RECENT DEVELOPMENTS IN CIVIL RICO LAW

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INTRODUCTION

In 1970, Congress enacted the Racketeer Influenced and Corrupt Organizations statute ("RICO").[1] RICO prohibits certain conduct involving a pattern of racketeering activity.[2] Specifically, RICO prohibits: (1) using income derived from a pattern of racketeering activity to acquire, establish or operate an enterprise engaged in or affecting interstate commerce; (2) acquiring or maintaining an interest in or control of an enterprise engaged in or affecting interstate commerce through a pattern of racketeering activity; (3) conducting or participating in the affairs of an enterprise engaged in or affecting interstate commerce through a pattern of racketeering activity; and (4) conspiring to take any action prohibited by RICO.[3] In addition to criminal penalties,[4] RICO provides a cause of action for plaintiffs who are injured in their business or property by reason of a RICO violation, and provides for recovery of treble damages, costs, and reasonable attorney's fees.[5] RICO's treble damages provision, and RICO's seemingly broad scope, have produced an increasing amount of civil RICO litigation.[6] This article discusses recent civil RICO cases

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1. 18 U.S.C. §§ 1961-68. RICO was created in Title IX of the Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922, 941-48 (1970).

2. RICO also prohibits certain conduct involving the collection of unlawful debt. *See* 18 U.S.C. § 1962.

3. *See* 18 U.S.C. § 1962.

4. 18 U.S.C. § 1963.

5. 18 U.S.C. § 1964(c).

6. *See* Montesano v. Seafirst Commercial Corp., 818 F.2d 423, 424 (5th Cir. 1987) ("An imaginative plaintiff could take virtually any illegal occurrence and point to acts preparatory to the occurrence . . . as meeting [RICO's requirements]."); Wolin v. Hanley Dawson Cadillac, Inc., 636 F. Supp. 890, 891 (N.D. Ill. 1986) ("RICO's lure of treble damages and attorneys' fees draws litigants and lawyers . . . like lemmings to the sea."); S. REP. NO. 269, 101st Cong., 2d Sess. 3-4 (1990) ("'Civil filings under . . . [RICO] have increased more than eight-fold over the last five years, to nearly a thousand cases during calendar year 1988. While that number has held steady during the past three years, there is every reason to expect a substantial increase in this already high number because of the statute's lucrative treble damages provisions and the extensive coverage recently afforded civil RICO actions by the national media, legal publication, and continuing education programs.'" (quoting Chief Justice Rehnquist, Speech at the Brookings Eleventh Seminar on the Administration of Justice (Apr. 7, 1989))).

The increasing importance of civil RICO in contemporary jurisprudence is revealed by the number of RICO symposiums held by legal publications to mark RICO's twentieth anniversary: *Law*

decided by the United States Supreme Court and the United States Court of Appeals for the Seventh Circuit.

I. RECENT SUPREME COURT DEVELOPMENTS

A. The Operation or Management Test

In *Reves v. Ernst & Young*,[7] the Court resolved a conflict among the federal circuits over the meaning of the phrase "to conduct or participate, directly or indirectly, in the conduct of [an] enterprise's affairs," as used in the following provision of RICO located at § 1962(c): "It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity . . . ."[8] The factual setting in *Reves* involved an accounting firm, Arthur Young, which prepared audits of the Farmer's Cooperative of Arkansas & Oklahoma, Inc. ("Co-op") in 1981 and 1982.[9] In connection with the audits, Arthur Young made crucial assumptions pertaining to the value of Co-op's assets, but failed to disclose that Co-op would be insolvent without those assumptions.[10] In 1984, there was a run on Co-op's demand notes which resulted in Co-op filing for bankruptcy.[11] As a result, Co-op's demand notes were frozen, and the note holders were unable to redeem their notes at will.[12] A year later, the bankruptcy trustee filed a civil RICO claim against Arthur Young on behalf of Co-op and a class of note holders. The district court granted summary judgment on the civil RICO claim in favor of Arthur Young on the grounds that RICO's prohibition of conducting or participating in the conduct of an enterprise required evidence that the defendant engaged in the operation or management of the enterprise itself.[13] This requirement was termed the operation or management test.[14] According to the district court, Arthur Young

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and the Continuing Enterprise: Perspectives on RICO, 65 NOTRE DAME L. REV. 873 (1990); *Reforming RICO: If, Why, and How?*, 43 VAND. L. REV. 621 (1990); *RICO: Something for Everyone*, 35 VILL. L. REV. 853 (1990); *The 20th Anniversary of the Racketeer Influenced and Corrupt Organizations Act*, 64 ST. JOHN'S L. REV. 701 (1990).

7. 113 S. Ct. 1163 (1993).

8. 18 U.S.C. § 1962(c).

9. The accounting firm that prepared the audit was originally known as Russell Brown and Company, which merged with Arthur Young and Company on January 2, 1982. *Reves*, 113 S. Ct. at 1167. Eventually, Arthur Young became Ernst & Young. *Id.* In order to be consistent with the terminology used by the Court in *Reves*, this article will refer to the accounting firm as "Arthur Young." *See id.* at 1167 n.2.

10. *Reves*, 113 S. Ct. at 1167-68.

11. *Id.* at 1168.

12. *Id.*

13. *Id.*

14. *Id.* at 1169.

was entitled to judgment as a matter of law because the evidentiary material revealed that Arthur Young's accountants reviewed a series of completed transactions and certified that Co-op's records fairly portrayed Co-op's financial status as of three or four months prior to Co-op's annual meetings at which Arthur Young's reports were presented, and that Arthur Young's actions did not constitute management of Co-op.[15] On appeal, the Eighth Circuit affirmed the grant of summary judgment in favor of Arthur Young based on application of the operation or management test.[16] The Supreme Court granted certiorari in *Reves* to resolve a circuit conflict over whether RICO required application of the operation or management test.[17]

The Court began its analysis of whether the operation or management test is required by focusing on the meaning of the term "conduct," which is used twice in the phrase at issue. As a verb, the term "conduct" means "to lead, run, manage, or direct."[18] Although conduct is also used as a noun in the statutory language—"participate, directly or indirectly in the *conduct* of [an] enterprise's affairs"—the Court held that when used as both a verb and noun the term requires an element of direction.[19] According to the Court, if an alternate meaning of conduct was intended, "Congress could easily have written 'participate, directly or indirectly, in [an] enterprise's affairs.'"[20] The Court also found that the term "participate" means "to take part in."[21] Based on the meanings it assigned to the terms "conduct" and "participate," the Court held that for a defendant to be liable under the provision "*some* part in directing the enterprise's affairs is required," and that the operation or management test "expresses this requirement in a formulation that is easy to apply."[22]

