171 F.3d 912, 1999-1 Trade Cases P 72,479, RICO Bus.Disp.Guide 9672, 23 Employee Benefits Cas. 1141
(Cite as: 171 F.3d 912)

United States Court of Appeals,
Third Circuit.
STEAMFITTERS LOCAL UNION NO. 420 WELFARE FUND; International Brotherhood of Painters and Allied Trades, District Council No. 21 Welfare Fund; International Brotherhood of Electrical Workers, Local Union No. 98, Health & Welfare Fund; Composition Roofers Union Local 30 Combined Health & Welfare Fund; Laborers' District Council Building and Construction Health and Welfare Fund; Carpenters Health & Welfare Fund of Philadelphia and Vicinity; Cement Mason's Union Local No. 592, on behalf of themselves and all others similarly situated, Appellants
v.
PHILIP MORRIS, INC.; R.J. Reynolds Tobacco Company; Brown & Williamson Tobacco Corporation; B.A.T. Industries P.L.C.; Lorillard Tobacco Company, Inc.; Liggett & Myers Inc.; The American Tobacco Company; United States Tobacco Company; The Council for Tobacco Research—U.S.A., Inc.; The Tobacco Institute, Inc.; Smokeless Tobacco Council, Inc.; Hill & Knowlton, Inc.

No. 98–1426.
Argued Jan. 28, 1999.
Decided March 29, 1999.

OPINION OF THE COURT

BECKER, Chief Judge.

This is one of a vast number of cases filed in state and federal courts all over the nation seeking to hold tobacco companies liable for the smoking-related costs incurred by union health and welfare funds. The plaintiff funds allege that they were defrauded by the defendants—tobacco companies and related industry organizations—into paying for their participants' smoking-related illnesses, as well as prevented by these defendants from informing the funds' participants about safer smoking and smoking-cessation products. The defendants allegedly conspired to prevent the funds from obtaining and using information that would have reduced the incidence of smoking—and therefore of illness—among the funds' participants. The fraud and conspiracy charges are the underpinnings of plaintiffs' federal statutory claims, which are brought under the antitrust laws and the civil RICO statute. Plaintiffs also assert state common-law claims based on supplemental jurisdiction.

The District Court dismissed plaintiffs' complaint under Federal Rule of Civil Procedure 12(b)(6), on the ground that the claimed injuries of the plaintiff funds were too remote from any wrongdoing of the defendants to be redressable under either federal or state law. The correctness of that conclusion is the primary issue on this appeal. Put another way, we are called upon to determine whether plaintiffs have alleged a compensable injury proximately caused by defendants' allegedly fraudulent and conspiratorial conduct sufficient to avoid dismissal under Rule 12(b)(6). This basic proximate cause inquiry, drawn from tort law, is complicated by the allegations of intentional tort, the packaging of plaintiffs' claims in RICO and antitrust terms, and the addition of state-law claims based on fraud, special duty, unjust enrichment, negligence, strict liability, and breach of ***918** warranty. In the end, we conclude that the District Court correctly dismissed all of plaintiffs' primary claims as being too remote from any alleged wrongdoing of defendants, and the other claims as concomitantly lacking in merit; hence, we affirm the dismissal of the complaint in its entirety.

I. *Background*

A. *Facts and Procedural History*

This suit was brought by seven Pennsylvania-based union health and welfare funds (the "Funds") as a putative class action on behalf of all such similarly-situated funds against eight tobacco companies and certain industry organizations (collectively, the "tobacco companies")[FN1] to recover for the Funds' costs of treating their participants' smoking-related illnesses. The suit is patterned after similar suits brought by state attorneys general, which were recently settled with the tobacco companies for more than $200 billion.[FN2] *See* Barry Meier, *Remaining States Approve the Pact on Tobacco Suits,* N.Y. Times, Nov. 21, 1998, at A1.[FN3] In the present case, the Funds have brought federal claims under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962, and the antitrust laws, 15 U.S.C. § 1. Their complaint also includes, under

the supplemental jurisdiction statute, 28 U.S.C. § 1367, state law claims for misrepresentation, breach of special duty, unjust enrichment, negligence, strict liability, and breach of warranty. The Funds seek both damages and extensive injunctive relief requiring the defendants to disclose any research on smoking that they have concealed, engage in a public education campaign to reduce smoking, cease advertising their products to minors, and fund smoking-cessation programs.

