PATTERN JURY INSTRUCTIONS (11th CIRCUIT COURT OF APPEALS)
PART 7: CIVIL RACKETEER INFLUENCED AND CORRUPT ORGANIZATION (RICO) INSTRUCTIONS
[ALL-IN-ONE DOCUMENT]

{LAST UPDATE: 3/10/2022}

E: TextBookDiscrimination@gmail.com
W: www.TextBookDiscrimination.com

visit TBD’s website for the most up-to-date information

TABLE OF CONTENTS | PART VII: CIVIL RACKETEER INFLUENCED AND CORRUPT ORGANIZATION (RICO) INSTRUCTIONS

PATTERN JURY INSTRUCTIONS

UNITED STATES COURT OF APPEALS

ELEVENTH CIRCUIT

PART:	VII	CIVIL RACKETEER INFLUENCED AND CORRUPT ORGANIZATION (RICO) INSTRUCTIONS
SECTIONS:	7 PJI 1 through 7 PJI 5 (entire part)	

7 PJI 1 | RICO | ACQUIRING AN INTEREST IN AN ENTERPRISE BY USE OF INCOME - 18 USC §1962(A)

[Plaintiff] asserts a claim against [Defendant] for allegedly violating the Racketeer Influenced and Corrupt Organizations Act, commonly known as RICO. [Plaintiff] specifically claims that [Defendant] violated §1962(a) of RICO.

To succeed on this claim, [Plaintiff] must prove each of the following four facts by a preponderance of the evidence:

> First, you must find that [Defendant] derived income, either directly or indirectly, from a pattern of racketeering activity.
>
> Second, you must find that [Defendant] participated as a principal in the pattern of racketeering activity.
>
> Third, you must find that some part of that income, or proceeds of that income, was used to acquire or maintain an interest in, or to operate, an enterprise.
>
> And fourth, you must find that the enterprise engaged in, or had some effect on, interstate or foreign commerce.

Now I'll provide you with some additional instructions to apply as you consider the facts that [Plaintiff] must prove.

For the first element, [Plaintiff] must prove that [Defendant] received or obtained money, either directly or indirectly from a pattern of racketeering activity.

> "Racketeering activity" is an act that violates [the specific statute[s] alleged]. I'll explain the law about [this statute/these statutes] to help you determine whether [Plaintiff] proved by a preponderance of the evidence that [Defendant] violated [this statute/these statutes]. An act of "racketeering activity" is also called a "predicate act."

[Plaintiff] must prove that [Defendant] engaged in a pattern of racketeering activity. A "pattern of racketeering activity" means that [Defendant] committed at least two distinct predicate acts. Distinct does not have to mean different types. But by itself, proof of two or more predicate acts doesn't establish a pattern under RICO.

To prove a pattern of predicate acts, [Plaintiff] must show that the acts were related to one another. Two or more acts of racketeering activity that aren't related don't establish a pattern of racketeering activity under RICO. Predicate acts are "related" to one another if they have the same or similar purposes, results, participants, victims, or methods. Predicate acts are also related if they have common distinguishing characteristics and aren't isolated events.

To be related, the predicate acts don't have to be the same kind of acts. For example, the acts may comprise one act of [type of alleged predicate act (e.g., wire fraud)] and one act of [another type of alleged predicate act (e.g., interstate transportation of stolen property)].

A pattern of racketeering activity requires predicate acts showing continuity. This can be demonstrated in two ways. The first is to demonstrate related predicate acts extending over a substantial period of time. The second is to show conduct that doesn't occur over a substantial period of time but, by its nature, is likely to be repeated into the future.

Again, "racketeering activity" means an act that violates [the statute[s] at issue]. But you can't consider just any racketeering act [Defendant] allegedly committed in violation of one of these statutes as bearing on whether [Defendant] has committed two or more predicate acts as a pattern of racketeering activity. [To determine if there is a pattern of racketeering activity, you must consider only those specific racketeering acts [Plaintiff] alleges against [name of defendant.]] And you can't find that [Defendant] engaged in a "pattern of racketeering activity" unless you unanimously agree on which of the alleged predicate acts, if any, make up the pattern.

So it's insufficient if you don't all agree to the finding of what two or more predicate acts [Defendant] committed. Some of you can't find that the predicate acts are A, B, and C and the rest of you find that the predicate acts are X, Y, and B. Put another way, you can't find that [Defendant] has engaged in a pattern of racketeering activity unless you find (1) a "pattern" of predicate acts, and (2) that [Plaintiff] has proved by a preponderance of the evidence that [Defendant] committed each of the two or more predicate acts that you find make up that pattern.

For the second element, [Plaintiff] must prove that [Defendant] "participated as a principal" in the pattern of racketeering activity. To prove this, [Plaintiff] must show by a preponderance of the evidence that [Defendant] either: (1) committed – or aided, abetted, counseled, commanded, induced, or procured the commission of – two or more alleged predicate acts that make up the alleged pattern of racketeering activity; or (2) willfully caused the commission of two or more alleged predicate acts that make up the alleged pattern of racketeering activity, which, if [Defendant] directly performed, would make up the commission of two or more alleged predicate acts that comprise the alleged pattern of racketeering activity. To be a "principal," [Defendant] must have acted with intent or knowledge, rather than by mistake or accident.

For the third element, [Plaintiff] must prove that some part of the income or proceeds of that income derived from the racketeering activity was used to acquire, maintain an interest in, or operate an enterprise.

> [Alternative #1: Individual or entity enterprise: An "enterprise" may consist of an individual, partnership, corporation, association, or other legal entity. In this case the enterprise is alleged to be [Enterprise].]

> [Alternative #2: Association-in-fact enterprise: An "enterprise" doesn't have to be a legal entity. It can be an association of persons or entities. In this case, the enterprise is alleged to be [Enterprise]. The association between the enterprise's members might be loose or informal. But the enterprise must have at least a purpose, relationships among those associated with the enterprise, and a duration sufficient to permit those associates to pursue the enterprise's purpose. Also, an enterprise must have a property interest that [Defendant] can acquire.]

For the fourth element, [Plaintiff] must prove that the enterprise engaged in or had an effect on interstate or foreign commerce. "Engage in or have an effect on interstate or foreign commerce" means that the enterprise either engaged in, or had an effect on commerce between two or more states, or on commerce between a state and a foreign country.

If you find that [Defendant] violated §1962(a), you must decide whether that violation caused an injury to [Plaintiff]. The damages that [Plaintiff] may recover are those caused by the use or investment of racketeering income to injure [Plaintiff] or [his/her/its] business or property. Put another way, [Plaintiff]'s injury must flow from [Defendant]'s use or investment of racketeering income.

((Rev. 03/2022) | Judicial Council of the United States Eleventh Judicial Circuit)

Annotations and Comments

The Eleventh Circuit held in *United States v. Pepe, 747 F.2d 632, 675-76 (11th Cir. 1984)* that "a plain reading of the statute indicates that RICO does not contain any separate mens rea or scienter elements beyond those encompassed in its predicate acts." As a result, in a §1962(a) case, the only relevant mental state is that necessary to commit the predicate acts. See, e.g., *Edwards v. Prime, Inc., 602 F.3d 1276, 1292-97 (11th Cir. 2010)* (analyzing different knowledge and intent requirements of specific categories of predicate offenses). This is in contrast to a RICO conspiracy, which requires the additional element of agreement. *United States v. Martino, 648 F.2d 367, 383 (5th Cir. 1981)*.