The Court advised that the operation or management test does not limit liability under § 1962(c) to an enterprise's upper management.[23] According to the Court, "[a]n enterprise is 'operated' not just by upper management but also by lower-rung participants in the enterprise who are under the direction of upper management."[24] Additionally, the Court noted that "[a]n enterprise also might be 'operated' or 'managed' by others 'associated with' the enterprise who exert control over it as, for example, by bribery."[25] In a footnote, the Court explained that an issue left unanswered by its decision in *Reves* was exactly how far down an enterprise's chain of command the operation or management test

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15. *Id.* at 1168.
16. *Id.* at 1168-69.
17. *Id.* at 1169.
18. *Id.*
19. *Id.* (emphasis added).
20. *Id.*
21. *Id.* at 1170.
22. *Id.* (emphasis in original).
23. *Id.* at 1173.
24. *Id.*
25. *Id.*

reaches.[26] According to the Court, there was no need to address the issue because it was clear that Arthur Young was not acting under the direction of Co-op's upper management, and thus, was not part of Co-op's chain of operations.[27] Because the parties did not dispute that the district court and the circuit court had properly applied the operation or management test, the Court affirmed the judgment of the court of appeals.[28]

Reves changes the law in the Seventh Circuit, which previously rejected the operation or management test and applied a less demanding three-part test which required that the defendant commit racketeering acts, that the defendant's commission of the racketeering acts be facilitated by the defendant having a position in or relationship with the enterprise, and that the racketeering acts have some effect on the enterprise.[29] Additionally, because the Supreme Court refused to address exactly how far down an enterprise's chain of operation the operation or management test reaches, an issue that is likely to be raised in future civil RICO actions premised on § 1962(c) is the scope of the requirement. Conflicting decisions and future confusion on this issue may result.

B. Proximate Cause & Standing in Securities Fraud-Based RICO Claims

In *Holmes v. Securities Investor Protection Corp.*,[30] the Court determined that a plaintiff must show an injury proximately caused by the defendant's conduct in order to recover treble damages under RICO's civil recovery provisions. At issue was whether a proximate cause requirement could be read into the following statutory language: "[a]ny person injured in his business or property by reason of a violation of [RICO] . . . 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."[31]

The Court began its analysis by admitting that the language in question could be read as requiring merely factual—"but for"—causation, but not a showing of proximate cause.[32] However, the Court held that such an expansive interpretation would be improper. According to the Court, "[t]he key to the better interpretation lies in some statutory history."[33] Because the language in

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26. *See id.* at 1173 n.9
27. *Id.*
28. *Id.* at 1173-74.
29. *See* Overnight Transp. Co. v. Truck Drivers, Oil Drivers, Filling Station & Platform Workers Union Local No. 705, 904 F.2d 391, 393 (7th Cir. 1990); *see also* United States v. Quintanilla, 2 F.3d 1469, 1484 (7th Cir. 1993) (noting that *Reves* changes the law in the Seventh Circuit).
30. 112 S. Ct. 1311 (1992).
31. 18 U.S.C. § 1964(c).
32. *Holmes*, 112 S. Ct. at 1316.
33. *Id.* at 1317.

question was modeled on § 4 of the Clayton Act,[34] which had been interpreted to include a proximate cause requirement, the Court held that Congress intended RICO to have a proximate cause requirement.[35]

Although the Court's decision in *Holmes* answers a question that the Court had not previously considered, the federal courts that had addressed the proximate cause issue, including the Seventh Circuit, "overwhelmingly" found that RICO contains a proximate cause requirement.[36] A more important aspect of the Court's decision was that the Court failed to resolve a conflict among the federal courts over whether a person has standing to bring a civil RICO claim based on allegations of securities fraud,[37] even though the person neither bought nor sold securities, and thus, is without standing to bring an implied cause of action for securities fraud under § 10(b) of the Securities Act of 1934[38] and Securities and Exchange Commission Rule 10b-5.[39] Three concurring Justices viewed the standing issue as the "only clearly articulated question on which [the Court] granted certiorari."[40]

The majority opinion declined to reach the RICO standing issue because it believed that all of the standing conflict cases could have been resolved on proximate cause grounds, and thus, addressing the standing issue would not have been proper.[41] However, all four concurring Justices would have reached the issue, and all would have held that a claimant who brings a civil RICO action based on allegations of securities fraud violations need not be a purchaser or seller of securities. The concurring opinion written by Justice O'Connor (the "O'Connor opinion") based its decision on the absence of a purchaser or seller requirement in the text of RICO, which provides a civil cause of action to "*any* person" injured by reason of a violation of RICO.[42] The O'Connor opinion rejected the argument that RICO incorporates the standing requirements of the various predicate acts listed in the definition of "racketeering activity." The O'Connor opinion also rejected the argument that even if in general the standing requirements of RICO predicates are not absorbed by RICO, an exception to the rule should be made for RICO predicates which involve fraud in the sale of securities because such a standing requirement is well-established for private

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34. 15 U.S.C. § 15.

35. *Holmes*, 112 S. Ct. at 1317 (quoting Associated Gen. Contractors of Cal., Inc. v. Carpenters, 459 U.S. 519, 534 (1983)).

36. *Id.* at 1317 n.11; *see* Haroco, Inc. v. American Nat'l Bank & Trust Co. of Chicago, 747 F.2d 384, 389 (7th Cir. 1984), *aff'd per curiam*, 473 U.S. 606 (1985).

37. *See Holmes*, 112 S. Ct. at 1321-22 & n.23 (discussing conflict).

38. 15 U.S.C. § 78j(b).

39. 17 C.F.R. § 240.10b-5.

40. *Holmes*, 112 S. Ct. at 1322 (O'Connor, J., White, J., and Stevens, J., concurring in part and concurring in judgment). Justice Scalia filed a separate concurring opinion.