FN1. The defendants include tobacco companies Philip Morris; R.J. Reynolds; Brown & Williamson; B.A.T. Industries; Lorillard; Liggett & Myers; the American Tobacco Company; and the United States Tobacco Company. In addition, named as defendants are the Council for Tobacco Research–USA; the Tobacco Institute; Smokeless Tobacco Council; and Hill & Knowlton, a public relations firm.

FN2. The parties cite a large number of reported state and federal opinions of this genre (of both the union fund and attorney general variety), and have also provided us with a considerable number of unreported decisions. For the benefit of students of this litigation war, we list these decisions in an Appendix to this opinion. We note that in the vast majority of the union fund cases cited by the parties (15 of 20), at least some of the plaintiffs' claims were dismissed. In 11 of the 20 cases (including the present one), courts have dismissed the plaintiffs' entire case. In the only case to reach a jury, the tobacco companies recently prevailed in federal court in Ohio. *See* Barry Meier, *Verdict Backs Cigarette Makers in Suit by Union Health Funds,* N.Y. Times, Mar. 19, 1999, at A10.

FN3. Although the tobacco companies and state attorneys general have reached an agreement resolving the state suits, the litigation surrounding these cases is apparently far from over. *See, e.g.,* Ann Belser & Mark Belko, *County Files Suit Against Tobacco,* Pitt. Post-Gazette, Mar. 6, 1999, at A1 (noting that Allegheny County, Pennsylvania, had filed suit against the tobacco companies in federal court at the same time it was seeking in state court to block final approval of the settlement by the attorneys general). In addition, the federal government appears poised to act. *See* White House Office of Communications, *FY2000 Budget Summary and Supporting Materials* (Feb. 1, 1999), *available in* 1999 WL 42060, at *46 ("To recover these losses [from tobacco-related health problems], the U.S. Department of Justice intends to bring suit against the tobacco industry, and the budget provides $20 million to pay for necessary legal costs.").

The Funds allege, *inter alia,* that the tobacco companies conspired to suppress research on safer tobacco products, defrauded health care providers and payers by informing them that the companies' tobacco products were safe, and caused smokers to become ill by preventing the dissemination of smoking-reduction and smoking-cessation information. All of these actions allegedly caused the costs of smoking-related illnesses to be shifted from their proper source, the tobacco companies, to the plaintiff Funds (and others). This shift in costs purportedly was accomplished***919** through the intentional and fraudulent actions of the tobacco companies, directed at both smokers and the Funds themselves.

Seeking to recover for these costs, the Funds filed suit in the District Court for the Eastern District of Pennsylvania in August 1997. Shortly thereafter, the defendants moved to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6), and, in an order accompanied by an unpublished opinion, the District Court granted the motion. *See Steamfitters Local Union No. 420 Welfare Fund v. Philip Morris, Inc.,* No. CIV.A.97–5344, 1998 WL 212846 (E.D.Pa. Apr. 22, 1998). The Court relied on two general grounds to dismiss the entire complaint, and invoked a number of additional rationales to reject the Funds' specific claims. First, it held that plaintiffs did not state a claim because of "the general rule [that] has long been established that one who pays the medical expenses of an injured party does not have a direct claim against the tortfeasor who caused the injury." *Id.* at *1. The District Court decided, however, that it "need not dwell upon this issue," as the Funds' claims "suffer from an even more fundamental flaw, namely, the fact that plaintiffs have not suffered any cognizable damages." *Id.* at *2. The District Court reasoned

that the Funds' increased costs for smoking-related illnesses caused them no injury because "plaintiffs are merely handling the payments with money provided by others, and have no genuine stake in the matter," *id.,* and "cannot claim to have suffered any economic loss in the form of lost profits," *id.* at *3.

The District Court also dismissed the complaint because (1) plaintiffs "allege no injury of the sort the antitrust laws were designed to prevent"; (2) the Funds' common-law fraud claims "are entirely too speculative to be taken seriously"; (3) plaintiffs "simply do not have legal standing to advance" claims for injunctive relief; (4) the state special duty claim is "restricted to 'physical harm' " that plaintiffs do not allege they suffered; and (5) the Funds' unjust enrichment claim "is simply a subrogation claim expressed in different language." *Id.* at *3–*4. Plaintiffs filed a timely notice of appeal. We have appellate jurisdiction under 28 U.S.C. § 1291. Our review of the District Court's order is plenary. *See Gallo v. City of Philadelphia,* 161 F.3d 217, 221 (3d Cir.1998). We accept as true all factual allegations in the complaint and will affirm a dismissal under Rule 12(b)(6) only if "it is certain that no relief can be granted under any set of facts which could be proved." *City of Pittsburgh v. West Penn Power Co.,* 147 F.3d 256, 262 n. 12 (3d Cir.1998) (internal quotations omitted).