The Eleventh Circuit's treatment of this issue is, however, not completely consistent. For example, in *Pepe*, the court affirmed where a Defendant had been acquitted of RICO conspiracy but found guilty of a §1962(c) violation, noting that the evidence was sufficient to permit the jury to find that the Defendant engaged in racketeering activity and was an active participant in the enterprise, which was characterized as "knowing participant in the enterprise." 747 F.2d at 665. As between these two, the requirement that the Defendant be an active participant seems to be more appropriate but this is not a completely settled area of law in this circuit. Accordingly, current case activity should be researched before this instruction is used to determine if more recent circuit authority on this issue is available.

This instruction assumes a single plaintiff suing a single defendant. It needs to be modified if there are multiple parties.

In *Beck v. Prupis, 162 F.3d 1090, 1095 n.8 (11th Cir. 1998)*, the Eleventh Circuit noted that §1962(a) of RICO prohibits the investment of income derived from a pattern of racketeering activity in any enterprise involving interstate commerce. See also *Pelletier v. Zweifel, 921 F.2d 1465, 1489 (11th Cir. Ga. 1991)* ("Section 1962(a) makes it a crime for anyone who has derived income from 'a pattern of racketeering activity... in which such person has participated as a principal... to use or invest, directly or indirectly, any part of such income... in acquisition of any interest in, or the establishment or operation of, any enterprise... engaged in... interstate... commerce.") (quoting 18 U.S.C. §1962(a)); *Club Car, Inc. v. Club Car (Quebec) Import, Inc., 276 F. Supp. 2d 1276, 1288 (S.D. Ga. 2003)* ("Section 1962(a) has two components: (1) receiving income from a pattern of racketeering activity, and (2) investing that income in an enterprise.") (quoting *Georgia v. Dairymen, Inc., 813 F. Supp. 1580, 1584 (S.D. Ga. 1991)*).

The definition of "predicate act" comes from *Williams v. Mohawk Indus., Inc., 465 F.3d 1277, 1283 (11th Cir. 2006)* (quoting *Maiz v. Virani, 253 F.3d 641, 671 (11th Cir. 2001)*). "A 'pattern' of racketeering activity is shown when a racketeer commits at least two distinct but related predicate acts." Id. (quoting *Maiz v. Virani, 253 F.3d at 671*). In Williams, the Court affirmed denial of the defendant's Rule 12(b)(6) motion to dismiss the RICO claims, finding that the plaintiff's allegations that the defendant had "committed hundreds, even thousands, of violations of federal immigration laws" were sufficient to plead a "pattern of racketeering activity." Id.

The continuity and relationship elements are derived from United States v. Browne, 505 F.3d 1229, 1257 (11th Cir. 2007) (noting that to establish a pattern of predicate acts, the plaintiff must prove that the predicate acts relate to each other and have continuity). In defining how "the predicate acts must relate to each other," the Eleventh Circuit has stated this "the predicate acts must 'have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise [be] interrelated by distinguishing characteristics and... not [be] isolated events."') Id. (quoting Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496, n.14 (1985)); United States v. Starrett, 55 F.3d 1525, 1543 (11th Cir. 1995) (same). In Starrett, the court found that the evidence that the defendant used a communication facility in the perpetration of a felony, transported an individual across state lines for the purpose of prostitution, and intended to distribute cocaine and marijuana supported a finding that the defendant's predicate acts were related. Id. at 1547. Specifically, the court found that "[f]our of the [defendant's] predicate acts shared the purpose of facilitating illegal prostitution, and the other four predicate acts share the purpose of furthering narcotics distribution." Id.

Starrett also discussed examples of how the two required predicate acts need not be the same type of acts to be related. Id. (finding that the evidence that the defendant used a communication facility in the perpetration of a felony, transported an individual across state lines for the purpose of prostitution, and intended to distribute cocaine and marijuana supported a finding that the defendant's predicate acts were related). As for continuity, "[p]redicate acts demonstrate continuity if they are either 'a closed period of repeated conduct,' or 'past conduct that by its nature projects into the future with a threat of repetition.'" Id. at 1543 (quoting H.J., Inc. v. NW Bell Tel. Co., 492 U.S. 229 (1989)). See also, Browne, 505 F.3d at 1257. The continuity of predicate acts was found to be satisfactorily alleged where defendants "had agreed to a scheme whereby [one] would supply [the other] with cocaine on an on-going basis." Starrett, 55 F.3d at 1547.

The second element requires a plaintiff to establish that the defendant "participated as a principal." Courts have interpreted 18 U.S.C. §2(a) and (b) as permitting plaintiff to satisfy this element by establishing that a defendant either: aided, abetted, counseled, commanded, induced, or procured the commission of two or more alleged predicate offenses that constitute the pattern of racketeering activity ; or willfully caused acts to be done which if directly performed by him would constitute the commission of two or more alleged predicate offenses that constitute the pattern of racketeering activity. See, e.g., In re Sahlen & Assoc., Sec. Litig., 773 F. Supp. 342, 368 (S.D. Fla. 1991) (aiding and abetting); Grimsley v. First Alabama Bank, No. 88000113, 1988 U.S. Dist. LEXIS 16042, at *3 (S.D. Ala. 1988). Also premised on 18 U.S.C. §2 is that a defendant must have intent or knowledge in order to act as a principal. Id. ("One cannot aid, abet, counsel, command, induce, willfully cause or perform without knowledge or intent.").

An example of the third element - that "some part of the income or proceeds of that income derived from the racketeering activity was used to acquire, maintain an interest in, or operate and enterprise" - was discussed in In re Sahlen. 773 F. Supp at 366 (finding that the plaintiffs had sufficiently alleged a violation of 1962(a) by alleging that the defendants had derived income as officers and directors of a company through fraudulent securities offerings and sales of stock and then invested this income back into the company to continue the scheme and guarantee the company's growth and increased value, to the detriment of the investing public).

18 U.S.C. 1961(4) provides the definition of enterprise 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." For discussion regarding the definitions of individual or entity enterprise or association-in-fact enterprise, see Starrett, 55 F.3d at 1541 (the South Florida Chapter of the Outlaw Motorcycle Club constituted an enterprise under 18 U.S.C. §1961(4)); Williams, 465 F.3d at 1284 ("[T]he definitive factor in determining the existence of a RICO enterprise is the existence of an association of individual entities, however loose or informal, that furnishes a vehicle for the commission of two or more predicate crimes, that is, the pattern of racketeering activity.") (quoting United States v. Goldin Industries, Inc., 219 F.3d 1271, 1275 (11th Cir. 2000)). In Williams, the Court found that the plaintiff's allegations that the defendant corporation worked with third-party temp agencies/recruiters to bring illegal workers into this country for the defendant's benefit were sufficient to allege an "enterprise" under this section.

In Boyle v. United States, 556 U.S. 938, 946-47, 129 S. Ct. 2237, 2244 (2009), the Supreme Court held that "an association-in-fact enterprise must have at least three structural features: a purpose, relationships among those associated with an enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose."). See also Williams, 465 F.3d at 1284-85 (allegations that the defendant corporation worked with third-party temp agencies/recruiters to bring illegal workers into this country for the defendant's benefit were sufficient to allege common purpose). In Boyle, the defendant was charged in connection with a series of bank thefts allegedly conducted by a group that was loosely organized and did not appear to have a leader or hierarchy. The Supreme Court ruled that although the three structural features set forth above were necessary for a finding of an association -in-fact enterprise, there are no additional structural features such as hierarchy or a chain of command required.

