

TO THE UNITED STATES WITH RICO:

THE BROAD JURISDICTION OF THE UNITED STATES OVER CIVIL
CASES INVOLVING RACKETEERING

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Bruce S. Marks

www.marks-sokolov.com

I. RICO: JURISDICTION

- A. Personal
- B. Subject Matter

II. RICO

- A. Enterprise and Person
- B. “Conduct or Participate” and “Continuity”
- C. Pattern of Racketeering Activity
 - 1. Mail and wire fraud
 - 2. Money laundering
 - 3. Transactions with property derived from illegal activity
 - 4. Violation of the Travel Act
 - 5. Hobbs Act Extortion
 - 6. International Terrorism



RICO, 18 U.S.C. §1962 **STATUTORY LANGUAGE**

Each of RICO sections 1962(a)-(d) makes it unlawful to engage in a “pattern of racketeering activity,” 18 U.S.C. § 1962, and “racketeering activity” specifically includes more than 70 racketeering acts that facially apply to extraterritorial conduct, *id.* § 1961(1). Each of RICO’s substantive sections 1962(a)-(d) applies to “any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.” 18 U.S.C. § 1962 (emphasis added).

Pasquantino v. United States,
544 U.S. 349, 372 (2005)

Pasquantino established that extraterritorial application of the wire fraud statute was not implicated in a scheme to deprive Canada of customs revenues because the proscribed conduct fell “within the literal terms” of the statute, i.e., use of the wires. 544 U.S. at 355:

“[O]ur interpretation of the wire fraud statute does not give it “extraterritorial effect”... Petitioners used U.S. interstate wires to execute a scheme to defraud a foreign sovereign of tax revenue. Their offense was complete the moment they executed the scheme inside the United States ...”

Further, *Pasquantino* held 18 U.S.C. §1343’s language establishes that “this is surely not a statute in which Congress had only ‘domestic concerns in mind.’” *Id.* at 371-72.

Morrison v. Nat'l Australia Bank, Ltd.,
130 S. Ct. 2869 (2010)

Morrison held the anti-fraud provisions of the Securities Exchange Act does not apply extraterritorially. But the “presumption against extraterritoriality ... [imposes no] requirement that a statute say ‘this law applies abroad’” for it to apply extraterritorially, *id.* at 2877; rather, courts need only determine that “there is the affirmative intention of the Congress” expressed through the statute’s text and context that it applies extraterritorially. *Id.* at 2883.

Post Morrison RICO Cases: Does RICO Apply Extra-territorially?

Two Circuits have ruled:

- ***Norex Petroleum Limited v. Access Industries, Inc.*, 631 F.3d 29, 32-33 (2d Cir. 2010):**

Our Court's precedent holds that "RICO is silent as to any extraterritorial application." *Al-Turki*, 100 F.3d at 1051. While *Norex* urges us to consider this statement dicta, we cannot do so. The finding that RICO is silent as to its extraterritorial application is a key holding of the opinion... The slim contacts with the United States alleged by *Norex* are insufficient to support extraterritorial application of the RICO statute.

- ***United States v. Chao Fan Xu*, 706 F.3d 965 (9th Cir. 2013):**

"When a statute gives no clear indication of an extraterritorial application, it has none." *Morrison* at 2878. We have previously held ... that RICO is silent as to its extraterritorial application... This Court applies the presumption [against extraterritorial application] in all cases, preserving a stable background against which Congress can legislate with predictable effects." *Morrison*, 130 S. Ct. at 2881. Therefore, we begin the present analysis with a presumption that RICO does not apply extraterritorially in a civil or criminal context.

Post Morrison: Does RICO Apply Extra-territorially?

In *Archangel Diamond Corp. Liquidating Trust v. OAO Lukoil*, D. Colo. 2012, Plaintiff's counsel, Akin, Gump argued:

RICO does not have extraterritorial application...Since the U.S. Supreme Court announced its opinion in *Morrison v. Nat'l Austl. Bank Ltd.*, 130 S.Ct. 2869 (2010), every court to consider whether RICO has extraterritorial application, including this court, has determined that it does not...*CGC Holding Co., LLC v. Hutchens*, 24 F. Supp. 2d 1193, 1209–10 (D. Colo. 2011). Regardless of whether this Court focuses on the location of the claimed "enterprise", or the location of the claimed pattern of racketeering activity and its consequences, it is beyond argument that the scheme alleged by Archangel is wholly extraterritorial. The only arguably "domestic" activities were faxes or letters sent by AGD (*not* Lukoil) to Archangel regarding the contracts between AGD and Archangel. The Colorado courts have already determined that these communications had only the most tenuous relationship with Colorado.

Post Morrison: Does RICO Apply Extra-territorially?

