

Third Circuit Rejects RICO Claim Filed Against Unions for Conduct During Corporate Campaign By Adopting A Union's "Claim-of-Right" Defense

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The Third Circuit issued a noteworthy split 2-1 decision last month, finding that a company's claim under the federal Racketeer Influenced and Corrupt Organizations Act ("RICO") against several Unions failed, where the Unions' tactics as part of a corporate campaign and its "extortion through fear of economic loss" directed at the company is committed to achieve a legitimate union objective. See [*Care One Mgmt., LLC v. United Healthcare Workers East*, No. 19-3693](#) (3d Cir. 2021). The Court also found that the alleged acts of vandalism and sabotage could not be attributed to the Unions, and thus the Company's RICO claims could not survive summary judgment.

Factual and Procedural History

Five Unions engaged in a "corporate campaign" against Care One Management LLC and related companies (collectively, the "Company"), seeking to pressure the Company to recognize the Unions for collective bargaining purposes and, according to the Unions, to provide better wages and working conditions to Company employees. The Company described this campaign as a "campaign of intimidation, interference, threats, deceptive trade practices, abuse of process, vandalism, and other illegal and extortionate conduct."

As background, a "corporate campaign" is a multi-faceted and typically long-running attack by a union or unions against a company in order to pressure the company to accede to the union's bargaining demands. Corporate campaigns routinely involve conduct by the unions directed towards harming the company's reputation and damaging its media, political, and/or business relationships, as well as extensive litigation filings.

Here, the acrimonious relationship between the Unions and the Company involved, among other things:

- Unfair labor practice charges filed by the Unions against the Company related to petitions for election the Unions filed, and allegedly discriminatory terminations by the Company toward several employees.
- On the eve of the parties' collective bargaining negotiations, certain of the Company's facilities were vandalized and sabotaged – e.g., patient identifying information was mixed up, medical records were altered, equipment damaged or hidden, and laundry equipment vandalized. An investigation commenced by the State's Attorney, but it did not yield any suspects or charges. The only evidence tying the conduct to the Unions were plans to inspire workers to “become angry about their working conditions” and to resort to “more militant” levels of activity—but nothing more specific. After the vandalism occurred, the Unions sent out communications denying that they had anything to do with the conduct.
- The Unions also launched a public campaign attacking the Company's labor and business practices, through print and radio ads and billboards. The Unions indicated that they subjected their attacks to fact checking, but the Company disagreed.
- The Unions also lobbied government officials to investigate the Company's billing practices, and engaged in public demonstrations against the Company.

The Company filed suit against the Unions in federal court, claiming they had engaged in actions that amounted to a pattern of racketeering in violation of RICO. RICO imposes criminal and civil liability for those who engage in certain “prohibited activities.” While RICO claims are typically reserved to combat organized crime, employers have filed RICO claims against unions in response to aggressive corporate campaigns, where the conduct involves a “pattern of racketeering activities.” A “racketeering activity” includes “any act or threat involving...extortion...which is chargeable under State law and punishable by imprisonment for more than one year.” For an act to be a predicate offense under state law, the conduct must be “generally classified as extortionate.”

Specifically, the Company asserted that the Unions had engaged in the “extortionate actions” of (i) fear of economic loss, and (ii) sabotage / vandalism.

On summary judgment, the District Court granted the Unions' motion and dismissed the complaint as a matter of law. The District Court concluded that the Unions' conduct directed toward “economic loss” did not reach the level of “extortionate” to state a viable claim under RICO. Central to the District Court's holding was that it used the federal Hobbs Act definition of “wrongfulness” in concluding that the Unions were not guilty of extortion under state law. The District Court also found that the alleged sabotage and vandalism could not be attributed to the Unions.

The Third Circuit's Decision Affirming the District Court

After review, the Third Circuit affirmed the District Court's decision. Importantly, at the outset, the Third Circuit noted that the "generic" definition of extortion used by the District Court (defined as "obtaining something of value from another with his consent induced by the wrongful use of force, fear, or threats") was substantially similar to the definition of "extortion" applied by courts interpreting the federal Hobbs Act, and thus the Court looked to cases under the Hobbs Act for guidance.

The Hobbs Act is a federal law prohibiting extortion or robbery by wrongful use of force or fear. The U.S. Supreme Court carved out a "claim-of-right defense" under Hobbs for a union pursuing legitimate labor objectives (such as better pay and working conditions), even if the union's means for seeking this objective are *violent or destructive*. See *United States v. Enmons*, 410 U.S. 396, 398 (1973). The Third Circuit rejected the interpretation that *Enmons* is narrowly limited to strike violence, and reasonably extends to all labor strife. Moreover, until now, the "claim-of-right" defense under Hobbs had generally not been applied by a federal court to a union's conduct purportedly in violation of RICO. Given the Third Circuit's decision to look to Hobbs Act cases for guidance, the Court easily found that the allegedly extortionate conduct constituting economic loss did not constitute "wrongful" "extortionate" conduct, as the Unions did not even engage in violent or destructive conduct. Accordingly, the Third Circuit held that the Unions did not violate RICO.

As to the second grounds of extortion, the Court held that the Company did not present sufficient evidence that the Unions— rather than simply union members or employees—were sufficiently connected to the alleged vandalism of the facilities. The Company alleged that given the timing, a jury could infer that the vandalism was conducted by Union members. The Court held that this was insufficient under the Norris LaGuardia Act, which requires Union "authorization" and "clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof." No such evidence was presented against the Unions, and the Company's second claim for extortion through sabotage under RICO failed as a matter of law.

The Dissent

The dissent argued, among other things, that the narrow “claim-of-right” defense for labor organizations under the Hobbs Act should not apply to RICO claims. The dissent asserted that the “linguistic parsing in *Enmons* is...not obviously applicable,” as the “wording chosen by states to outlaw extortion does not necessarily track the wording of the Hobbs Act.” Since a RICO claim requires the violation of a predicate state law, and here, the Unions violated several state laws’ extortion provisions based on their conduct, the dissent concluded that the Company established a prima facie claim under RICO.

Takeaways

The Third Circuit appears to be the first Court of Appeals to issue such an expansive rejection of a company’s RICO claim in the context of a corporate campaign based on the “claim-of-right” defense under the Hobbs Act. This decision appears to create new law in applying a RICO claim to a Union’s aggressive corporate campaign tactics, and could serve as a useful defense for unions in other jurisdictions and/or create a potential split among the Circuits that may need to be resolved by the Supreme Court.

Although there are not many recent Circuit Court decisions addressing RICO claims in the context of a corporate campaign, the principle upon which the Third Circuit’s ruling was based—that a union may use coercive labor actions to attain legitimate objectives—has been discussed by many Circuit Courts, including the Fifth Circuit and the Eighth Circuit. In a somewhat analogous situation to a corporate campaign, where a labor organization’s extortionate conduct at issue included nonviolent “threats of slowdowns” and violence, the Second Circuit upheld a jury instruction that the Hobbs Act “does not apply to labor disputes in which workers seek to obtain lawful and legitimate labor objectives” and stated the use of violence does not violate Hobbs. *See United States v. Mulder*, [273 F.3d 91](#), 104 (2d Cir. 2001). Only time will tell whether other Circuits adopt this principle in the context of RICO claims, which is an important counter-attack for Employers in response to aggressive and illegal Union corporate campaign tactics.

We will continue to monitor this case and whether the Company intends to petition the Supreme Court, and we will track the impact of this development in subsequent decisions. We will keep you posted!

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