

June 29, 2023

A NEW WAY OF USING RICO: INJURIES CAUSED TO INTANGIBLE PROPERTY (INCLUDING JUDGMENTS AND ARBITRATION AWARDS)

On June 22, 2023, the Supreme Court of the United States (“**SCOTUS**”) settled a circuit split and decided that Section 1964 of the Racketeer Influenced and Corrupt Organizations Act (“**RICO**”) can be used by foreign plaintiffs that have suffered injuries to their intangible property (including US judgments and arbitration awards), provided that such injury is felt in the United States.¹

RICO is a federal statute that was enacted in 1970 with the purpose of fighting organized crime in the United States.² It serves this purpose by unifying the different acts of an organized crime enterprise “under one umbrella.”³ Due to this unification of acts, RICO applies in a large variety of criminal contexts.⁴

Perhaps one of the most notable features of RICO is that it provides a right of action to private individuals. The civil enforcement scheme of RICO is quite broad, allowing private plaintiffs to request damages they have incurred in due to a violation of the statute’s substantive provisions.⁵ Pursuant to Section 1964, any person that is injured in their business or property by a violation of Section 1962 of RICO can sue for treble damages (tripling the damages suffered), plus the costs of filing the lawsuit and reasonable attorney’s fees.⁶

Moreover, a private plaintiff must prove that a domestic injury has been caused to its business or property (this is, that the damage has been suffered in the US).⁷ Therefore, foreign plaintiffs can also sue under RICO, provided that the injury is *domestic*.⁸

BACKGROUND OF THE UNDERLYING DISPUTE

The plaintiff in *Yegiazaryan v. Smagin*, Vitaly Smagin, obtained in 2014 an arbitration award in London against the defendant, Ashot Yegiazaryan, related to certain fraudulent actions concerning a joint real estate venture in Moscow. The arbitration was administered by the London Court of International Arbitration (“**LCIA**”) and was London seated. Previously, the defendant had moved to Beverly Hills to avoid criminal prosecution in Russia. Plaintiff filed an action in the Central District of California to confirm and enforce the LCIA Award under the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “**New York Convention**”).

As part of its enforcement efforts, the plaintiff requested a preliminary injunction alleging that the defendant had won a substantial arbitration award in an unrelated matter, alleging that defendant would

¹ *Yegiazaryan v. Smagin*, No. 22-381, slip op. at 1 (U.S. June 22, 2023).

² 18 U.S.C. §§ 1961-1968; Brynne Peluso, Mariah Breit, Natalie Cappuzzo, Katelyn Gloe, Alexandra Peterson, *Racketeer Influenced and Corrupt Organizations*, 60 Am. Crim. L. Rev. 1197, 1198 (2023).

³ *Id.*

⁴ *Id.* at 1199.

⁵ *Id.* at 1231.

⁶ *Id.*; 18 U.S.C.A. § 1964 (c).

⁷ *RJR Nabisco Inc. v. European Community*, 579 U.S. 325, 346 (2016).

⁸ *Id.* at 353.

conceal the money to avoid paying plaintiff's award. The district court granted the preliminary injunction, freezing defendant's assets in California.

Plaintiff's concerns proved true, as the defendant accepted the payment of the award it had won through the London office of an American law firm headquartered in Los Angeles attempting to avoid the district court's order. Additionally, the defendant created a network of offshore entities aimed at concealing the funds, before transferring the money to an account at CMB Monaco (a Monaco-based bank). The defendant also managed to convince some of his close contacts to file fraudulent claims against him in multiple foreign jurisdictions, resulting in sham judgements and essentially blocking the payment.

