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Pennsylvania federal court rejects federal RICO claims as well as cross-jurisdictional tolling based on prior RICO class actions

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Takeaway: Complex litigation—such as federal RICO class actions—often begets more complex litigation. An excellent example of this principle is *County of Dakota, Nebraska v. United Biosource Corp.*, Civ. A. No. 24-4276, 2026 WL 637426 (E.D. Pa. Mar. 5, 2026), where the Eastern District of Pennsylvania analyzed RICO claims asserted in a follow-on case to prior putative RICO class actions, as well as whether those prior class actions tolled the applicable statutes of limitation for related state law claims. The district court rejected the plaintiffs' RICO and limitations arguments, finding the RICO claims lacking and the limitations arguments unsound.

County of Dakota involves allegations that the manufacturer of the prescription Acthar Gel (Acthar) – non-party Mallinckrodt ARD LLC ("Mallinckrodt") – and several Express Scripts entities conspired to remove Acthar from retail distribution and inflate its price by over 100,000%. The plaintiffs – the County of Dakota, Nebraska; the Sheet Metal Workers Local No. 40 Health Fund; the Harlem School District 122; and Dustin's Bar-B-Q Inc. – are four third-party payors who sought to recover alleged overpayments for Acthar caused by defendants' alleged illegal conduct and conspiracy.

Mallinckrodt manufactures, markets, and distributes Acthar, an FDA-approved hormone medication for treating infantile spasms and acute exacerbations of multiple sclerosis. When Questcor (Mallinckrodt's predecessor) acquired Acthar in 2001, the average wholesale price ("AWP") per vial was approximately $40. By 2018, Acthar's AWP had risen to over $40,000 per vial. 2026 WL 637426, at *3.

Plaintiffs' complaint alleged violations of the federal RICO statute, state consumer protection laws, state and federal antitrust statutes, and related claims (including tort claims). The complaint alleged three principal schemes by the plaintiffs to (in plaintiffs' telling) fraudulently increase the price of Acthar, which they described as the "Distribution Scheme," the "Pricing Scheme," and the "Marketing Scheme." *Id.* at *3-5.

The federal RICO claims – a substantive RICO claim under 18 U.S.C. § 1962(c) and a RICO conspiracy claim under 18 U.S.C. § 1962(d) – were brought against a single defendant, United Biosource Corporation (UBC). The district court dismissed the RICO claims against UBC without prejudice for failure to plead predicate acts of mail and wire fraud with the particularity, as required by Federal Rule of Civil Procedure 9(b). *Id.* at *10-13. The district court concluded that:

- Plaintiffs' allegations regarding off-label marketing and misrepresentations about Acthar's uses and safety were internally contradictory, as the complaint alleged that claims did not depend on FDA approval or safety/efficacy issues while simultaneously alleging fraud based on misleading statements about those very topics. *Id.* at *11.
- Even absent such contradictions, off-label marketing is not per se fraudulent. *Id.*
- Allegations regarding misrepresentations about Acthar's price failed to specify "when or to whom" such statements were made, falling short of Rule 9(b)'s dictates. *Id.* at *12.
- Charging high prices does not constitute actionable fraud. *Id.*
- And because the substantive RICO claim failed, the RICO conspiracy claim (to violate that substantive RICO provision – Section 1962(c)) also failed. *Id.*

In light of the court's ruling on the failure to adequately allege RICO predicate acts, the court elected not to address other arguments going to the federal RICO claims, such as UBC's arguments about the application of the Supreme Court's antitrust decision in the *Illinois Brick* case and "direct purchaser" standing. *Id.* at *13

Turning to the state law claims, the court dismissed those state law claims with prejudice as barred by the applicable statutes of limitations. Applying Pennsylvania's tolling rules, the court found that the *American Pipe* federal class action tolling doctrine did not apply to state law claims because Pennsylvania substantive law bars "cross-jurisdictional tolling" (plaintiffs had argued that the applicable state law limitations statutes were tolled during the pendency of the two prior RICO class actions). *Id.* Without the benefit of tolling to lengthen the limitations periods, the state law claims were untimely because Plaintiffs' latest initial Acthar purchase occurred in June 2018, more than six years before the complaint was filed in August 2024. *Id.* at *14.

The district court further rejected plaintiffs' arguments that the fraudulent concealment doctrine, discovery rule, or continuing violations doctrine saved their claims. *Id.* at *14-15.