367 F.3d 212, 2004-1 Trade Cases P 74,393, RICO Bus.Disp.Guide 10,666
(Cite as: 367 F.3d 212)

United States Court of Appeals,
Fourth Circuit.
AMERICAN CHIROPRACTIC ASSOCIATION, INCORPORATED, a nonprofit corporation; Virginia Chiropractic Association, Incorporated; George W. Chirikinian, D.C.; Douglas M. Cox, D.C.; William R. Theisier, D.C.; John C. Willis, D.C.; Jerry R. Willis, D.C.; Sarah Elizabeth Allen; Lana Kay Ball; Margaret Byrne; Roger Dalton; Mary Sue Dean; Harvie Lee French, Jr.; Patricia Herman; Cindy Linkenhoker; Sandra Phillippi; Darlene Requizo; David Russotto; Gloria Jean Smith; Lynn D. Wagner; Andrea Wallace; Patricia Whittington; Benis D. Wood; Richard D. Worley; Dale Duke Yontz; Douglas F. Ambrose; George C. Mcclelland; James M. Porter; Larry L. Stine; Wendy Holden Willis; Steven W. Yates; Kevin J. Westby; Gregory Walter; Jefferson K. Teass, Plaintiffs-Appellants,
v.
TRIGON HEALTHCARE, INCORPORATED; Trigon Insurance Company; Trigon Administrators; Mid-South Insurance Company; Trigon Health And Life Insurance Company, Defendants-Appellees,
and
Blue Cross and Blue Shield Association, Defendant.

No. 03-1675.
Argued: Feb. 24, 2004.
Decided: May 6, 2004.

WILLIAMS, Circuit Judge:

In this appeal, we consider whether Trigon Healthcare, Virginia's largest for-profit health insurance company, and its affiliated companies (collectively, Trigon),[FN1] were engaged in an anticompetitive conspiracy with medical doctors and medical associations whose purpose was to harm chiropractors. American Chiropractic[FN2] filed this eight count complaint alleging violations of federal antitrust laws, the Racketeer Influenced and Corrupt Organizations Act (RICO), and various state laws, claiming that Trigon and the medical doctors and associations were engaged in a conspiracy that used Trigon's reimbursement policies and treatment guidelines to limit severely the flow of insurance dollars to chiropractors and steer those monies toward***218** medical doctors. Trigon argues that no conspiracy exists, and that it implemented its coverage policies unilaterally based on market supply and demand. The district court agreed with Trigon, dismissing two counts of the complaint for failure to state a claim and disposing of the remaining counts by granting Trigon's motion for summary judgment. Although we apply different reasoning than the district court in some areas, we affirm its disposition of the case in favor of Trigon.

FN1. Trigon Healthcare was recently purchased by Anthem Healthcare, an Indiana based health insurance company. To be consistent with the district court's usage and the factual record developed below, we refer to the corporation as "Trigon."

FN2. We refer to the appellants, the American Chiropractic Association, the Virginia Chiropractic Association, certain individual chiropractors and some patients of individual chiropractors, collectively as "American Chiropractic."

I.

Trigon is a for-profit, publicly-traded health insurance company located in Virginia. Trigon's business consists of selling individual and group healthcare benefit plans to its subscribers. Generally, these healthcare benefit plans list the benefits and services covered by Trigon under the plan and describe any services that are excluded from the plan or are the subject of coverage limitations. Trigon makes a network of healthcare providers, including medical doctors, hospitals, pharmacies, chiropractors, and therapists, available to plan members to provide the services covered under the plan. Trigon creates this network of healthcare providers by entering into contracts with providers who are willing to abide by Trigon's terms and conditions, as set forth in Trigon's provider agreements. Simply put, "Trigon is essentially purchasing services from the healthcare providers who agree to become participating providers in Trigon's [provider] networks." (J.A. at 1344.) Trigon strives to offer "the best coverage at the lowest possible cost," and it endeavors to pay "the lowest possible price" to healthcare providers to ensure low-cost

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access for plan enrollees. (J.A. at 1597, 4579.)