Section 1962(a) also requires that an enterprise have a property interest that can be acquired by the defendant. See Nat'l Org. for Women v. Scheidler, 510 U.S. 249, 259, 114 S. Ct. 798, 804 (1994) ("The 'enterprise' referred to in subsections (a) and (b) [of § 1962] is thus something acquired through the use of illegal activities or by money obtained from illegal activities. The enterprise in these subsections is the victim of unlawful activity and may very well be a 'profit-seeking' entity that represents a property interest and may be acquired. But the statutory language in subsections (a) and (b) does not mandate that the enterprise be a 'profit-seeking' entity; it simply requires that the enterprise be an entity that was acquired through illegal activity or the money generated from illegal activity. By contrast, the 'enterprise' in subsection (c) [of §1962] connotes generally the vehicle through which the unlawful pattern of racketeering activity is committed, rather than the victim of that activity... Consequently, since the enterprise in subsection (c) is not being acquired, it need not have a property interest that can be acquired nor an economic motive for engaging in illegal activity; it need only be an association in fact that engages in a pattern of racketeering activity. Nothing in subsections (a) and (b) directs us to a contrary conclusion."); Lockheed Martin Corp. v. Boeing Co., 357 F. Supp. 2d 1350, 1368 (M.D. Fla. 2005) ("Unlike a §1962(c) enterprise, which 'generally connotes the vehicle through which the unlawful pattern of racketeering activity is committed,= a '1962(a) enterprise is something acquired through the use of illegal activities or by money obtained from illegal activities. A §1962(a) enterprise is, in other words, the victim of unlawful activity, not the vehicle through which that activity is committed.@ (citations and quotations omitted).

Pursuant to 18 U.S.C. ' 1964(c), A[a]ny person injured in his business or property by reason of a violation of section 1962 . . . may sue . . . in any appropriate United States district court@ and may recover treble damages and a reasonable attorney's fee. However, no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of Section 1962. This exclusion concerning securities does not apply to an action against any person that is criminally convicted in connection with a securities fraud. 18 U.S.C. ' 1964(c). In contrast to the injury requirement under ' 1962(c), which my be satisfied by harm alleged to be the result of racketeering activity,, a majority of courts that have addressed the issue have determined that a claimant under '1962(a) must plead an injury which stems not from the racketeering predicate acts themselves= but from the use or investment of... racketeering income.=@). Id. at 1369 (quoting *Fogie v. Thorn Ams., Inc., 190 F.3d 889, 895 (8th Cir. 1999)* (adopting the majority position that limits >standing only to plaintiffs who have suffered injury from the use or investment or racketeering income@)); *Club Car, Inc., 276 F. Supp. 2d at 1288* (AThe plain language of Federal RICO shows that injury by reason of investment of racketeering income B investment injuryB is required.@) (quoting *Dairymen, Inc., 813 F. Supp. at 1584*)). In Club Car, the court dismissed the plaintiff=s ' 1962(a) claim for failure to allege Aany injury resulting from the investment of racketeering income,@ as opposed to injury from the underlying predicate acts.@ 276 F. Supp. 2d at 1288. See also, *Danielsen v. Burnside-Ott Aviation Training Center, Inc., 291 U.S. App. D.C. 303, 941 F.2d 1220, 1229 (D.C. Cir. 1991)* (holding that injury to a plaintiff must flow from a Defendant=s use or investment of racketeering income.)

7 PJI 2 | RICO | ACQUIRING OR MAINTAINING AN INTEREST IN OR CONTROL OF AN ENTERPRISE - 18 USC §1962(B)

[Plaintiff] asserts a claim against [Defendant] for allegedly violating the Racketeer Influenced and Corrupt Organizations Act, commonly known as RICO. [Plaintiff] specifically claims that [Defendant] violated §1962(b) of RICO.

To succeed on this claim, [Plaintiff] must prove each of the following four facts by a preponderance of the evidence:

> First, you must find that [Defendant] engaged in a pattern of racketeering activity.
>
> Second, you must find that through the pattern of racketeering activity, [Defendant] acquired or maintained, directly or indirectly, an interest in or control of an enterprise.
>
> And third, you must find that the enterprise engaged in, or had some effect on, interstate or foreign commerce.

Now I'll provide you with some additional instructions to apply as you consider the facts that [Plaintiff] must prove.

> First, [Plaintiff] must prove that [Defendant] engaged in a pattern of racketeering activity. "Racketeering activity" is an act that violates [the specific statute[s] alleged]. I'll explain the law about [this statute/these statutes] to help you determine whether [Plaintiff] proved by a preponderance of the evidence that [Defendant] violated [this statute/these statutes]. An act of "racketeering activity" is sometimes referred to as a "predicate act."

A "pattern of racketeering activity" means that [Defendant] committed at least two distinct predicate acts. Distinct does not have to mean different types. But by itself, proof of two or more predicate acts doesn't establish a pattern under RICO.

To prove a pattern of predicate acts, [Plaintiff] must show that the acts were related to one another. Two or more acts of racketeering activity that aren't related don't establish a pattern of racketeering activity under RICO. Predicate acts are "related" to one another if they have the same or similar purposes, results, participants, victims, or methods. Predicate acts are also related if they have common distinguishing characteristics and aren't isolated events.

To be related, the predicate acts don’t have to be the same kind of acts. For example, the acts may comprise one act of [type of alleged predicate act (e.g., wire fraud)] and one act of [another type of alleged predicate act (e.g., interstate transportation of stolen property)].

A pattern of racketeering activity requires predicate acts showing continuity. This can be demonstrated in two basic ways. The first is to demonstrate related predicate acts extending over a substantial period of time. The second is to show conduct that doesn’t occur over a substantial period of time but, by its nature, is likely to be repeated into the future.

Again, “racketeering activity” means an act that violates [the statute[s] at issue]. But you can’t consider just any racketeering act [Defendant] allegedly committed in violation of one of these statutes as bearing on whether [Defendant] has committed two or more predicate acts as a pattern of racketeering activity. [To determine if there is a pattern of racketeering activity, you must consider only those specific racketeering acts [Plaintiff] alleges against [name of defendant.]] And you can’t find that [Defendant] engaged in a “pattern of racketeering activity” unless you unanimously agree on which of the alleged predicate acts, if any, make up the pattern.

So it’s insufficient if you don’t all agree to the finding of what two or more predicate acts [Defendant] committed. Some of you can’t find that the predicate acts are A, B, and C and the rest of you find that the predicate acts are X, Y, and B. Put another way, you can’t find that [Defendant] has engaged in a pattern of racketeering activity unless you find (1) a “pattern” of predicate acts, and (2) that [Plaintiff] has proved by a preponderance of the evidence that [Defendant] committed each of the two or more predicate acts that you find make up that pattern.

For the second element, [Plaintiff] must prove by a preponderance of the evidence that [Defendant], through the pattern of racketeering activity, acquired or maintained an interest in, or control of, an enterprise. To find that [Plaintiff] has established this element, you must find by a preponderance of the evidence not only that [Defendant] had some interest in or control over an enterprise, but also that this interest or control was connected to the pattern of racketeering activity. It isn’t sufficient that [Defendant] engaged in racketeering activities if [he/she/it] acquired an interest in, or control of, the enterprise through legitimate activities.

[Alternative #1: Individual or entity enterprise: An "enterprise" may consist of an individual, partnership, corporation, association, or other legal entity. In this case, the enterprise is alleged to be [Enterprise].]