In Aluminum Bahrain B.S.C. v. Alcoa Inc. et al, Civil Action No. 08-299 (W.D. PA 2008), on March 1, 2012 Plaintiff's counsel, Akin, Gump argued: Unlike the securities laws at issue in Morrison, RICO applies extraterritorially. ... As the Supreme Court has admonished, "RICO is to be read broadly," and "is to be liberally construed to effectuate its remedial purposes," *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 497-98 (1985) (quoting Pub. L. 91-452, §904(a), 84 Stat. 947). Unlike the securities fraud statutes at issue in Morrison, Congress included with RICO's ambit of predicate racketeering offenses a number of criminal statutes with undisputed extraterritorial reach, including but not limited to, mail and wire fraud, 18 U.S.C. §§ 1341, 1343, the Travel Act, 18 U.S.C. § 1952, and Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-2, all of which [plaintiff] has pled as part of the Defendants' pattern of racketeering activity. Accordingly, Morrison's construction of the federal securities statutes does not preclude extraterritorial application of RICO, since RICO does contain exactly the sort of "clear indication of extraterritoriality" that the Court found lacking in the securities statutes. 130 S.Ct. at 2883.

Post Morrison RICO Cases: Is Extra-territorial Application At Issue?

United States v. Chao Fan Xu, 706 F.3d 965 (9th Cir. 2013) concluded “RICO's statutory language and legislative history support the notion that RICO's focus is on the pattern of racketeering activity.” 706 F.3d at 977. *Chao Fan* held “an inquiry into the application of RICO to Defendants’ conduct is best conducted by focusing on the pattern of Defendants’ racketeering activity as opposed to the geographic location of Defendants’ enterprise.” *Id.* *Chao Fan* rejected RICO does not apply to foreign enterprises, stating “it is highly unlikely that Congress was unconcerned with the actions of foreign enterprises where those actions violated the laws of this country while the defendants were in this country.” 706 F.3d at 978. Thus, *Chao Fan* applied RICO to defendants whose activities were “conducted within the United States.” *Id.* While “[d]efendants’ pattern of racketeering activity may have been conceived and planned overseas . . . it was executed and perpetrated in the United States.” *Id.* at 979.

Post Morrison RICO Cases: Is Extra-territorial Application At Issue?

Chevron Corp. v. Donziger, 871 F. Supp. 2d 229 (S.D.N.Y. 2012) sustained RICO claims based on harm to an American arising from racketeering acts committed in the U.S., holding:

[whether the enterprise is foreign is irrelevant] “if the prohibited activities injured Americans in this country and occurred here, either entirely or in significant part.” *Id.* at *21. “If there is a domestic pattern of racketeering activity aimed at or causing injury to a domestic plaintiff, the application of Section 1962(c) to afford a remedy would not [be] an extraterritorial application of the statute.” *Id.* at *29-30.

Post Morrison RICO Cases: Is Extra-territorial Application At Issue?

CGC Holding Company, LLC v. Hutchens, 2011 U.S. Dist. LEXIS 126361 (D. Colo. Nov. 1, 2011) held “the racketeering activity of the [Canadian] enterprise ... which ... was directed at ... the United States ... to extract money from CGC and the other plaintiffs through a phony loan scheme ... [using] telephone, mail, and email communications directed to potential borrowers in the United States” did not constitute the extraterritorial application of RICO to Canadian defendants. *Id.* at *39.

General Advice:

**DO NOT ENGAGE IN MONEY
LAUNDERING OR OTHER
RACKETEERING**



Specific Advice:

IF YOU DO ENGAGE IN RACKETEERING:

- Do not engage in Dollar denominated transactions which are wired through banks in the United States
- Do not make telephone calls or send faxes to the United States
- Do not travel to the United States
- Get a good lawyer



Bruce S. Marks, Firm Managing Partner

As the founder and managing partner of the firm, Bruce has earned an international reputation as an expert on legal issues involving commerce between the West companies and the former Soviet Union and trans-boundary litigation and arbitration. He has successfully represented clients in lawsuits filed in the U.S. involving billions of dollars in claims.

**1835 Market Street, 28th Floor
Philadelphia, PA 19103
Tel 215 569 8901
Fax 215 569 8912**



**Sergey Sokolov, Managing Partner
Moscow Office**

Sergey is an expert on legal issues involving commerce between Western companies and those of the former Soviet Union. As the managing partner in the firm's Moscow office, Sergey directs an extensive international transactional practice, M&A, litigation, and real estate work. In addition, he assists clients on corporate law, and corporate governance matters.

**21/5 Kuznetsky Most, Entrance 5,
Suite 3129
Moscow, 107996
Tel: +7 (495) 626-0606**