

SCOTUS to Decide Whether RICO Reaches Overseas

By Kevin Chiu, J.D. Candidate 2018 | October 9, 2015

With a docket already filled with politically charged and highly contentious issues, the U.S. Supreme Court hopes to also address the reach of U.S. law overseas, specifically as it pertains to the [Racketeer Influenced and Corrupt Organizations Act](#). Commonly referred to as RICO, the law was designed to combat organized crime by allowing for the criminal prosecution of “patterns of racketeering activity in an enterprise,” which may include money laundering, bribery, embezzlement, drug trafficking, and a number of other questionable activities.

A few days prior to the start of its new term beginning October 2015, the highest court in the land granted a writ of certiorari to hear the case [RJR Nabisco, Inc., et al. v. European Community, et al.](#), in order to resolve the question of whether RICO applies extraterritorially and if so, to what extent. The [petition](#), filed by counsel at Jones Day representing R.J. Reynolds, questioned the reversing of the lower court’s dismissal of the case in the Eastern District of New York by the sharply divided 2nd U.S. Circuit Court of Appeals Court of Appeals, which held that because the scope of RICO encompassed activities that apply to overseas conduct, claims filed based on these activities can proceed in a U.S. federal court.

The lawsuit originally began in 2002 when the European Community or EC (now known as the European Union) and 26 of its member nations filed suit against the R.J. Reynolds Tobacco Company. The EC alleged that the R.J. Reynolds led an [elaborate scheme](#) from the U.S. spanning a decade that involved the smuggling of illicit drugs from South America and Russia into Europe, the laundering of monies earned from these drug deals, and the subsequent use of these proceeds by importers to purchase R.J. Reynolds tobacco products.

While the [creative use](#) of federal law to prosecute foreign parties normally falling outside of U.S. jurisdiction is not new, SCOTUS’s decision to hear this case potentially allows for RICO to cut both ways, opening the doors for foreign entities to actively pursue domestic parties over activities that occur on foreign soil affecting foreign plaintiffs. Judge Jose Cabranes, one of the dissenters in the 2nd Circuit case, opined that this “[regrettable decision](#)” will “invite our courts to adjudicate civil RICO claims grounded on extraterritorial activities anywhere in the world.”

The court’s decision could affect RICO’s application as a [tool for DOJ prosecutors](#). Moreover, the outcome of the case could have far reaching implications beyond multinational corporations doing business overseas such as R.J. Reynolds. In addition to strategy lawyers abroad seeking to capture fees and settlements from American corporate defendants under RICO, the Supreme Court’s anticipated decision could impact whether [overseas human rights victims](#), who have been denied access to US federal courts under SCOTUS’s previous 2013 ruling in [Kiobel](#), could now bring a case under the US Alien Tort Statute for corporate activities overseas. The court’s decision to hear this case leaves many stakeholders across different areas in the law interested in its outcome and potential consequences.