[Alternative #2: Association-in-fact enterprise: An "enterprise" doesn't have to be a legal entity. It can be an association of persons or entities. In this case, the enterprise is alleged to be [Enterprise]. The association between the enterprise's members might be loose or informal. But the enterprise must have at least a purpose, relationships among those associated with the enterprise, and a duration sufficient to permit those associates to pursue the enterprise's purpose.]

For the third element, [Plaintiff] must prove that the enterprise engaged in or had an effect on interstate or foreign commerce. "Engage in or have an effect on interstate or foreign commerce" means that the enterprise either engaged in, or had an effect on commerce between two or more states, or on commerce between a state and a foreign country.

If you find that [Defendant] violated §1962(b), you must decide whether that violation caused an injury to [Plaintiff]. The damages that [Plaintiff] may recover are those caused by [Defendant]'s acquisition or control of the alleged enterprise through a pattern of racketeering activity. It's not enough that [Plaintiff] suffered injuries from [Defendant]'s commission of predicate acts. Rather, [Plaintiff]'s injury must flow from [Defendant]'s acquisition or control of the alleged enterprise.

((Rev. 03/2022) | Judicial Council of the United States Eleventh Judicial Circuit)

Annotations and Comments

The Eleventh Circuit held in United States v. Pepe, 747 F.2d 632, 675-76 (11th Cir. 1984) that "a plain reading of the statute indicates that RICO does not contain any separate mens rea or scienter elements beyond those encompassed in its predicate acts." As a result, in a §1962(a) case, the only relevant mental state is that necessary to commit the predicate acts. See, e.g., Edwards v. Prime, Inc., 602 F.3d 1276, 1292-97 (11th Cir. 2010) (analyzing different knowledge and intent requirements of specific categories of predicate offenses). This is in contrast to a RICO conspiracy, which requires the additional element of agreement. United States v. Martino, 648 F.2d 367, 383 (5th Cir. 1981).

The Eleventh Circuit's treatment of this issue is, however, not completely consistent. For example, in Pepe, the court affirmed where a Defendant had been acquitted of RICO conspiracy but found guilty of a §1962(c) violation, noting that the evidence was sufficient to permit the jury to find that the Defendant engaged in racketeering activity and was an active participant in the enterprise, which was characterized as "knowing participant in the enterprise." 747 F.2d at 665. As between these two, the requirement that the Defendant be an active participant seems to be more appropriate but this is not a completely settled area of law in this circuit. Accordingly, current case activity should be researched before this instruction is used to determine if more recent circuit authority on this issue is available.

This instruction assumes a single plaintiff suing a single defendant. It needs to be modified if there are multiple parties.

In Beck v. Prupis, 162 F.3d 1090, 1095 n.8 (11th Cir. 1998), the Eleventh Circuit noted that §1962(b) of RICO prohibits acquisition through a pattern of racketeering activity of interest in an enterprise involving interstate commerce. See also Pelletier v. Zweifel, 921 F.2d 1465, 1489 (11th Cir. Ga. 1991) ("Section 1962(b) imposes criminal liability on anyone who 'through a pattern of racketeering activity acquire[s] or maintain[s], directly or indirectly, any interest in or control of any enterprise... engaged in... interstate... commerce.'") (quoting 18 U.S.C. §1962(b); Avirgan v. Hull, 691 F. Supp. 1357, 1361 (S.D. Fla. 1988) ("A defendant violates §1962(b) by acquiring or maintaining through a pattern of racketeering activity any interest in or control of any enterprise which is engaged in or the activities of which affect interstate commerce.").

The definition of "predicate act" comes from Williams v. Mohawk Indus., Inc., 465 F.3d 1277, 1283 (11th Cir. 2006) (quoting Maiz v. Virani, 253 F.3d 641, 671 (11th Cir. 2001)). "A 'pattern' of racketeering activity is shown when a racketeer commits at least two distinct but related predicate acts." Id. In Williams, the Court affirmed denial of the defendant's Rule 12(b)(6) motion to dismiss the RICO claims, finding that the plaintiff's allegations that the defendant had "committed hundreds, even thousands, of violations of federal immigration laws" were sufficient to plead a "pattern of racketeering activity." Id.

The continuity and relationship elements are derived from United States v. Browne, 505 F.3d 1229, 1257 (11th Cir. 2007) (noting that to establish a pattern of predicate acts, the plaintiff must prove that the predicate acts relate to each other and have continuity). In defining how "the predicate acts must relate to each other," the Eleventh Circuit has stated this "the predicate acts must 'have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise [be] interrelated by distinguishing characteristics and... not [be] isolated events.'") Id. (quoting *Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496, n.14 (1985)*); *United States v. Starrett, 55 F.3d 1525, 1543 (11th Cir. 1995)* (same). In *Starrett*, the court found that the evidence that the defendant used a communication facility in the perpetration of a felony, transported an individual across state lines for the purpose of prostitution, and intended to distribute cocaine and marijuana supported a finding that the defendant's predicate acts were related. Id at 1547. Specifically, the court found that "[f]our of the [defendant's] predicate acts shared the purpose of facilitating illegal prostitution, and the other four predicate acts share the purpose of furthering narcotics distribution." Id.

Starrett also discussed examples of how the two required predicate acts need not be the same type of acts to be related. Id. (finding that the evidence that the defendant used a communication facility in the perpetration of a felony, transported an individual across state lines for the purpose of prostitution, and intended to distribute cocaine and marijuana supported a finding that the defendant's predicate acts were related).

As for continuity, "[p]redicate acts demonstrate continuity if they are either 'a closed period of repeated conduct,' or 'past conduct that by its nature projects into the future with a threat of repetition.'" Id. at 1543 (quoting *H.J., Inc. v. NW Bell Tel. Co., 492 U.S. 229 (1989)*). See also, *Browne, 505 F.3d at 1257*. The continuity of predicate acts was found to be satisfactorily alleged where defendants "had agreed to a scheme whereby [one] would supply [the other] with cocaine on an on-going basis." *Starrett, 55 F.3d at 1547*.

This instruction differs from the instruction for §1962(a) in that it requires a plaintiff to establish that a defendant acquired, maintained an interest in, or obtained control over an enterprise, through a pattern of racketeering activity. See *Pelletier, 921 F.2d at 518* (discussing necessity of nexus between racketeering activities and acquisition of interest in or control of enterprise and finding that the plaintiff's complaint failed to indicate how the defendant acquired or maintained a partnership interest in the enterprise at issue through a pattern of racketeering activity); *Johnson Enters. of Jacksonville v. FPL Group, 162 F.3d 1290, 1317 (11th Cir. 1998)* (finding "no evidence that any of the defendants 'acquired or maintained, directly, or indirectly, an interest in or control of [the enterprise at issue] through a pattern of racketeering activity.'") (quoting U.S.C. § 1962(b)).

18 U.S.C. 1961(4) provides the definition of enterprise 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." For discussion regarding the definitions of individual or entity enterprise or association-in-fact enterprise, see *Starrett, 55 F.3d at 1541* (the South Florida Chapter of the Outlaw Motorcycle Club constituted an enterprise under 18 U.S.C. §1961(4)); *Williams, 465 F.3d at 1284* ("[T]he definitive factor in determining the existence of a RICO enterprise is the existence of an association of individual entities, however loose or informal, that furnishes a vehicle for the commission of two or more predicate crimes, that is, the pattern of racketeering activity.") (quoting *United States v. Goldin Industries, Inc., 219 F.3d 1271, 1275 (11th Cir. 2000)*). In *Williams*, the Court found that the plaintiff's allegations that the defendant corporation worked with third-party temp agencies/recruiters to bring illegal workers into this country for the defendant's benefit were sufficient to allege an "enterprise" under this section.

