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AN INTRODUCTION TO RICO

Joseph C. Sweeney*

In October of this year, I will have been an admiralty lawyer and proctor in admiralty for thirty years, and I have witnessed the conservative attitude of the maritime bar on many issues. For instance, most of you are familiar with the Lloyd's hull policy with respect to ships; the same form of hull policy has been used consistently from the seventeenth century to well into the twentieth century. It can hardly be said that the developments of the last 300 years have not precipitated a need to change the wording of the hull policy. The conservative attitude of the maritime bar is similarly evident in charter parties, where many clauses are deliberately ambiguous. Admiralty lawyers prefer to leave them ambiguous rather than change them to more closely address the problems that the clauses were designed to handle.

The Limitation of Liability Statute of the United States serves as an excellent illustration of the maritime bar's inertia.¹ The Act was drafted in 1851, and poorly drafted at that. Almost 140 years has passed and no one has seen fit to make the Act any more comprehensible. The Act was amended in 1886² and we are still trying to ascertain what the amendments were all about. Besides the addition of the Sirovich Amendments of 1935³ and 1936,⁴ the only other change occurred two years ago when Congress increased the amount of the fund for personal injury and death cases from \$60 per ton to \$420 per ton.⁵ Except for these amendments, the original statute remains substantially intact.

Despite the conservative attitude of our profession, it now occurs to the maritime bar that perhaps a piece of legislation passed in 1970 may speak to the maritime fraud problem. The legislation is, of course, "RICO" - the Racketeer Influenced and Corrupt Organiza-

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1. Limitation of Liability Act, 46 U.S.C. §§ 183-189 (1982).

2. Act of June 19, 1886, ch. 421, § 4, 24 Stat. 80 (codified at 46 U.S.C. § 188 (1982)).

3. Act of Aug. 29, 1935, ch. 804, § 3, 49 Stat. 960 (codified at 46 U.S.C. § 183 (1982)).

4. Act of June 5, 1936, ch. 521, § 3, 49 Stat. 1479 (codified at 46 U.S.C. § 183 (1982)).

5. Act of Oct. 19, 1984, § 213(a), 98 Stat. 2306 (codified at 46 U.S.C. § 183 (1982)).

tions Act.⁶ Maritime fraud has always had a connection with the docks, yet it is not limited to blue collar crime. The maritime industry has always had lightly capitalized companies that might defraud the unwary, whether in good times or bad times. The current distressed state of the maritime industry has aggravated matters, however, and RICO may prove to be an amenable solution.

One problem that has plagued the maritime industry for years is maritime fraud in the physical movement of maritime bills of lading. A modern solution to this problem is to keep the bill of lading at a single location and let all transactions proceed by telex. The withdrawal of Chase Manhattan Bank from the SeaDocs system in January 1987, however, indicates that this solution will not be a viable option. Consequently, we are still faced with the possibility of considerable fraud in maritime bills of lading.

Until the United States Supreme Court handed down its decision in *Sedima, S.P.R.L. v. Imrex Co.*,⁷ many practitioners viewed RICO's broad application as an aberration. My colleague, Mr. Douglas Abrams, has published an important article on *Sedima* in which he notes that the Supreme Court has construed the RICO statute as not limiting the classes of litigants that can bring a RICO suit.⁸ While the broad language Congress used in RICO caused some doubt as to the statute's constitutionality, *Sedima* suggests that those doubts can be set to rest.

On January 15, 1969, Senate Bill 30, also known as the Organized Crime Control Act, was introduced to the Ninety-first Congress. The statute was approved by the Senate and the House⁹ and signed into law by President Nixon on October 15, 1970. Title IX of that Act contains the RICO provisions. The civil RICO provisions of interest to the maritime bar were the work of Senator Roman L. Hruska of Nebraska.¹⁰

It is interesting to note that Congress's consideration of the Organ-

6. 18 U.S.C. §§ 1961-1968 (1982 & Supp. IV 1986).

7. 473 U.S. 479 (1985).

8. Abrams, *The Place of Procedural Control in Determining Who May Sue or Be Sued: Lessons in Statutory Interpretation from Civil RICO and Sedima*, 38 VAND. L. REV. 1477 (1985).

9. Congressmen William F. Ryan, Abner J. Mikva, and John Conyers, Jr., dissented to the House Committee Report, describing Title IX as legislation "run [] amuck. It employs penalties and investigative procedures which are both abusive and pregnant with the potential for abuse." 1970 U.S. CODE CONG. & ADMIN. NEWS (91 Stat.) 4081.

10. For a discussion of RICO's origins, see Blakey, *The RICO Civil Fraud Action in Context: Reflections on Bennett v. Berg*, 58 NOTRE DAME L. REV. 237, 249-80 (1982).

ized Crime Control Act coincided with a period of extreme violence in this country and the world. The national euphoria of the previous summer incited by the lunar landing had evaporated in the face of opposition to the government policy in Vietnam. That opposition, at times, was ugly. On May 4, 1970, four students were killed at Kent State University by the Ohio National Guard. This event disrupted campuses throughout the summer, and continued with an orgy of recrimination and protest in response to the activities of the government in Cambodia and Vietnam. That summer of violence was closely followed by international terrorism when four aircraft were hijacked in Europe that September by the "Black September Movement" of Palestinians. Violence was no doubt on the mind of the Judiciary Committee as it considered the Organized Crime Control Act during that fateful summer of 1970.

A few words about the substantive provisions of the statute are in order. It is important to note that the context in which RICO has been enacted is decidedly criminal, an area where plaintiffs' lawyers seldom trespass. Furthermore, it is hornbook law that any judicial construction of criminal statutes should be rigorous.

RICO is one part of the complex bill entitled the "Organized Crime Control Act of 1970."¹¹ Title IX of that statute contains both criminal and civil RICO provisions. As described in the House Report, the threefold purpose of RICO is:

- (1) making unlawful the receipt or use of income from "racketeering activity" or its proceeds by a principal in commission of the activity to acquire an interest in or establish an enterprise engaged in interstate commerce; (2) prohibiting the acquisition of any enterprise engaged in interstate commerce through a "pattern" of "racketeering activity," and (3) proscribing the operation of any enterprise engaged in interstate commerce through a "pattern" of "racketeering activity."¹²

The legislative history behind civil RICO indicates that it was meant as a civil remedy for the criminal violations already provided for in section 1962. Civil RICO is intended to assist in the reform of corrupted organizations. It does this by permitting the courts to require performance bonds by those who deal with corrupted organi-

11. Pub. L. No. 9-452, 84 Stat. 922 (codified as amended in various sections of 18 U.S.C. (1982 & Supp. IV 1986).

12. 1970 U.S. CODE CONG. & ADMIN. NEWS (91 Stat.) 4010.

zations, permitting treble damages for any person injured in his business or property by reason of a criminal violation of RICO, and allowing the collateral estoppel doctrine to be applied in favor of the government in civil proceedings after a successful criminal prosecution.

The legislation had something for everybody. For some, RICO provides a tool well suited for union bashing; it did seem that corrupt unions were the target of the bill. For others, it put the federal government into the business of prosecuting organized crime, something which J. Edgar Hoover had been resisting for many years. This was the context in which civil RICO was enacted. It is surrounded by, and identified with, the criminal law. Undoubtedly, this racketeering stigma will influence the frequency and character of RICO suits brought by the maritime bar.