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NOTE

CIVIL RICO: THE PROPRIETY OF CONCURRENT STATE COURT SUBJECT MATTER JURISDICTION

INTRODUCTION

To combat the growing problem of organized crime,¹ Congress enacted the Racketeer Influenced and Corrupt Organizations Act ("RICO")² in 1970. In addition to criminal³ and civil remedies given to the government, the act creates a private treble-damages cause of action ("civil RICO").⁴ When it enacted civil RICO, Congress provided for original subject matter jurisdiction in the United States district courts.⁵ The lawmakers, however, failed to specify whether this jurisdiction was exclusive or whether it was concurrent with state courts.⁶

Most recently, in *Gulf Offshore Co. v. Mobil Oil Corp.*,⁷ the Supreme Court has provided the framework for determining the effect of congressional failure to specify the nature of district court subject matter jurisdiction.⁸ Federal and state courts, however, remain sharply divided on the precise question whether RICO establishes exclusive federal subject matter jurisdiction over civil RICO claims.⁹

1. See *infra* note 11 and accompanying text.

2. The Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-1968 (1982 & Supp. IV 1986), was enacted as Title IX of the twelve-title Organized Crime Control Act of 1970. Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922 (1970) (codified as amended in scattered sections of titles 18 and 28 U.S.C. (1982 & Supp. III 1985)).

3. See 18 U.S.C. § 1963(a) (1982 & Supp. IV 1986) (providing for fines of up to \$25,000 and twenty years imprisonment, as well as forfeiture).

4. See 18 U.S.C. § 1964(c) (1982). Section 1964(c) states: "Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." *Id.* For a discussion of § 1962 violations, see *infra* note 14 and accompanying text.

The cause of action created by § 1964(c) has been called "civil RICO" by most courts and commentators. See, e.g., *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 500 (1985); *Bankers Trust v. Rhoades*, 741 F.2d 511, 518 (2d Cir. 1984), *aff'd sub nom. American Nat'l Bank & Trust Co. v. Haroco, Inc.*, 473 U.S. 606 (1985).

5. See 18 U.S.C. § 1964(c) (1982) ("Any person injured . . . by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court . . ."); see also *infra* note 61 and accompanying text.

6. See *supra* note 5.

7. 453 U.S. 473 (1981).

8. See *infra* notes 34-53 and accompanying text.

9. As of this writing, at least twenty-two published opinions have addressed the issue of whether civil RICO jurisdiction is exclusive or concurrent. See *Lou v. Belzberg*, 834 F.2d 730 (9th Cir. 1987), *cert. denied*, 108 S. Ct. 1302 (1988); *Brandenburg v. First Maryland Sav. & Loan*, 660 F. Supp. 717 (D. Md. 1987); *Contemporary Servs. Corp. v. Universal City Studios, Inc.*, 655 F. Supp. 885 (C.D. Cal. 1987); *Village Improvement Ass'n v. Dow Chem. Co.*, 655 F. Supp. 311 (E.D. Pa. 1987); *Spence v. Flynt*, 647 F. Supp. 1266 (D. Wyo. 1986); *Broadway v. San Antonio Shoe, Inc.*, 643 F. Supp. 584 (S.D. Tex. 1986); *Massey v. City of Oklahoma City*, 643 F. Supp. 81 (W.D. Okla. 1986); *Carman v. First*

This Note argues that the act should be interpreted to authorize concurrent jurisdiction. Part I discusses civil RICO and its legislative history. Part II examines *Gulf Offshore Co. v. Mobil Oil Corp.*¹⁰ and the criteria that the court's decision establishes for determining whether subject matter jurisdiction is exclusive or concurrent. Part III explains how the *Gulf Offshore* criteria apply to civil RICO. This Note concludes that when applied to civil RICO, the *Gulf Offshore* factors do not rebut the presumption of concurrent jurisdiction that generally applies when a statute is silent on the question.

I. CIVIL RICO

Enacted to undermine the economic base of organized crime,¹¹ civil

Nat'l Bank, 642 F. Supp. 862 (W.D. Ky. 1986); *Matek v. Murat*, 638 F. Supp. 775 (C.D. Cal. 1986), *aff'd*, No. 86-6292 (9th Cir. Nov. 25, 1988) (LEXIS, Genfed library, USAPP file); *HMK Corp. v. Walsey*, 637 F. Supp. 710 (E.D. Va. 1986), *aff'd on other grounds*, 828 F.2d 1071 (4th Cir. 1987), *cert. denied*, 108 S. Ct. 706 (1988); *Karel v. Kroner*, 635 F. Supp. 725 (N.D. Ill. 1986); *Kinsey v. Nestor Exploration, Ltd.*, 604 F. Supp. 1365 (E.D. Wash. 1985); *Chas. Kurz Co. v. Lombardi*, 595 F. Supp. 373 (E.D. Pa. 1984); *Cianci v. Superior Court*, 40 Cal. 3d 903, 710 P.2d 375, 221 Cal. Rptr. 575 (1985); *Levinson v. American Accident Reins. Group*, 503 A.2d 632 (Del. Ch. 1985); *Washington Courte Condominium Assoc.-Four v. Washington-Golf Corp.*, 150 Ill. App. 3d 681, 501 N.E.2d 1290 (1986); *Thrall Car Mfg. Co. v. Lindquist*, 145 Ill. App. 3d 712, 495 N.E.2d 1132 (1986); *Maplewood Bank & Trust Co. v. Acorn, Inc.*, 207 N.J. Super. 590, 504 A.2d 819 (1985); *Simpson Elec. Corp. v. Leucadia, Inc.*, No. 220, slip. op. at 1 (N.Y. Ct. App. Oct. 25, 1988); *Belfont Sales Corp. v. Gruen Indus. Inc.*, 112 A.D.2d 96, 491 N.Y.S.2d 652 (1st Dep't 1985); *Greenview Trading Co. v. Hershman & Leicher, P.C.*, 108 A.D.2d 468, 489 N.Y.S.2d 502 (1st Dep't 1985); *Main Rusk Assocs. v. Interior Space Constructors, Inc.*, 699 S.W.2d 305 (Tex. Ct. App. 1985).

Of these twenty-two cases, fourteen have applied the *Gulf Offshore* test. Seven of the fourteen have found jurisdiction to rest exclusively in the federal courts. See *Spence*, 647 F. Supp. at 1270; *Broadway*, 643 F. Supp. at 586-87; *Kinsey*, 604 F. Supp. at 1371; *Levinson*, 503 A.2d at 635; *Washington Courte Condominium Assoc.-Four*, 150 Ill. App. 3d at 690-91, 501 N.E.2d at 1296; *Maplewood Bank & Trust Co.*, 207 N.J. Super. at 594 n.2, 504 A.2d at 821 n.2; *Main Rusk Assocs.*, 699 S.W.2d at 307.

Seven of the fourteen have found jurisdiction to be concurrent. See *Belzberg*, 834 F.2d at 737; *Brandenburg*, 660 F. Supp. at 732; *Contemporary Servs. Corp.*, 655 F. Supp. at 893; *HMK Corp.*, 637 F. Supp. at 717; *Karel*, 635 F. Supp. at 731; *Cianci*, 40 Cal. 3d at 916, 710 P.2d at 382, 221 Cal. Rptr. at 581; *Simpson Elec.*, No. 220, slip op. at 2.

10. 453 U.S. 473 (1981)

11. In enacting RICO Congress stated:

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.

Organized Crime Control Act of 1970, Pub. L. No. 91-452, tit. IX, 84 Stat. 922, 922-23 (1970) (codified as amended at 18 U.S.C. §§ 1961-68 (1982 & Supp. IV 1986)) (Statement of Findings and Purposes).

Characterizing organized crime as a "vulture," Congress considered legislation to prevent the infiltration of legitimate business by organized crime as early as 1965. See S. Rep. No. 617, 91st Cong., 1st Sess. 76 (1969); 111 Cong. Rec. 4277 (1965). See also *Organized Crime Control, Hearings on S. 30 and Related Proposals Before Subcomm. No. 5 of the House Comm. on the Judiciary*, 91st Cong., 2d Sess. 106 (1970) (statement of Sen.

RICO provides a powerful weapon against individuals who have gained an unfair competitive or financial advantage over legitimate businesses by engaging in racketeering activity.¹² RICO's private cause of action authorizes plaintiffs to sue and recover treble damages, costs and reasonable attorneys' fees from defendants¹³ who have engaged in a pattern of racketeering activity in violation of the statute.¹⁴

McClellan) (Title IX is designed to prevent organized criminals from infiltrating legitimate commercial enterprises.); 116 Cong. Rec. 35,295 (1970) (statement of Rep. Poff) (Title IX holds promise of solving the serious problem of infiltration of racketeers into legitimate business); 116 Cong. Rec. 35,295 (1970) (statement of Rep. Poff) (most alarming aspect of organized crime is its continual infestation into legitimate business). During the debates preceding RICO's enactment, the following businesses were noted to have been infiltrated by organized crime: advertising, appliances, basketball, baking, ball-rooms, cigarette distribution, florists, juke boxes and oil. See *Organized Crime Control Act of 1969*, S. Rep. No. 617, 91st Cong., 1st Sess. 76, 76-78 (1969).

