

## ***Green Leaf Nursery v. E.I. Dupont De Nemours and Co.*: The Eleventh Circuit Revisits the Proximate Cause Issues of Reliance and Intervening Third-Party Victims**

Civil plaintiffs may bring RICO actions only under section 1964(c) of the RICO Act. To qualify to bring a claim under section 1964(c) (or to have “standing” as lawyers say) a civil plaintiff must have been injured “by reason of” the RICO violation. The most common RICO claims are brought pursuant to section 1962(c) of the RICO Act which prohibits persons from operating or managing a enterprise through a pattern of racketeering activity. Thus, a civil plaintiff has standing to bring a section 1962(c) claim only if the plaintiff has been injured “by reason of” the pattern of racketeering activity.

In *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258 (1992), the United States’ Supreme Court held that section 1964(c)’s “by reason of” language required every civil plaintiff to prove that the racketeering activity was the proximate (or direct) cause of the plaintiff’s alleged injury.

When a RICO claim is predicated on racketeering acts of mail and wire fraud, RICO’s proximate cause standard generally requires the plaintiff to prove that it reasonably relied on the allegedly false statements. *See Summit Properties Inc. v. Hoechst Calenese Corp.*, 214 F.3d 556, 559-60 (5<sup>th</sup> Cir. 2000); *but see Procter & Gamble Co. v. Amway Corp.*, 242 F.3d 539 (5<sup>th</sup> Cir. 2001) (fraudulent statements may also proximately cause injury where a defendant’s false statements are targeted at and damage the business reputation of a competitor). RICO claims based on other types of racketeering acts must be analyzed on a case-by-case basis to determine if there is a direct link between the racketeering activity and the alleged injury. Generally, however, proximate cause does not exist when the injury and racketeering activities are separated by intervening non-predicate acts, intervening third-party victims, or other intervening independent factors (such as market fluctuations or acts of god).

In *Green Leaf Nursery v. E.I. Dupont De Nemours and Co.*, 341 F.2d 1292, which was announced on August 15, 2003, the Eleventh Circuit provided further direction with regard to section 1964(c)’s “by reason of” language, and in particular, with regard to reliance and intervening third-party victims.

### ***Facts***

Green Leaf was one of many parties across the nation that brought fraud and product liability claims arising out of a Dupont fungicide named Benlate. The *Bush Ranch* case was one of the first Benlate cases to proceed to trial. In order to better measure the merits of the Benlate claims, Green Leaf and all other Benlate plaintiffs monitored the *Bush Ranch* case very closely.

All of the Benlate plaintiffs, including Green Leaf, experienced contentious discovery. The Benlate plaintiffs commonly brought motions to compel on the basis of Dupont's alleged concealment of evidence, discovery fraud and other misconduct.

Green Leaf settled its claim against Dupont in 1994. The plaintiff in *Bush Ranch* went on to receive a very favorable judgment but that judgment was ultimately reversed on appeal.

Eventually, information came to light causing Green Leaf and other Benlate plaintiffs to believe that the discovery process in *Bush Ranch* was tainted by a massive Dupont scheme to suborn perjury, falsify evidence, fraudulently conceal documents, and maliciously destroy evidence. Green Leaf then filed the instant RICO claim, alleging that Dupont's scheme in *Bush Ranch* was not only designed to obtain a favorable result in the *Bush Ranch* case but also to fraudulently induce other Benlate plaintiffs, such as Green Leaf, to settle their claims at less than the actual value of those claims.

Green Leaf's RICO claim was predicated on alleged acts of mail and wire fraud, obstruction of justice, and witness tampering.

### ***Reliance – Mail & Wire Fraud***

In its motion for judgment on the pleadings, Dupont argued that the alleged acts of mail and wire fraud were not the proximate cause of Green Leaf's damages because Green Leaf did not reasonably rely on any statements made by Dupont when entering the 1994 settlement agreement.

The Eleventh Circuit agreed with Dupont, citing a principle long-applied to common law fraud claims: "When negotiating or attempting to compromise an existing controversy over fraud and dishonesty it is unreasonable to rely on representations made by the allegedly dishonest parties." In applying this doctrine to Green Leaf's claim, the court stated:

Simply because the misrepresentations occurred during litigation does not render reliance upon them reasonable. This is especially so given the extremely adversarial positions of the parties in the Underlying Litigation and the large number cases around the country, which [Green Leaf was] continually monitoring, in which Dupont was accused of discovery violations involving the concealment and destruction of evidence.