In *Boyle v. United States, 556 U.S. 938, 946-47, 129 S. Ct. 2237, 2244 (2009)*, the Supreme Court held that “an association-in-fact enterprise must have at least three structural features: a purpose, relationships among those associated with an enterprise, and longevity sufficient to permit these associates to pursue the enterprise’s purpose.”). See also *Williams, 465 F.3d at 1284-85* (allegations that the defendant corporation worked with third-party temp agencies/recruiters to bring illegal workers into this country for the defendant’s benefit were sufficient to allege common purpose). In *Boyle*, the defendant was charged in connection with a series of bank thefts allegedly conducted by a group that was loosely organized and did not appear to have a leader or hierarchy. The Supreme Court ruled that although the three structural features set forth above were necessary for a finding of an association-in-fact enterprise, there are no additional structural features such as hierarchy or a chain of command required.

Pursuant to 18 U.S.C. §1964(c), “[a]ny person injured in his business or property by reason of a violation of section 1962... may sue... in any appropriate United States district court” and may recover treble damages and a reasonable attorney’s fee. See, *Fuller v. Home Depot Servs., LLC, 512 F. Supp. 2d 1289, 1294 (N.D. Ga. 2007)* (“Just as §1962(a) requires an investment injury, §1962(b) requires an acquisition injury.”). However, no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of Section 1962. This exclusion concerning securities does not apply to an action against any person that is criminally convicted in connection with a securities fraud. 18 U.S.C. §1964(c).

There is a split within the circuit regarding this injury causation issue. However, the prevailing (and more recent) authority establishes that the plaintiff’s injury must have resulted from the acquisition itself. Compare: *Fuller v. Home Depot Servs., LLC, 512 F. Supp. 2d 1289, 1294 (N.D. Ga. 2007)* (finding injury from predicate acts insufficient when injury did not result from alleged acquisition); *Smart Sci. Labs., Inc. v. Promotional Mktg. Servs., No. 8:07-CV-1554-T-24EAJ, 2008 U.S. Dist. LEXIS 118270, at *20 (M.D. Fla. June 27, 2008)* (“[Plaintiff] fails to allege injury by reason of [Defendant’s] acquisition or control of an enterprise through a pattern of racketeering activity.”); *Design Pallets, Inc. v. Grayrobinson, P.A., 515 F. Supp. 2d 1246, 1255 & n.2 (M.D. Fla. 2007)* (dismissing §1962(b) as duplicative of §1962(c) claim when plaintiff failed to explain what additional injury resulted from defendant’s interest or control of enterprise) (citing *Lightning Lube v. Witco Corp., 4 F.3d 1153 (3rd Cir. 1993)*); and *Club Car, Inc. v. Club Car (Quebec) Import, Inc., 276 F. Supp. 2d 1276, 1288 (S.D. Ga. 2003)* (concluding §1962(b) claim fails when injury did not result from acquisition of enterprise) with: *In re Sahlen & Assoc., Sec. Litig., 773 F. Supp. 342, 369 (S.D. Fla. 1991)* (“[Defendants] contend that Plaintiffs’ claims are deficient in that they fail to allege an injury caused by either the use of income derived from racketeering activity or by the acquisition or maintenance of an interest in a RICO enterprise. Unlike the additional causation connection necessary to state a cause of action under §1962(a), however, §1962((b) does not require such a nexus.”); *Avirgan, 691 F. Supp. at 1362* (“The causation link of §1962 (b) is direct. The plaintiff must be injured by the defendant’s pattern of racketeering activity, that was used to either acquire or maintain any interest in or control of, any enterprise. Accordingly, the plaintiff must be injured by the pattern of racketeering activity committed by the defendant.”); *Marshall v. City of Atlanta (In re Air Terminal Enters.), 1995 Bankr. LEXIS 1248, at *18 (Bankr. N.D. Ga. June 20, 1995)* (“Unlike Section 1962(a), a claim may be made under Section 1962(b) by alleging that the injury occurred as a result of the pattern or racketeering activity that was used to acquire an interest in or control of such an enterprise, as opposed to the acquisition itself.”).

The majority position in other jurisdictions accords with the conclusion that an “acquisition injury” is required. See, e.g., *Advocacy Org. for Patients & Providers v. Auto Club Ins. Ass’n, 176 F.3d 315, 330 (6th Cir. 1999)* (“[I]njury from the racketeering acts themselves is not sufficient; rather, a plaintiff must plead facts tending to show that the acquisition or control of an interest injured plaintiff.”); *Discon, Inc. v. NYNEX Corp., 93 F.3d 1055, 1062-63 (2nd Cir. 1996)* rev’d on other grounds, 525 U.S. 128 (1998); *Compagnie De Reassurance D’Ile De Fr. v. New Eng. Reinsurance Corp., 57 F.3d 56, 92 (1st Cir. 1995)*; *Old Time Enters. V. Int’l Coffee Corp., 862 F.2d 1213, 1218 (5th Cir. 1989)*; *In re Nat’l Western Life Ins. Deferred Annuities Litig., 467 F. Supp. 2d 1071, 1084 (S.D. Cal. 2006)*; *NL Industries, Inc. v. Gulf & Western Industries, Inc., 650 F. Supp. 1115, 1127-28 (D. Kan. 1986)*.

7 PJI 3 | RICO | CONDUCT THE AFFAIRS OF THE ENTERPRISE - 18 USC §1962(C)

[Plaintiff] asserts a claim against [Defendant] for allegedly violating the Racketeer Influenced and Corrupt Organizations Act, commonly known as RICO. [Plaintiff] specifically claims that [Defendant] violated §1962(c) of RICO.

To succeed on this claim, [Plaintiff] must prove each of the following five facts by a preponderance of the evidence:

> First, you must find the existence of an enterprise.
>
> Second, you must find that the enterprise engaged in, or had some effect on, interstate or foreign commerce.
>
> Third, you must find that [Defendant] was employed by or associated with the alleged enterprise.
>
> Fourth, you must find that [Defendant] participated, either directly or indirectly, in the conduct of the affairs of the enterprise.
>
> And fifth, you must find that [Defendant] participated through a pattern of racketeering activity.

Now I'll provide you with some additional instructions to apply as you consider the facts that [Plaintiff] must prove.

For the first element, [Plaintiff] must prove the existence of an enterprise.

> [Alternative #1: Individual or entity enterprise: An "enterprise" may consist of an individual, partnership, corporation, association, or other legal entity. In this case, the enterprise is alleged to be [Enterprise].]
>
> [Alternative #2: Association-in-fact enterprise: An "enterprise" doesn't have to be a legal entity. It can be an association of persons or entities. In this case, the enterprise is alleged to be [Enterprise]. The association between the enterprise's members might be loose or informal. But the enterprise must have at least a purpose, relationships among those associated with the enterprise, and a duration sufficient to permit those associates to pursue the enterprise's purpose.]

For the second element, [Plaintiff] must prove that the enterprise engaged in or had an effect on interstate or foreign commerce.

"Engage in or have an effect on interstate or foreign commerce" means that the enterprise either engaged in, or had an effect on commerce between two or more states, or on commerce between a state and a foreign country.