For a comprehensive discussion of RICO's legislative history, see Report of the Ad Hoc Civil RICO Task Force of the ABA Section of Corporation, Banking and Business Law 70-126 (1985) [hereinafter ABA Report]; Blakey, *The RICO Civil Fraud Action In Context: Reflections on Bennett v. Berg*, 58 Notre Dame L. Rev. 237, 249-80 (1982); Lynch, *RICO: The Crime of Being A Criminal, Parts I & II*, 87 Colum. L. Rev. 661, 664-713 (1987).

12. Senator McClellan, in advocating adoption of RICO, described four methods by which racketeers acquire control of legitimate businesses: "(1) investing concealed profits acquired from gambling and other illegal activities; (2) accepting business interests in payment of the owner's gambling debts; (3) foreclosing on usurious loans and (4) using various forms of extortion." 115 Cong. Rec. 9567 (1969) (statement of Sen. McClellan); see also *Organized Crime Control, Hearings on S.30 and Related Proposals Before Subcomm. No. 5 of the House Judiciary Comm.*, 91st Cong., 2d Sess. 409-10 (1970) (testimony of Sen. McClellan); 115 Cong. Rec. 5872-75 (1969) (describing and depicting structure and activities of organized crime groups). For a discussion of the mechanics of civil RICO, see *infra* note 14 and accompanying text.

13. See 18 U.S.C. § 1964(c) (1982). Most courts have found that civil RICO does not authorize equitable relief. See, e.g., *Religious Technology Center v. Wollersheim*, 796 F.2d 1076 (9th Cir. 1986), cert. denied, 479 U.S. 1103 (1987). Other courts have concluded that private RICO plaintiffs may seek equitable relief. See, e.g., *Chambers Dev. Co. v. Browning-Ferris Indus.*, 590 F. Supp. 1528, 1541 (W.D. Pa. 1984). See generally P. Batista, *Civil RICO Practice Manual* 169-71 (1987); D. Smith & T. Reed, *Civil RICO* 10-4 to 10-9 (1987).

14. Section 1964(c)'s private remedy is triggered by a violation of § 1962, which forbids four types of conduct: using or investing any income derived from a pattern of racketeering activity to establish, operate or acquire an interest in any enterprise engaged in, or affecting, interstate commerce, see 18 U.S.C. § 1962(a) (1982); acquiring or maintaining an interest in any enterprise through a pattern of racketeering activity, or the collection of an unlawful debt, see 18 U.S.C. § 1962(b) (1982), participating or conducting either directly or indirectly the affairs of an enterprise engaged in or affecting, interstate commerce through a pattern of racketeering activity or the collection of an unlawful debt, see 18 U.S.C. § 1964(c) (1982), or conspiring to violate any of these provisions, see 18 U.S.C. § 1962(d) (1982).

An enterprise is defined by § 1961 as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4) (1982).

Furthermore, according to § 1961, a person engages in racketeering when he commits any act "chargeable" under several described state laws, any act "indictable" under specific enumerated federal criminal provisions, including the mail and wire fraud statutes,

Civil RICO went largely unnoticed for almost a decade.¹⁵ Recently, however, civil RICO has "stirred a storm of controversy."¹⁶ Thanks to broad judicial interpretation of this act,¹⁷ a wide range of plaintiffs now commonly assert civil RICO claims¹⁸ in almost any fraud action.¹⁹

securities fraud, or drug related activity that is "punishable" under federal law. See 18 U.S.C. § 1961(1) (1982 & Supp. IV 1986).

Section 1961(5) further requires that at least two of the above offenses or "predicate acts" must have been committed within a ten year period to constitute a "pattern of racketeering activity." 18 U.S.C. § 1961(5) (1982). Mail and wire fraud are frequently alleged predicate acts. See *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479 (1985) (quoting ABA Report, *supra* note 11, at 55). The issue of what constitutes a "pattern" of racketeering activity has caused a tremendous degree of controversy in the courts. The Supreme Court has granted certiorari in order to resolve the disagreement concerning § 1961's pattern requirement. See *H.J., Inc. v. Northwestern Bell Tel. Co.*, 829 F.2d 648 (1987), *cert. granted*, 108 S. Ct. 1219 (1988). For a discussion of the pattern requirement problem, see Note, *The Civil RICO Pattern Requirement: Continuity and Relationship, A Fatal Attraction?*, 56 Fordham L. Rev. 955 (1988).

15. Although Congress enacted RICO on October 15, 1970, the first reported judicial opinion encountering the statute did not appear until three years later, and did not even consider the civil aspects of RICO. See *United States v. Amato*, 367 F. Supp. 547 (S.D.N.Y. 1973) (applying criminal RICO); *Lynch, supra* note 11, at 695-97 (discussing early RICO cases). In fact, throughout the 1970s, federal district courts decided only nine civil RICO cases. See ABA Report, *supra* note 11, at 55; see also *Abrams, Civil RICO's Cause of Action: The Landscape After Sedima*, 12 Tul. Mar. L.J. 19, 21 (1987) (arguing that attorneys overlooked RICO in the early years largely because it is codified in title 18, a title not usually looked to for civil remedies); *Blakey & Gettings, Racketeer Influenced And Corrupt Organizations (RICO): Basic Concepts-Criminal And Civil Remedies*, 53 Temp. L.Q. 1009, 1048 (1980) (offering no explanation).

16. *Bankers Trust Co. v. Rhoades*, 741 F.2d 511, 518 (2d Cir. 1984) (Cardamone, J., dissenting), *vacated sub nom. American Nat'l Bank & Trust Co. v. Haroco, Inc.*, 473 U.S. 606 (1985).

More than any other cause of action "enacted by Congress in the past generation, civil RICO has been plagued by unanticipated consequences." *Abrams, supra* note 15, at 20. The Supreme Court, in *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479 (1985), while discussing civil RICO for the first time, acknowledged that "RICO is evolving into something quite different from the original conception of its enactors." *Id.* at 500. RICO's enactors probably did not envision the many problems caused by its draftsmanship. See *Lynch, supra* note 11, at 661.

17. See *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 526 (1985) (Powell, J., dissenting). The Supreme Court has encouraged broad interpretation of the RICO statute by determining that civil RICO's extensive use against non-racketeer defendants is "inherent in the statute as written," *id.* at 499, because Congress included a liberal construction clause in the RICO statute. See *id.* at 497-98; *accord United States v. Turkette*, 452 U.S. 576, 587-89 & n.11 (construing RICO's statement of purpose and legislative history to require broad reading). See also *infra* notes 85-87 and accompanying text.

18. By late 1981, plaintiffs began to discover RICO and its "potential breadth." *Abrams, supra* note 15, at 22. Since then the number of civil RICO actions filed has risen sharply: of the 270 pre-1985 district court civil RICO decisions, 3 percent (9 cases) were decided throughout the 1970s, 2 percent (6 cases) were decided in 1980, 7 percent (19 cases) were decided in 1981, 13 percent (35 cases) were decided in 1982, 33 percent (90 cases) were decided in 1983, and 43 percent (116 cases) were decided in 1984. See ABA Report, *supra* note 11, at 55.

19. See *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 499 (1985) (civil RICO has become a "tool for everyday fraud cases brought against respected and legitimate enterprises" instead of being used against mobsters and similar organized crime figures). Mail and wire fraud constitute predicate acts which can combine to create criminal and civil

In enacting civil RICO, Congress apparently never anticipated the judicial controversy that would arise over whether federal courts exercise exclusive jurisdiction over civil RICO actions.²⁰ Whenever Congress establishes a new cause of action, it has the option of giving the federal courts exclusive jurisdiction. If Congress does not expressly limit jurisdiction to the federal courts, jurisdiction is presumed to be shared concurrently between federal and state courts.²¹ While section 1964(c) of Title 18 endows the United States district courts with original jurisdiction over civil RICO claims,²² neither section 1964(c) nor any other civil RICO provision explicitly establishes exclusive federal subject matter jurisdiction over civil suits arising under Title IX.²³ Consequently, courts disagree about whether jurisdiction rests exclusively in the federal judiciary.²⁴

Indeed, it is not surprising that Congress overlooked the question of civil RICO subject matter jurisdiction; the civil RICO cause of action was not even included in the pending legislation until the lawmakers' final deliberations.²⁵ The legislative history of civil RICO reveals that nearly all the cursory attention paid to the private civil aspects of the RICO statute focused on whether to provide a private action at all.²⁶ Despite three years of Senate deliberations concerning the RICO statute, the Senate's final version did not include a private cause of action.²⁷

RICO liability. *See supra* note 14 and accompanying text. Because two predicate acts are required to constitute a pattern of racketeering activity, two fraudulent uses of the wires or mail would potentially violate RICO. *See id.* Thus, it is not difficult to allege a RICO violation against figures other than mobsters. *See Sedima*, 473 U.S. at 499.

20. Congress never even addressed the issue of jurisdiction during its consideration of civil RICO. *See Simpson Elec. Corp. v. Leucadia, Inc.*, No. 220, slip op. at 7 (N.Y. Ct. App. October 25, 1988); *see also infra* notes 25-32 and accompanying text.