B. *The Allegations and Theory of the Complaint*

Plaintiffs' complaint is voluminous (containing 317 paragraphs and running to 116 pages) and detailed in its explication of the history of the tobacco companies' alleged wrongdoing. By now, this history is well-known to the public at large, though plaintiffs rely heavily on the fact that the defendants successfully conspired to cover up their wrongdoing for almost five decades. This conspiracy was allegedly directed at both smokers and the plaintiff Funds themselves. Therefore, plaintiffs aver, they are both indirect and direct victims of the defendants' wrongful conduct.

1. The Indirect Injury

The Funds' indirect injury allegedly arises from the fact that they paid millions of dollars for the smoking-related medical expenses of Fund participants whom they say were victimized by the tobacco companies' conspiracy and fraud. The defendants respond that this indirect claim is simply a traditional subrogation claim dressed up in treble-damages federal statutory clothing. They invoke the general principle that an insurer's only claim against a tortfeasor for the insurer's costs arising out of wrongdoing against an insured is by way of subrogation. *See, e.g.,* ***920** *Great Am. Ins. Co. v. United States,* 575 F.2d 1031, 1033 (2d Cir.1978). Generally, if an insurer wishes to recover from the wrongdoer, it must assert the same claim—by way of subrogation—that the insured could have asserted against the wrongdoer, as well as be subject to the same defenses that the wrongdoer could assert in defense of the claim. The defendants argue that the Funds could seek to recover the costs of treating participants' smoking-related illnesses only through tort actions such as those that have been asserted individually by smokers. *Cf. Cipollone v. Liggett Group, Inc.,* 505 U.S. 504, 112 S.Ct. 2608, 120 L.Ed.2d 407 (1992).

2. The Direct Injury

In plaintiffs' submission, notwithstanding defendants' argument that all of the Funds' claims are essentially subrogation claims, their "direct" claim is a fundamentally different legal claim from the typical insurer-against-wrongdoer claim that falls under the principle of subrogation. This direct claim is said to arise not only out of a tortfeasor's actions toward an insured, but also from its actions toward the insurance company (here the Funds) itself. The traditional subrogation principle holds that an " 'insurer, upon paying to the assured the amount of a loss of the property insured, is doubtless subrogated in a corresponding amount to the assured's right of action against any other person responsible for the loss.' " *Great Am. Ins. Co.,* 575 F.2d at 1034 (quoting W. Vance, *Vance on Insurance* 787 n.2 (3d ed.1951)). Here, the Funds are essentially claiming that they paid for more than "the property insured" (i.e., the health of fund participants) because the defendants caused the Funds to expend additional costs that would have been paid by the tobacco companies (through reduced revenues and tort damages) if they had not defrauded the Funds and conspired to cover up their wrongdoing.

As the Funds frame their direct injury argument: "Had defendants not undertaken their deceptive, fraudulent, and anticompetitive activity, the Trusts' trustees, administrators, and advisors could have taken countermeasures against smoking and smoking-related illness and would have commenced legal efforts much sooner and more effectively to impose

the costs resulting from tobacco use on the tobacco companies." Appellants' Br. at 10. Plaintiffs' complaint sets out this theory as follows:

> Defendants' contract, combination, or conspiracy was and is for the express purpose and effect of restraining, suppressing and withholding information necessary to medical care researchers, providers, and payers, including Plaintiffs and members of the Class, so that the costs of health care for tobacco-related illnesses continue to be borne by health care providers and payers, such as Plaintiffs and members of the Class, [who] are injured in their business and property by, among other things, having to provide or pay for the health care costs of persons with tobacco-related diseases without being reimbursed by Defendants.

Compl. ¶ 256. Plaintiffs correctly observe that the District Court did not address this alleged "direct" injury, but as is clear from our discussion below, we do not find the directness of the Funds' alleged injury dispositive of whether they have stated a claim under either federal or state law.

II. *Plaintiffs' Federal Claims*

A. *Introduction*

Plaintiffs' federal claims are based on the antitrust laws and the RICO statute. In brief, they allege that defendants conspired to withhold certain information and products from the Funds, and fraudulently induced the Funds to reimburse smokers for illnesses caused by the tobacco companies' wrongdoing. We need not focus on many of the necessary elements of these claims, such as the details of the conspiracy and the fraud, whether the Funds (or others) reasonably relied on the ***921** fraud, the predicate acts for the RICO claims, etc. Rather, we focus on the issue of proximate cause, a necessary element for bringing both antitrust and RICO claims, and an element we find lacking in plaintiffs' case.