41. *Id.*

42. *Id. at 1323.*

securities fraud actions.[43] The O'Connor opinion noted that RICO's language specifies that there must be an "offense involving . . . fraud in the sale of securities . . . punishable under any law of the United States," and thus, requires only that there be an act which constitutes fraud in the sale of securities that can be punished criminally.[44] Because there is no purchaser or seller requirement to establish a criminal violation of § 10(b) and Rule 10b-5, the O'Connor opinion found no basis to impose a purchaser or seller requirement for civil RICO claims based on those securities fraud provisions.[45]

The concurring opinion written by Justice Scalia (the "Scalia opinion") focused its discussion on a zone of interests standing requirement.[46] Although the Scalia opinion was guided by RICO's provision of a cause of action to "any person" injured by a RICO violation, the Scalia opinion stressed that the zone of interests standing requirement limits the set of persons with standing to sue under RICO to those persons who the underlying racketeering offenses seek to protect.[47] Accordingly, the Scalia opinion advocated a standing analysis that considers each RICO predicate and determines the set of persons the RICO predicate is intended to protect.[48]

The impact of *Holmes* is two-fold. First, the Court confirmed the law of the Seventh Circuit that a civil RICO claimant must have an injury that is proximately caused by the defendant's unlawful acts.[49] Second, by specifically reserving judgment on whether a civil RICO claimant must be a purchaser or seller of securities to bring a civil RICO claim predicated on securities fraud, the Court allowed the conflict among the courts over the standing requirement to continue. Whether the majority is correct that the standing issue is resolved by the Court's decision concerning RICO's proximate cause requirement is likely to be the subject of future civil RICO litigation. However, to the extent courts find that the purchaser or seller standing issue survives, the discussion of the standing issue in the O'Connor and Scalia opinions may provide the courts with some guidance in resolving the issue.[50]

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43. *Id.* at 1324.

44. *Id.* at 1323 (quoting 18 U.S.C. § 1961(1)).

45. *Id.* at 1324-25.

46. *Id.* at 1328.

47. *Id.*

48. *See id.* at 1328-29.

49. *See* Haroco v. American Nat'l Bank & Trust Co., 747 F.2d 384, 398 (7th Cir. 1984), *aff'd per curiam*, 473 U.S. 606 (1985).

50. For additional discussion of the probable impact of *Holmes* on the purchaser-seller standing issue for civil RICO claims, see Virginia G. Maurer, *Holmes v. SIPC: A New Direction for RICO Standing?*, 5 U. FLA. J.L. & PUB. POL'Y 73, 95-102 (1992) (explaining why proximate cause analysis is not enough to resolve standing issue and advocating adoption of the zone of interests analysis set out in the Scalia opinion); Jonathan Coe, Comment, *Holmes v. Securities Investor Protection Corp.: A Disappointing Attempt to Limit RICO Actions for Securities Fraud*, 70 DENV. U. L. REV. 413, 421-26 (1993) (predicting continued conflict among the federal courts on the purchaser-seller standing issue, and advocating RICO's adoption of the purchaser-seller standing

C. Economic Motive Requirement

In *National Organization for Women, Inc. v. Scheidler*, the Supreme Court resolved a conflict among the federal courts over whether RICO requires an economic motive.[51] The civil RICO claims in *Scheidler* were brought in the United States District Court for the Northern District of Illinois by two health care centers[52] against a coalition of antiabortion groups known as the Pro-Life Action Network ("PLAN") and others who oppose legal abortion.[53] According to the health care centers, PLAN and the other defendants were part of a nationwide conspiracy aimed at closing abortion clinics by engaging in a pattern of racketeering activity,[54] which included extortion in violation of the Hobbs Act.[55] The district court dismissed the health care centers' RICO claims for failure to state a claim on which relief could be granted because there had been no allegation that the defendants' actions had a "profit-generating purpose."[56]

On appeal, the Seventh Circuit affirmed the district court's decision in *Scheidler*, and joined other federal courts in reading an economic motive requirement into RICO's enterprise element.[57] The court of appeals based its decision mainly on the analysis contained in three criminal RICO cases decided by the Second Circuit, which held that RICO contains such a requirement.[58] In the first case, *United States v. Ivic*,[59] the Second Circuit considered RICO's legislative history, Supreme Court precedent, and United States Department of Justice guidelines, and determined that a RICO violation requires that either the

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requirement).

51. 114 S. Ct. 798, 802 (1994).

52. The health centers are the Delaware Women's Health Organization and the Summit Women's Health Organization. *Scheidler*, 114 S. Ct. at 801 and 802. Although the National Organization for Women ("NOW") was also listed as a plaintiff in the complaint, the district court did not rule on NOW's motion for class certification prior to dismissing the RICO claims. *See id.* at 802 n.3.

53. *Id.* at 801.

54. *See id.*

55. The Hobbs Act, 18 U.S.C. § 1951, provides:

> (a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.
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> (b) As used in this section —
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> . . . .
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> (2) the term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

56. National Org. for Women v. Scheidler, 765 F. Supp. 937, 943 (N.D. Ill. 1991)

57. National Org. for Women v. Scheidler, 968 F.2d 612, 625-630 (7th Cir. 1992).

58. *See id.* at 627-29.

59. 700 F.2d 51 (2d Cir. 1983).

enterprise or the racketeering activity be economically motivated.[60] In *United States v. Bagaric*,[61] and *United States v. Ferguson*,[62] respectively, the Second Circuit emphasized that RICO does not require that there be solely an economic motive, but only that "either the predicate acts or the enterprise be geared toward economic gain,"[63] and "that RICO requires only that there be 'some financial purpose.'"[64] The Seventh Circuit also found that although the Supreme Court has instructed courts to avoid establishing "undue limitations [on] civil RICO," the Supreme Court has frequently discussed RICO in the context of "businesses."[65] According to the Seventh Circuit in *Scheidler*, this "emphasis on business — economic activity — bolsters" the conclusion that RICO requires an economic motive.[66]

The Supreme Court granted certiorari in *Scheidler* to resolve the conflict over whether RICO requires an economic motive.[67] In a unanimous decision, the Court rejected the Seventh Circuit's analysis and concluded that RICO contains no economic motive requirement.[68] The Court began its discussion of the economic motive issue by looking at RICO's statutory provisions. The Court noted that the definition of "enterprise" in RICO is broad,[69] and provides no basis for adopting an economic motive requirement.[70] The Court found unpersuasive the argument that the term "enterprise," as used in some of RICO's substantive provisions, indicates that Congress intended the term to establish a general economic motive requirement. The provisions in question prohibit acquiring an interest in an enterprise with income gained through a pattern of racketeering activity, or acquiring control of an enterprise through a pattern of

