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RICO class actions: D. Conn. rules that legal entity must have or share a common fraudulent purpose to qualify as a RICO enterprise

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Takeaway: There are, essentially, two ways to defeat a RICO class action: through the denial of class certification or by the dismissal of the RICO claims on the merits. We have written a number of articles about both the class certification and merits aspects of RICO class actions. *See RICO class actions: To win certification, the RICO claims must be driven by defendant-specific and not class-member specific evidence; otherwise, individualized issues predominate* (Aug. 7, 2018); *RICO class actions: Ninth Circuit affirms dismissal of civil RICO claims by Volkswagen dealers* (Feb. 8, 2021); *RICO class actions: District of New Jersey dismisses with prejudice federal RICO claims asserted by indirect purchasers* (July 8, 2020); *RICO class actions: D.N.J. rejects claim for private injunctive relief under Federal RICO* (Feb. 27, 2020). In *Negron v. Cigna Health and Life Ins. Co.*, --- F. Supp. 3d ----, No. 3:16-cv-1702 (JAM), 2023 WL 2639610 (D. Conn. Mar. 27, 2023), the District of Connecticut dismissed a federal RICO claim on the merits by adopting the defendant-friendly rule requiring proof of a common fraudulent purpose for the purpose of establishing "legal entity" RICO enterprises.

The named plaintiffs in *Negron* were at one time insured under employee health insurance plans administered by Cigna Health and Life Insurance Company ("Cigna"). Seeking to represent themselves and putative classes, they alleged that Cigna overcharged them for prescription drugs, and that it carried out this scheme through its contracts with separately-incorporated pharmacy benefits managers ("PBMs"), which functioned as intermediaries between Cigna and a designated network of retail pharmacies.

They asserted a federal RICO claim against Cigna under 18 U.S.C. § 1962(c), which requires proof that a RICO defendant (1) conducted (2) an enterprise (3) through a pattern (4) of racketeering activity. They further asserted that Cigna conducted two RICO enterprises, consisting of two of these separate PBMs. But the plaintiffs did not claim that the PBMs participated in or even knew about the alleged illegal activity. Instead, they asserted that the PBMs were "unwitting accomplices" to the RICO scheme. *Negron*, 2023 WL 2639610, at *3.

Cigna moved for summary judgment on the Section 1962(c) claim. Even though the district court had denied a prior motion to dismiss the RICO claim, it granted the motion for summary judgment. In doing so, the district court examined rulings from other jurisdictions concerning the requirements for proving a "legal entity" (as opposed to an association-in-fact) RICO enterprise. Some courts require that the legal entity share a common fraudulent purpose. Some simply analyze whether the legal entity has a common purpose with the RICO defendant – whether legitimate or illegitimate. And some courts do not require proof of any shared purpose.

The district court ruled that "to qualify as an enterprise, the entity must have or share a common fraudulent purpose." *Id*. at *4. Citing Second Circuit precedent requiring proof of a common fraudulent purpose with respect to association-in-fact enterprises, the district court reasoned that adopting the same requirement for legal entity enterprises avoided inconsistencies in proving the enterprise element of a federal RICO claim.

Because the plaintiffs did not claim that the PBMs participated in or even knew about the RICO violations, the PBMs did not have or share a common fraudulent purpose with RICO defendant Cigna and thus did not qualify as RICO enterprises. Therefore, the RICO claim failed because the plaintiffs could not prove an essential element of Section 1962(c) liability.

The Section 1962(c) claim failed for another reason – plaintiffs could not prove that Cigna conducted or participated in the conduct of the PBMs. Even though plaintiffs asserted that Cigna participated in the conduct of the PBMs by providing them with the tools to fraudulently overcharge plaintiffs for prescription drugs (while keeping the PBMs "in the dark" about the scheme), the district court disagreed, determining that Cigna and the PBMs were separately-operated businesses involved in contractual relationships. *Id*. at *4-5. The district court ruled that a RICO defendant cannot be held liable under Section 1962(c) "based solely on routine business contracts with its service providers." *Id*. at *5. Stated another way, "a defendant does not satisfy the conduct element of § 1962(c) by entering into business contracts with passive third-party vendors." *Id*. Expanding further, the court ruled that "[a]ccepting the plaintiffs' theory would expand RICO far beyond Congress's intent by 'RICO-izing' any alleged wrongdoing involving an arms-length contract with a third party." *Id*. at *6.