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RICO Usage Against Employers for Immigration Misdeeds

The federal Racketeer Influenced and Corrupt Organizations statute (RICO),[1] as its title suggests, is often thought of principally as a powerful weapon used to thwart organized crime takeovers of labor unions and other legitimate businesses.

The U.S. Court of Appeals for the Eleventh Circuit's recent decision in *Williams v. Mohawk Industries, Inc.*,[2] on remand from the U.S. Supreme Court, suggests that RICO may have significant uses for employees suing employers for suppressed wages allegedly caused by violations of federal immigration laws.

In *Williams*, the court of appeals allowed a RICO case to proceed even though the employer was treated in the complaint as both the defendant and part of the statutory "enterprise" (along with third-party recruiters) taken over by the defendant—in other words, the defendant employer was both victim and perpetrator for RICO purposes. Although the Eleventh Circuit opinion decided only whether the plaintiffs' complaint had sufficiently alleged violations of RICO to survive an F.R.Civ. P. Rule 12(b)(6) motion to dismiss, the opinion illustrates some judicial receptivity to a potentially very expansive interpretation of RICO's scope and may open the door to a wide variety of RICO suits against employers, labor unions, and other institutions.

Facts

Mohawk Industries (Mohawk) is the second-largest carpet and rug manufacturer in the United States, with over 30,000 employees.[3] According to plaintiffs' complaint,[4] Mohawk employees, along with third-party recruiters retained by Mohawk (collectively the "recruiters"), travel to the U.S.-Mexico border to recruit illegal aliens and transport them to northern Georgia where Mohawk is located. Mohawk allegedly makes incentive payments to the recruiters for locating the illegal aliens that Mohawk ultimately hires. The plaintiffs also alleged that Mohawk "knowingly or recklessly accepts fraudulent documentation from the illegal aliens," and "has concealed its efforts to hire and harbor illegal aliens by destroying documents and assisting illegal workers in evading detection by law enforcement," including "during law enforcement searches and inspection at Mohawk facilities."[5]

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The plaintiffs, current or former hourly employees, filed a class-action complaint against Mohawk alleging that its hiring and harboring of illegal workers allowed Mohawk to reduce labor costs by depressing wages and discouraging workers-compensation claims, in violation of federal and Georgia state RICO statutes.[6] Mohawk filed a Rule 12(b)(6) motion to dismiss, which the trial court for the U.S. District Court for the Northern District of Georgia denied as to plaintiffs' federal RICO claims. On the defendants' interlocutory appeal under 28 USC §1292(b), the Eleventh Circuit affirmed, holding that plaintiffs had sufficiently alleged violations of the statute to survive a motion to dismiss.[7] Mohawk then successfully sought review in the Supreme Court.[8]

Its principal contention in the Supreme Court was that the complaint should have been dismissed because a corporation could not be part of an "assocat[ion] in fact" separate "enterprise" under RICO §1961(4). After oral argument, the high court dismissed the writ as having been improvidently granted, vacated the Eleventh Circuit's prior decision, and remanded "for further consideration in light of *Anza v. Ideal Steel Supply Corp.*"[9] (discussed below). On remand, the Eleventh Circuit held, in an opinion nearly identical to its prior opinion, that "the district court correctly denied Mohawk's 12(b)(6) motion as it relates to the plaintiffs' federal civil RICO claim."[10]

Following other decisions, the *Williams* court states that a plaintiff's burden of proof in a RICO action consists of four elements: "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity."[11] Although not mentioned by the court, the federal RICO statute also requires proof of a "person" (which can include a corporation) "employed by or associated with [the] enterprise…[who] conduct[s] or participate[s], directly or indirectly, in the conduct of [the] enterprise's affairs through a pattern of racketeering activity…."[12]

