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RICO class actions: D.N.J. rejects claim for private injunctive relief under Federal RICO

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Takeaway: The issue of whether a federal RICO plaintiff may obtain equitable relief may be the longest-running circuit split under the federal RICO statute. In *Scheidler v.National Organization for Women*, 537 U.S. 393 (2003), the Supreme Court granted certiorari on this issue but ultimately did not address it, as the Court resolved the case on a narrower ground (concluding that the RICO plaintiffs had not proved the required predicate acts of federal extortion under the Hobbs Act). Because the issue remains unresolved by the Supreme Court, disputes as to the availability of private injunctive relief continue to crop up in RICO class action litigation.

In *In re Insulin Pricing Litigation*, Case No. 3:17-cv-699 (BRM) (LHG), 2020 WL 831552 (D.N.J. Feb. 20, 2020), over 100 analog insulin consumers filed federal RICO and related claims against a number of pharmaceutical companies, alleging a number of claims based on the way the companies priced and marketed analog insulin products. The district court initially dismissed the RICO claims on standing grounds, because the plaintiffs were indirect purchasers of the insulin products and were not directly harmed by the alleged misconduct. The plaintiffs then submitted an amended complaint, seeking forward-looking injunctive relief under federal RICO "to prevent [Defendants] from reporting benchmark prices that do not approximate their true net prices." 2020 WL 831552, at *3. The defendants moved to dismiss, arguing that private injunctive relief is not available under federal RICO.

The district court agreed with the defendants and dismissed the amended federal RICO claims. Although the issue has never been addressed by the Third Circuit, the *Insulin* court favorably cited two earlier District of New Jersey decisions holding "RICO does not establish a private right of equitable relief." Id. at *3 (citing *Curley v. Cumberland Farms Dairy, Inc.*, 728 F. Supp. 1123, 1137 (D.N.J. 1989), and *Futterknecht v. Thurber*, Civ. No. 2:14-7395 (WJM), 2015 WL 4603010, at *4 (D.N.J. July 30, 2015)). These cases reached this conclusion "by analyzing both the legislative history of RICO and the Department of Justice's Manual." *Id*. (citation omitted). Given the prior in-district decisions, the Insulin court declined plaintiffs' invitation to follow decisions by the Second and Seventh Circuits, ruling instead that "this Court declines to stray from the weight of persuasive authority and holds that a private party may not seek equitable relief under RICO." *Id*.

The leading decision in this area remains the Ninth Circuit's decision in *Religious Technology Center v. Wollersheim*, 796 F.2d 1076 (9th Cir. 1986), which held that a private plaintiff may only seek compensatory relief under federal RICO. The *Insulin* decision expressly refused to follow the Second and Seventh Circuit cases espousing the contrary view, *Chevron Corp. v. Donziger*, 833 F.3d 74 (2d Cir. 2016),

and National Organization for *Women v. Scheidler*, 267 F.3d 687 (7th Cir. 2001), *revd on other grounds* , 537 U.S. 393 (2003). It remains to be seen whether this issue will percolate back up to the Supreme Court.