For the third element, [Plaintiff] must prove that [Defendant] was employed by or associated with the alleged enterprise. The requirement that [Defendant] be "employed by or associated with" the enterprise means [he/she/it] must have some minimal association with the alleged enterprise. [Defendant] must know something about the alleged enterprise's activities as they relate to the racketeering activities.

For the fourth element, [Plaintiff] must also prove by a preponderance of the evidence that [Defendant] "participated, directly or indirectly, in the conduct of the affairs of the enterprise." To prove this, [Plaintiff] must show that [Defendant] actively conducted or participated in conducting the affairs of the alleged enterprise through a pattern of racketeering activity. [Defendant] doesn't need to participate in, or be aware of, all of the enterprise's activities. It's sufficient if [Defendant] conducted or participated in the conduct of some of the enterprise's activities through a pattern of racketeering activity.

For the fifth element, [Plaintiff] must prove that [Defendant] participated in the conduct of the enterprise's affairs through a pattern of racketeering activity.

> "Racketeering activity" is an act that violates [the specific statute[s] alleged]. I'll explain the law about [this statute/these statutes] to help you determine whether [Plaintiff] proved by a preponderance of the evidence that [Defendant] violated [this statute/these statutes]. An act of "racketeering activity" is also called a "predicate act."
>
> A "pattern of racketeering activity" means that [Defendant] committed at least two distinct predicate acts. Distinct does not have to mean different types. But by itself, proof of two or more predicate acts doesn't establish a pattern under RICO.

To prove a pattern of predicate acts, [Plaintiff] must show that the acts were related to one another and to the enterprise. Two or more acts of racketeering activity that aren't related don't establish a pattern of racketeering activity under RICO. Predicate acts are "related" to one another if they have the same or similar purposes, results, participants, victims, or methods. Predicate acts are also related if they have common distinguishing characteristics and aren't isolated events.

To be related, the predicate acts don't have to be the same kind of acts. For example, the acts may comprise one act of [type of alleged predicate act (e.g., wire fraud)] and one act of [another type of alleged predicate act (e.g., interstate transportation of stolen property)].

To make up a pattern of racketeering activity, predicate acts must demonstrate continuity. Continuity can be demonstrated in two basic ways. The first is to demonstrate related predicate acts extending over a substantial period of time. The second is to show conduct that doesn't occur over a substantial period of time but, by its nature, is likely to be repeated into the future.

Again, "racketeering activity" means an act that violates [the statute[s] at issue]. But you can't consider just any racketeering act [Defendant] allegedly committed in violation of one of these statutes as bearing on whether [Defendant] has committed two or more predicate acts as a pattern of racketeering activity. [To determine if there is a pattern of racketeering activity, you must consider only those specific racketeering acts [Plaintiff] alleges against [name of defendant.]] And you can't find that [Defendant] engaged in a "pattern of racketeering activity" unless you unanimously agree on which of the alleged predicate acts, if any, make up the pattern.

So it's insufficient if you don't all agree to the finding of what two or more predicate acts [Defendant] committed. Some of you can't find that the predicate acts are A, B, and C and the rest of you find that the predicate acts are X, Y, and B. Put another way, you can't find that [Defendant] has engaged in a pattern of racketeering activity unless you find (1) a "pattern" of predicate acts, and (2) that [Plaintiff] has proved by a preponderance of the evidence that [Defendant] committed each of the two or more predicate acts that you find make up that pattern.

A person doesn't violate RICO just by associating with or being employed by an otherwise lawful enterprise if others conduct the enterprise's affairs through a pattern of racketeering activity in which the person isn't personally engaged.

If you find that [Defendant] violated §1962(c), you must decide whether that violation caused an injury to [Plaintiff]. The damages that [Plaintiff] may recover are those caused by the predicate acts constituting the pattern of racketeering activity if they injure [Plaintiff] or [his/her/its] business or property. It isn't necessary that every predicate act caused damage to [Plaintiff]. But [he/she/it] can only recover damages caused by predicate acts that are part of the pattern of racketeering activity.

((Rev. 03/2022) | Judicial Council of the United States Eleventh Judicial Circuit)

Annotations and Comments

The Eleventh Circuit held in *United States v. Pepe, 747 F.2d 632, 675-76 (11th Cir. 1984)* that "a plain reading of the statute indicates that RICO does not contain any separate mens rea or scienter elements beyond those encompassed in its predicate acts." As a result, in a §1962(a) case, the only relevant mental state is that necessary to commit the predicate acts. See, e.g., *Edwards v. Prime, Inc., 602 F.3d 1276, 1292-97 (11th Cir. 2010)* (analyzing different knowledge and intent requirements of specific categories of predicate offenses). This is in contrast to a RICO conspiracy, which requires the additional element of agreement. *United States v. Martino, 648 F.2d 367, 383 (5th Cir. 1981)*.

The Eleventh Circuit's treatment of this issue is, however, not completely consistent. For example, in Pepe, the court affirmed where a Defendant had been acquitted of RICO conspiracy but found guilty of a §1962(c) violation, noting that the evidence was sufficient to permit the jury to find that the Defendant engaged in racketeering activity and was an active participant in the enterprise, which was characterized as "knowing participant in the enterprise." 747 F.2d at 665. As between these two, the requirement that the Defendant be an active participant seems to be more appropriate but this is not a completely settled area of law in this circuit. Accordingly, current case activity should be researched before this instruction is used to determine if more recent circuit authority on this issue is available.

This instruction assumes a single plaintiff suing a single defendant. It needs to be modified if there are multiple parties. It also assumes that a single enterprise is at issue, and will need to be modified if multiple enterprises are at issue.

Pursuant to 18 U.S.C. §1964(c), "[a]ny person injured in his business or property by reason of a violation of section 1962... may sue... in any appropriate United States district court" and may recover treble damages and a reasonable attorney's fee. See, *Sedima, S.P.R.L., 173 U.S. at 496*. However, no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of Section 1962. This exclusion concerning securities does not apply to an action against any person that is criminally convicted in connection with a securities fraud. 18 U.S.C. §1964(c).

"To establish a violation of 18 U.S.C. §1962(c), [a plaintiff] must prove: (1) the existence of an enterprise; (2) that the enterprise affected interstate commerce; (3) that the defendants were employed by or associated with the enterprise; (4) that the defendants participated, either directly or indirectly, in the conduct of the affairs of the enterprise; and (5) that the defendants participated through a pattern of racketeering activity." *United States v. Starrett, 55 F.3d 1525, 1543 (11th Cir. 1995)* (citing *United States v. Kotvas, 941 F.2d 1141, 1143-44 (11th Cir. 1991)*; *United States v. Young, 906 F.2d 615, 618-29 (11th Cir. 1990)*; *United States v. Russo, 769 F.2d 1443, 1455 (11th Cir. 1986)*).

The definition of "predicate act" comes from *Williams v. Mohawk Indus., Inc., 465 F.3d 1277, 1283 (11th Cir. 2006)* (quoting *Maiz v. Virani, 253 F.3d 641, 671 (11th Cir. 2001)*). "A 'pattern' of racketeering activity is shown when a racketeer commits at least two distinct but related predicate acts." Id. In Williams, the Court affirmed denial of the defendant's Rule 12(b)(6) motion to dismiss the RICO claims, finding that the plaintiff's allegations that the defendant had "committed hundreds, even thousands, of violations of federal immigration laws" were sufficient to plead a "pattern of racketeering activity." Id.