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60. *See Scheidler*, 968 F.2d at 627 (discussing *Ivic*).
61. 706 F.2d 42 (2d Cir.), *cert. denied*, 464 U.S. 840 (1983).
62. 758 F.2d 843 (2d Cir.), *cert. denied*, 474 U.S. 1032 (1985).
63. *Scheidler*, 968 F.2d at 628 (discussing *Bagaric*).
64. *Id.* (quoting *Ferguson*, 758 F.2d at 853).
65. *Id.* at 629.
66. *Id.*
67. 114 S. Ct. at 801.
68. *Id.* at 803-06.
69. RICO's definition of enterprise provides: "'enterprise' 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." 18 U.S.C. § 1961(4).
70. *Scheidler*, 114 S. Ct. at 803-04.

racketeering activity.[71] The Court observed that in either case the enterprise need not be a profit-seeking entity.[72]

Next, the Court considered whether RICO's legislative history reveals a congressional intent for an economic motive requirement. The Court disapproved of the Second Circuit's decision in *Bagaric*,[73] which had found an economic motive implied in the congressional statement of findings that preface RICO which contain language noting that billions of dollars are drained from the American economy by criminal group activity.[74] According to the Court in *Scheidler*, criminal group activity can affect the economy even if not aimed at providing a financial benefit to the perpetrators.[75] The Court stressed that RICO's language was unambiguous, and that there was no basis for finding a "clearly expressed legislative intent" that courts should ignore RICO's unambiguous language and impose an economic motive requirement.[76]

The Court found no grounds for adopting an economic motive requirement based on deference to the Department of Justice's guidelines for RICO prosecutions, which, according to the Seventh Circuit in *Scheidler*, limit RICO prosecutions brought by the federal government to cases that involve criminal activity with an economic goal.[77] According to the Court, "[w]hatever may be the appropriate deference afforded to such internal rules . . . the Department of Justice [has] amended its guidelines [to] provide that an . . . enterprise must be 'directed toward an economic *or other identifiable goal.*'"[78] Similarly, the Court found no reason to apply the rule of lenity in criminal cases to the issue whether an economic motive requirement should be grafted on RICO. According to the Court, the rule of lenity applies only where the Court is faced with an ambiguous criminal statute; it does not mandate an "'over-riding consideration of being lenient to wrongdoers'" in every case.[79]

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71. The substantive provisions in question are 18 U.S.C. §§ 1962(a) and (b), which provide:
(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity . . . to use or invest, directly or indirectly, any part of such income, or the proceeds of such income in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. . . .
(b) It shall be unlawful for any person through a pattern of racketeering activity . . . to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

72. *Scheidler*, 114 S. Ct. at 804.

73. 706 F.2d at 57 n.13.

74. *See Scheidler*, 114 S. Ct. at 805.

75. *Id.*

76. *Id.* at 806.

77. *Id.*

78. *Id.* (quoting U.S. Dept. of Justice, United States Attorney's Manual § 9-110.360 (Mar. 9, 1984)) (emphasis added by the Court).

79. *Id.* (quoting United States v. Turkette, 452 U.S. 576, 587-88 n.10 (1981)).

In a concurring opinion, Justice Souter, joined by Justice Kennedy, considered the argument that to avoid any possible impact that RICO may have on rights protected by the First Amendment the Court should adopt an economic motive requirement, which the majority opinion refused to address.[80] The concurring Justices stated that they agreed with the majority that RICO's language is unambiguous, and accordingly, found no reason to apply the established rule that courts should construe an ambiguous statute in a manner that avoids constitutional dilemmas.[81] The concurring Justices expressed their doubt, however, that an economic motive requirement would be an adequate mechanism to avoid constitutional dilemmas if an ambiguity were present. The concurring Justices found the economic motive requirement too restrictive because it would remove conduct that is clearly criminal from RICO's reach so long as the conduct was not aimed at economic gain.[82] Further, the concurring Justices found that to the extent activities which are clearly protected by the constitution could be characterized as economically motivated, the economic motive requirement would not remove all possible constitutional dilemmas.[83] As the concurring opinion explained, "even protest movements need money."[84] Because "nothing in the Court's opinion precludes a RICO defendant from raising the First Amendment in its defense in a particular case," the concurring Justices cautioned "courts applying RICO to bear in mind the First Amendment interests that could be at stake."[85]

The most important impact of the Supreme Court's decision in *Scheidler*, for purposes of this article, is that it changes the law in the Seventh Circuit. The absence of an economic motive is no longer a proper basis for rejecting a civil RICO claim. Additionally, although in its RICO decisions immediately preceding *Scheidler—Reves*[86] and *Holmes*[87] — the Court narrowed RICO's scope, *Scheidler* demonstrates that the Court remains unwilling to adopt judicially-created limitations on the scope of RICO if the limitations are not supported by RICO's broadly worded text.[88]

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80. *See id.* at 806 n.6
81. *Id.* at 806-07.
82. *Id.* at 807.
83. *Id.*
84. *Id.*
85. *Id.*
86. 113 S. Ct. 1163 (discussed *supra* text accompanying notes 7-27).
87. 112 S. Ct. 1311 (discussed *supra* text accompanying notes 30-50).
88. *See, e.g.*, H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 243-49 (1989) (Court refuses to read an "organized crime" limitation into RICO); *see also* Michael Goldsmith, *Judicial Immunity for White-Collar Crime: The Demise of Civil RICO*, 30 HARV. J. ON LEGIS. 1, 8-18 (1993) (providing an overview of Supreme Court RICO jurisprudence).

II. Recent Seventh Circuit Developments

Recently, the Seventh Circuit has addressed a variety of civil RICO issues. First, the Seventh Circuit has finally adopted a rule for determining when a civil RICO claim accrues for purposes of applying RICO's limitations period. Second, the Seventh Circuit has continued to refine its method of applying RICO's elusive pattern of racketeering activity requirement. Lastly, the Seventh Circuit has determined what is necessary for standing to bring a claim based on RICO's prohibition against conspiracies to violate RICO. Each of these developments is addressed in turn.