A Pattern of Racketeering

The Eleventh Circuit first addressed the third and fourth elements of §1962(c)-(3) through a pattern (4) of racketeering activity—because those elements were "easily met…(at least at the motion-to-dismiss stage)." A pattern of racketeering requires "at least two distinct but related predicate acts,"[13] which includes "any act which is indictable under the Immigration and Nationality Act, §274 (relating to bringing and harboring certain aliens)…."[14] The appeals court noted that plaintiffs' allegations that Mohawk committed "hundreds, even thousands, of violations of

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federal immigration laws" constituted the required pattern and predicate acts.[15]

'Conduct' of an Enterprise

The *Williams* court next addressed whether plaintiffs satisfied the first two elements of §1962(c)-(1) conduct (2) of an enterprise. These elements also require "that the enterprise had a common goal." The statutory definition of "enterprise" under RICO "includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity."[16] The panel reasoned that the Eleventh Circuit "has never required anything other than a 'loose or informal' association of distinct entities" to satisfy the "enterprise" requirement. Plaintiffs' allegations that Mohawk and the recruiters acted in concert to hire the illegal aliens "sufficiently alleged an 'enterprise' under RICO[—]that is an association-in-fact between Mohawk and third-party recruiters."

'Common Goal'

As for a "common goal," the court was satisfied with plaintiffs' allegation that "[t]he recruiters and Mohawk share the common purpose of obtaining illegal workers for employment by Mohawk." The court found it "clear from the complaint… that each member of the enterprise is allegedly reaping a large economic benefit from Mohawk's employment of illegal workers" and the "common purpose of making money was sufficient under RICO."

The Eleventh Circuit acknowledged that its holding regarding a common purpose was in conflict with the U.S. Court of Appeals for the Seventh Circuit's decision in *Baker v. IBP, Inc.*[17] In a factually similar situation,[18] the *Baker* court held that there was no common purpose among the members of an alleged enterprise where "[the employer] wants to pay lower wages; the recruiters want to be paid more for services rendered (though [the employer] would like to pay them less)…. These are divergent goals."[19] The *Williams* court, however, disagreed with this analysis:

> [I]t may often be the case that different members of a RICO enterprise will enjoy different benefits from the commission of predicate acts…all that is required is that the enterprise have a common purpose. In [*Williams*], the complaint allege[d] that… [the defendants] had a common purpose of providing illegal workers to Mohawk so that Mohawk could reduce its labor costs and the recruiters could get paid. This commonality [was] all that [the Eleventh Circuit's] case law require[d].[20]

Requisite Injury

The *Williams* court then went on to address the two additional requirements for a civil RICO action under §1964(c): "(1) the requisite injury to 'business or property,' and (2) that such injury was 'by reason of' the substantive RICO violation."[21] In the panel's view, the plaintiffs sufficiently alleged a business interest affected by Mohawk's alleged RICO violations: "a legal entitlement to business relations unhampered by schemes prohibited by the RICO predicate statutes."[22]

Substantive RICO Violations

The "by reason of" requirement has two distinct but overlapping elements: "(1) a sufficiently direct injury so that a plaintiff has standing to sue; and (2) proximate cause."[23] The Eleventh Circuit analyzed the element of proximate cause under the Supreme Court's recent decision in *Anza* (in light of which the Court remanded the *Williams* case to the Eleventh Circuit), where the Court held that the plaintiff's claim that the defendant's alleged defrauding of the New York state tax authority did not satisfy the element of proximate cause for purposes of §1964(c), because the direct victim of any alleged RICO violation was the state of New York, not the plaintiff. In the Eleventh Circuit's view, "*Anza* makes clear that courts should scrutinize proximate causation at the pleading stage and carefully evaluate whether the injury pleaded was proximately caused by the claimed RICO violations."[24] Under *Anza*, "when a court evaluates a RICO claim for proximate causation, the central question it must ask is whether the alleged violation led directly to the plaintiff's injuries."[25]