The continuity and relationship elements are derived from *United States v. Browne, 505 F.3d 1229, 1257 (11th Cir. 2007)* (noting that to establish a pattern of predicate acts, the plaintiff must prove that the predicate acts relate to each other and have continuity). In defining how "the predicate acts must relate to each other," the Eleventh Circuit has stated this "the predicate acts must 'have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise [be] interrelated by distinguishing characteristics and... not [be] isolated events.'") Id. (quoting *Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496, n.14 (1985)*); *United States v. Starrett, 55 F.3d at 1543* (same). In *Starrett*, the court found that the evidence that the defendant used a communication facility in the perpetration of a felony, transported an individual across state lines for the purpose of prostitution, and intended to distribute cocaine and marijuana supported a finding that the defendant's predicate acts were related. Id at 1547. Specifically, the court found that "[f]our of the [defendant's] predicate acts shared the purpose of facilitating illegal prostitution, and the other four predicate acts share the purpose of furthering narcotics distribution." Id.

Starrett also discussed examples of how the two required predicate acts need not be the same type of acts to be related. Id. (finding that the evidence that the defendant used a communication facility in the perpetration of a felony, transported an individual across state lines for the purpose of prostitution, and intended to distribute cocaine and marijuana supported a finding that the defendant's predicate acts were related).

As for continuity, "[p]redicate acts demonstrate continuity if they are either 'a closed period of repeated conduct,' or 'past conduct that by its nature projects into the future with a threat of repetition.'" Id. at 1543 (quoting *H.J., Inc. v. NW Bell Tel. Co., 492 U.S. 229 (1989)*). See also, *Browne, 505 F.3d at 1257*. The continuity of predicate acts was found to be satisfactorily alleged where defendants "had agreed to a scheme whereby [one] would supply [the other] with cocaine on an on-going basis." *Starrett, 55 F.3d at 1547*.

In *Boyle v. United States, 556 U.S. 938, 946-47, 129 S. Ct. 2237, 2244 (2009)*, the Supreme Court held that "an association-in-fact enterprise must have at least three structural features: a purpose, relationships among those associated with an enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose."). See also *Williams, 465 F.3d at 1284-85* (allegations that the defendant corporation worked with third-party temp agencies/recruiters to bring illegal workers into this country for the defendant's benefit were sufficient to allege common purpose). In *Boyle*, the defendant was charged in connection with a series of bank thefts allegedly conducted by a group that was loosely organized and did not appear to have a leader or hierarchy. The Supreme Court ruled that although the three structural features set forth above were necessary for a finding of an association-in-fact enterprise, there are no additional structural features such as hierarchy or a chain of command required.

A claim under §1962(c), requires a plaintiff to establish that the defendant[s] "conduct[ed] or participate[d], directly or indirectly, in the conduct of [an] enterprise's affairs though a pattern of racketeering activity." 18 U.S.C. 1962(c). The Supreme Court has defined this term as meaning that a defendant "participate in the operation or management of the enterprise itself." *Reeves v. Ernst & Young, 507 U.S. 170, 184 (1993)*. In *Reeves*, the defendant accounting firm performed financial audits for a cooperative that issued notes to individuals. The defendant's audits indicated its doubt about whether a certain investment was recoverable, but the condensed financial statement distributed at the cooperative's annual meeting omitted this information. The Supreme Court held that the defendant's failure to tell the cooperative's board about the investment was insufficient to constitute participation in the operation or management of the cooperative to give rise to §1962(c) liability.

7 PJI 4 | RICO | CONSPIRACY TO CONDUCT THE AFFAIRS OF THE ENTERPRISE - 18 USC §1962(D)

[Plaintiff] has brought a claim against [Defendant] for allegedly violating the Racketeer Influenced and Corrupt Organizations Act, commonly known as RICO.

[Plaintiff] specifically claims that [Defendant] violated RICO §1962(d) by conspiring to violate RICO §1962(c). I've already given you instructions on the elements of a violation of §1962(c). Now you must decide if [Plaintiff] has proved by a preponderance of the evidence whether two or more of the defendants engaged in a conspiracy to violate RICO §1962(c).

Generally, a RICO "conspiracy" is an agreement by two or more people to commit an unlawful act. Put another way, it's a kind of partnership for illegal purposes. Every member of the conspiracy becomes the agent or partner of every other member. [Plaintiff] doesn't have to prove that all the people named in the complaint were members of the conspiracy – or that those who were members made any kind of formal agreement. The heart of the conspiracy is the making of the unlawful plan itself. And [Plaintiff] doesn't have to prove that the conspirators were successful in carrying out the plan.

To prove a RICO conspiracy, [Plaintiff] must prove each of the following three facts by a preponderance of evidence:

> First, you must find that two or more people agreed to try to accomplish an unlawful plan to engage in a pattern of racketeering activity.
>
> And second, you must find that a defendant agreed to the overall objective of the conspiracy.

Or, as an alternative to the second element, you must find that a defendant agreed with at least one other defendant to commit two predicate acts as part of the conspiracy.

[Plaintiff] may show an "agreement to the overall objective of the conspiracy" by circumstantial evidence that a defendant must have known that others were also conspiring to participate in the same enterprise through a pattern of racketeering activity. If [Plaintiff] proves agreement on an overall objective, then it isn't necessary that a defendant agree to personally commit two predicate acts.

A defendant can also engage in a RICO conspiracy even if [Defendant] didn’t agree to the conspiracy’s overall objective. It’s enough that [Defendant] engaged in a part of the conspiracy with at least one other defendant by committing at least two predicate acts – alone or with someone else.

While the essence of a RICO conspiracy is an agreement to further an endeavor that, if completed, would satisfy all the elements of a substantive RICO violation, [Plaintiff] doesn’t have to offer direct evidence of an agreement.

The conspiracy’s existence can be inferred from the participants’ conduct. But a defendant must objectively manifest, through words or actions, [Defendant]’s agreement to participate in the enterprise’s affairs.

[Plaintiff] doesn’t have to show that the alleged members of the conspiracy entered into any express or formal agreement, or that they directly stated the details of the scheme, its object, or purpose, or the precise means by which the object or purpose was to be accomplished. [Plaintiff] also doesn’t have to establish that all the means or methods alleged to carry out the alleged conspiracy were, in fact, agreed on, or that all the means or methods that were agreed on were actually used or put into operation. And [Plaintiff] doesn’t have to prove that all persons alleged to be conspiracy members were actually members or that alleged conspirators succeeded in accomplishing their unlawful objectives.

But it isn’t enough if the evidence shows only that the alleged conspirators agreed to commit the acts of racketeering [Plaintiff] alleges, without more, or that they agreed to participate in the affairs of the same alleged enterprise. It doesn’t matter that the alleged conspirators participated in the conduct of the affairs of the alleged enterprise through different or dissimilar acts of racketeering activity so long as the alleged racketeering acts would – if actually committed – create a “pattern of racketeering activity” as I’ve defined it.

A defendant can become a member of a conspiracy without knowing all the unlawful scheme’s details or without knowing the names and identities of all the other alleged conspirators. If [Plaintiff] proves by a preponderance of the evidence that a particular defendant has knowingly joined the alleged conspiracy, it doesn’t matter that [Defendant] may not have participated in the alleged conspiracy or scheme’s earlier stages.

Mere presence at the scene of some transaction or event, or mere similarity of conduct among various persons and the fact that they may have associated with each other, and may have assembled together and discussed common aims and interests, doesn't necessarily prove the existence of a conspiracy. A person who doesn't have knowledge of a conspiracy, but who happens to act in a way that advances some object or purpose of conspiracy, doesn't become a conspirator.