Chiropractic medicine is "a non-pharmaceutical, nonsurgical system of health care based on the self-healing capacity of the body" with the aim of "removing irritants to the nervous system and restoring proper function" to the nervous system. *Dorland's Medical Illustrated Dictionary* 347 (30th ed.2003). Chiropractic treatment most commonly involves spinal manipulations[FN3] to relieve musculoskeletal complaints. *Id.* Trigon has provided coverage for chiropractic services since the 1980's, and Trigon "acknowledge[s] that chiropractic care has a health effect, a positive health effect when rendered appropriately."[FN4] (J.A. at 4186.)

FN3. Spinal manipulation is defined by the Agency for Health Care Policy and Research, a division of the U.S. Department of Health and Human Services, as "manual therapy in which loads are applied to the spine using short or long lever methods." (J.A. at 5507.)

FN4. The use of chiropractors by Trigon's plan enrollees has increased substantially since Trigon began covering chiropractic care. For instance, in 1996 only 26,275 plan enrollees received spinal manipulation treatment from chiropractors, but that number jumped to 74,477 by 2001. The number of chiropractic providers in Trigon's network rose from 513 to 961 during the same time span, and now almost 90% of chiropractors in the Commonwealth of Virginia are in Trigon's provider network. In addition, the total amount of payments from Trigon to chiropractors rose from $12,380,737 in 1996 to $21,510,503 in 2001.

Despite Trigon's coverage of chiropractic services, and the fact that chiropractic medicine is, as the district court noted, a "recognized branch of the healing arts," *see American Chiropractic Association v. Trigon Healthcare, Inc., 258 F.Supp.2d 461, 463 (W.D.Va.2003)*, there is a history of animus from medical doctors and insurers aimed at chiropractors. Beginning in 1962, the American Medical Association (AMA), aided by the National Association ***219** of Blue Shield Plans,[FN5] began a "lengthy, systematic, successful, and unlawful" national group boycott aimed at destroying chiropractic medicine. *Wilk v. Am. Medical Ass'n., 895 F.2d 352, 371 (7th Cir.1990)*. As the Seventh Circuit explained:

FN5. This organization is now called Blue Cross & Blue Shield Association of America.

> In 1963 the AMA formed its Committee on Quackery ("Committee"). The Committee worked diligently to eliminate chiropractic. A primary method to achieve this goal was to make it unethical for medical physicians to professionally associate with chiropractors. Under former Principle 3, it was unethical for medical physicians to associate with "unscientific practitioners." In 1966, the AMA's House of Delegates passed a resolution labeling chiropractic an unscientific cult.

Id. at 356.

Beginning in 1977, the AMA slowly began to phase out its boycott of chiropractors, and the Seventh Circuit adopted the *Wilk* district court's finding that the boycott became dormant in 1980 when Principle 3 was revised. [FN6] *Id.* at 356, 374. Although Trigon is a licensee of Blue Cross & Blue Shield Association of America, there is no record evidence connecting Trigon to this boycott.

FN6. Although the Seventh Circuit recognized that the boycott ended in 1980, it affirmed a grant of injunctive relief against the American Medical Association because some of its actions in 1983 "indicated the AMA's likelihood of returning to its old (anti-chiropractic) ways." *Wilk v. Am. Medical Ass'n., 895 F.2d 352, 367 (7th Cir.1990)*.

American Chiropractic, however, asserts that medical doctors continue to harbor animosity toward chiropractors and have entered into an anticompetitive conspiracy with Trigon to harm chiropractors. American Chiropractic contends that medical doctors and their medical associations have conspired with Trigon to limit the usage of chiropractors by Trigon's plan enrollees and to restrain severely the reimbursement paid to chiropractors for services rendered to plan enrollees. The ultimate goal of this conspiracy, American Chiropractic argues, is to shift insurance dollars away from chiropractors toward medical

doctors and harm the business of chiropractors.

