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Applying U.S. Supreme Court Decision on Extraterritoriality of Securities Laws,
Federal District Court Holds That Civil RICO Does Not Apply Abroad

In our original memo on *Morrison* v. *National Australia Bank Ltd.*, No. 08-1191 (U.S. June 24, 2010), we observed that the Supreme Court's sweeping decision in that case would have significant implications under other federal statutes as well. We specifically identified RICO, the Racketeer Influenced and Corrupt Organizations Act, as a law that would be affected. Yesterday, the first district court decision came down applying *National Australia Bank* to RICO—and it held that, as with the four decades of securities cases abrogated in *National Australia Bank*, prior precedent on RICO's extraterritorial application is no longer good law.

In *Cedeño* v. *Intech Group, Inc.*, No. 09 Civ. 9716 (JSR) (S.D.N.Y. Aug. 25, 2010), a Venezuelan citizen and his British Virgin Islands investment company, alleging a wide-ranging conspiracy involving the Central Bank of Venezuela and other agencies of the Venezuelan government, asserted civil RICO claims against various "Venezuelan government officials and their confederates." The district court observed that some of the criminal conduct alleged was "dreadful" and "perfectly plausible given what is generally known about the Chavez regime." Some of the alleged criminal activity included money laundering in the United States.

The United States District Court for the Southern District of New York nevertheless dismissed the complaint on the ground that the claims exceeded the territorial scope of RICO. The court held that even though *National Australia Bank* did not involve RICO, its reasoning was nonetheless "dispositive." RICO is "silent as to any extraterritorial application," the court explained, and under the logic of *National Australia Bank*, must therefore be "presumed not to apply to . . . claims that are essentially extraterritorial in focus." As a result, prior court of appeals decisions on RICO extraterritoriality—decisions that had imported from securities cases the "conduct" and "effects" tests rejected in *National Australia Bank*—were "no longer good precedent."

The court held that the proper interpretive inquiry under *National Australia Bank* required "look[ing] to the 'focus' of congressional concern in enacting the statute." And just as the "focus" of the securities laws was "on domestic purchases and sales of securities," RICO has a domestic focus as well: the court observed that "nowhere does the statute evidence any concern with foreign [criminal] enterprises, let alone a concern sufficiently clear to overcome the presumption against extraterritoriality." That the plaintiffs alleged money laundering involving American bank accounts did not suffice to sustain their complaint, the court held, because "the focus of RICO is on the enterprise as a recipient of, or cover for, a pattern of criminal activity." Concluding that "RICO does not apply where, as here, the alleged enterprise and the impact of the predicate activity upon it are entirely foreign," the court dismissed the complaint.

We expect that *National Australia Bank* will continue to be rigorously applied by courts to reject efforts by plaintiffs to give extraterritorial reach to federal statutes that were only intended to apply domestically.

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