A. Accrual of a Civil RICO Claim

In *Agency Holding Corp. v. Malley-Duff & Assoc., Inc.*, the Supreme Court held that a four-year limitations period applies to civil RICO actions.[89] However, the Court refused to decide when a RICO action accrues for purposes of starting the limitations period.[90] After the Court's decision in *Agency Holding Corp.*, the federal courts developed a variety of RICO accrual rules.[91]

In *McCool v. Strata Oil Co.*,[92] the Seventh Circuit articulated its RICO accrual rules. Before *McCool*, precisely when a civil RICO action accrued was an issue that produced conflicting decisions among the district courts within the Seventh Circuit.[93] Prior to the Seventh Circuit addressing the issue in *McCool*, at least four RICO accrual rules had been established among the federal courts: (1) the discovery rule, which provides that a claim accrues when the claimant first knows or should have known of an injury which forms the basis for a RICO action;[94] (2) the separate accrual discovery rule, a variation of the discovery rule which provides a fresh four-year limitations period for each new injury, but allows recovery only for injuries that were discovered or that should have been discovered within the limitations period;[95] (3) the last predicate act rule, which provides that RICO's limitations period begins to run after the last predicate act and allows recovery for injuries caused by all acts that are part of the same pattern of racketeering acts;[96] and (4) the last predicate act discovery rule, under

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89. 483 U.S. 143, 156 (1987).

90. *Id.* at 157.

91. *See* Mary S. Humes, Note, *RICO and a Uniform Rule of Accrual*, 99 YALE L.J. 1399, 1409-1417 (1990) (discussing the various RICO accrual rules developed by the federal courts); Paul B. O'Neill, Note, *"Mother of Mercy, Is this the Beginning of RICO?": The Proper Point of Accrual of a Private Civil RICO Action*, 65 N.Y.U. L. REV. 172, 195-234 (1990) (same).

92. 972 F.2d 1452 (7th Cir. 1992).

93. *See, e.g.*, Calabrese v. State Farm Mut. Auto. Ins. Co., 789 F. Supp. 264, 266-68 (N.D. Ill. 1992) (applying a discovery accrual rule); Norris v. Wirtz, 703 F. Supp. 1322, 1326 (N.D. Ill. 1989) (applying a last predicate act accrual rule).

94. Humes, *supra* note 91, at 1409-10.

95. *Id.* at 1411-13.

96. *Id.* at 1413-14.

which the limitations period does not run until the claimant discovers or should have discovered the last predicate act which is part of the alleged pattern of racketeering activity.[97]

In *McCool*, investors who put their money in an oil drilling project in 1984 brought securities fraud and civil RICO claims in 1989.[98] The district court held that the RICO claims were time-barred by RICO's four-year limitations period and granted summary judgment.[99] On appeal, the *McCool* court began its analysis of the RICO accrual issue by noting that a four-year statute of limitations period applies to civil RICO claims, and by noting that federal equitable tolling principles apply to civil RICO claims.[100] The court rejected the "last predicate act" rule, which had been applied by some district courts in the Seventh Circuit.[101] The court found the last predicate act rule problematic because it allows a "plaintiff to recover for every injury suffered as a result of [a RICO violation], no matter how old."[102]

The *McCool* court opted for a discovery-based accrual rule.[103] Yet the Seventh Circuit's discovery rule differs from those adopted in other circuits. The Seventh Circuit requires only discovery of an injury and not also discovery of the presence of a RICO pattern.[104] Acknowledging that there must be a pattern of racketeering before the statute of limitations begins to run on a RICO claim, the Seventh Circuit recognized a distinction between discovering an injury and discovering a cause of action on which to base a theory of recovery, and held that a pattern of racketeering merely establishes a RICO cause of action, not the existence of an actionable injury.[105] The court did state, however, that application of equitable tolling principles might allow for tolling the limitations period during the time that a diligent plaintiff investigates the existence of a pattern of racketeering.[106]

Additionally, the *McCool* court incorporated a separate accrual principal into its discovery rule. As discussed above, a separate accrual discovery rule specifies that a new RICO claim arises for each injury. The court compared the operation of its separate accrual discovery rule to an adage of playground basketball — "no blood, no foul."[107] According to the Seventh Circuit, "each

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97. *Id.* at 1415-16.

98. *McCool*, 972 F.2d at 1454.

99. *See* McCool v. Strata Oil Co., 724 F. Supp. 1232 (N.D. Ill. 1989), *aff'd in part, rev'd in part*, 972 F.2d 1452 (7th Cir. 1992).

100. *McCool*, 972 F.2d at 1463.

101. *See, e.g.*, Norris v. Wirtz, 703 F. Supp. 1322 (N.D. Ill. 1989).

102. *McCool*, 972 F.2d at 1464.

103. *Id.* at 1464-65.

104. *Id.* at 1465.

105. *Id.*

106. *Id.*

107. *Id.* at 1466.

wrongful act that causes injury is a new cause of action."[108] In light of the established rule that RICO injuries flow from the predicate racketeering acts, rather than the pattern of racketeering activity, the court rejected more generous accrual rules which allow recovery of all injuries caused by a pattern of racketeering activities even if some injuries occurred outside of the limitations period.[109]

After resolving the issue of when a RICO claim accrues, the Seventh Circuit found that because of a dispute in the evidence it could not decide whether its accrual rule barred the civil RICO claims in *McCool* (the case was before the court to review a grant of summary judgment), and the case was remanded. Since the Seventh Circuit's decision in *McCool*, the accrual rule has been accepted by another Seventh Circuit panel and applied by some district courts within the Seventh Circuit.[110]

The Seventh Circuit was one of the last circuits to adopt a RICO accrual rule. *McCool* resolves the dispute among the district courts in the Seventh Circuit, but joins cases from other circuits in producing a cacophony of RICO accrual approaches. Although the conflict among the circuits could prompt the Supreme Court to address the issue in the near future, until the Supreme Court resolves the conflict *McCool* makes the Seventh Circuit one of the least advantageous circuits for bringing RICO claims. Other circuits apply RICO accrual rules which are more generous with respect to what a claimant must discover before the limitations period begins to run.[111] Additionally, other circuits are more generous with respect to what injuries a claimant may obtain recovery for by allowing either recent injuries or recent racketeering acts to start a new limitations period for all injuries stemming from the same pattern of racketeering activity.[112]

B. Pattern Requirement

To prevail on a civil RICO claim, a claimant must allege and prove, among other things, a "pattern of racketeering activity."[113] RICO provides that a

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108. *Id.*

109. *Id.* (citing Sedima S.P.R.L. v. Imrex Co., 473 U.S. 479, 495-97 (1985)).

