¹⁴⁹ the court rejected the *Kirschner* approach,¹⁵⁰ and instead applied the rationale employed by the tenth circuit in section 1983¹⁵¹ ac-

140. *Kirschner*, 576 F. Supp. at 241.

141. 591 F. Supp. 837 (D. Minn. 1984).

142. *Id.* at 839.

143. 576 F. Supp. at 241; *see supra* notes 134-40 and accompanying text.

144. *Eisenberg*, 564 F. Supp. at 1354; *D'Iorio*, 554 F. Supp. at 232.

145. *Burns*, 591 F. Supp. at 845.

146. *Id.*

147. *Id.* The court applied Minnesota’s three-year statute of limitations applicable to securities fraud cases (*see* MINN. STAT. ANN. § 80A.23, subd. 7 (West Supp. 1984)), and specifically rejected applying the six-year statute applicable to an action based on common law fraud (*see* MINN. STAT. ANN. § 541.05, subd. 1(6) (West Supp. 1984)). *Burns*, 591 F. Supp. at 845.

148. *See Victoria Oil*, 587 F. Supp. at 431-32; *Teltronics*, 587 F. Supp. at 733.

149. 587 F. Supp. 429 (D. Colo. 1984). Plaintiff was the assignee of an unsuccessful participant in a federal oil and gas lottery. Defendants were the successors in interest of an individual who had received an oil and gas lease through the lottery. Plaintiff alleged that defendants’ conduct constituted a violation of the Sherman Antitrust Act, common law fraud, conspiracy to defraud and civil RICO. *Id.* at 430.

150. *See supra* notes 134-40 and accompanying text.

151. 42 U.S.C. § 1983 (1982). Section 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia,

tions.¹⁵² The *Victoria Oil* court held that civil RICO claims brought within its jurisdiction should have uniform limitations periods.¹⁵³ The court specifically rejected an approach which would depend on the individual predicate acts of the RICO claim and adopted a uniform approach.¹⁵⁴ Courts are divided in their reaction to this approach.¹⁵⁵

subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Id.

152. See *Garcia v. Wilson*, 731 F.2d 640 (10th Cir.), *cert. granted*, 105 S. Ct. 79 (1984). In *Garcia*, the Court of Appeals rejected their earlier practice of looking to the specific facts of each action brought under Section 1983, to determine the appropriate limitations period. Instead, the court adopted a "general characterization for all civil rights claims." *Id.* at 649. The court reasoned that the uniform approach "will ultimately best effectuate the purposes of both the civil rights acts and statutes of limitations." *Id.*; accord *Pauk v. Bd. of Trustees*, 654 F.2d 856 (2d Cir. 1981), *cert. denied*, 455 U.S. 1000 (1982); *Johnson v. Davis*, 582 F.2d 1316 (4th Cir. 1978).

153. *Victoria Oil*, 587 F. Supp. at 431. The court noted that the civil RICO claims are remedial in nature and that they present the same potential for factual variety as do section 1983 actions. *Id.* However, once the predicate acts are established, the remedy under the RICO statute depends solely on injury. Therefore, the reasoning in *Garcia* "appears to apply to RICO claims as well." *Id.* The court concluded that Colorado's residuary three-year statute of limitations should be applied to all civil RICO claims brought within the state. See COLO. REV. STAT. § 13-80-108(1)(b) (1973). In this case, the limitations period barred the RICO claim. *Victoria Oil*, 587 F. Supp. at 432.

154. *Id.* at 431.

155. Compare *Teltronics*, 587 F. Supp. 724 (court applied three-year statute of limitations) with *Estee Lauder*, No. 82 Civ. 8188 (court applied six-year statute of limitations).

In *Teltronics*, the court specifically adopted the approach employed by the Second Circuit in its consideration of section 1983 actions. This approach calls for the uniform application of limitations periods to section 1983 actions within a jurisdiction. See *Pauk*, 654 F.2d at 863. The *Teltronics* court found that the same policy considerations which were cited in section 1983 actions "apply with equal force to RICO claims." *Teltronics*, 587 F. Supp. at 733. The court applied New York's three-year statute to bar the RICO claim. *Id.*; see N.Y. CIV. PRAC. LAW § 214(2) (McKinney Supp. 1984-85).