In response to this perceived anticompetitive conspiracy, American Chiropractic brought this action in the United States District Court for the Western District of Virginia on August 18, 2000. American Chiropractic's eight-count complaint alleged that Trigon[FN7] conspired with medical doctors and medical associations to restrain interstate trade in violation of § 1 of the Sherman Antitrust Act, 15 U.S.C.A. § 1 (West 1997) (count one); attempted to monopolize the market for treatment of neuromusculoskeletal conditions in violation of § 2 of the Sherman Act, 15 U.S.C.A. § 2 (West 1997) (count two); engaged in a pattern of racketeering activity in violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C.A. § 1962 (West 2000) (count three); tortiously interfered with the business enterprise of chiropractors in violations of state common law (count four); conspired to injure chiropractors in their trade or practice in violation of Va.Code Ann. § 18.2-499 (Michie 1996) (count five); committed state common law breach of contract (count six) and conspiracy (count seven); and violated Va.Code Ann. §§ 38.2-2203, 38.2-3408, 38.2-4221, and ***220** 38.2-4312(E) (Michie 2002), referred to as the Virginia insurance equality laws (count eight). The district court exercised supplemental jurisdiction over the state law claims pursuant to 28 U.S.C.A. § 1367 (West 1993).

FN7. The complaint initially named Blue Cross & Blue Shield of America in addition to Trigon Healthcare, Inc. and its affiliated companies. Blue Cross & Blue Shield of America was voluntarily dismissed as a defendant by American Chiropractic.

Trigon moved to dismiss the complaint in its entirety on October 13, 2000. The district court, on July 19, 2001, granted that motion in part and dismissed American Chiropractic's RICO (count three) and Virginia insurance equality (count eight) claims for failure to state claims. The district court held that the RICO claim was preempted by the McCarran-Ferguson Act and that the Virginia insurance equality laws relied upon by American Chiropractic did not create private causes of action.

Following discovery, on August 13, 2002, Trigon filed a motion for summary judgment on the remaining counts in the complaint. American Chiropractic did not file a Rule 56(f) motion requesting further discovery, but it did contest Trigon's motion for summary judgment. After the benefit of oral argument, the district court, on April 25, 2003, granted Trigon's motion for summary judgment on the remaining counts. As to counts one, five, and seven, the district court found that the intracorporate immunity doctrine precluded any conspiracy between Trigon and the medical doctors that served on one of its committees, the Managed Care Advisory Panel, and that American Chiropractic had produced no other evidence of a conspiracy between Trigon and the medical doctors or medical associations. As to American Chiropractic's claim for monopolization (count two), the district court granted summary judgment because Trigon did not possess monopoly power in the relevant market. It also granted Trigon's motion for summary judgment as to American Chiropractic's state law claims for tortious interference (count four) and breach of contract (count six). American Chiropractic noted a timely appeal of the district court's rulings, and we have jurisdiction under 28 U.S.C.A. § 1291.

On appeal, American Chiropractic argues: (1) that the district court erred in holding the intracorporate immunity doctrine applies to this case; (2) that the district court erred in holding that there was insufficient evidence of a conspiracy between Trigon and the medical associations to withstand summary judgment; (3) that the district court erred in granting summary judgment on the tortious interference claim; (4) that the district court erred in dismissing the Virginia insurance equality claim; (5) that the district court erred in dismissing the RICO claim as preempted by the McCarran-Ferguson Act; and (6) that the district court abused its discretion in conducting discovery. [FN8] We address each contention in turn.

FN8. We note that American Chiropractic does not appeal the district court's grant of summary judgment on its § 2 Sherman Act claim (count two) or the state law breach of contract claim (count six).

* * * *

V.

Count Three

(RICO)

American Chiropractic's final contention of error relating to the substantive holdings of the district court is that the district court erred in finding that its

RICO claim was preempted by the McCarran-Ferguson Act and dismissing that claim pursuant to Rule 12(b)(6).[FN20] As stated above, we review de novo a complaint for failure to state a claim and "take all allegations as admitted and examine whether the plaintiff can prove any set of facts that would entitle him to relief." *Anderson v. Found. for Advancement, Educ. and Employment of Am. Indians,* 155 F.3d 500, 505 (4th Cir.1998). "Federal 'notice' pleading standards require that the complaint be read liberally in favor of the plaintiff." *Id.* For the reasons that follow, we agree that American Chiropractic's claim is not preempted by the McCarran-Ferguson Act, but nonetheless affirm the district court's dismissal of this count because American Chiropractic failed to allege a claim for mail fraud or wire fraud and, accordingly, failed to state a claim for a RICO violation.