110. *See* Bontkowski v. First Nat'l Bank of Cicero, 998 F.2d 459, 461-62 (7th Cir.), *cert. denied*, 114 S. Ct. 602 (1993); Pucci v. Litwin, 828 F. Supp. 1285, 1296-97 (N.D. Ill. 1993); Jacobsohn v. Marks, 818 F. Supp. 1187, 1189-91 (N.D. Ill. 1993); In re VMS Ltd. Partnership Sec. Litig., 803 F. Supp. 179, 188-91 (N.D. Ill. 1992).

111. *See, e.g.*, Granite Falls Bank v. Henrikson, 924 F.2d 150, 154 (8th Cir. 1991) (plaintiff must discover both injury and RICO pattern before limitations period begins to run).

112. *See, e.g.*, Keystone Ins. Co. v. Houghton, 863 F.2d 1125, 1130-31 (3rd Cir. 1988) ("If the complaint was filed within four years of the last injury or the last predicate act, the plaintiff may recover for injuries caused by other predicate acts which occurred outside an earlier limitations period but which are part of the same 'pattern.'").

113. *See* Sedima S.P.R.L. v. Imrex Co., 473 U.S. 479, 496 (1985) ("A violation of [RICO] . . . requires (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.").

pattern of racketeering activity requires at least two such predicate acts,[114] committed within a ten-year period, excluding any period of imprisonment.[115] The Supreme Court has discussed the contours of RICO's pattern requirement twice.[116] In *Sedima, S.P.R.L. v. Imrex Co.*, the Supreme Court instructed that because RICO provides only that two predicate acts are *required* for a pattern, "while two acts are necessary, they may not be sufficient."[117] After reviewing RICO's legislative history, the Court in *Sedima* determined that "[i]t is the factor of *continuity plus relationship* which combines to produce a pattern."[118] After *Sedima*, the federal courts developed a number of different methods for determining whether a RICO pattern exists, and created a conflict among the circuits.[119] To resolve the circuit conflict, the Court provided further guidance in *H.J. Inc. v. Northwestern Bell Telephone Co.*[120] In *H.J. Inc.*, the Court attempted to define the relationship and continuity prongs of its continuity plus relationship requirement. To define the relationship prong the Court adopted the definition of pattern of criminal conduct provided in 18 U.S.C. § 3575(e): "[predicates that have] the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events."[121] With respect to the continuity prong, the Court said that continuity is "both a closed- and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition."[122] The Court stressed that in either case, continuity is "*centrally a temporal concept.*"[123] Closed-ended continuity may be demonstrated "by proving a series of related predicates extending over a substantial period of time."[124] Although the Court did not define precisely what constitutes a substantial period of time, it did

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114. A racketeering activity is any one of the various state and federal offenses identified at 18 U.S.C. § 1961(1). One court has described the list of offenses in § 1961(1) as "a bewildering array of offenses from kidnapping to embezzlement, from murder to fraud." *McCool*, 972 F.2d at 1466.

115. 18 U.S.C. § 1961(5) provides:

> [A] "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity.

116. *See* H.J. Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229 (1989); Sedima S.P.R.L. v. Imrex Co., 473 U.S. 479 (1985).

117. 473 U.S. at 496 n.14.

118. *Id.* (emphasis in original).

119. *See, e.g.*, Bart A. Karwath, Note, *Has the Constituency of Continuity Plus Relationship Put an End to RICO's Pattern of Confusion?*, 18 AM. J. CRIM. L. 201, 203 & n.17 (1991) (and materials cited therein).

120. 492 U.S. 229, 235 (1989).

121. *Id.* at 240.

122. *Id.* at 241.

123. *Id.* at 242 (emphasis added).

124. *Id.*

determine that continuity is not present if the racketeering activity lasts only a few weeks or months and threatens no future criminal conduct.[125] If a RICO action is brought before closed-ended continuity can be proven, continuity may be established by proving open-ended continuity.[126] The Court declined to provide an exhaustive set of circumstances that present open-ended continuity, but offered some examples of situations that it believed demonstrate the threat of future criminal conduct, including the example of a defendant engaging in racketeering activity as a regular way of doing business.[127]

In response to *Sedima*, the Seventh Circuit created a multi-factor continuity standard in *Morgan v. Bank of Waukegan*.[128] In *Morgan*, the Seventh Circuit determined that the relevant factors for assessing continuity "include the number and variety of predicate acts and the length of time over which they were committed, the number of victims, the presence of separate schemes and the occurrence of distinct injuries."[129] The court described RICO's requirement of a pattern of racketeering activity as a "standard, not a rule,"[130] and explained that determining whether continuity is present is necessarily dependant upon the facts and circumstances of each case.[131] Accordingly, the court warned that in applying the multi-factor standard, no one factor should necessarily be determinative.[132]

After the Supreme Court provided additional guidance on RICO's pattern requirement in *H.J. Inc.*, the Seventh Circuit had to decide whether it would continue applying the same *Morgan* multi-factor continuity standard.[133] In *Sutherland v. O'Malley*, the Seventh Circuit noted that, notwithstanding the refinement of the continuity concept in *H.J. Inc.*, the Supreme Court "ha[d] not formulated any general test for continuity in the abstract."[134] Therefore, the court, applying the *Morgan* multi-factor standard, determined that an examination of the specific facts in each case remained necessary to properly assess the presence of continuity.[135]

In *Management Computer Services, Inc. v. Hawkins, Ash, Baptie & Co.*, a case decided only days after *Sutherland*, the Seventh Circuit stated that, although in *H.J. Inc.* the Court "attempted to provide additional guidance" on RICO's pattern requirement, the Court's "explanations of the terms continuity plus

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125. *Id.*
126. *Id.*
127. *Id.* at 242-43.
128. 804 F.2d 970 (7th Cir. 1986).
129. *Id.* at 975.
130. *Id.* at 976.
131. *Id.*
132. *Id.*
133. *See* Karwath, *supra* note 119, at 230-32.
134. 882 F.2d 1196, 1204 (7th Cir. 1989).
135. *Id.*

relationship [were] somewhat elastic."[136] Noting that *H.J. Inc.* prescribed "'a natural and common sense approach to RICO's pattern element,'" the court in *Hawkins* determined that "the factors identified in *Morgan*—with the exception of our focus on the presence of separate schemes—are still useful in analyzing the pattern."[137]

The decisions in *Sutherland* and *Hawkins* indicate that initially the Seventh Circuit believed that it should continue applying the same *Morgan* multi-factor continuity standard. Apparently there was concern over only the weight to be given the presence of separate schemes.