21. *See infra* notes 35-36, 41-44 and accompanying text. The Constitution empowers Congress to establish the scope of jurisdiction in the lower courts. *See* U.S. Const. art. III, § 1 ("The judicial power of the United States, shall be . . . in such inferior Courts as the Congress may . . . establish."). Congress clearly has the authority to limit jurisdiction over federal law to the federal courts if it so desires. *See Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 479 n.5 (1981); *see also infra* note 36 and accompanying text.

22. 18 U.S.C. § 1964(c) (1982) ("Any person injured . . . by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court").

23. Organized Crime Control Act of 1970, Pub. L. No. 91-452, tit. IX, 84 Stat. 922 (1970) (codified as amended at 18 U.S.C. §§ 1961-68 (1982 & Supp. IV 1986)); *see e.g.*, *Lou v. Belzberg*, 834 F.2d 730, 736 (9th Cir. 1987), *cert. denied*, 108 S. Ct. 1302 (1988); *Karel v. Kroner*, 635 F. Supp. 725, 731 (N.D. Ill. 1986); *Cianci v. Superior Court*, 40 Cal. 3d 903, 916, 710 P.2d 375, 380-82, 221 Cal. Rptr. 575, 579-82 (1985); *Simpson Elec. Corp. v. Leucadia, Inc.*, No. 220, slip op. at 6 (N.Y. Ct. App. October 25, 1988); *see also Abrams, supra* note 15, at 25 n.33.

24. *See supra* note 9 and accompanying text.

25. *Hearings on S. 30 and Related Proposals Before Subcommittee No. 5 of the House Comm. on the Judiciary*, 91st Cong., 2d Sess. 520 (1970).

26. *See Karel*, 635 F. Supp. at 730; *Cianci*, 40 Cal. 3d at 912, 710 P.2d at 379, 221 Cal. Rptr. at 579.

27. The Senate's final version, Senate Bill 30, was similar to the RICO statute as it was ultimately enacted. *See* S. 30, 91st Cong., 1st Sess. (1969); 115 Cong. Rec. 769 (1969); T. Smith & D. Reed, *supra* note 13, ¶ 10.02 at 10-6. Earlier versions of the Senate

Consequently, the only civil remedy provided in the Senate version of RICO was an injunctive remedy now incorporated into section 1964(a), (b) and (d).²⁸

It was not until the Senate bill was sent to the House and was before the Senate Judiciary Committee, that Congress incorporated a treble-damage action similar to the private remedy found in the antitrust laws into the RICO statute.²⁹ The House Judiciary Committee finally included a separate cause of action in its legislation because it thought that the civil remedies available under the antitrust laws were inadequate to provide a proper remedy to businessmen whose businesses had been destroyed by racketeers.³⁰

When the House Judiciary Committee reported the amended bill to the House on October 12, 1970, the Committee did not even mention its addition of the private cause of action.³¹ The Senate decided to forego a conference and discussion of the House changes, and simply concurred with the House version.³² President Nixon signed RICO into law three

bill had "provided for a private treble damages action in exactly the terms ultimately adopted in § 1964(c)," *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 487 (1985), but that provision was "omitted . . . without explanation." T. Smith & D. Reed *supra* note 13, ¶ 10.02 at 10-6; *see also* S. 1623, 91st Cong., 1st Sess. § 4(a) (1969); S. 2048 and S. 2049, 90th Cong., 1st Sess. (1967). Professor Blakey, a principal drafter of the RICO statute, stated that a private right of action was deliberately omitted from the Senate version in order to "streamline" the bill and to "sidestep a variety of complex legal issues, as well as possible political problems," which a private cause of action might raise. Blakey & Gettings, *supra* note 15, at 1017-18 (1980).

28. *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 486-87 (1984); *see also* S. 1623, 91st Cong., 1st Sess. § 4(a) 1969; ABA Report, *supra* note 11, at 88 n.105; Blakey, *supra* note 11 at 262 n.71; Blakey & Gettings, *supra* note 15, at 1017-18 n.46 (1980).

29. *Hearings on S. 30 and Related Proposals Before Subcommittee No. 5 of the House Committee on the Judiciary*, 91st Cong., 2d Sess. 520 (1970). The American Bar Association, which had called for an amendment "based upon the concept of section 4 of the Antitrust Act," also supported a private right of action. *See id.*; Report of the Antitrust Section of the American Bar Association on S. 2043 and S. 2049 (1968), reprinted in *Organized Crime Control Act of 1969*, S. Rep. No. 617, 91st Cong., 1st Sess. 76, 559 (1969); H.R. 9327, 91st Cong., 1st Sess. (1969); 116 Cong. Rec. 25,190-25,191 (1970).

30. *See* 115 Cong. Rec. 6993 (1969) (statements of Sen. Hruska). Thus, rather than simply letting the courts apply existing antitrust provisions against RICO defendants, the House promulgated a new statute. *See id.*

It appears that at least some members of Congress had doubts about the language and scope of the new private cause of action because some members attempted to clarify the newly created private cause of action in the committee discussions. While in committee, an amendment establishing penalties for malicious treble damages actions was proposed but defeated. *See* 116 Cong. Rec. 35342 (1970). In addition, an amendment to clarify aspects of § 1964(c) was offered, but later was withdrawn because the entire bill was "being processed under an informal agreement among Judiciary Committee members to oppose all floor amendments." Blakey & Gettings, *supra* note 15, at 1020 n.67. In light of the fact that defeat of the amendment was inevitable, it was withdrawn to avoid creating an unfavorable legislative history. *See id.*

31. *See* 116 Cong. Rec. 35,197-35,198 (1970) (remarks of Congressman McCulloch) (McCulloch indicated that "about fifty changes" were made from the Senate bill but did not even mention the addition of the private cause of action).

32. The Senate seemingly decided to forego a conference and any discussion of the

days later.³³

II. *GULF OFFSHORE CO. V. MOBIL OIL CORP.*

In *Gulf Offshore Co. v. Mobil Oil Corp.*, the Supreme Court addressed the issue of congressional silence concerning jurisdiction over civil RICO claims in general and articulated the analysis that should govern the issue.³⁴ The Supreme Court reiterated the general principle established over a century ago that state courts possess jurisdiction over cases "arising under the Constitution, laws and treaties of the United States"³⁵ unless Congress expressly limits this jurisdiction.³⁶ In *Gulf Offshore*, the Court also identified criteria to guide lower courts in determining whether the presumption of shared subject matter jurisdiction is rebutted in situations in which a statute is silent concerning state court jurisdiction.³⁷ Any effort to resolve the jurisdictional issue in civil RICO, therefore, requires application of the *Gulf Offshore* analysis to the RICO statute.³⁸

In *Gulf Offshore*, the question of exclusive subject matter jurisdiction dealt with personal injury and indemnity cases arising under the Outer Continental Shelf Lands Act ("OCSLA").³⁹ Like section 1964(c) of RICO, OCSLA grants original subject matter jurisdiction to federal district courts, but is silent concerning whether state courts also have jurisdiction to hear claims arising under the statute.⁴⁰ The Supreme court affirmed the lower court's finding of concurrent jurisdiction.

In analyzing OCSLA, the Supreme Court first noted that, in the ab-

House changes because of the approaching end of the 1970 session and the upcoming elections. See 116 Cong. Rec. 36,280-36,296 (1970).

33. The President had indicated his support for the use of antitrust provisions against organized crime earlier, so his signature just three days later, on October 15, 1970, was not surprising. See Special Message to the Congress on a Program to Combat Organized Crime in America, 1969 Pub. Papers 315, 320-21 (April 23, 1969).

34. 453 U.S. 473, 477-78 (1980).

35. U.S. Const. art. III, § 2.

36. See *Gulf Offshore*, 453 U.S. at 477-78; *California v. Arizona*, 440 U.S. 59, 66-67 (1979); *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502, 507-08 (1962); *Claffin v. Houseman*, 93 U.S. (3 Otto) 130, 136-37 (1876).

37. See *Gulf Offshore*, 453 U.S. at 477-78.

38. See *id.*; *infra* notes 50-53 and accompanying text.

39. Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331-56 (1982 & Supp. III. 1986); see *Gulf Offshore*, 453 U.S. at 478-83, in which plaintiff brought suit against Mobil Oil Corporation for personal injuries sustained during an attempt to evacuate crewmen from an offshore drilling platform during a hurricane. See *id.* at 473. Plaintiff commenced his action in Texas state court alleging negligence. See *id.* at 476. The trial and appellate courts rejected *Gulf Offshore's* argument that the state court lacked subject matter jurisdiction to hear the action because the OCSLA vested exclusive subject matter jurisdiction in the United States district courts. The Supreme Court affirmed the lower court's decision. *Id.* at 478-84.