FN20. As discussed *infra,* in its RICO claim, American Chiropractic alleged that Trigon engaged in a pattern of racketeering activity including mail fraud, wire fraud, and extortion.

A.

The McCarran-Ferguson Act provides that "[n]o Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance." 15 U.S.C.A. § 1012(b) (West 1997). The McCarran-Ferguson Act does not apply to federal laws that are specifically targeted at the business of insurance. *Id.* Trigon argues that applying RICO to American Chiropractic's claims would invalidate, impair or supersede Virginia's insurance code, found at Title 38.2 of the Code of Virginia. For a federal law to be preempted by McCarran-Ferguson: (1) the state law in question must be enacted for the purpose of regulating the business of insurance; (2) the federal law must not ***231** be specifically related to the business of insurance; and (3) the federal law must invalidate, impair or supersede the state law in question. *Humana, Inc. v. Forsyth,* 525 U.S. 299, 307, 119 S.Ct. 710, 142 L.Ed.2d 753 (1999). The second factor is easily satisfied because the Supreme Court has held that "RICO is not a law that specifically relates to the business of insurance." *Humana,* 525 U.S. at 307, 119 S.Ct. 710 (quotation marks omitted). Thus, we are left to decide whether Title 38.2 is a law enacted for the purpose of regulating the business of insurance and, if so, whether RICO impairs, invalidates or supersedes its operation.

We have little difficulty concluding that Title 38.2 is a set of laws enacted for the purpose of regulating the business of insurance. The Supreme Court has stated that "[s]tatutes aimed at protecting or regulating this relationship [between insurer and insured], directly or indirectly are laws regulating the 'business of insurance.' " *SEC v. Nat'l Securities, Inc.,* 393 U.S. 453, 460, 89 S.Ct. 564, 21 L.Ed.2d 668 (1969)."[T]he focus of McCarran-Ferguson is upon the relationship between the insurance company and its policyholders...." *United States Dep't of Treasury v. Fabe,* 508 U.S. 491, 501, 113 S.Ct. 2202, 124 L.Ed.2d 449 (1993). Accordingly, the McCarran-Ferguson Act encompasses "laws that possess the 'end, intention, or aim' of adjusting, managing, or controlling the business of insurance." *Id.* at 505, 113 S.Ct. 2202. Applying these standards, Title 38.2 of the Code of Virginia, specifically §§ 38.2-200, 38.2-221 and 38.2-3408 at issue here, is a set of laws enacted for the purpose of regulating the business of insurance. Title 38.2 is limited to insurance companies and creates a comprehensive network of statutory provisions aimed at controlling and managing the business of insurance. For instance, § 38.2-3408, by requiring insurers to provide reimbursement for all providers of covered services, helps to manage the relationship between the policyholder and the insurance company by ensuring that if a particular service is covered by an insurance company, the policyholder can seek treatment from any provider able to perform that service.

Accordingly, we next must decide whether allowing a RICO claim to proceed against an insurance company would "invalidate, impair, or supersede" Virginia's insurance code. The Supreme Court recently considered a similar question: whether RICO invalidated, impaired or superseded Nevada's laws regulating insurance. *Humana,* 525 U.S. at 307, 119 S.Ct. 710. In *Humana,* the Court defined "invalidate" as "to render ineffective, generally without providing a replacement rule or law," and "supersede" as "to displace (and thus render ineffective) while providing a substitute rule." *Id.* Using these definitions, it is clear that, as in *Humana,* RICO's application would neither "invalidate" nor "supersede" Virginia law.[FN21]

FN21. The district court relied heavily on *Ambrose v. Blue Cross & Blue Shield of Va.,*

> *Inc.,* 891 F.Supp. 1153 (E.D.Va.1995), *aff'd* 95 F.3d 41 (4th Cir.1996) (unpublished per curiam opinion). Because *Ambrose* was decided before the Supreme Court's decision in *Humana, Inc. v. Forsyth,* 525 U.S. 299, 119 S.Ct. 710, 142 L.Ed.2d 753 (1999), and because the district court in *Ambrose* applied different definitions for the statutory terms than did the *Humana* Court, that decision is not helpful to our decision today.