In *New Burnham Prairie Homes, Inc. v. Village of Burnham*, the Seventh Circuit appeared to resolve the question of what effect *H.J. Inc.* would have on its use of the *Morgan* multi-factor continuity standard.[138] In *New Burnham*, the court determined that the continuity concept articulated in *H.J. Inc.* "confirm[ed] the well-established precedent of this circuit," and determined that the following factors should be considered in assessing continuity: "'(1) the number and variety of predicate acts and the length of time over which they were committed; (2) the number of victims; (3) the presence of separate schemes; and (4) the occurrence of distinct injuries.'"[139] The most significant statement in *New Burnham* was that *H.J. Inc.*'s refinement of the continuity concept had no impact on how the Seventh Circuit applies its multi-factor continuity standard. According to the court in *New Burnham*, the rule that when applying the multi-factor continuity standard "[n]o one factor is dispositive of a claim," survived *H.J. Inc.*'s refinement.[140]

Although *New Burnham* indicated that the Seventh Circuit was firmly committed to continuing to apply its *Morgan* multi-factor standard in the same fashion as before *H.J. Inc.*, two recent Seventh Circuit cases reveal that the Seventh Circuit has altered how it employs the *Morgan* factors. These cases demonstrate that the Seventh Circuit's continuity standard has evolved from the traditional *Morgan* multi-factor approach to a time-focused criterion.

The first clear indication that the Seventh Circuit was modifying its continuity standard came in *Midwest Grinding Co. v. Spitz*.[141] In *Spitz*, the court began its continuity analysis by reviewing *H.J. Inc.*'s closed- and open-ended continuity concepts.[142] According to the court's understanding of those concepts, "a RICO plaintiff can prevail by either (1) demonstrating a closed-ended conspiracy that existed for such an extended period of time that a threat of future harm is implicit, or (2) an open-ended conspiracy that, while short-

136. 883 F.2d 48, 50-51 (7th Cir. 1989).
137. *Id.* at 50.
138. 910 F.2d 1474 (7th Cir. 1990).
139. *Id.* at 1478.
140. *Id.*
141. 976 F.2d 1016 (7th Cir. 1992).
142. *Id.* at 1022-23.

lived, shows clear signs of threatening to continue into the future."[143] The court also stated that the impact of *H.J. Inc.* was a "refocusing [of] the pattern requirement on the sort of long-term criminal activity that carries some quantum of threat to society."[144] The court held that the racketeering activity present in *Spitz* was closed-ended, and concluded that whether continuity could be found hinged on whether the activity extended over a substantial period of time.[145] Although the court stated that it would be *aided* by the *Morgan* multi-factor standard in determining if the time span of the racketeering activity was substantial, it acknowledged that the duration of the racketeering activity, "is perhaps the closest thing . . . to a bright-line continuity test."[146] Because the racketeering activity was a "one shot scheme that lasted, at most, nine months," and because none of the remaining *Morgan* factors supported finding continuity, a RICO pattern was not found.[147]

The continuity discussion in *Midwest Grinding* demonstrates that, contrary to the analysis provided in *New Burnham*, the Seventh Circuit now believes that *H.J. Inc.* requires a modification of the *Morgan* multi-factor continuity standard. Specifically, the court noted that one of the *Morgan* factors—duration of the racketeering activity—is the primary consideration for courts when performing a continuity inquiry, and described the role of the remaining *Morgan* factors as merely aiding the court in evaluating whether the duration of the racketeering activity constitutes a substantial period of time.

In *420 East Ohio Limited Partnership v. Cocose*, the Seventh Circuit discussed *H.J. Inc.*'s refinement of the continuity requirement and observed that since *H.J. Inc.* the Seventh Circuit had retained the *Morgan* multi-factor continuity standard.[148] However, the court also acknowledged that since *H.J. Inc.* the Seventh Circuit had "changed slightly" the way the court utilized the *Morgan* multi-factor continuity standard.[149] According to the court in *Cocose*, after *H.J. Inc.* the Seventh Circuit examines "the facts with an eye toward not only the *Morgan* factors, but also toward the Court's suggestion that continuity encompasses a lengthy period of racketeering activity or a threat of continued criminal activity."[150] The court in *Cocose* applied a modified *Morgan* standard, and determined that closed-ended continuity could not be found because the alleged single scheme of racketeering activity occurred over a six-month period and therefore the racketeering activity did not take place over a substantial period of time.[151] Significantly, the court stated, "[t]his does not mean [that] a six-

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143. *Id.* at 1023.
144. *Id.* at 1025.
145. *Id.*
146. *Id.* at 1024.
147. *Id.* at 1024-25.
148. 980 F.2d 1122, 1124 (7th Cir. 1992).
149. *Id.*
150. *Id.*
151. *Id.* at 1124-25.

month period is automatically 'too short'; however, six months is not enough to automatically infer the requisite continuity."[152] The court also concluded that there was no indication that the alleged racketeering activity presented the threat of future criminal activity.

In *Cocose*, the Seventh Circuit explicitly took notice of the *H.J. Inc.*-influenced evolution of its continuity standard. Additionally, the Seventh Circuit's discussion in *Cocose* hinted that given the proper time span of racketeering activity, the Seventh Circuit may be willing to find continuity based *solely* on the duration of the racketeering activities.

The Seventh Circuit no longer follows its prior rule that no one of the *Morgan* factors can control the outcome of a continuity inquiry, and has begun focusing on the duration of the racketeering activity. However, it is unclear what effect this modification in the Seventh Circuit's continuity standard will have on the precedential value of its pre-*H.J. Inc.* cases. More importantly, by employing a time-focused continuity criterion in the post-*H.J. Inc.* era, the Seventh Circuit's continuity analyses will be more similar to the continuity analyses performed by other circuit courts.[153] The use of a time-focused continuity criterion promotes uniform development among the federal courts of *H.J. Inc.*'s RICO pattern requirement. Uniform development of the continuity requirement is necessary because, as the Supreme Court explained in *H.J. Inc.*, in the absence of a legislative amendment of RICO's pattern requirement, further refinement of the closed- and open-ended continuity concepts must come through application by the federal courts.[154]

C. Standing for Civil RICO Conspiracy Claims

In *Schiffels v. Kemper Financial Services, Inc.*,[155] the Seventh Circuit addressed RICO's standing requirement for civil RICO claims based on a

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152. *Id.* at 1125.