40. Compare 43 U.S.C. § 1349(b)(1) (1982) ("the district courts of the United States shall have jurisdiction of cases and controversies . . . arising under this subchapter") with 18 U.S.C. § 1964(c) (1982) ("[a]ny person injured . . . may sue therefor in any appropriate United States district court . . .").

sence of express statutory language to the contrary, a strong presumption exists that jurisdiction over federal claims is shared concurrently by federal and state courts.⁴¹ This presumption is based on the doctrine of federalism and its influence upon the relationship between the states and federal government.⁴² State and federal governments exercise concurrent sovereignty, although the Constitution limits the states' powers and requires them to recognize federal law as paramount.⁴³ If Congress does not confer exclusive subject matter jurisdiction in the federal courts to hear a particular federal claim, "the state courts stand ready to vindicate the federal right, subject always to review, of course, in [the Supreme] Court."⁴⁴ The presumption of concurrent jurisdiction can be overcome only by a strong showing that exclusive jurisdiction is necessary.⁴⁵

The Court, however, also acknowledged that the existence of any one of three factors may rebut the presumption of concurrent jurisdiction:⁴⁶ an explicit statutory directive,⁴⁷ an unmistakable implication from legislative history,⁴⁸ or a clear incompatibility between state court jurisdiction and federal interests.⁴⁹

The Supreme Court has suggested that the factors enumerated in *Gulf Offshore* provide the sole test for resolving a controversy concerning the existence of exclusive federal subject matter jurisdiction.⁵⁰ Thus, the *Gulf Offshore* analysis has been applied to jurisdictional aspects of other statutes where Congress has failed to specify whether original subject matter jurisdiction is exclusive or concurrent.⁵¹ The criteria set forth in

41. See *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 477-78 (1981).

42. See *id.* at 478 (citing The Federalist No. 82 (Hamilton)).

43. See *Gulf Offshore*, 453 U.S. at 478. The Constitution establishes the supremacy of federal law: "This Constitution, and the Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby" U.S. Const. art. VI, cl. 2.

44. *Gulf Offshore*, 453 U.S. at 478 n.4 (citing *Martin v. Hunter's Lessee*, 1 Wheat. 304, 346-48 (1816)).

45. See *id.* at 478-79.

46. See *id.* at 478.

47. See *id.*; see also *infra* notes 58-63 and accompanying text.

48. See *id.* at 478; see also *infra* notes 64-98 and accompanying text.

49. See *id.* at 478; see *infra* notes 101-33 and accompanying text.

50. See *Hathorn v. Lovorn*, 457 U.S. 255, 266 (1982).

51. See, e.g., *Hathorn v. Lovorn*, 457 U.S. 255, 267-69 (1982) (*Gulf Offshore* standard applied to Voting Rights Act, 42 U.S.C. § 1923 (1982)); *Lane v. Central Bank of Alabama N.A.*, 756 F.2d 814, 816-17 (11th Cir. 1985) (*Gulf Offshore* rule applied to Bank Holding Company Act, 12 U.S.C. § 1975 (1982)). The statutory language of the Bank Holding Company Act to which the Eleventh Circuit applied the *Gulf Offshore* standard in *Lane*, 756 F.2d at 817, is similar to the language of civil RICO. Compare 12 U.S.C. § 1975 (1982) ("Any person who is injured in his business or property by reason of anything forbidden in section 1972 of this title may sue therefor in any district court of the United States . . . [and] recover three times the amount of damages sustained by him, and the cost of suit, including a reasonable attorney's fee.") with 18 U.S.C. § 1964(c) (1982) ("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").

Gulf Offshore assist in evaluating the need for exclusive jurisdiction,⁵² and have been applied in the majority of cases addressing the civil RICO jurisdiction issue.⁵³

III. APPLICATION OF THE *GULF OFFSHORE* FACTORS

Analysis of RICO demonstrates that the presumption of concurrent jurisdiction is not rebutted under the *Gulf Offshore* test.⁵⁴ First, section 1964(c) contains no explicit statutory directive providing for exclusive subject matter jurisdiction over civil RICO claims.⁵⁵ Moreover, because Congress never addressed the issue of subject matter jurisdiction when enacting RICO, the legislative history supplies no "unmistakable implication" that Congress intended to prohibit civil RICO litigation in state forums.⁵⁶ Finally, the arguments suggesting conflicts between federal interests and state court adjudication are insufficient to establish a "clear incompatibility" of interests.⁵⁷

A. *Express Statutory Directive*

In determining whether subject matter jurisdiction over federal claims is exclusive or concurrent, *Gulf Offshore* first directs courts to inquire whether the statute itself contains an express jurisdictional directive.⁵⁸ This directive comports with the general principle of statutory construction that a court, when construing a statute, must look first to the express statutory language.⁵⁹ RICO contains no express language about subject

52. See *Simpson Elec. Corp. v. Leucadia, Inc.*, No. 220, slip op. at 9 (N.Y. Ct. App. Oct. 25, 1988); see also Redish & Muench, *Adjudication of Federal Causes of Action in State Court*, 75 Mich. L. Rev. 311, 329-35 (1980) (providing the factors adopted by the *Gulf Offshore* court).

53. See *supra* note 9 and accompanying text. Despite the clear applicability of *Gulf Offshore*, several courts addressing the issue of jurisdiction for civil RICO have failed to apply the *Gulf Offshore* analysis at all, contributing to the confusion that now exists. See *Village Improvement Ass'n v. Dow Chem. Co.*, 655 F. Supp. 311, 313 (E.D. Pa. 1987) (concurrent jurisdiction); *Massey v. City of Oklahoma City*, 643 F. Supp. 81, 84 (W.D. Okla. 1986) (exclusive federal jurisdiction); *Carman v. First Nat'l Bank*, 642 F. Supp. 862, 864 (W.D. Ky. 1986) (concurrent); *Matek v. Murat*, 638 F. Supp. 775, 783 n.6 (C.D. Cal. 1986) (concurrent); *Chas. Kurz Co. v. Lombardi*, 595 F. Supp. 373, 381 n.11 (E.D. Pa. 1984) (concurrent); *Thrall Car Mfg. Co. v. Lindquist*, 145 Ill. App. 3d 712, 718, 495 N.E.2d 1132, 1136 (1986) (exclusive federal); *Maplewood Bank & Trust Co. v. Acorn, Inc.*, 207 N.J. Super. 590, 594, 504 A.2d 819, 821 (1985) (same); *Belfont Sales Corp. v. Gruen Indus.*, 112 A.D.2d 96, 100, 491 N.Y.S.2d 652, 655 (1st Dep't 1985) (same); *Greenview Trading Co. v. Hershman & Leicher P.C.*, 108 A.D.2d 468, 473, 489 N.Y.S.2d 502, 506 (1st Dep't 1985) (same). These courts do not provide any reasoning for their decision not to follow the *Gulf Offshore* analysis.

54. See *infra* text accompanying notes 58-130.

55. See *infra* text accompanying notes 58-63.

56. See *infra* text accompanying notes 64-96.

57. See *infra* text accompanying notes 101-30.

58. See *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 478 (1981).

59. See, e.g., *United States v. Turkette*, 452 U.S. 576, 580 (1981) ("In determining the scope of a statute, we look first to its language."); *Lewis v. United States*, 445 U.S. 55, 60

matter jurisdiction.⁶⁰ Although the statute authorizes suit to be brought in "any appropriate United States district court,"⁶¹ this alone does not establish exclusive jurisdiction.⁶² Thus, the statute does not directly rebut the presumption of concurrent jurisdiction.⁶³

B. *Indications From Legislative History*

The presumption of concurrent jurisdiction can be rebutted by an "unmistakable implication from legislative history" that Congress intended jurisdiction over civil RICO claims to be exclusively federal.⁶⁴ An examination of the legislative history, however, provides no evidence that Congress ever considered the question of subject matter jurisdiction.⁶⁵ Quite the contrary, while Congress vigorously debated the criminal aspects of RICO, it focused little attention on the civil aspects of the statute.⁶⁶ Because Congress never addressed the jurisdictional issue, courts are "not at liberty to amend [civil RICO] . . . to provide for circumstances that Congress has overlooked."⁶⁷

(1980) (the starting point to ascertain legislative intent is the language of the statute itself).

60. *See, e.g.*, *Lou v. Belzberg*, 834 F.2d 730, 736 (9th Cir. 1987), *cert. denied*, 108 S. Ct. 1302 (1988); *Karel v. Kroner*, 635 F. Supp. 725, 731 (N.D. Ill. 1986); *Cianci v. Superior Court*, 40 Cal. 3d 903, 916, 710 P.2d 375, 382, 221 Cal. Rptr. 575, 581-82 (1985); *Simpson Elec. Corp. v. Leucadia, Inc.*, No. 220, slip op. at 6 (N.Y. Ct. App. October 25, 1988); *Abrams*, *supra* note 15, at 25 & n.33.

61. 18 U.S.C. § 1964(c) (1982).

62. *See Gulf Offshore Co.*, 453 U.S. at 479 ("It is black letter law . . . that the mere grant of jurisdiction to a federal court does not operate to oust a state court from concurrent jurisdiction over the cause of action."); *Charles Dowd Box Co. Inc., v. Courtney*, 368 U.S. 502, 506 (1962); *United States v. Bank of New York & Trust Co.*, 296 U.S. 463, 479 (1936). In the *Charles Dowd* case, the Court interpreted the Labor Management Relations Act, 29 U.S.C. § 185(a), which states in relevant part that "[s]uits may be brought in any district court of the United States . . ." to grant jurisdiction to the federal courts, but held that it "does not state nor even suggest that such jurisdiction shall be exclusive." *Id.* at 506.