In *Estee Lauder*, the court specifically rejected the analogy to section 1983 actions. The court interpreted civil RICO as offering "new opportunities for enforcing existing statutes." *Estee Lauder*, No. 82-8188. As such, it was distinct from section 1983 actions which represent "a wholly new form of liability." *Id.* In short, the *Estee Lauder* court "accept[ed] the possibility of widely varying statutes of limitations for actions brought under RICO." *Id.* The *Estee Lauder* court applied New York's six-year statute of limitations for actions based on fraud to permit the RICO claim. *Id.*; see N.Y. CIV. PRAC. LAW § 213(8) (McKinney Supp. 1984-85).

3. *The Federal Approach*

One court, although following the general rule,¹⁵⁶ has suggested that a better approach would be to apply the most analogous federal statute of limitations.¹⁵⁷ Arguably, such an approach would provide even greater uniformity in civil RICO actions.¹⁵⁸ Specifically, the court in *State Farm v. Estate of Caton*,¹⁵⁹ although ultimately applying an analogous state statute of limitations, stated that “[t]he better approach would seem to be to apply the nearest analogous federal statute because it would promote predictability and uniformity. Such application would also avoid encumbering the remedial purposes of RICO . . . on the question of which state statute of limitations to apply.”¹⁶⁰ The *State Farm* court, in reaching this conclusion, relied on the Supreme Court’s decision in *Occidental Life*,¹⁶¹ but conceded the uncertain effect of *Occidental Life* on civil RICO actions.¹⁶²

In *Gilbert v. Bagley*,¹⁶³ the court stressed the importance of characterizing the civil RICO claim as a “federal cause of action” when choosing the appropriate statute of limitations.¹⁶⁴ Concluding that state courts have no interest in characterizing a civil RICO action, when choosing the appropriate limitations period, a court should do so “in light of the federal policy behind the RICO statute.”¹⁶⁵

Thus, the potential for inconsistencies in the application of statutes

156. See *supra* notes 109-16 and accompanying text.

157. See *State Farm*, 540 F. Supp. at 684; see also *Basic Concepts*, *supra* note 10, at 1047; *Commercial Litigation*, *supra* note 10, at 937-38; *Pleading Fraud*, *supra* note 10, at 107.

158. *State Farm*, 540 F. Supp. at 684; see also *Basic Concepts*, *supra* note 10, at 1047.

159. 540 F. Supp. 673 (N.D. Ind. 1982). In *State Farm*, plaintiff insurance company brought a civil RICO action in connection with an allegedly fraudulent insurance claim filed by defendants regarding the arson of a house. *Id.* at 675.

160. *Id.* at 684.

161. See *supra* notes 119-26 and accompanying text.

162. *State Farm*, 540 F. Supp. at 684. Recently, in *Durante Bros.*, the Second Circuit followed the general rule and applied an analogous state limitations period. No. 84-7221, slip op. at 1740. However, the court reasoned that when considering a federal statutory cause of action which does not have an express limitations period, like RICO, courts should look first to an analogous federal limitations period. *Id.* at 1739-40. The *Durante Bros.* court could not find an “apparently relevant federal statute of limitations,” and thus applied an analogous state limitations period. *Id.*

163. [1982-1983 Transfer Binder] FED. SEC. L. REP. (CCH) ¶ 99,483, at 96,791 (M.D.N.C. Sept. 17, 1982). In *Gilbert*, the court considered a civil RICO claim based on an alleged scheme to manipulate company stock prices.

164. *Id.* at 96,796.

165. *Id.*

of limitations to civil RICO actions is manifest.¹⁶⁶ According to the general Supreme Court rule,¹⁶⁷ a court would look to the predicate acts comprising the civil RICO claim and apply the statute of limitations of the most analogous state cause of action.¹⁶⁸ As a review of the case law has shown, this procedure requires the courts to make a judgment on the appropriate limitations period to apply based on the nature of the alleged predicate acts committed.¹⁶⁹ Consequently, there is little uniformity in the application of limitations periods to civil RICO claims.¹⁷⁰ Although some courts have specifically accepted this result,¹⁷¹ others have looked for a more uniform approach.¹⁷² Differing limitations periods lead to inconsistent results, not only among federal courts around the country,¹⁷³ but even among federal district courts within an individual circuit.¹⁷⁴ Thus, although a claim might be timely in one jurisdiction, the same claim might be stale in another.¹⁷⁵ A claimant would not be certain whether or not his claim was timely or stale.¹⁷⁶ Moreover, the present approach lends itself to potentially confusing and complex choice of law and other legal disputes.¹⁷⁷

166. See, e.g., *Estee Lauder*, No. 82-8188, where the court recognized and accepted the potential that different limitations periods could be applied in civil RICO actions, depending upon the specific facts of a case.