153. *See, e.g.*, Primary Care Investors, Seven, Inc. v. PHP Healthcare Corp., 986 F.2d 1208, 1215-16 (8th Cir. 1993); Religious Technology Ctr. v. Wollershiem, 971 F.2d 364, 366-67 (9th Cir. 1992); Aldridge v. Lily-Tulip, Inc., 953 F.2d 587, 592-94 (11th Cir. 1992); Lange v. Hocker, 940 F.2d 359, 361-62 (8th Cir. 1991); Hughes v. Consol-Pennsylvania Coal Co., 945 F.2d 594, 609-611 (3rd Cir. 1991), *cert. denied*, 112 S. Ct. 2300 (1992); American Eagle Credit Corp. v. Gaskins, 920 F.2d 352, 354-55 (6th Cir. 1990)

154. The Court stated:

> The limits of the relationship and continuity concepts that combine to define a RICO pattern, and the precise methods by which relatedness and continuity or its threat may be proved, cannot be fixed in advance with such clarity that it will always be apparent whether in a particular case a "pattern of racketeering activity" exists. The development of these concepts must await future cases, absent a decision by Congress . . . to provide [clearer] guidance as to [RICO's] intended scope.

H.J. Inc., 492 U.S. at 243.

155. 978 F.2d 344, 348-351 (7th Cir. 1992).

violation of RICO's prohibition of conspiracies to violate RICO.[156] Presently, a conflict over RICO's standing requirement for conspiracy claims exists among the federal courts; some courts require a claimant to allege an injury caused by a RICO predicate act of racketeering activity, and some courts require only that a claimant allege an injury caused by any act taken in furtherance of a RICO conspiracy.[157] The only case from the Seventh Circuit touching the subject, *Rylewicz v. Beaton Services, Ltd.*,[158] suggested that the more stringent standing requirement, which requires an allegation of an injury caused by a RICO predicate, would be applied in the Seventh Circuit.

In *Schiffels*, a discharged employee brought a civil RICO action alleging an injury caused by an act in furtherance of a conspiracy to violate RICO. Specifically, the employee alleged that she was harassed and eventually fired—acts which do not constitute RICO predicates—as part of the defendants' conspiracy. The Seventh Circuit held that, contrary to the suggestion in *Rylewicz*, standing to bring a RICO conspiracy claim requires only an injury caused by an act in furtherance of a RICO conspiracy.[159] In reaching this conclusion, the court in *Schiffels* was guided by RICO's statutory language, which provides a civil cause of action to "any person injured in his business or property by reason of a violation of [RICO],"[160] and the Seventh Circuit's established rule that RICO conspiracy law is controlled by "traditional concepts of conspiracy law," which require only an agreement and an act in furtherance of the agreement in order to have an actionable conspiracy.[161]

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156. *See* 18 U.S.C. § 1964(d).

157. *See* Bowman v. Western Auto Supply Co., 985 F.2d 383, 388 (8th Cir.) (holding that standing to bring a RICO conspiracy claim requires evidence that claimant was harmed by a RICO predicate committed in furtherance of a conspiracy to violate RICO), *cert. denied*, 113 S. Ct. 2459 (1993); Miranda v. Ponce Fed. Bank, 948 F.2d 41, 48 (1st Cir. 1991) ("an actionable claim under § 1962(d) . . . requires that the complainant's injury stem from a predicate act within the purview of 18 U.S.C. § 1961(1)."); Reddy v. Litton Indus., Inc., 912 F.2d 291, 294-95 (9th Cir. 1990) (discussing the conflict and deciding that a civil RICO claimant must allege an injury caused by a RICO predicate), *cert. denied*, 112 S. Ct. 332 (1991); Hecht v. Commerce Clearing House, Inc., 897 F.2d 21, 25 (2d Cir. 1990) ("[S]tanding may be founded only upon injury from overt acts that are also section 1961 predicate acts, and not upon any and all overt acts furthering a RICO conspiracy."); Shearin v. E.F. Hutton Group, Inc., 885 F.2d 1162, 1168-170 (3rd Cir. 1989) (holding that standing for a RICO conspiracy claim does not require an allegation of an injury caused by a RICO predicate); *see also* Reddy v. Litton Indus., Inc., 112 S. Ct. 332 (1991) (White, J., dissenting from decision to deny certiorari in light of the circuit conflict); Fredric Brooks, *RICO Conspiracy Standing After* Sedima, 25 COLUM. J.L. & SOC. PROBS. 423 (1992) (discussing the conflict and advocating adoption of a standing rule which requires only an injury caused by any act in furtherance of a RICO conspiracy).

158. 888 F.2d 1175 (7th Cir. 1989).

159. *Schiffels*, 978 F.2d at 351.

160. 18 U.S.C. § 1964(c).

161. *Schiffels*, 978 F.2d at 348 (citing United States v. Neapolitan, 791 F.2d 489 (7th Cir.), *cert. denied*, 479 U.S. 940 (1986)).

The Seventh Circuit rejected the argument that the Supreme Court's decision in *Sedima S.P.R.L. V. Imrex Co.*[162] requires an injury caused by a RICO predicate act for all civil RICO claims, including RICO conspiracy claims.[163] According to the court in *Schiffels*, the Supreme Court's decision in *Sedima* addressed only the standing requirement for substantive RICO violations, and not RICO conspiracy claims.[164] The Seventh Circuit also rejected the argument that the more stringent standing rule should be applied in order to restrict the scope of RICO.[165] According to the court, such a restrictive application of RICO would be contrary the Supreme Court's directive in *Sedima* that "RICO is to be read broadly" in light of RICO's broad language and its liberal construction clause.[166] To the extent that the Seventh Circuit's decision in *Schiffels* conflicts with its prior decision in *Rylewicz*, the court in *Schiffels* held that *Rylewicz* is rejected.[167]

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162. 473 U.S. 479 (1985).
163. *Schiffels*, 978 F.2d at 349.
164. *Id.*
165. *Id.* at 350.
166. *Id.* (quoting *Sedima*, 473 U.S. at 497-98).
167. *Id.* at 351.