Thus, the key question, as in *Humana,* is whether RICO's application to Trigon's alleged conduct would "impair" Virginia's law. In holding that RICO did not impair Nevada's law, the Supreme Court stated that

> When federal law does not directly conflict with state regulation, and when application***232** of the federal law would not frustrate any declared state policy or interfere with a State's administrative regime, the McCarran-Ferguson Act does not preclude its application.

Id. at 310, 119 S.Ct. 710. The only difference between the Nevada laws considered in *Humana* and the Virginia laws at issue in this case is that the Nevada laws explicitly provided for a private right of action, whereas the Virginia laws, as discussed *supra,* Part IV, do not. The district court found this difference dispositive, holding that application of RICO would convert Virginia's system of public redress into a federal system of private redress and thus that RICO would impair, invalidate, and supersede Virginia law. *Am. Chiropractic Ass'n,* 258 F.Supp.2d 461. We disagree.

Instead, we agree with the Tenth Circuit's resolution of this issue in *BancOklahoma Mortgage Corp. v. Capital Title Co.,* 194 F.3d 1089 (10th Cir.1999). The Missouri insurance laws at issue in that case, like the Virginia insurance laws at issue here, did not provide for a private right of action. The court nonetheless concluded that *Humana* compelled a holding that the RICO claims were not barred by the McCarran-Ferguson Act. *Id.* at 1099. The court held

> RICO "advances" Missouri's "interest in combating insurance fraud" and "does not frustrate any articulated [Missouri] policy." Although Missouri does not provide a private cause of action under its [insurance laws], it does allow causes of action under other state law. *See* Mo.Rev.Stat. § 375.944(4) (1991). Therefore, the McCarran-Ferguson Act does not bar [the] RICO claims.

Id. (quoting *Humana,* 525 U.S. at 314, 119 S.Ct. 710); *see also Humana,* 525 U.S. at 312, 119 S.Ct. 710 ("Moreover, the [Nevada] Act is not hermetically sealed; it does not exclude application of other state laws, statutory or decisional."); *Sabo v. Metropolitan Life Ins. Co.,* 137 F.3d 185 (3d Cir.1998) (holding that RICO does not impair a state insurance law that permits private rights of action under other state laws). *But see LaBarre v. Credit Acceptance Corp.,* 175 F.3d 640 (8th Cir.1999) (holding that the lack of a private right of action in the state insurance laws was dispositive without considering whether the statute at issue permitted the application of other state laws to the conduct of insurers).

RICO furthers Virginia's interest in policing insurance fraud and misconduct and does not frustrate any declared state policy. Although RICO's damage provisions are admittedly more severe than many state laws, RICO does not interfere with Virginia's administrative scheme. Moreover, as discussed in Part IV, although Virginia's insurance laws do not create private rights of action, § 38.2-221 allows for other state laws to apply to the conduct of insurers.[FN22] Va.Code Ann. § 38.2-221 (The "power and authority conferred upon the Commission by this section shall be in addition to and not in substitution for the power and authority conferred upon the courts by general law to impose civil penalties for violations of the laws of this Commonwealth."). We agree with the Tenth Circuit that in such a situation, *Humana* compels a conclusion that American Chiropractic's RICO claim was not barred by the McCarran-Ferguson Act.

> FN22. For example, in this case American Chiropractic asserted state law claims for tortious interference with a business relationship, common law and statutory conspiracy, and breach of contract.

B.

Although we disagree with the reasoning of the district court, we can affirm the ***233** dismissal of the complaint "on any basis fairly supported by the record." *Eisenberg v. Wachovia Bank, N.A.,* 301 F.3d 220, 222 (4th Cir.2002). Perhaps anticipating our

conclusion in Part V.A., Trigon has argued in the alternative that we should affirm the 12(b)(6) dismissal of the RICO claim because American Chiropractic has failed to state a claim under RICO. RICO provides, in pertinent part, that "[i]t shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity ... to use or invest, directly or indirectly, any part of such income, or the proceeds of such income ... [in] the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce." 18 U.S.C.A. § 1962(a). "Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue ... and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C.A. § 1964(c).

