

976 F.2d 279, RICO Bus.Disp.Guide 8097
(Cite as: 976 F.2d 279)

United States Court of Appeals,
Sixth Circuit.

Douglas B. FIRESTONE (90-4114/4120); Amy Firestone Del Valle (90-4114/4120); Russell A. Firestone III (90-4115); Jeffrey Firestone (90-4116/4117); David M. Firestone, Jr. (90-4116/4117); Mark A. Firestone (90-4118); and Leigh E. Firestone (90-4119), Plaintiffs-Appellants,

v.

Daniel M. GALBREATH, et al., Defendants-Appellees.

Nos. 90-4114 to 90-4120.

Argued June 15, 1992.

Decided Sept. 23, 1992.

Rehearing Denied Oct. 21, 1992.

[ENGEL](#), Senior Circuit Judge.

The underlying conflict in this litigation is a will contest between competing factions of a wealthy family.

Plaintiffs Douglas B. Firestone, Amy Firestone del Valle, Russell A. Firestone III, Jeffrey B. Firestone, David M. Firestone Jr., Mark Firestone and Leigh Firestone appeal from the district court's dismissal of their seventy-four state tort and federal RICO claims against Daniel Galbreath and others. The district court dismissed the bulk of the claims on the grounds that the plaintiffs lacked standing to assert the claims of their grandmother's estate and family [trust](#). [747 F.Supp. 1556](#). For the reasons set forth in this opinion we affirm.

In 1925 decedent Dorothy Bryan Firestone Galbreath married Russell Allen Firestone, an heir to the Firestone tire fortune. Dorothy and Russell had two sons, who in turn had ten children. These children became the plaintiffs in this lawsuit and all but three of them now appeal. In 1955, four years after the death of Russell Firestone, Dorothy married John Galbreath. Like her first husband, John Galbreath had a substantial fortune which he achieved and maintained as a real estate developer, and through which

he enjoyed ownership of the Darby Dan horse farms and the Pittsburgh Pirates. Dorothy shared her new husband's enthusiasm for breeding and racing thoroughbreds.

Twenty years later, her health failing, Dorothy executed her will on October 31, 1978. In this will, she bequeathed specific assets to her children, her husband, and her stepchildren. She also left a heirloom brooch to her granddaughter Amy. The residuary estate she left to a Family Trust, created on that same day. The sole beneficiaries of the Family Trust were her grandchildren. She named her stepson, Daniel Galbreath, as executor of her estate and trustee of the Family Trust.

During her lifetime, Dorothy Galbreath funded the Family Trust only nominally. Any residuary assets in Dorothy's decedent estate was bequeathed to the Family Trust [*282](#) and from there into individual trusts for her generically described "then living grandchildren." The Trust also provided for appointment of a new trustee by majority vote of the Family Trust beneficiaries.

Dorothy died on February 24, 1986, having suffered for the last years of her life from [Herpes Zoster](#) of the brain. On June 26, 1986, two of Dorothy's grandchildren, Douglas Firestone and Amy Firestone del Valle, filed a will contest action claiming Dorothy Galbreath had been incompetent at the time she made her will. On January 19, 1990, the two voluntarily dismissed the action when it appeared it might interfere with their case here.

John Galbreath died shortly after Dorothy, on July 20, 1988. Daniel Galbreath also serves as executor of his estate. On September 22, 1988, Douglas and Amy sent Daniel a letter. In part, that letter stated:

We are writing to you as Trustee of [the Family Trust] as well as Executor of Mrs. Galbreath's Estate to demand that you, in your dual capacities and in accordance with law, make formal presentation of the claims of [Amy and Douglas], of the Family Trust, and of the Estate of Dorothy B. Galbreath ...

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upon the Estate of your father, John W. Galbreath.

Essentially, Amy and Douglas made the same charges in that letter that they make here, namely that the Galbreaths had been looting Dorothy Galbreath's estate as she lay dying. They demanded only a presentation of these claims to John Galbreath's estate. Daniel Galbreath asserts that he presented the claims to the estate, and has offered to resign as executor of Dorothy's estate if the Grandchildren should demand a suit against the Galbreaths, or request his resignation.

Rather than following either of these courses (a direct demand that the executor file suit or a request for Daniel's resignation), Douglas Firestone and Amy Firestone del Valle began this action by filing a seventy-four count complaint in the Southern District of New York in December of 1988. The complaint contained numerous charges of fraud, tort claims and RICO violations involved in transfers of two pieces of property Dorothy Galbreath owned in New York, her rights in various horses, and all financial transactions she made with the Galbreaths after her marriage in 1955 to John Galbreath. Named as defendants were Daniel Galbreath individually, and as trustee and executor, John Galbreath's Estate and various Galbreath business interests, Joan Galbreath Phillips, James W. Phillips (Joan's husband), John Phillips (Joan's son), Lizanne Galbreath (Daniel's daughter) (collectively, the "Galbreath Defendants"), Bricker & Eckler (a law firm), Bricker & Eckler partners John Eckler, David Cummins, John Phillips (still Joan's son), and Charles H. Waterman III (the "Bricker Defendants"), and finally the accounting firm of Bolon, Hart & Buehler, Inc. ("Bolon, Hart"). Originally, the complaint also named the eight other grandchildren as defendants, but they have since realigned as plaintiffs. Interestingly, no child of Dorothy Firestone has ever been named in or sought intervention in this litigation.