After recognizing the LCIA award in California and trying to enforce it, Smagin filed an action under RICO against Yegiazaryan and others alleging that defendants had conducted an enterprise to prevent him from enforcing and collecting his US judgment. The district court dismissed the action on the grounds that the injury suffered by the plaintiff, a foreign individual, was felt in the plaintiff's home jurisdiction (Russia) and not in the United States. Smagin appealed and the Court of Appeals for the Ninth Circuit reversed the decision reasoning that the analysis to determine whether an injury to intangible property (including US judgment and arbitration awards) was *domestic* for purposes of RICO had to be "a context-specific inquiry that turns largely on the particular facts alleged in a complaint."⁹

DAMAGES COVERED BY RICO

❖ ***Economic injuries and intangible property.*** Injury to business or property includes damages to intangible property, such as US judgments and arbitration awards.¹⁰ Damages to that type of intangible property (US judgments and arbitration awards) can be in the form of harming one's ability to collect a judgment.¹¹ Therefore, racketeering acts that are aimed at sabotaging the execution of a judgment or the recognition and enforcement of an arbitration award are covered by RICO.¹²

❖ ***Domestic injury.*** An injury is domestic for purposes of RICO when the circumstances surrounding the injury indicate that such injury arose in the United States.¹³ This is a context specific inquiry and its results depend on the particular circumstances and facts.¹⁴

POTENTIAL INDICATORS OF A DOMESTIC INJURY

RICO is an expansive statute and it covers a large scope of acts that can lead to compensable injuries.¹⁵ Therefore, interpretation of domestic injury will be done by courts on a case-by-case basis.¹⁶

⁹ *Smagin v. Yegiazaryan*, 37 F.4th 562, 567 (9th Cir. 2022), cert. granted, No. 22-381, 2023 WL178402 (U.S. Jan. 13, 2023).

¹⁰ *Yegiazaryan v. Smagin*, No. 22-381, slip op. at 4 (U.S. June 22, 2023).

¹¹ *Id.* at 5.

¹² *Id.*

¹³ *Id.* at 1.

¹⁴ *Id.* at 7.

¹⁵ *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 498-499 (1985).

¹⁶ No. 22-381, slip op. at 7 (U.S. June 22, 2023).

The following factors, used by SCOTUS in its June 22 decision, can serve as examples and guidelines.¹⁷

❖ ***Place of the Racketeering Activity.*** If the majority of the racketeering activity that caused the injury took place in the United States, this may be a solid ground to claim domestic injury.¹⁸ Domestic actions to avoid collection of a judgment provide an example of this situation.¹⁹ For example, SCOTUS has found that “creating US shell companies to hide US assets, submitting a forged doctor’s note to a California District Court, and intimidating a US-based witness” are domestic racketeering acts that point to a domestic injury.²⁰

❖ ***Place of Injurious Effects of Racketeering Activity.*** That the injurious effects of the racketeering activity manifested domestically is also a potential indicator of domestic injury.²¹ In this regard, courts may identify the place in which the plaintiff hoped to collect the judgment and where the rights that such judgment gave the plaintiff existed.²² Petitioner may claim domestic injury if these locations are in the United States.²³ Because enforcement of judgments in the United States is limited to the particular state in which the judgments are granted, parties may more easily argue that the location of the injury is in the relevant state.

❖ ***Nature of the alleged injury.*** Economic injuries such as injury to intangible property are also examined contextually.²⁴ Therefore, frustration of the collection or enforcement of judgments can also be considered a domestic injury according to the circumstances.²⁵

CONCLUSION

Actions in concert by U.S. defendants and their agents that aim to frustrate the collection of a judgment create an economic injury to intangible property.²⁶ SCOTUS has now ruled that such injury falls within the scope of RICO.²⁷ Going forward, courts will assess the situation as a whole and decide whether the injury caused to the plaintiff is a domestic injury.²⁸

The SCOTUS June 22 decision has turned RICO’s Section 1964 into a very powerful tool for foreign plaintiffs seeking to enforce an arbitration award in the US. Under certain circumstances, foreign plaintiffs can bring civil actions against US defendants and seek the remedies provided in RICO for

¹⁷ *Id.*

¹⁸ *Id.* at 8.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 9.

²⁵ *Id.*

²⁶ *Id.* at 5.

²⁷ *Id.*

²⁸ *Id.* at 7.

economic injuries that arose in the United States.²⁹ These remedies permit trebling the damages awarded in the arbitration and collecting the reasonable legal fees and costs of the RICO action.

The SCOTUS decision can be found in the following link: [June 22 decision](#).

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²⁹ *Id.* at 1.