Here, the court reasoned that Mohawk's alleged hiring and harboring of illegal workers led directly to the depression of wages in the specific market of northern Georgia. Although Mohawk argued that other factors contribute to plaintiffs' wages, the court found that "plaintiffs persuasively reply that Mohawk's argument ignores that Mohawk's conduct has grossly distorted those normal market forces by employing literally thousands of illegal, undocumented aliens at its manufacturing facilities in north Georgia."[26] The panel also noted the underlying concerns in *Anza* were not present in the instant case: (1) "There [was] no more direct party who could bring suit"; and (2) the "concern about speculative damages, 'intricate, uncertain injuries,' and unwieldy apportionment [were] not implicated" either.[27] The *Williams* court did note, however, that "the plaintiffs' evidence in this case may not ultimately prove the proximate-cause requirement," but alleged "sufficiently direct relation …to withstand Mohawk's motion to dismiss."[28]

Analysis

The *Williams* decision raises several concerns about the federal RICO statute. First, who is a proper RICO defendant, or, rather, what constitutes an enterprise under RICO? As counsel for Mohawk argued before the Supreme Court,

> [T]here are two fairly obvious enterprises that one might have expected plaintiff to identify in …their complaint. The first one is Mohawk Industries, which is their employer. That is a corporation, clearly eligible to serve as an enterprise. But of course, the problem is if you identify Mohawk as the…enterprise, you then cannot sue Mohawk as the person under [the Supreme] Court's decision in *Kushner [Promotions Ltd. v. King,* 533 US 158, 162 (2001), which held that "to establish liability under §1962(c) one must allege and prove the existence of two distinct entities: (1) a 'person'; and (2) an 'enterprise' that is not simply the same 'person' referred to by a different name."][29]
>
> Second, there are the recruiting and temporary agencies which are likely corporations and certainly are legal entities and, again, are eligible to be enterprises within the meaning of the statute. But, again, here the problem is that there is no indication that Mohawk in any way directs or conducts the affairs of those agencies, and therefore, under [the Supreme] Court's explicit holding in *Reves [v. Ernst & Young*, 507 US 170 (1993), that a defendant is not liable under RICO unless it "has participated in the operation or management of the enterprise itself,"][30] there would be no…basis for liability.

The plaintiffs' approach, however, effectively blurred the line between the RICO defendant, or "person," and the RICO "enterprise," alleging that Mohawk was both the "person"—who "conduct[ed] or participate[d]" in the affairs of the alleged "enterprise"—and part of the "enterprise" itself. As counsel for Mohawk pointed out, this type of pleading is problematic because under *Kushner* the "person" and the

"enterprise" must be distinct entities. Allowing such an allegation to proceed effectively eradicates any distinction between the "person" under RICO and the "enterprise," creating a anomalous situation in which the perpetrator and the victim of the RICO violations are one and the same.

In addition, under the Supreme Court's decision in *Reves*, RICO liability "depends on showing that defendants conducted or participated in the conduct of the 'enterprise's affairs,' not just their own affairs."[31] The Seventh Circuit recognized this requirement in *Baker*:

> The nub of the complaint is that IBP operates itself unlawfully—it is IBP that supposedly hires, harbors and pays the unlawful workers for the purpose of reducing its payroll. IBP does not manage or operate some other enterprise by violating §274; the complaint does not allege…that IBP has infiltrated, taken over, manipulated, disrupted, or suborned a distinct entity or even a distinct association in fact…. Without a difference between the defendant and the 'enterprise' there can be no violation of RICO.[32]

Similarly, in *Williams*, there was little, if any, distinction, in plaintiffs' allegations, between the affairs of the alleged "enterprise"—hiring employees (illegally) to work for Mohawk—and the affairs of the alleged "person" —hiring employees (illegally) to work for it (i.e., Mohawk). The Eleventh Circuit, however, did not even address whether the alleged enterprise's activities were sufficiently distinguishable from Mohawk's normal activities, but, in holding that the plaintiffs' alleged enterprise met the requirements of RICO, the Eleventh Circuit's decision arguably implicitly contradicts the Seventh Circuit.