167. See *supra* notes 109-16 and accompanying text.

168. See, e.g., *Burns v. Ersek*, 591 F. Supp. 837, 845 (D. Minn. 1984); *Kirschner v. Cable/Tel Corp.*, 576 F. Supp. 234, 241 (E.D. Pa. 1983); *Eisenberg v. Gagnon*, 564 F. Supp. 1347, 1354 (E.D. Pa. 1983); *D'Iorio v. Adonizio*, 554 F. Supp. 222, 232 (M.D. Pa. 1982).

169. See *supra* notes 133-47 and accompanying text.

170. Courts deciding the application of statutes of limitations to civil RICO actions have applied limitations periods ranging from one year to six years. See *supra* note 133.

171. See *Estee Lauder*, No. 82-8188.

172. See *supra* notes 148-65 and accompanying text.

173. See *supra* note 133.

174. Compare *Teltronics*, 587 F. Supp. at 733 (court for Eastern District of New York applied three-year limitations period) with *Estee Lauder*, 82 Civ. 8188 (court for Southern District of New York applied six-year limitations period).

175. Given the vast divergence of limitations periods applied in civil RICO actions in the past five years (see *generally* note 133), a stale claim in one jurisdiction would be a timely claim in another. Compare *J. Ray McDermott*, 495 F. Supp. at 1324 n.4 (one year) with *Eisenberg*, 564 F. Supp. at 1354 (six years).

176. For instance, a civil RICO claim based on activity occurring in New York City could be subject to a three-year limitations period (see *Teltronics*, 587 F. Supp. 724), or a six-year limitations period *Teltronics*, 587 F. Supp. 724), or a six-year limitations period (see *Estee Lauder*, No. 82-8188).

177. The court in *State Farm* warned of the problems which the present approach forebodes when it wrote, "it is foreseeable that a complex issue concerning a choice of state law will arise where the operative facts occurred in a state other than the forum state or a combination of states." 540 F. Supp. at 684; see also *UAW v.*

V. Recommendation: Enactment of a Uniform Civil RICO Statute of Limitations

Although some courts have recognized the inequities of the general rule and have moved to establish a uniform limitations period for civil RICO actions within their jurisdictions,¹⁷⁸ or have suggested that the statute is federal in nature and that the better approach would be to apply the nearest analogous federal statute,¹⁷⁹ a more definite approach is needed.¹⁸⁰

Clearly, RICO is a federal statute with the distinctly federal purpose of eliminating organized crime.¹⁸¹ Congress' intent in enacting RICO was to provide an additional remedy to supplement existing state and federal provisions.¹⁸²

In light of the real and potential inequities in the present limitations scheme¹⁸³ and of the federal character of RICO,¹⁸⁴ Con-

Hoosier Cardinal Corp., 383 U.S. 696, 705 n.8 (1966). Other unsettled questions which inevitably will be presented involve the situation in which the predicate acts occur at one time, but the RICO injury occurs many years later. Should the limitations period begin to run at the time of the commission of the final predicate act and possibly bar a civil RICO claim prior to the RICO injury? Shall the limitations period run from the occurrence of the RICO injury? Moreover, the present rule permits a court, in its discretion, to utilize the statute of limitations to support the judge's substantive view of civil RICO.

178. See *supra* notes 148-55 and accompanying text.

179. See *supra* notes 156-65 and accompanying text.

180. See *infra* notes 201-07 and accompanying text.

181. Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922, 923 (1970) (Statement of Findings and Purpose).