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Because [Green Leaf was] represented by counsel, [was] in an antagonistic and distrusting relationship with Dupont, and settled litigation that included accusations of fraud and other dishonest conduct by Dupont, [Green Leaf] could not reasonably or justifiably rely on any of Dupont's misrepresentations.

Given the court's decision that Green Leaf could not possibly reasonably rely on Dupont's pre-settlement statements, the court held that Green Leaf could not have been injured "by reason of" Dupont's alleged acts of mail and wire fraud.

### ***Intervening Third-party Victims***

The court also held that Dupont's alleged obstruction of justice and witness tampering were not the proximate cause Green Leaf's damages. All of the alleged obstruction and tampering occurred in the *Bush Ranch* action. Dupont argued that even if Green Leaf's allegations were true, the *Bush Ranch* plaintiffs were the only persons directly injured by the obstruction and tampering. Green Leaf could not possibly have been directly injured because it was not a party to the *Bush Ranch* case.

Green Leaf, however, claimed that it was directly injured by the obstruction and tampering in *Bush Ranch* because ". . . Dupont knew that [Green Leaf and all Benlate plaintiffs] were monitoring the *Bush Ranch* case and that Dupont hid and falsified evidence in that case to defeat cases throughout the country."

Again, the court disagreed with Green Leaf:

This is too remote to satisfy the proximate cause requirements because the directness inquiry is not a question of specific intent. [Citations omitted.] "[T]he test for RICO standing is whether the alleged injury was directly caused by the RICO violation, not whether such harm was reasonably foreseeable." [Citations omitted.]

Given that this opinion was in response to a motion for judgment on the pleadings, the court was required to assume that Dupont engaged in obstruction and witness tampering in *Bush Ranch*. Pursuant to the court's holding, however, only the *Bush Ranch* parties who could possibly have standing to bring a RICO claim predicated on such wrongful conduct. Green Leaf and other Benlate plaintiffs were too remote from the wrongful conduct. The only directly injured parties were the parties in the *Bush Ranch* case. See also *Pillsbury, Madison & Sutro v. Lerner*, 31 F.3d 924 (9<sup>th</sup> Cir. 1994); *Firestone v. Gallbreath*, 976 F.2d 279 (9<sup>th</sup> Cir. 1994).

## ***GOOD LAW vs. BAD LAW***

**Good Law:** The Eleventh Circuit's result with regard to the reliance question is a step in the right direction to the extent it limits the use of mail and wire fraud as predicate acts under RICO.

**Bad Law:** The trend in the past twenty years has been for courts to distinguish between the criminal nature of mail and wire fraud and common law fraud – courts have been adamant in their expression that not all instances of common law fraud give rise to a RICO claim. Yet, in *Green Leaf*, the court relied on common law fraud principles to define reasonable reliance under RICO. Plaintiff's lawyers may trumpet this decision as support for the proposition that there is no distinction between common law fraud and criminal mail and wire fraud and that a RICO claim arises whenever a party engages in common law fraud. RICO claims based on fraudulently induced settlement agreements are rare, and thus, the limiting affect of this decision will be correspondingly rare. Given the universal desire of plaintiffs to equate common law fraud to federal mail and wire fraud, the greatest impact of this decision may be to further blur the line between federal mail and wire fraud and common law fraud.

**Bad Law:** The implication of this case is that it is not possible for a defendant accused of fraud to fraudulently induce a settlement agreement. This cannot be true. Even if a defendant has engaged in allegedly fraudulent behavior that gives rise to the underlying dispute, there is some point at which the plaintiff should be able to rely on the defendant's truthfulness in settlement negotiations. If a plaintiff cannot rely on such a defendant's representations during settlement negotiations, then why should a plaintiff in a fraud claim ever settle – isn't the risk of fraudulent inducement too great? This decision could have a substantial chilling effect on the willingness of fraud victims to settle.

**Good Law:** The Eleventh Circuit's determination that Green Leaf's damages were not proximately caused by Dupont's alleged obstruction of justice and tampering with witnesses in *Bush Ranch* is absolutely the right result. The intervening third-party victim is one of the more easily grasped factors in the proximate cause analysis. As stated by the Supreme Court, "a plaintiff who complain[s] of harm flowing merely from the misfortunes visited upon a third person by the defendant's acts [is] generally said to stand at too remote a distance to recover." *Holmes*, 503 U.S. at 268-269. *Green Leaf* upholds this concept and maintains its clarity.