A plaintiff bringing a civil RICO action under § 1964(c) must adequately plead at least two predicate acts of racketeering that form a "pattern of racketeering." 18 U.S.C.A. § 1961(5). Private civil RICO suits may be brought regardless of whether the government chooses to prosecute the criminal RICO violation. *Sedima, S.P.R.L. v. Imrex Co., Inc.,* 473 U.S. 479, 493, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985). Here, American Chiropractic's complaint stated that Trigon committed mail fraud, wire fraud, and extortion. [FN23] All three qualify as "racketeering activity," *see* 18 U.S.C.A. § 1961(1), but Trigon contends that American Chiropractic cannot state a claim for any of those predicate acts.

FN23. American Chiropractic also alleged the predicate act of securities fraud in its complaint, but it did not pursue that claim because Trigon previously had not been convicted of securities fraud, as required by 18 U.S.C.A. § 1964(c) (West 2000).

We consider first the alleged mail and wire fraud. The federal mail and wire fraud statutes prohibit the use of the mails or interstate wires in furtherance of schemes to defraud. 18 U.S.C.A. §§ 1341, 1343 (West 2000). For the government to obtain a conviction for mail or wire fraud it must prove (1) a scheme disclosing an intent to defraud; and (2) the use, respectively, of the mails or interstate wires in furtherance of the scheme. *See Chisolm v. TranSouth Fin. Corp.,* 95 F.3d 331, 336 (4th Cir.1996). In a prosecution for mail or wire fraud, the government is not required to show reliance on any misrepresentation.

To recover civil RICO damages, however, an individual must also allege that he was injured "by reason of" the pattern of racketeering activity. *Id.; see also* 18 U.S.C.A. § 1964(c). To meet this burden with respect to mail fraud and wire fraud, a plaintiff must "*plausibly* allege both that [he] detrimentally relied in some way on the fraudulent mailing [or wire] ... and that the mailing [or wire] was a proximate cause of the alleged injury to [his] business or property." *Chisolm,* 95 F.3d at 337 (emphasis added). The alleged fraud "must be a 'classic' one[,] ... the plaintiff must have justifiably relied, to his detriment, on the defendant's material misrepresentation." *Id.* American Chiropractic's complaint states that Trigon committed mail and wire fraud by representing, in its "Ancillary Professional Provider Agreement," that it reimburses healthcare providers pursuant to the Federal Resource Based Relative Value Scale (RBRVS).[FN24] The complaint stated that ***234** chiropractors justifiably relied upon this alleged misrepresentation in deciding to enter into provider agreements with Trigon and that the chiropractors were injured because Trigon does not, in fact, reimburse chiropractic services pursuant to the RBRVS.[FN25] Trigon entered the Ancillary Professional Provider Agreement in full to support its motion to dismiss.

FN24. The RBRVS is the relative value scale used by Medicare in setting its reimbursement rates for providers under that program.

FN25. At oral argument before this court, counsel for American Chiropractic also alleged that Trigon committed mail fraud by telling its plan enrollees that healthcare providers were reimbursed in accordance with Medicare rates. The district court previously had held that American Chiropractic lacked standing to advance the claims of individual patients, and American Chiropractic did not appeal that ruling. Thus, the argument that Trigon committed mail fraud against its enrollees is not properly before this court.

[31] Although as a general rule extrinsic evidence should not be considered at the 12(b)(6) stage,

we have held that when a defendant attaches a document to its motion to dismiss, "a court may consider it in determining whether to dismiss the complaint [if] it was integral to and explicitly relied on in the complaint and [if] the plaintiffs do not challenge its authenticity." *Phillips v. LCI Int'l Inc.,* 190 F.3d 609, 618 (4th Cir.1999); *see also* *Parrino v. FHP, Inc.,* 146 F.3d 699, 705-06 (9th Cir.1998). As the Third Circuit has explained

> The rationale underlying this exception is that the primary problem raised by looking to documents outside the complaint-lack of notice to the plaintiff-is dissipated "[w]here plaintiff has actual notice ... and has relied upon these documents in framing the complaint." What the rule seeks to prevent is the situation in which a plaintiff is able to maintain a claim of fraud by extracting an isolated statement from a document and placing it in the complaint, even though if the statement were examined in the full context of the document, it would be clear that the statement was not fraudulent.