[Plaintiff] doesn't have to prove that a defendant actually committed any of the acts that [Defendant] may have agreed to commit to establish [his/her] membership in the conspiracy.

To determine whether there was a conspiracy, you must consider all the evidence in the case. If you find that there was a conspiracy, then you can attribute the statements or acts of the [names of co-conspirators] to [Defendant]. If you find that there was not a conspiracy, then you can't attribute the statements or acts of [names of co-conspirators] to [Defendant].

If you find the conspiracy didn't exist, then you must find for [Defendant]. But if you're satisfied that the conspiracy existed, you must determine who the members of the conspiracy were.

If you find that a particular defendant is a member of another conspiracy, but not the one [Plaintiff] charged, then you can't find that defendant liable in this case. Put another way, you can't find that a defendant violated §1962(d) unless you find that [Defendant] was a member of the conspiracy charged – not some other separate conspiracy.

If you decide that a defendant conspired to violate RICO, you must decide whether that conspiracy caused [Plaintiff] injury. The damages [Plaintiff] may recover are those caused by the predicate acts committed by members of the conspiracy that injured [Plaintiff] in [his/her/its] business or property.

If you conclude that a defendant joined in a conspiracy to violate RICO, [Defendant] is responsible for all damages caused by predicate acts committed by members of the conspiracy that caused injury to [Plaintiff]. It isn't necessary that every predicate act caused damage to [Plaintiff], but [he/she/it] can only recover for damages caused by a predicate act committed by a conspiracy member.

In your consideration of this conspiracy claim, you should first determine whether the alleged conspiracy existed. If you conclude that a conspiracy existed as alleged, you should next determine whether each defendant under consideration willfully became a member of that conspiracy.

((Rev. 03/2022) | Judicial Council of the United States Eleventh Judicial Circuit)

Annotations and Comments

Pursuant to 18 U.S.C. §1964(c), "[a]ny person injured in his business or property by reason of a violation of section 1962... may sue... in any appropriate United States district court" and may recover treble damages and a reasonable attorney's fee. See, *Sedima, S.P.R.L., 173 U.S. at 496*. However, no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of Section 1962. This exclusion concerning securities does not apply to an action against any person that is criminally convicted in connection with a securities fraud. 18 U.S.C. §1964(c).

This instruction assumes a single plaintiff suing a single defendant. It will need to be appropriately modified if there are multiple defendants. Additionally, as the vast majority of RICO conspiracies allege claims under §1962(c), this instruction is tailored to allege a conspiracy under that subsection. If a conspiracy claim alleges violations of either §1962(a) or (b), then the instruction will need to be amended accordingly.

"A plaintiff can establish a RICO conspiracy claim in one of two ways: (1) by showing that the defendant agreed to the overall objective of the conspiracy; or (2) by showing that the defendant agreed to commit two predicate acts." *American Dental Ass'n. v. Cigna Corp., 605 F. 3d 1283, 1293 (11th Cir. 2010)* (quoting *Republic of Panama v. BCCI Holdings (Luxembourg) S.A., 119 F.3d 935, 950 (11th Cir. 1997)*. A plaintiff may establish an "agree[ment] to the overall objection" by "circumstantial evidence showing that each defendant must necessarily have known that others were also conspiring to participate in the same enterprise through a pattern of racketeering activity." *United States v. Starrett, 55 F.3d 1525, 1544 (11th Cir. 1995)*. In *Starrett*, the Court found that the jury could infer that the defendant manifested an agreement to participate in a national crime organization from evidence that the defendant had been the president of the regional and local chapters of the organization, had been one of the four original members of the Florida chapter of the organization, had initiated an aggressive membership recruitment drive to solidify the organization's position, and had personally committed thirty-four predicate acts related to the organization. Id. at 1547.

"A conspirator must intend to further an endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense, but it suffices that he adopt the goal of furthering or facilitating the criminal endeavor. He may do so in any number of ways short of agreeing to undertake all of the acts necessary for the crime's completion." *Salinas v. United States, 522 U.S. 52, 65 (1997)*. In Salinas, the court found that the defendant conspired to violate the RICO statute by accepting numerous bribes while knowing about and agreeing to facilitate an ongoing criminal scheme.

A RICO conspiracy plaintiff is not required to "offer direct evidence of an agreement; the existence of [the] conspiracy 'may be inferred from the conduct of the participants.'" *American Dental Ass'n., 605 F.3d at 1283*. In *American Dental*, the court found that because the plaintiff's allegations were "mere formulaic recitations" of a conspiracy claim, they were therefore insufficient to "support an inference of agreement to the overall objective of the conspiracy or an agreement to commit two predicate acts.

7 PJI 5 | FRAMEWORK FOR SPECIAL INTERROGATORIES TO THE JURY - 18 USC §1962(A)-(C)

Because special interrogatories will vary significantly in RICO cases, this format simply suggests a general framework and structure for use in drafting special-interrogatory-verdict forms.

SPECIAL INTERROGATORIES TO THE JURY

Do you find from a preponderance of the evidence:

1. That [Defendant] operated or managed an interest in an enterprise through a pattern of racketeering activity?

Answer Yes or No _____________

2. State if you unanimously find that [Plaintiff] proved by a preponderance of the evidence that [Defendant] committed any of the following acts:

Category 1: Mail Fraud

As to Racketeering Act 1A:

(Example: Invoice dated A from Defendant to Plaintiff)

Answer Proved or Not Proved _____________

As to Racketeering Act 1B:

(Example: Invoice dated B from Defendant to Plaintiff)

Answer Proved or Not Proved _____________

As to Racketeering Act 1C:

(Example: Invoice dated C from Defendant to Plaintiff)

Answer Proved or Not Proved _____________

Category 2: Wire Fraud

As to Racketeering Act 2A:

(Example: E-mail dated A from Defendant to X, copying Plaintiff)

Answer Proved or Not Proved _____________

As to Racketeering Act 2B:

(Example: Fax dated B from Defendant to Plaintiff)

Answer Proved or Not Proved _____________

As to Racketeering Act 2C:

(Example: Wire transfer dated C from Plaintiff to Defendant)

Answer Proved or Not Proved _____________

Category 3: Interstate Transportation of Stolen Property

As to Racketeering Act 3A:

(Example: Transmission in interstate commerce of funds of $5,000 or more known to have been taken by fraud)

Answer Proved or Not Proved _____________

If you found in paragraph 1 above that [Defendant] is liable on Count 1, what is the amount of damages, if any, that you find was proximately caused by the violation?

$_______________________

SO SAY WE ALL.

DATE: ____________________ ____________________________
Foreperson's Signature

((Rev. 03/2022) | Judicial Council of the United States Eleventh Judicial Circuit)

Annotations and Comments

No annotations associated with this instruction.

APPENDIX

COPYRIGHT NOTICE

ORIGINAL SOURCE

#	Item	Link
1	Original Source	https://CA11.USCourts.gov

INTERACTIVE VERSION

#	Item	Link
1	Web	TextBookDiscrimination.com/Handbooks/PJI/CA11/P07

CONTACT INFORMATION

E: TextBookDiscrimination@gmail.com
W: www.TextBookDiscrimination.com

Congratulations! You're now ***booked up*** on Part 7 from the Eleventh Circuit Court of Appeal's **Pattern Jury Instructions**!