63. *Broadway v. San Antonio Shoe, Inc.*, 643 F. Supp. 584, 587 (S.D. Tex. 1986); *see Lou v. Belzberg*, 834 F.2d 730, 736 (9th Cir. 1987), *cert. denied*, 108 S. Ct. 1302 (1988); *Brandenburg v. First Maryland Sav. & Loan, Inc.*, 660 F. Supp. 717, 731 (D. Md. 1987); *Contemporary Servs. Corp. v. Universal City Studios*, 655 F. Supp. 885, 893 (C.D. Cal. 1987); *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); *Karel v. Kroner*, 635 F. Supp. 725, 731 (N.D. Ill. 1986); *Cianci v. Superior Court*, 40 Cal. 3d 903, 907-08, 710 P.2d 375, 377-79, 221 Cal. Rptr. 575, 579 (1985).

64. *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 478 (1981).

65. *See, e.g.*, *Lou v. Belzberg*, 834 F.2d 730, 736 (9th Cir. 1987), *cert. denied*, 108 S. Ct. 1302 (1988); *Brandenburg v. First Maryland Sav. & Loan, Inc.*, 660 F. Supp. 717, 731 (D. Md. 1987). Even Professor Blakey, who served as Chief Counsel of the Senate Subcommittee on Criminal Laws and Procedure and who was a principal draftsman and proponent of RICO, admits that Congress did not consider the issue. *See Flaherty, Two States Lay Claim to Rico*, Nat'l L.J., May 7, 1984, at 10, col. 2 (quoting Professor Blakey).

66. *See, e.g.*, *Karel v. Kroner*, 635 F. Supp. 725, 730 (N.D. Ill. 1986); *Cianci v. Superior Court*, 40 Cal. 3d 903, 710 P.2d 375, 221 Cal. Rptr. 575 (1985); *see also supra* notes 25-33 and accompanying text.

67. *Lou v. Belzberg*, 834 F.2d 730, 736 n.4 (9th Cir. 1987); *accord Cianci v. Superior*

Despite this evidence, several courts have found an implication of congressional intent to vest exclusive jurisdiction over civil RICO claims in the federal courts.⁶⁸ These courts infer congressional intent from the fact that Congress purposefully modeled section 1964(c)⁶⁹ after section 4 of the Clayton Act,⁷⁰ which has been judicially construed to require exclusive federal subject matter jurisdiction.⁷¹

Court, 40 Cal. 3d 903, 916, 710 P.2d 375, 382, 221 Cal. Rptr. 575, 581-82 (1985). The Supreme Court has issued a similar caution in another context: "[i]n ascertaining the meaning of a statute, a court cannot, in the manner of Sherlock Holmes, pursue the theory of the dog that did not bark." *Harrison v. PPG Indus.*, 446 U.S. 578, 592 (1980) (analyzing § 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1) (Supp. II 1976)). For a discussion of the effect of judicial interpretation on civil RICO, see generally Blakey, *supra* note 11, at 248 n.33 (When construing RICO, courts have "unfortunately and improperly read the absence of *specific* legislative history on a particular point to negate the *general* language of the statute.") (emphasis in original); Note, *RICO: Are the Courts Construing the Legislative History Rather Than the Statute Itself?*, 55 *Notre Dame Lawyer* 777 (1980).

Moreover, Congress has not indicated any interest in clarifying the jurisdiction issue. In the most recent session, hearings were held on three bills to amend various provisions of civil RICO. None addressed subject matter jurisdiction. *See* H.R. 3240, 100th Cong., 1st Sess. (introduced Sept. 9, 1987); H.R. 2983, 100th Cong., 1st Sess. (introduced July 22, 1987); S. 1523, 100th Cong., 1st Sess. (introduced June 23, 1987). For a recent discussion of the proposed RICO amendments, see Strasser, *Prosecutors, Private Bar Find New Uses for RICO*, Nat'l L.J., Sept. 28, 1987, at 18.

68. *See* *Spence v. Flynt*, 647 F. Supp. 1266, 1270 (D. Wyo. 1986); *Massey v. City of Oklahoma City*, 643 F. Supp. 81, 84 (W.D. Okla. 1986); *Levinson v. American Accident Reins. Group*, 503 A.2d 632, 635 (Del. Ch. 1985); *Washington Courte Condominium Assoc.-Four v. Washington-Golf Corp.*, 150 Ill. App. 3d. 681, 690-91, 501 N.E.2d 1290, 1296-97 (1986); *Ambassador Office Equip., Inc. v. Gallagher*, Nos. 84-2050, 84-2912 (Ill. Ct. App. Feb. 6, 1986) (LEXIS, States library, Ill file); *Maplewood Bank & Trust Co. v. Acorn, Inc.*, 207 N.J. Super. 590, 592-93, 504 A.2d 819, 820-21 (1985); *Greenview Trading Co. v. Hershman & Leicher, P.C.*, 108 A.D.2d 468, 470, 489 N.Y.S.2d 502, 504-05 (1st Dep't 1985); *Main Rusk Assocs. v. Interior Space Constructors, Inc.*, 699 S.W.2d 305, 306-07 (Tex. App. 1985).

69. 18 U.S.C. § 1964(c) (1982).

70. Clayton Act, ch. 323, § 4, 38 Stat. 731 (1914) (codified as amended at 15 U.S.C. § 15 (1982)) (providing private treble damages cause of action for injuries arising out of antitrust law violations). *See* *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 487 (1986); *Hearings on S. 30, and Related Proposals Before Subcomm. No. 5 of the House Comm. on the Judiciary*, 91st Cong., 2d Sess. 520 (1970) (statement of Rep. Steiger) (proposing the addition of a private treble damages action similar to the private damage remedy found in the antitrust laws); 115 Cong. Rec. 6993 (1969) (remarks of Sen. Hruska) (section 1964(c) provides another example of the antitrust remedy being adopted for use against organized crime); *id.* (remarks of Sen. Hruska) ("[Section 1964(c)] is innovative in the sense that it vitalizes procedures which have been tried and proven in the antitrust field and applies them into the organized crime field where they have been seldom used before."); *compare* 15 U.S.C. § 15 (1982) ("[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 . . .") *with* 18 U.S.C. § 1964(c) (1982) ("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.").

71. It has long been recognized that § 4 of the Clayton Act grants federal courts exclusive subject matter jurisdiction over claims under the statute. *See, e.g., Vendo Co. v.*

Although section 1964(c) is generally patterned after section 4 of the Clayton Act,⁷² it does not necessarily follow that Congress must have intended that the private RICO action also require exclusive federal subject matter jurisdiction.⁷³ First, the policies underlying the Clayton Act differ fundamentally from those of civil RICO.⁷⁴ The antitrust laws aim to promote economic competition through market efficiency.⁷⁵ In contrast, civil RICO addresses the harm suffered by individual businesses as a result of interference by racketeers.⁷⁶ Its purpose is to "inflict severe economic injury on violators and perhaps to destroy them."⁷⁷ Because civil RICO's primary objective is to strip racketeers of their financial power rather than to achieve market efficiency,⁷⁸ civil RICO should protect the plaintiff injured competitively by a corrupt business, even at the cost of market efficiency.⁷⁹

Second, the "mere borrowing of statutory language does not imply that Congress also intended to incorporate all of the baggage that may be

Lektro-Vend Corp., 433 U.S. 623 (1977); *Blumenstock Bros. Advertising Agency v. Curtis Publishing Co.*, 252 U.S. 436, 440 (1920).

72. See *supra* notes 69-71 and accompanying text.

73. See *Lou v. Belzberg*, 834 F.2d 730, 737 (9th Cir. 1987), *cert. denied*, 108 S. Ct. 1302 (1988); *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), *Cianci v. Superior Court*, 40 Cal. 3d 903, 916, 710 P.2d 375, 382, 221 Cal. Rptr. 575, 581-82 (1985); *Simpson Elec. Corp. v. Leucadia, Inc.*, No. 220, slip op. at 7, (N.Y. Ct. App. Oct. 25, 1988). Nor is there any evidence that by adopting the Clayton Act as a model, "[l]egislators must have known" that § 4 vests exclusive jurisdiction in the federal courts, thereby rendering it "anomalous . . . to hold that the jurisdictional grant in the RICO statute did anything other than create exclusive federal jurisdiction." *Belzberg*, 834 F.2d at 736 (quoting *County of Cook v. Midcon Corp.*, 574 F. Supp. 902, 912 (N.D. Ill. 1983), *aff'd on other grounds*, 773 F.2d 892 (7th Cir. 1985)).

74. See, e.g., *Furman v. Cirrito*, 741 F.2d 524, 532 (2d Cir. 1984), *vacated*, 473 U.S. 922 (1985); *Cenco Inc. v. Seidman & Seidman*, 686 F.2d 449, 457 (7th Cir.), *cert. denied*, 459 U.S. 880 (1982); *Bennett v. Berg*, 685 F.2d 1053, 1059 (8th Cir. 1982), *aff'd in part and rev'd in part on other grounds*, 710 F.2d 1361 (8th Cir.) (en banc), *cert. denied*, 464 U.S. 1008 (1983); *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, 1513 (1985).

75. See, e.g., *National Soc'y of Professional Eng'rs v. United States*, 435 U.S. 679, 695 (1978) (antitrust laws reflects a legislative judgment that free competition is "the best method of allocating resources in a free market"); *Northern Pac. Ry. v. United States*, 356 U.S. 1, 4 (1958) (antitrust laws were "designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade").