All in all, the *Williams* court evinced a willingness to let the case proceed beyond the 12(b)(6) motion, giving the plaintiffs all the close calls. For instance, despite the Supreme Court's insistence in *Anza* that courts should scrutinize proximate cause at the pleadings stage, the Eleventh Circuit allowed the case to proceed despite a large number factors, other than the hiring of undocumented alien workers, that could have (and more likely) affected plaintiffs' wages. The appellate court also failed to fully address the issue of what properly constitutes an enterprise, did not address at all whether the alleged enterprise was performing activities distinct from those of the defendant Mohawk, and, on the element of common purpose, held that it was not required that all members of the enterprise have the same purpose, despite this blaring contradiction of terms and the conflict with the Seventh Circuit.

Has the Eleventh Circuit effectively "RICO-IZED"[33] federal immigration law? Violations of immigration law are ordinarily the province of U.S. government agencies and the criminal justice system. With some artful pleading by plaintiff counsel, they may now be the subject of treble damages in private civil law suits. The *Williams* decision, allowing a corporation to be treated in the same suit both as a RICO defendant and a RICO enterprise, may spawn a new generation of employment litigation in which the limitations of statutes that form the basis for the RICO predicate acts can be circumvented by creative pleading. It is too early to say whether this prediction is well founded. A better understanding of the full reach of these new types of RICO claims will, hopefully, come when this case is ultimately decided on the merits at trial, or when the Supreme Court provides needed guidance.

