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RICO OBSTACLE REMOVED FOR BUSINESS OWNERS

Civil RICO is a powerful cause of action which may be used to protect your interests against the entities which have defrauded you or your business. One bar to its use in Missouri and certain other states was a requirement that you, the plaintiff, relied upon the misrepresentations of the parties which caused you harm. This same requirement, however, did not exist if the same cause of action was filed by the United States Attorneys' office as a criminal matter. This conflict has been resolved by a recent United States Supreme Court decision.

The Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961 – 1968 (“civil RICO”) provides that “[a]ny 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.” As such, it is a powerful piece of legislation.

To bring a lawsuit under civil RICO, a plaintiff must show that a defendant engaged in conduct of an enterprise through a pattern of racketeering activity. A “pattern of racketeering activity” requires at least two predicate acts of racketeering activity occurring within ten years of each other. 18 U.S.C. § 1961(5). Among the predicate acts which are defined as “racketeering activity” the most commonly employed are mail fraud and wire fraud. Simply put, in order to make a claim for mail or wire fraud a plaintiff must prove: (a) a scheme to defraud, (b) intent to defraud, (c) reasonable foreseeability the mails would be used, and (d) use of the mails in furtherance of the scheme.

Certain federal circuits had grafted a requirement of reliance upon the fraudulent scheme or representations upon the injured party. However, after years of hinting that it may do so, the United States Supreme Court has definitively stated otherwise, stating that “a plaintiff asserting a RICO claim predicated on mail fraud need not show . . . that it relied on the defendant's alleged misrepresentations.” *Bridge v. Phoenix Bond & Indemnity Co.*, 128 S.Ct. 2131, 2145, 553 U.S. - (2008).

The Supreme Court’s decision now clearly expands the relief available when a party has been the target of a fraudulent scheme or misrepresentations.

For further discussion, please feel free to contact your Lashly & Baer attorney or [Matthew S. McBride](#) at (314) 621-2939.