76. See *supra* notes 14-15 and accompanying text.

77. *Abrams, supra* note 74, at 1512. For example, contrary to RICO's liberal construction mandate, standing in antitrust cases is strictly restricted to "confine treble damages to extreme situations and to avoid ruining violators and reducing market place competition." *Furman v. Cirrito*, 741 F.2d 524, 532 (2d Cir. 1984), *aff'd*, 473 U.S. 922 (1985).

78. See *supra* notes 74-77 and accompanying text.

79. See *Simpson Elec. Corp. v. Leucadia, Inc.*, No. 220, slip op. at 1 (N.Y. Ct. App. Oct. 25, 1988); see also *Abrams, supra* note 74, at 1513; Note, *Civil RICO: The Temptation and Impropriety of Judicial Restriction*, 95 Harv. L. Rev. 1101, 1113-14 (1982).

attached to the borrowed language.”⁸⁰ In fact, the Supreme Court in *Sedima, S.P.R.L. v. Imrex Co.*⁸¹ rejected the argument that the relationship between section 1964(c)⁸² and section 4 of the Clayton Act⁸³ warranted the application of antitrust standing requirements to section 1964(c).⁸⁴

Moreover, Congress expressly included a broad purpose clause in RICO to ensure that the act is “liberally construed to effectuate its remedial purposes.”⁸⁵ The Supreme Court has found that “if Congress’ liberal construction mandate is to be applied anywhere, it is in § 1964, where RICO’s remedial purposes are most evident.”⁸⁶ Therefore, courts should not frustrate these remedial purposes by compelling a civil RICO plaintiff to bring his suit in federal court, even though he may prefer a state forum.⁸⁷

Even if courts construe the connection between the Clayton Act and civil RICO as proof that Congress envisioned RICO suits only in federal courts,⁸⁸ this argument is insufficient to rebut the presumption of concur-

80. *Lou v. Belzberg*, 834 F.2d 730, 737 (9th Cir. 1987), *cert. denied*, 108 S. Ct. 1302 (1988).

81. 473 U.S. 479 (1985).

82. 18 U.S.C. § 1964(c) (1982).

83. 15 U.S.C. § 15 (1964).

84. *See Sedima*, 473 U.S. at 498-99. The Court, in rejecting the lower courts’ application of the complex and stricter antitrust standing requirements to § 1964(c), stated that “[i]n borrowing its racketeering injury requirement from antitrust standing principles, the court below created exactly the problems Congress sought to avoid,” in rejecting the strict and complex standing requirements. *Id.* Moreover, Senator McClellan, a principal sponsor of the legislation, stated that he had “no intention . . . of importing the great complexity of antitrust law enforcement into civil RICO.” 115 Cong. Rec. 9567 (1969) (comments of Sen. McClellan).

Although *Sedima* involved standing under civil RICO, rather than jurisdiction, its holding has been applied to the jurisdiction issue. *See, e.g., Lou v. Belzberg*, 834 F.2d 730, 737 (9th Cir. 1987), *cert. denied*, 108 S. Ct. 1302 (1988); *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); *Simpson Elec. Corp. v. Leucadia, Inc.*, No. 220, slip op. at 7 (N.Y. Ct. App. Oct. 25, 1988).

85. *See* Pub. L. No. 91-452, § 904(a), 84 Stat. 941, 947 (1970). For an analysis of the history and rationale of the liberal construction clause, *see* Note, *RICO and the Liberal Construction Clause*, 66 Cornell L. Rev. 167 (1980).

86. *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 491-92 & n.10 (1985).

87. *See, e.g., Lou v. Belzberg*, 834 F.2d 730, 737 (9th Cir. 1987) (the liberal construction requirement “strongly counsels” against reading the obstacle of exclusive jurisdiction into 18 U.S.C. § 1964(c) (1982)) (quoting *Cianci v. Superior Court*, 40 Cal. 3d 903, 913, 710 P.2d 375, 379, 221 Cal. Rptr. 575, 579 (1985)), *cert. denied*, 108 S. Ct. 1302 (1988); *Simpson Elec. Corp. v. Leucadia, Inc.*, No. 220, slip op. at 10-11 (N.Y. Ct. App. Oct. 25, 1988) (exclusive federal jurisdiction would thwart remedial purposes of the civil RICO statute).

Indeed, in urging creation of a statute distinct from the Clayton Act, the American Bar Association stressed that “the use of antitrust laws themselves as a vehicle for combating organized crime could create inappropriate and unnecessary obstacles in the way of persons injured by organized crime.” 115 Cong. Rec. 6995 (1969). Such obstacles include the strict standing and proximate cause requirements that exist in antitrust law. *See Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 498 (1985).

88. *See supra* notes 71-79 and accompanying text.

rent jurisdiction. To rebut this presumption, the party claiming exclusivity must also produce evidence of an "unmistakable implication"⁸⁹ that Congress intended to prohibit state litigation, not that Congress merely assumed that the litigation would be exclusively federal.⁹⁰ In light of the "clanging silence"⁹¹ surrounding the jurisdiction question, there can be no implication, much less an "unmistakable implication"⁹² of exclusive jurisdiction.⁹³

Proponents of exclusive jurisdiction also rely upon Professor Blakey's suggestion that "courts can infer from the statute that if Congress had thought about it they would have made jurisdiction exclusive."⁹⁴ As the New York Court of Appeals has aptly pointed out, Professor Blakey's "after the-fact opinion is insufficient to rebut the presumption of concurrent jurisdiction."⁹⁵ The text of civil RICO and its legislative history make it clear that Congress did not address the issue.⁹⁶

C. Clear Incompatibility

Even where there is no express statutory directive⁹⁷ or clear legislative intent,⁹⁸ a showing of "clear incompatibility between state court jurisdiction and federal interests" rebuts the presumption of concurrent jurisdiction.⁹⁹ Factors indicating clear incompatibility include "the desirability of uniform interpretation, the expertise of federal judges in federal law, and the assumed greater hospitality of federal courts to peculiarly federal claims."¹⁰⁰

89. *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 478 (1981), *cert. denied*, 459 U.S. 945 (1988).

90. *See Karel v. Kroner*, 635 F. Supp. 725, 731 (N.D. Ill. 1986).

91. *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 507 (1985) (Marshall, J., dissenting).

92. *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 478 (1981), *cert. denied*, 459 U.S. 945 (1982).

93. *Lou v. Belzberg*, 834 F.2d 730, 736 n.4 (9th Cir. 1987), *cert. denied*, 108 S. Ct. 1302 (1988); *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); *Cianci v. Superior Court*, 40 Cal. 3d 903, 916, 710 P.2d 375, 382, 221 Cal. Rptr. 575, 581-82 (1985).

94. Flaherty, *supra* note 65, at 10, col. 2 (quoting Professor Blakey). In support of his assertion, Professor Blakey points to the exclusive jurisdiction of the Clayton Act, which served as a model for § 1964(c). *See id.* Some courts have relied on Professor Blakey's comments. *See, e.g., Washington Courte Condominium Assoc.-Four v. Washington-Golf Corp.*, 150 Ill. App. 3d 681, 690-91, 501 N.E.2d 1290, 1297 (1986); *Greenview Trading Co. v. Herscham & Leicher, P.C.*, 108 A.D.2d 468, 472, 489 N.Y.S.2d 502, 505-06 (1st Dep't 1985).

95. *Simpson Elec. Corp. v. Leucadia, Inc.*, No. 220, slip op. at 7 (N.Y. Ct. App. October 25, 1988); *see also Cianci v. Superior Court*, 40 Cal. 3d 903, 914 n.3, 710 P.2d 375, 380 n.3, 221 Cal. Rptr. 575, 580 n.3 (1985).

96. *See supra* notes 25-33, 65-67 and accompanying text.

97. *See supra* notes 58-63 and accompanying text.

98. *See supra* notes 64-96 and accompanying text.

99. *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 478 (1981), *cert. denied*, 459 U.S. 945 (1982).

100. *Id.* at 483-84 (citing Redish & Muench, *supra* note 52, at 329-35).

1. Uniform Interpretation

Proponents of exclusive jurisdiction argue that because RICO was enacted to attack a national problem—organized crime—and because the statute establishes a comprehensive criminal enforcement scheme, uniformity will be promoted only by exclusive federal jurisdiction.¹⁰¹ These arguments are unpersuasive for several reasons. First, although Congress enacted civil RICO to fight the national problem of organized crime,¹⁰² Congressional legislation usually combats national problems and state court jurisdiction is not necessarily incompatible with this goal.¹⁰³ If the mere “national character of a problem necessarily required uniformity, there could never be a presumption of concurrent jurisdiction.”¹⁰⁴ In most instances, the very character of the statute would suffice to rebut the presumption.¹⁰⁵

Furthermore, decisions calling for uniform interpretation erroneously assert that this goal can only be achieved by exclusive jurisdiction because several acts that are predicate offenses for RICO purposes are also violations of federal law.¹⁰⁶ These decisions fail to note, however, that the predicate offenses set forth in section 1961¹⁰⁷ also include violations of state criminal laws, thereby incorporating both federal and state law into RICO.¹⁰⁸

In addition, while Congress provided for exclusively federal subject

101. See, e.g., *Spence v. Flynt*, 647 F. Supp. 1266, 1270 (D. Wyo. 1986); *Levinson v. American Accident Reins. Group*, 503 A.2d 632, 635 (Del. Ch. 1985); see also *supra* notes 11-14 and accompanying text (discussing purpose of RICO and its enforcement scheme).