182. *Id.* See generally Pub. L. No. 91-452, 1970 U.S. CODE CONG. & AD. NEWS 4007-91. The fact that RICO has a distinctly federal purpose is supported by the fact that several states have enacted their own racketeering statutes. See, e.g., ARIZ. REV. STAT. ANN. §§ 13-2301 to 13-2316 (1978 & West Supp. 1984-85); CAL. PENAL CODE §§ 186-186.8 (West Supp. 1984); COLO. REV. STAT. §§ 18-17-101 to 18-17-109 (Supp. 1983); CONN. GEN. STAT. §§ 53-393 to 53-403 (1983); FLA. STAT. ANN. §§ 895.01-895.08 (Harrison Supp. 1984); GA. CODE ANN. §§ 16-14-1 to 16-14-15 (1984); HAWAII REV. STAT. §§ 842-1 to 842-12 (1976); IDAHO CODE ANN. §§ 18-7801 to 18-7805 (Burns Supp. 1984); ILL. ANN. STAT. ch. 56 1/2, §§ 1651-1660 (Smith-Hurd Supp. 1984-85); IND. CODE ANN. §§ 34-4-30.5-1 to 34-4-30.5-6, 35-45-6-1 to 35-45-6-2 (Burns Supp. 1984); LA. REV. STAT. ANN. §§ 15:1351-1356 (West Supp. 1984); NEV. REV. STAT. §§ 207.350-207.520 (West 1983); N.J. STAT. ANN. §§ 5:12-125 to 5:12-129 (West Supp. 1984-85); N.M. STAT. ANN. §§ 30-42-1 to 30-42-6 (1980); N.D. CENT. CODE §§ 12.1-06.1-01 to 12.1-06.1-08 (Supp. 1983); OR. REV. STAT. §§ 166.715-735 (1981); 18 PA. CONS. STAT. ANN. § 911 (Purdon 1983); P.R. LAWS ANN. tit. 25, §§ 971-971p (1979 & Supp. 1983); R.I. GEN. LAWS §§ 7-15-1 to 7-15-11 (Supp. 1984); TEX. PENAL CODE ANN. §§ 71.01-71.05 (Vernon Supp. 1984); UTAH CODE ANN. §§ 76-10-1601 to 76-10-1608 (Supp. 1983); WIS. STAT. ANN. §§ 946.80-946.87 (West Supp. 1984-85).

183. See *supra* notes 166-77 and accompanying text.

184. See *supra* notes 181-82 and accompanying text.

gress should enact an express statute of limitations.¹⁸⁵ Such a statute would provide potential litigants with a uniform and predictable approach which would result in a more equitable application of RICO.¹⁸⁶

The clearest analogy may be found in criminal RICO¹⁸⁷ actions.¹⁸⁸ Courts considering statute of limitations issues in criminal RICO actions, noting the absence of an express statute of limitations,¹⁸⁹ have uniformly applied the general five-year statute applicable to federal criminal statutes.¹⁹⁰ This uniform application has brought predictability to limitations problems in criminal RICO actions.¹⁹¹

For instance, in *United States v. Forsythe*,¹⁹² the court held that federal law, not state law, governed the period of limitations applicable to criminal RICO actions.¹⁹³ Specifically, given the absence

185. For instance, in the area of antitrust law, Congress has enacted an express four-year statute of limitations.

Any action to enforce any cause of action under sections 15, 15a, or 15c or this title shall be forever barred unless commenced within four years after the cause of action accrued. No cause of action barred under existing law on the effective date of this Act shall be revived by this Act.

15 U.S.C. § 15b (1976).

Prior to the enactment of 15 U.S.C. § 15b, courts had looked to an analogous state action and applied its limitations period. *Compare* *Englander Motors, Inc. v. Ford Motor Co.*, 293 F.2d 802 (6th Cir. 1961) (six-year state limitations period applied) *with* *North Carolina Theaters, Inc. v. Thompson*, 277 F.2d 673 (4th Cir. 1960) (one-year state limitations period applied). The enactment of 15 U.S.C. § 15b provides that all actions brought under the antitrust statutes will be governed by a uniform four-year limitations period.

186. A single federal statute of limitations for RICO will combine 1) the benefits of those courts applying uniform state limitations periods to all RICO claims within their jurisdiction (*see supra* notes 148-55 and accompanying text) and 2) the federal nature of RICO (*see supra* notes 156-65 and accompanying text).

187. 18 U.S.C. § 1963 (1982). For the text of this statute, see *supra* note 3.