1. 18 USC §§1961-1968 (2004).
2. 465 F3d 1277 (11th Cir. 2006).
3. 465 F3d at 1282.
4. Because the court was deciding a rule 12(b)(6) motion to dismiss, the court was required to "assume the facts set forth in the plaintiffs' complaint as true." Thus, what was "set out in [the] opinion as 'the facts' for Rule 12(b)(6) purposes may not be the actual facts." 465 F3d at 1282.
5. 465 F3d at 1282.
6. The court ultimately concluded that, in light of its holding that plaintiffs alleged sufficient injury to pursue their federal RICO claims, they alleged sufficient injury to pursue their state RICO claims. 465 F3d at 1293. Plaintiffs also claimed that Mohawk was unjustly enriched as a result of paying lower wages and reducing workers' compensation claims in violation of state law. 465 F.3d at 1294. The court affirmed the district court's determination that plaintiffs did not have standing to assert the unjust enrichment claim. Id.
7. The appellate court also affirmed the lower court's dismissal of the plaintiffs' unjust-enrichment claim relating to worker's compensation, but held that the district court should have as well dismissed the plaintiffs' unjust-enrichment claim relating to agreed-upon wages plaintiffs received. *Williams v. Mohawk Indus., Inc.*, 411 F.3d 1252 (11th Cir. 2005).
8. *Mohawk Indus., Inc. v. Williams*, 126 S. Ct. 830 (2005).
9. *Mohawk Indus., Inc. v. Williams*, __US__, 126 SCt 2016 (2006) (remanding in light of *Anza*, __US__, 126 S. Ct. 1991 (2006)).
10. 465 F3d 1293.
11. 465 F3d at 1282 (quoting *Jones v. Childers*, 18 F.3d 899, 910 (11th Cir. 1994) (quoting *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496, 105 S. Ct. 3275, 3285 (1985)).
12. 18 U.S.C. §1962(c).
13. 465 F.3d 1283 (quoting *Maiz v. Virani*, 253 F.3d 641, 671 (11th Cir. 2001). So long as two statutory violations are found, "the predicate acts will be considered to be distinct irrespective of the circumstances under which they arose." Id. (quoting *Cox v. Adm'r U.S. Steel & Carnegie*, 17 F.3d 1386, 1397 (11th Cir. 1994), modified on other grounds, 30 F.3d 1347 (11th Cir. 1994)).
14. 18 U.S.C. §1961(1)(F).
15. Specifically, the plaintiffs alleged: that Mohawk "knowingly hir[ed] for employment at least 10 individuals with actual knowledge that the individuals [were] aliens" during a 12 month period, a violation of 8 U.S.C. §1324(a)(3)(A); that Mohawk "'conceal[ed], harbor[ed] or shield[ed] from detection, or attempt[ed] to conceal, harbor or shield from detection' aliens that have illegally entered the United States," a violation of 8 U.S.C. §1324(a)(1)(A)(iii); and that Mohawk "encourage[ed] or induc[ed] an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law," a violation of 8 USC §1324(a)(1)(A)(iv).
16. 18 USC §1961(4).
17. 357 F3d 685 (7th Cir. 2004), cert. denied, 543 U.S. 956, 125 S.Ct. 412 (2004).
18. In *Baker*, a group of employees filed a class-action lawsuit on behalf of legal workers, alleging that their employer, a meat-processing facility, conspired with recruiters and a Chinese aid group, to hire illegal workers in an effort to drive down wages, in violation of the federal RICO statute. Id.
19. 357 F.3d at 691.
20. 465 F.3d at 1286. An additional requirement is that a defendant "participate[d] in the operation or management of the enterprise itself." 465 F.3d at 1285. The Eleventh Circuit recognized that the *Baker* Court held that there was no way to determine that the employer operated or managed the enterprise, but since "the Supreme Court has yet to delineate the exact boundaries of the operation or management test," it is possible that plaintiffs will be able to establish that "Mohawk played some part in directing the affairs of the enterprise." 465 F.3d at 1286.
21. 465 F.3d 1283. Specifically, §1964(c) provides that "[a]ny person injured in his business or property by reason of a violation of §1962 of this chapter may sue therefore in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit."
22. 465 F.3d at 1287 (quoting *Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163, 1168 n.4 (9th Cir. 2002)).
23. 465 F.3d at 1287 (quoting *Trollinger v. Tyson Foods*, 370 F.3d 602, 612 (6th Cir. 2004)).
24. 465 F.3d at 1287 (citing *Anza*, 126 S.Ct. at 1997).
25. *Anza*, 126 S.Ct. at 1998.
26. 465 F.3d at 1290.
27. The court also noted that "*Anza's* concern about blurring the line between RICO and antitrust laws is wholly missing here." 465 F.3d at 1290.
28. 465 F.3d at 1291. The court also addressed statutory standing under RICO, and held that, "given [the] stage of the litigation …the plaintiffs have sufficiently alleged that Mohawk's illegal conduct was aimed primarily at them" since one purpose and result of Mohawk's actions was to depress the wages of legal workers. Id.
29. In *Kushner*, the plaintiff, a boxing promoter, brought an action against another boxing promoter, Don King, the president and sole shareholder of a rival corporation, alleging that defendant-King had conducted his corporation's affairs in violation of RICO. The Supreme Court held that the president and sole shareholder of a corporation and the corporation were legally distinct entities, and thus were sufficiently distinct to satisfy RICO's requirements of a "person" distinct from the enterprise. 33 U.S. 158, 162 (2001).
30. In *Reves*, the plaintiffs, purchasers of demand notes from a farmer's cooperative, brought an action against the cooperative's accountants, who had performed yearly audits and created financial statements for the cooperative that ultimately filed for bankruptcy, alleging that the accountants' participation in the cooperative's activities and presentation of its financial status made the accountants liable under RICO. The Supreme Court held that the accountants' auditing of the cooperative's records and preparation of its financial statements did not constitute participation in the operation of management of the cooperative, and thus the accountants could not be held liable under RICO. 507 U.S. 170 (1993).
31. *Reves*, 507 U.S. at 185.
32. 357 F.3d at 691-92.
33. Justice Stephen Breyer, Transcript of Oral Argument at p. 44, *Mohawk Indus. v. Williams*, Cert. granted 126 S.Ct. 830 (April 26, 2006) (No. 05-465).