102. See *supra* notes 11-12 and accompanying text.

103. See *Lou v. Belzberg*, 834 F.2d 730, 738 (9th Cir. 1987), *cert. denied*, 108 S. Ct. 1302 (1988); *Matek v. Murat*, 638 F. Supp. 775, 783 n.6 (C.D. Cal. 1986); *Cianci v. Superior Court*, 40 Cal. 3d 903, 915, 710 P.2d 375, 381, 221 Cal. Rptr. 575, 581 (1985).

For example, the Securities Act of 1933 establishes a comprehensive enforcement scheme and nevertheless grants concurrent jurisdiction. See 15 U.S.C. § 77v (1982) (“The district courts of the United States . . . shall have jurisdiction . . . concurrent with State . . . courts . . .”).

104. *Cianci v. Superior Court*, 40 Cal. 3d 903, 915, 710 P.2d 375, 381, 221 Cal. Rptr. 575, 581 (1985).

105. See *id.*

106. See, e.g., *Spence v. Flynt*, 647 F. Supp. 1266 (D. Wyo. 1986); *Broadway v. San Antonio Shoe, Inc.*, 643 F. Supp. 584 (S.D. Tex. 1986); *Kinsey v. Nestor Exploration, Ltd.*, 604 F. Supp. 1365 (E.D. Wash. 1985); *Levinson v. American Accident Reins. Group*, 503 A.2d 632, 635 (Del. Ch. 1985).

107. Section 1961 defines the predicate offenses as including:

(A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, . . . narcotic or other dangerous drugs, which is *chargeable under State law* . . . , (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 1341 (relating to mail fraud) . . . , section 1343 (relating to wire fraud).

18 U.S.C. § 1961(1)(A-B) (1982 & Supp. IV 1986) (emphasis added).

108. See *id.*; *Lou v. Belzberg*, 834 F.2d 730, 735-39 (9th Cir. 1987), *cert. denied*, 108 S. Ct. 1302 (1988); *Cianci v. Superior Court*, 40 Cal. 3d 903, 914-16, 710 P.2d 375, 380-82,

matter jurisdiction over criminal RICO,¹⁰⁹ this does not dictate that civil RICO actions be brought in federal courts as well.¹¹⁰ Separate jurisdictional grants for civil and criminal provisions are not uncommon.¹¹¹ For example, five of the six New Deal federal securities acts authorize private civil actions and provide for concurrent jurisdiction.¹¹² The criminal statute, however, grants exclusive subject matter jurisdiction to the federal courts.¹¹³

Finally, several courts¹¹⁴ have expressed concern that concurrent state court adjudication of civil RICO claims would exacerbate the pervasive disagreement among federal courts over the proper application and interpretation of the Act.¹¹⁵ This fear is unfounded.¹¹⁶ To the contrary, expanding the number of potential forums may assist in resolving some of

221 Cal. Rptr. 575, 580-81 (1985); *Simpson Elec. Corp. v. Leucadia, Inc.*, No. 220, slip op. at 1 (N.Y. Ct. App. Oct. 25, 1988).

109. See 18 U.S.C. § 3231 (1982), which provides that "[t]he district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States."

110. As the Ninth Circuit Court of Appeals has stated, there is "no reason to read the federalized aspects of the statute into section 1964(c)." *Lou v. Belzberg*, 834 F.2d 730, 738 (9th Cir. 1987) (referring to criminal enforcement of RICO by federal officials), *cert. denied*, 108 S. Ct. 1302 (1988); see also *Brandenburg v. First Md. Sav. & Loan*, 660 F. Supp. 717, 733 (D. Md. 1987) (*Sedima* has made it clear that civil RICO is not to be tied closely to the criminal prosecutions); *Cianci v. Superior Court*, 40 Cal. 3d 903, 915, 710 P.2d 375, 381, 221 Cal. Rptr. 575, 581 (1985) (existence of federal criminal enforcement scheme does not mandate exclusive federal jurisdiction over civil actions).

111. See *Hazen, Allocation of Jurisdiction Between the State and Federal Courts for Private Remedies Under the Federal Securities Laws*, 60 N.C.L. Rev. 707, 710 (1982).

112. Public Utility Holding Co. Act of 1935, 15 U.S.C. § 79y (1982); Securities Act of 1933, 15 U.S.C. § 22(a) (1982); Trust Indenture Act of 1939, 15 U.S.C. § 77vvv (1982); Investment Co. Act of 1940, 15 U.S.C. § 80a-43 (1982); Investment Advisors Act of 1940, 15 U.S.C. § 80b-14 (1982).

113. 15 U.S.C. § 78aa (1976) (Securities Exchange Act of 1934).

114. See *Washington Courte Condominium Assoc.-Four v. Washington-Golf Corp.*, 150 Ill. App. 3d 681, 690-91, 501 N.E.2d 1290, 1297 (1986); *Greenview Trading Co. v. Hershman & Leicher, P.C.*, 108 A.D.2d 468, 472-73, 489 N.Y.S.2d 502, 506 (1st Dep't 1985).

115. Civil RICO has spawned a wide variety of inconsistent interpretations concerning several aspects of the statute. See, e.g., *Barticheck v. Fidelity Union Bank*, 832 F.2d 36, 38-39 (3d Cir. 1987) (discussing disagreement regarding pattern requirement); *Wilcox v. First Interstate Bank, N.A.*, 815 F.2d 522, 531-32 (9th Cir. 1987) (discussing controversy concerning appropriate standard of proof for civil RICO claims); *Cullen v. Margiotta*, 811 F.2d 698, 725 (2d Cir.) (discussing disagreement concerning time of accrual of civil RICO claims), *cert. denied*, 107 S. Ct. 3266 (1987); *Morgan v. Bank of Waukegan*, 804 F.2d 970, 977 (7th Cir. 1986) (discussing disagreement concerning whether a RICO enterprise may also be a defendant for the purposes of civil RICO claim), *cert. denied*, 108 S. Ct. 698 (1988); *Religious Technology Center v. Wallersheim*, 796 F.2d 1076, 1081-89 (9th Cir. 1986) (discussing disagreement concerning availability of injunctive relief under civil RICO), *cert. denied*, 107 S. Ct. 1336 (1987); *United States v. Bledsoe*, 674 F.2d 647 (8th Cir.) (discussing disagreement concerning enterprise/pattern distinction), *cert. denied*, 459 U.S. 1040 (1982).

116. The Supreme Court explicitly cautioned that "[t]he fears and doubts of the opposition are no authoritative guide to the construction of legislation." *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 483 (1981) (quoting *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 394 (1951)).

the current disagreement because the increased number of forums would provide a better basis for "considering all sides of an unresolved question."¹¹⁷ In any event, the alleged need for uniformity is not sufficiently strong to rebut the presumption of concurrent jurisdiction.¹¹⁸

2. Expertise of Federal Judges in Federal Law

Proponents of exclusive jurisdiction have claimed that federal judges possess expertise over civil RICO claims superior to that of state judges.¹¹⁹ While federal judges may possess greater expertise in adjudicating federal claims in general, this is not necessarily true in the case of civil RICO.¹²⁰ Many states have enacted "little RICO" statutes that are modeled after federal RICO.¹²¹ Moreover, a significant number of fed-

117. Cover, *The Uses of Jurisdictional Redundancy: Interest, Ideology and Innovation*, 22 Wm. & Mary L. Rev. 639, 675-77 (1966); Hazen, *supra* note 111, at 718; *see also* Lou v. Belzberg, 834 F.2d 730, 738-39 (9th Cir. 1987) ("Providing a private plaintiff with a choice of fora encourage[s] enforcement of RICO and preserves an appropriate role for state courts in cases involving essentially state law."), *cert. denied*, 108 S. Ct. 1302 (1988).

For example, after the California Supreme Court in *Cianci v. Superior Court*, 40 Cal. 3d 903, 710 P.2d 375, 221 Cal. Rptr. 575 (1985), found jurisdiction to be concurrent, the Ninth Circuit Court of Appeals adopted its reasoning and thus ended the disagreement that had previously existed among its district courts. *See* Lou v. Belzberg, 834 F.2d 730, 737 (9th Cir. 1987), *cert. denied*, 108 S. Ct. 1302 (1988).

118. *See, e.g.*, Lou v. Belzberg, 834 F.2d 730 (9th Cir. 1987), *cert. denied*, 108 S. Ct. 1302 (1988); *Brandenberg v. First Md. Sav. & Loan*, 660 F. Supp. 717, 731 (1987); *HMK Corp., v. Walsey*, 637 F.Supp. 710 (E.D. Va. 1986), *aff'd on other grounds*, 828 F.2d 1071 (4th Cir. 1987), *cert. denied*, 108 S. Ct. 706 (1988); *Cianci v. Superior Court*, 40 Cal.3d 903, 710 P.2d 375, 221 Cal. Rptr. 575 (1985); *Simpson Elec. Corp., v. Leucadia, Inc.*, No. 220, slip op. at 13-14 (N.Y. Ct. App. October 25, 1988).