188. *See, e.g.*, *United States v. Licavoli*, 725 F.2d 1040 (6th Cir.), *cert. denied*, 104 S. Ct. 3535 (1984); *United States v. Bethea*, 672 F.2d 407 (5th Cir. 1982); *United States v. Forsythe*, 560 F.2d 1127 (3d Cir. 1977); *United States v. Boffa*, 513 F. Supp. 444 (D. Del. 1980); *United States v. Mazzio*, 501 F. Supp. 340 (E.D. Pa. 1980), *aff'd*, 681 F.2d 810 (3d Cir.), *cert. denied*, 457 U.S. 1134 (1982).

189. *Betha*, 672 F.2d at 419; *Boffa*, 513 F. Supp. at 479.

190. 18 U.S.C. § 3282 (1982). Section 3282 provides: "Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed." *Id.*

191. Unlike civil RICO actions decided to date, where the applicable statute of limitations may and do differ, in criminal RICO cases courts consistently have applied the general five-year statute of limitations. *See supra* note 188.

192. 560 F.2d 1127 (3d Cir. 1977).

193. *Id.* at 1134.

of an express statute of limitations in RICO, the court should apply the five-year general criminal statute of limitations to criminal RICO actions.¹⁹⁴ The statute begins to run at the commission of the final predicate act which constitutes the RICO violation.¹⁹⁵ Therefore, at trial, a jury must find that at least one of the predicate acts occurred within five years of the date of the indictment.¹⁹⁶ It is irrelevant that the state limitations period for the state crime chargeable as a predicate offense had run, because federal law controls.¹⁹⁷ "The reference to state law in the [RICO] statute is simply to define the wrongful conduct, and is not meant to incorporate state procedural law."¹⁹⁸ In short, in criminal RICO cases, the state statute of limitations is "simply irrelevant."¹⁹⁹ Furthermore, RICO was designed not to eradicate predicate state violations, but rather "to punish the impact on commerce caused by conduct which meets the statute's definition of racketeering activity."²⁰⁰

Congress should enact a uniform statute of limitations for civil RICO actions.²⁰¹ A uniform statute of limitations, like the five-year statute applied in criminal cases, would best protect the interests of the litigants²⁰² as well as provide predictability in civil RICO cases.²⁰³ If Congress fails to adopt such a limitations provision, courts should consider those cases which have applied the exception to the Supreme Court rule.²⁰⁴ In light of these cases, courts should not hesitate to look to the federal provision applied in criminal RICO cases,²⁰⁵

194. *Id.*

195. *Bethea*, 672 F.2d at 419. "The statute of limitations runs from the date of the last act of racketeering activity alleged in the indictment and proved at trial." *Id.*

196. *Id.*

197. *See Licavoli*, 725 F.2d at 1046-47.

198. *Id.* at 1047.

199. *Mazzio*, 501 F. Supp. at 343.

200. *Forsythe*, 560 F.2d at 1135; *see also Boffa*, 513 F. Supp. at 479.

201. *See Note, Civil RICO: The Temptation and Impropriety of Judicial Restriction*, 95 HARV. L. REV. 1101 (1982).

202. Consequently, the general purpose of statutes of limitations would be best fulfilled. That is, limitations periods are enforced in order to protect the litigants and to prevent any impairment of "the accuracy of the factfinding process." *Board of Regents v. Tomanio*, 446 U.S. 478, 487 (1980).

203. The same uniform approach which applies to criminal RICO would prevent the present inconsistencies and potentially confusing legal problems. *See supra* notes 166-77.

204. *See supra* notes 117-32 and accompanying text for a discussion of cases which have adopted the exception to the Supreme Court rule and have applied an analogous federal limitations period.

205. 18 U.S.C. § 3282 (1982). *See supra* note 190 for text of this statute.

which is consistent with RICO's legislative purpose,²⁰⁶ and apply it to civil RICO actions.²⁰⁷

VI. Conclusion

This Note has examined RICO and its history, emphasizing actions seeking RICO's civil remedies. This Note has explored RICO's problems and has stressed the inequities which surround courts' present applications of limitations provisions to civil RICO actions. To avoid these inequities, a uniform statute of limitations for civil RICO claims should be adopted to provide needed uniformity and predictability.

Michael J. Lane

206. See *supra* notes 42-56 and accompanying text for a discussion of RICO's legislative history.

207. The adoption of the statute of limitations applied in criminal RICO actions would lend the same uniformity to civil RICO actions which criminal RICO actions now possess. See generally *supra* notes 188-200 and accompanying text for a discussion of criminal RICO cases which have uniformly applied a five-year statute of limitations.