In re Burlington Coat Factory Securities Litigation, 114 F.3d 1410, 1426 (3d Cir.1997) (quotation marks omitted).

As stated above, American Chiropractic explicitly referred to the Ancillary Professional Provider Agreement, and its mail and wire fraud claims are based on the alleged misrepresentation made in that document. In addition, American Chiropractic does not contest the authenticity of the documents. Accordingly, we can consider those documents at the 12(b)(6) stage of the litigation.

The Ancillary Professional Provider Agreement states, in part, that "[m]ost Trigon fees are based upon external benchmarks of relative value, for example, the [RBRVS]." (J.A. at 156.) Thus, American Chiropractic alleges, Trigon has misled chiropractors into believing that their reimbursement would be based upon Medicare's reimbursement system. In full, however, the Ancillary Professional Provider Agreement states that

> *Trigon's fee schedules represent the maximum Allowable Charge for each covered service that corresponds to a single service code.* The preponderance of valid service codes [are] from Current Procedural Terminology (CPT), HCFA Common Procedural Coding System (HCPCS), American Dental Association (ADA), or National Drug Codes (NDC). For *covered services represented by a single code, the maximum Allowable Charge is the fee schedule amount determined by Trigon in its sole discretion* or your usual charge for the service, whichever is less. *Most Trigon fees are* ***235** *based upon external benchmarks* or relative value, for example, the Federal Resource Based Relative Value Scale (RBRVS), Average Wholesale Price (AWP), American Society of Anesthesiologists (ASA), relative value and Medicare's laboratory and Durable Medical Equipment (DME) fees.

(J.A. at 156 (footnote omitted) (emphases added).)

The Agreement comes with Trigon's fee schedule attached. Relevant here, Trigon's fee schedule includes the maximum allowable charge for the four service codes associated with spinal manipulations. The fee schedule discloses that Trigon reimburses providers who perform spinal manipulations the same amount regardless of how many "regions" of the spine are manipulated. The RBRVS, however, provides a higher reimbursement when more spinal regions are manipulated. It is undisputed that Trigon began this reimbursement practice in 1997.

We conclude that American Chiropractic, as a matter of law, could not justifiably rely on the statement that "most" Trigon fees are based on the RBRVS for two reasons. First, the statement only provides that "*most* " fees are based on the external benchmark of the RBRVS. The term "most" indicates that some of Trigon's reimbursement payments were not based upon the RBRVS. Second, the remainder of the document clearly explains that Trigon's fee schedule represents the maximum allowable charge for a service. Moreover, the fee schedule discloses that Trigon does not follow the RBRVS when reimbursing for spinal manipulations. Because the fee schedule discloses that Trigon does not reimburse for spinal manipulation services according to the RBRVS, American Chiropractic could not have justifiably relied on Trigon's alleged misrepresentation that most of Trigon's fees were based on the RBRVS. Accordingly, American Chiropractic has failed to plausibly allege that it justifiably relied on a misrepresentation by Trigon.

To withstand a motion to dismiss for failure to state a RICO claim, a plaintiff must plausibly allege at least two predicate acts of racketeering. As noted above, American Chiropractic's complaint alleged three predicate acts-mail fraud, wire fraud, and extortion. Because we have held that American Chiropractic failed to state a claim for mail or wire fraud, it has failed to allege at least two predicate acts of racketeering, and we need not address whether it properly alleged a claim of extortion.

Although, in light of *Humana, Inc v. Forsyth,* American Chiropractic's claim is not preempted by the McCarran-Ferguson Act, we affirm the dismissal of this count because American Chiropractic failed to state a claim for a RICO violation.

* * * *

AFFIRMED

C.A.4 (Va.),2004.
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367 F.3d 212, 2004-1 Trade Cases P 74,393, RICO Bus.Disp.Guide 10,666