

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

KURIAN DAVID, et al. CIVIL ACTION
Plaintiffs

VERSUS No. 08-1220

SIGNAL INTERNATIONAL, LLC, et al., SECTION “E”
Defendants

Related Cases:

EQUAL EMPLOYMENT OPPORTUNITY CIVIL ACTION
COMMISSION,
Plaintiff

VERSUS No. 12-557

SIGNAL INTERNATIONAL, LLC, SECTION “E”
Defendant

LAKSHMANAN PONNAYAN ACHARI, et al., CIVIL ACTION
Plaintiffs

VERSUS No. 13-6218
(c/w 13-6219, 13-6220,
SIGNAL INTERNATIONAL, LLC, et al., 13-6221, 14-732, 14-1818)

SECTION “E”

Applies To: David v. Signal, 08-1220

TRIAL BRIEF ON RICO JURY CHARGE REGARDING THIRD PARTY RELIANCE

Plaintiffs respectfully submit this brief to urge this Court to include a third-party reliance instruction within the RICO jury charge to be read to the jury. The Supreme Court expressly authorizes third-party reliance as a basis to establish the requisite causation to ground RICO liability. Plaintiffs’ proposed language is provided in Part III below.

I. Third Party Reliance Is Adequate to Meet the Causation Standard Under RICO

In Bridge v. Phoenix Bond & Indem. Co., the Supreme Court unanimously held that because reliance was not an element of mail fraud it is also not an element for a RICO violation premised on mail fraud. 553 U.S. 639, 661 (2008). The Court noted that the mail fraud statute – a predicate act of racketeering – may be violated “even if no one relied on any misrepresentation.” Id. at 648. And the Court further reasoned that “one can [also] conduct the affairs of a [RICO] enterprise . . . without anyone relying on a fraudulent misrepresentation.” Id. at 649.

While under RICO’s private right of action, a plaintiff must show injury “by reason of” a violation of § 1962 “a person can be injured . . . even if he has not relied on any misrepresentations.” Id. The Court further added that “there is no general common law principle holding that a fraudulent misrepresentation can cause legal injury only to those who rely on it.” But the Court did recognize that “none of this is to say that a RICO plaintiff who alleges injury ‘by reason of’ a pattern of mail fraud can prevail without showing that someone relied on the defendant’s misrepresentations.” Id. at 658 (emphasis in original). Therefore, while at least a third party’s reliance on a misrepresentation may be necessary, no more than that is required: “it may well be that a RICO plaintiff alleging injury by reason of a pattern of mail fraud must establish at least third-party reliance in order to prove causation.” Id. at 659.

One of Plaintiffs’ Theories of RICO Liability is Premised on Third-Party Reliance

In granting the H-2B visas on which Plaintiffs traveled to the United States, the U.S. government relied on Signal’s and Burnett’s false attestations to the U.S. Department of Labor and U.S. Customs and Immigration Service. As part of the H2B visa applications, these defendants falsely attested, under pain of perjury, that Signal had a 10-month labor need. These applications were then mailed to the relevant government agency notwithstanding Signal’s and

Burnett's knowledge, expressed over email and other means, that Signal's labor need was not ten months but rather two-to-three years. These false attestations were made because the Defendants concluded, in part via communications over email, that the H2B visas would not be granted if a need longer than ten months were revealed to the U.S. government.

As a result of this mail and wire fraud, Plaintiffs suffered pecuniary losses directly. But for the government's granting of the H-2B visas predicated on this fraud, Plaintiffs would not have, at the very least, made their last installment payment to Defendants Dewan, Pol and Burnett. The trial testimony (consistent with the allegations in Plaintiffs' complaint) establishes that the H-2B visa issuance – the specific goal and result of the email fraud on the U.S. government – directly caused not only Plaintiffs' last recruiting fee installment payment but also Plaintiffs traveling to the United States and working for Signal. The direct connection between the result of the U.S. government's reliance on the defendants' misrepresentation and the Plaintiffs' pecuniary losses satisfies RICO's proximate cause requirement. Holmes v. Sec. Investor Prot. Corp., 503 U.S. 258, 259 (1992) (Plaintiffs must show that there is "some direct relation[ship] between the [money they lost] and the injurious conduct alleged.").

Because there is a direct relationship between the injury – Plaintiffs' payment of part of the fees and other injuries suffered at Signal – and the RICO mail and wire fraud, the Plaintiffs, under Bridge, need not demonstrate that they relied on Defendants' false statements to the government. "[A] plaintiff asserting a RICO claim predicated on mail fraud need not show, either as an element of its claim or as a prerequisite to establishing proximate causation, that it relied on the defendant's alleged misrepresentations." Bridge, 553 U.S. at 661; see also Warnock v. State Farm Mut. Auto. Ins. Co., 08cv01, 2008 U.S. Dist. LEXIS 81507, at *16-18 (S.D. Miss.

Oct. 14, 2008) (in civil RICO action, payment of attorneys' fees were proximately caused by fraud on court by way of defendants' filing frivolous lawsuits).¹

III. Proposed Jury Instruction Encapsulating Availability of Third Party Reliance as Establishing Causation.

Plaintiffs request the following instruction for both mail and wire fraud:

THE PERSON WHO WAS INJURED BY THIS SECTION OF RICO DOES NOT HAVE TO SHOW HE RELIED UPON THE FRAUD. IN OTHER WORDS, THE FRAUD DOES NOT HAVE TO BE DIRECTED AT A PERSON FOR THAT PERSON TO BE INJURED BY THE FRAUD.

Respectfully submitted this 7th day of February, 2015,

s/ Daniel Werner

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¹ Plaintiffs recognize that, after Bridge, the Supreme Court weighed in again on indirect fraud in Hemi Group, LLC v. City of New York, 130 S. Ct. 983, 990-991 (2010). In Hemi, New York City claimed that it lost sales tax revenue from customers based on defendants' failure to report tobacco sales to the State of New York. The Court found that, in part because the allegation was of fourth-party fraud (Defendant fraud on state resulting in customers' failure to pay taxes to city), proximate causation was too attenuated. Id. at 990. The Court also emphasized that a key test for RICO causation is "whether better situated plaintiffs would have an incentive to sue." Id. In Hemi, the Court held that the State of New York, which had lost \$2.75 per cigarette pack as a result of the alleged fraud, would have possessed a stronger incentive to sue. In the instant case, Plaintiffs are alleging injuries as a result of third-party fraud (Defendants' fraud on federal government resulted in Plaintiffs' payments to defendants). Further, the federal government suffered no pecuniary losses as a result of Defendants' fraud. Therefore, unlike the Plaintiffs, the government has no incentive whatsoever to file suit under civil RICO. In fact, Plaintiffs are the only parties who suffered pecuniary losses as a result of the fraud and therefore are uniquely situated to bring this claim.

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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of February, 2015, I filed the foregoing document using the Court's Electronic Case Filing system, which will provide service on counsel for all ECF-registered parties.

I further certify that the attached has been deposited in a U.S. Mail receptacle for delivery by first class mail, properly addressed and with postage pre-paid to:

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