On September 28, 1989, the District Court in New York transferred the case to the Southern District of Ohio. Various motions to dismiss had been filed before the transfer, and on December 1, 1989, the defendants renewed these motions. On July 30, 1990, the district court dismissed the majority of the claims with leave to amend within thirty days to plead a demand. The Grandchildren never made an amendment, and on November 13, 1990 the district

court dismissed all claims, largely on the question of standing. Douglas B. Firestone, Amy Firestone del Valle, Russell A. Firestone III, Jeffrey B. Firestone, David M. Firestone Jr., Mark Firestone and Leigh Firestone (the "Grandchildren") all filed timely notices of appeal.

* * * *

II.

The district court also dismissed a number of other claims in the Grandchildren's names based on their lack of standing. The court dismissed the single RICO claim against all of the defendants on grounds that the Grandchildren lacked standing to bring an individual RICO claim because they had not suffered a direct injury, because they had failed to state a claim, and finally because RICO was unconstitutional both as applied and as written.

The Grandchildren employ flawed logic in their insistence that an "actual monetary loss" equates to a "direct injury." The Supreme Court recently explained the direct injury requirement of [18 U.S.C. § 1964\(c\)](#), the civil RICO statute. [Holmes v. Securities Investor Protection Corp.](#), 503 U.S. 258, ---, 112 S.Ct. 1311, 1318, 117 L.Ed.2d 532 (1992). The Court held that RICO contains a proximate cause requirement mirroring that of the Sherman and Clayton Acts. This requirement forces the plaintiff to demonstrate a direct relation between the injury suffered and the alleged injurious conduct. Thus, the concept of direct injury refers to the relationship between the injury and the defendants' actions, not the plaintiffs' pocketbooks.^{FN5}

^{FN5} Furthermore, the Grandchildren's reliance on [Norris v. Wirtz](#), 703 F.Supp. 1322 (N.D.Ill.1989) for their assertion of direct injury is misplaced for the simple reason that *Norris* does not even discuss standing or direct injury.

For example, our court has held that a shareholder lacks standing to bring a suit where the alleged injury is diminution or destruction of the value of the stock due to acts aimed at a corporation. [Gaff v. FDIC](#), 814 F.2d 311 (6th Cir.1987); [Warren v. Manufacturer's Nat'l Bank](#), 759 F.2d 542 (6th Cir.1985). In these cases, the shareholder's injury is only indirect because the decrease in the value of the corporation precipitates the drop in the value of the stock. The corporation, on the other hand, suffers the direct in-

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jury in the decreased value of its corporate assets.

The relationship between the Grandchildren's alleged injury and the injurious conduct here parallels that of the injured stockholders. The Grandchildren allege that by stealing from their grandmother during her lifetime, the defendants decreased the size of Dorothy Galbreath's estate, and consequently the size of their inheritance. This is only an indirect injury because any harm to the Grandchildren flows merely from the misfortunes allegedly visited upon Dorothy Galbreath by the defendants. See [*Holmes*, 503 U.S. at ---, 112 S.Ct. at 1318](#). The estate suffered the direct harm; it, not the Family Trust, lost the property. Consequently, the Grandchildren lack standing to bring an individual RICO claim, and the district court correctly dismissed it.

Since we find that the Grandchildren lacked standing to bring a RICO claim, the other inherent weaknesses of that claim are moot. In reference to the constitutionality of the RICO statute itself, we note only the words of the Supreme Court: "If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality ... unless such adjudication is unavoidable." [*Jean v. Nelson*, 472 U.S. 846, 854, 105 S.Ct. 2992, 2997, 86 L.Ed.2d 664 \(1985\)](#) quoting [**286Spector Motor Service, Inc. v. McLaughlin*, 323 U.S. 101, 105, 65 S.Ct. 152, 154, 89 L.Ed. 101 \(1944\)](#). Deciding constitutional issues only after considering and rejecting every nonconstitutional ground for the decision is a "fundamental rule of judicial restraint." [*Three Affiliated Tribes of the Fort Berthold Reservation v. World Engineering*, 467 U.S. 138, 104 S.Ct. 2267, 81 L.Ed.2d 113 \(1984\)](#). The district court's correct holding that plaintiffs failed to plead adequate RICO claims makes it unnecessary and undesirable for us to pass upon the constitutional aspects of that statute and we expressly distance ourselves from the district court's holding in that respect.

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Having fully considered all other allegations of error and finding them lacking in merit, for the reasons stated above we AFFIRM the district court's dismissal of all other claims.