119. *See, e.g.*, *Levinson v. American Accident Reins. Group*, 503 A.2d 632, 635 (Del. Ch. 1985); *Main Rusk Assocs. v. Interior Space Constructors, Inc.*, 699 S.W.2d 305, 306-07 (Tex. Ct. App. 1985).

120. *See* Lou v. Belzberg, 834 F.2d 730 (9th Cir. 1987), *cert. denied*, 108 S. Ct. 1302 (1988). Indeed, the confusion that currently exists in many areas of civil RICO adjudication belies any claim of expertise. *See Simpson Elec. Corp.*, No. 220, slip op. at 13-14; *see also supra* notes 114-15 and accompanying text.

Some courts have even stated that state court adjudication of civil RICO claims will not involve state courts in complex questions of federal law interpretation because in adjudicating a RICO case, courts only need to ascertain whether the alleged predicate offenses occurred. *See, e.g.*, *Belzberg*, 834 F.2d at 738; *HMK Corp.*, 637 F. Supp. at 717. The argument is simplistic, however, in light of the recent disagreement existing, for example, among federal courts as to what constitutes a "pattern of racketeering activity" within the meaning of 18 U.S.C. § 1961 (1982). *See supra* note 14. While the RICO statute is admittedly complex, this Note argues that because state court judges are presumably as intellectually able as federal judges, the complexity of the statute should not preclude state court judges from hearing these actions. *See Simpson Elec. Corp.*, No. 220, slip op. at 14; *see also infra* note 123 and accompanying text.

121. These statutes vary in scope and application, but almost all create private causes of action. *See, e.g.*, *Ariz. Rev. Stat. Ann.* §§ 13-2301 to 13-2317 (1978 & Supp. 1987) (treble damages); *Colo. Rev. Stat. Ann.* §§ 18-17-101 to -109 (1986) (treble damages and injunctive relief); *Del. Code Ann.* tit. 11, §§ 1501-11 (Michie Supp. 1987) (treble and punitive damages); *Ga. Code Ann.* §§ 16-14-1 to 16-14-15 (1988) (treble and punitive damages); *Ind. Code Ann.* §§ 35-45-6-1 to 35-45-6-2, 34-4-30.5-1 to 34-4-30.5-5 (Burns 1983 & Supp. 1987) (treble damages); *N.C. Gen. Stat.* §§ 75D-1 to 75D-14 (Michie 1986) (treble damages). *See generally* *Abrams, supra* note 15, at 24 n.29; *Granelli, Playing For*

eral civil RICO claims are based on asserted violations of state law, such as state fraud claims.¹²² Therefore, since state court judges presumably are at least as expert in adjudicating state law claims as their federal counterparts, no need arises for exclusive federal jurisdiction over these state law claims.¹²³ Furthermore, in assessing whether state court jurisdiction is compatible with federal interests, the Court in *Gulf Offshore* explicitly stated that a claim of exclusive jurisdiction is not supported where the principles governing the underlying claim are "borrowed from state law,"¹²⁴ as is the case with several of the RICO predicate acts.

3. Greater Hospitality of Federal Courts to Peculiarly Federal Claims

The "assumed greater hospitality of federal courts to peculiarly federal claims"¹²⁵ is a factor in determining whether federal courts exercise exclusive subject matter jurisdiction over an area of federal law. The Supreme Court in *Gulf Offshore* has instructed, however, that state judges are not to be deemed unsympathetic to a claim simply "because it is labeled federal, rather than state law."¹²⁶ Indeed, in civil RICO, much evidence suggests that federal courts are not particularly hospitable¹²⁷ to

Keeps with State RICO, Nat'l L.J., July 5, 1982, at 1, col. 4; Siegel, *Arizona Hits Racketeers in the Wallet*, L.A. Times, May 3, 1982, at 1, col. 1.

122. In finding jurisdiction to be concurrent, Judge Williams of the Eastern District of Virginia made these observations:

[A]s a practical matter, state courts are unlikely to find themselves . . . interpreting . . . the underlying federal statutes. The vast majority of RICO cases involve garden variety state law fraud, where the plaintiff has simply seized upon RICO to obtain federal jurisdiction, treble damages, and attorney's fees. If anything, RICO involves federal courts in the adjudication of state law claims, rather than the other way around.

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).

123. *Cianci v. Superior Court*, 40 Cal. 3d 903, 915, 710 P.2d 375, 381, 221 Cal. Rptr. 575, 581 (1985); *Simpson Elec. Corp., v. Leucadia, Inc.*, No. 220, slip op. at 14 (N.Y. Ct. App. Oct. 25, 1988); *see also* Bator, *The State Courts and Federal Constitutional Litigation*, 22 Wm. & Mary L. Rev. 605, 624-29 (1981); Hazen, *supra* note 111, at 732; Rosenberg, *The Qualities of Justices—Are They Strainable?* 44 Tex. L. Rev. 1063, 1066 (1966).

124. *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 484 (1981), *cert. denied*, 459 U.S. 945 (1982). Although not totally borrowed from state law as were the OSCLA claims in *Gulf Offshore*, civil RICO claims often involve application of state common law principles over which state court judges are deemed to possess superior expertise. For example, § 1961 defines the predicate offenses as including: "(A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, . . . narcotic or other dangerous drugs, which is chargeable under State law . . ." *See* 18 U.S.C. § 1961(1)(a-e) (1982 & Supp. IV 1986) (emphasis added); *see also*, *HMK Corp. v. Walsey*, 637 F. Supp. 710, 717 (E.D. Va. 1986) (Because the majority of civil RICO claims involve state fraud, "RICO involves federal courts in the adjudication of state law claims, rather than the other way around."), *aff'd on other grounds*, 828 F.2d 1071 (4th Cir. 1987), *cert. denied*, 108 S. Ct. 706 (1988).

125. *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 484 (1981), *cert. denied*, 459 U.S. 945 (1982).

126. *Id.*

127. *See, e.g.*, *Sutcliffe v. Donovan Cos.*, 727 F.2d 648, 654 (7th Cir. 1984) ("We . . . regret the burdens that the [civil RICO statute] has cast on the federal courts . . .");

the ever growing number of civil RICO claims that clog their dockets and further strain limited judicial resources.¹²⁸ Consequently, it is not surprising that the majority of courts that find jurisdiction to be concurrent are federal courts.¹²⁹ Thus, because no evidence exists to support a claim of greater hospitality on the part of federal courts to civil RICO actions, efficient adjudication of the growing number of such actions should weigh heavily against a hasty, unsupported recommendation of exclusivity.¹³⁰

CONCLUSION

Congress did not address the issue of whether civil RICO subject matter jurisdiction is exclusive or concurrent. In light of this congressional silence, courts should not read exclusivity into the statute to provide for circumstances Congress has overlooked. Concurrent jurisdiction comports with the language of the civil RICO statute, its legislative history and substantive goals. Moreover, concurrent jurisdiction is consistent with Congress' express mandate that civil RICO be construed liberally.

Catherine M. DiDomenico

Schacht v. Brown, 711 F.2d 1343, 1361 (7th Cir.) (en banc) (RICO is a "dramatically expansive and perhaps insufficiently discriminate, tool for combating organized crime."), *cert. denied*, 464 U.S. 1002 (1983); Rojas v. First Bank Nat'l Ass'n, 613 F. Supp. 968, 969 (E.D.N.Y. 1985) (referring to civil RICO cause of action as "the now obligatory civil RICO claim"); Maxwell v. Southwest Nat'l Bank, 593 F. Supp. 250, 255 (D. Kan. 1984) (accepting a narrow reading of civil RICO because it reflected an attempt to "slow the growing burden which civil RICO cases have placed on federal court dockets already laden with backlogs of cases"). Seemingly motivated by the desire to reduce their overflowing dockets, most of the courts finding exclusive federal court subject matter jurisdiction are state courts. See Village Improvement Ass'n v. Dow Chem. Co., 655 F. Supp. 311, 313 (E.D. Pa. 1987) ("Interestingly, it seems that state courts have been more prone than federal courts to conclude that RICO vests jurisdiction . . . exclusively in the federal courts."); see also *supra* note 9.

128. Furthermore, it is clear that the number of civil RICO suits being brought is multiplying rapidly. See *supra* note 18; Batista, *supra* note 13, at 4 ("[A]ny review of the printed advance sheets of federal district and appellate court decisions reveals that the pace of RICO litigation is intensifying, not diminishing.").

129. See *supra* note 9.

130. See *Brandenburg v. First Md. Sav. & Loan*, 660 F. Supp. 717, 730 (D. Md. 1987) (filing of a burdensome number of claims under the statute weigh in favor of concurrent jurisdiction); see also Hazen, *supra* note 111, at 728; Redish & Muench, *supra* note 52, at 334. In fact, the American Law Institute recognized the problem of judicial overcrowding as far back as 1969 and recommended that all actions be freely removable to state court when concurrent jurisdiction exists, and generally disfavored exclusive jurisdiction altogether. See ALI Study of the Division of Jurisdiction Between State and Federal Courts 185-87 (1969). Similarly, concern over crowded federal appellate dockets as early as the 1970s has led to numerous anti-congestion proposals, including the establishment of a national or intermediate court of appeals. See Commission on Review of the Federal Court Appellate System, Structure and Internal Procedures: Recommendations For Change (1975); Federal Judicial Center Report of the Study Group On The Caseload of the Supreme Court (1972).