Given the Supreme Court's determination that the standing requirements for RICO and antitrust claims are similar, and that the standing analysis under these federal laws is drawn from common-law principles of proximate cause and remoteness of injury, we analyze the key remoteness issue for plaintiffs' federal claims under the rubric of standing doctrine. *See* *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 268, 112 S.Ct. 1311, 117 L.Ed.2d 532 (1992) (RICO); *Blue Shield v. McCready*, 457 U.S. 465, 477, 102 S.Ct. 2540, 73 L.Ed.2d 149 (1982) (antitrust).

[4][5] As is clear from our discussion below, the key problem with plaintiffs' complaint is the remoteness of their alleged injury from the defendants' alleged wrongdoing. Remoteness is an aspect of the proximate cause analysis, in that an injury that is too remote from its causal agent fails to satisfy tort law's proximate cause requirement—a requirement that the Supreme Court has adopted for federal antitrust and RICO claims. *Cf.* *McCready*, 457 U.S. at 477, 102 S.Ct. 2540 ("In the absence of direct guidance from Congress, and faced with the claim that a particular injury is too remote from the alleged violation to warrant [antitrust] standing, the courts are thus forced to resort to an analysis no less elusive than that employed traditionally by courts at common law with respect to the matter of 'proximate cause.' "). By subsuming the proximate cause requirement under the concept of standing, the Supreme Court has acknowledged that a private plaintiff might validly plead (and even prove) that a defendant has committed an antitrust violation, but still lack standing to enjoin or remedy this violation if his own injury is too remotely connected to it. Therefore, in discussing whether plaintiffs have standing to bring their antitrust or RICO claims, we will focus on proximate cause in general and on remoteness in particular.

Plaintiffs' claims are largely grounded in allegations of fraud on the part of defendants. Therefore, we would normally focus initially, in addressing the federal claims in this case, on the RICO claims, which are predicated on alleged mail and wire fraud by the defendants. *See* Compl. ¶ 224(a). However, the Supreme Court has discussed proximate cause more expansively in the antitrust context, and has incorporated this discussion into its RICO jurisprudence. *See* *Holmes*, 503 U.S. at 268–70, 112 S.Ct. 1311. We therefore begin our discussion of plaintiffs' federal claims with an analysis of the Court's holdings in the antitrust field.[FN4]

> FN4. As noted above, the District Court also dismissed plaintiffs' complaint on the ground that the Funds have suffered no cognizable injury. *See* *Steamfitters*, 1998 WL 212846, at *2–*3 (finding that any increased expenses due to smoking-related illnesses of

fund participants "merely meant that the unions negotiated a greater level of contributions from the employers"). We seriously doubt that this was an appropriate basis for dismissing the complaint. The plaintiffs clearly could not go at will to the employers who funded their health plans for a replenishment any time they needed more money. Increased costs likely necessitated reduced expenditures in other areas, as well as reductions in the Funds' reserves. *Cf.* Amicus Br. of UMWA Combined Benefit Fund at 22 (noting that the Funds cannot "merely return to the inexhaustible well of employers' bank accounts when the spigot for health benefits runs dry"). Simply because they are not the ultimate source of the money used to pay for smoking-related illnesses does not mean that the Funds have suffered no legally cognizable injury.

The District Court also found that all of the Funds' claims are essentially subrogation claims and therefore could not be brought under the federal and state theories invoked in the complaint. *See Steamfitters,* 1998 WL 212846, at *1. Again, we do not necessarily agree with this conclusion. As noted *supra* Part I.B.2, the Funds' claims of direct injury are fundamentally different from a traditional insurer-against-wrongdoer subrogation claim. They are said to arise not only out of the wrongdoer's actions toward the insured, but also out of his actions directed at the insurer in attempting to avoid the consequences of his misdeeds.

We need not resolve these issues, however, for we conclude that the District Court correctly held that the Funds' alleged injuries are too remote from any wrongdoing by the defendants to be redressable through the RICO statute, the antitrust laws, or state common-law theories of recovery.

* * * *

C. *RICO Claims:* Holmes v. SIPC

In *Holmes v. Securities Investor Protection Corp.,* 503 U.S. 258, 112 S.Ct. 1311, 117 L.Ed.2d 532 (1992), the Supreme Court held that its discussion of proximate cause and remoteness in cases such as *McCready* and *AGC* applied to the analysis of proximate cause in RICO cases as well. *See Holmes,* 503 U.S. at 268, 112 S.Ct. 1311; *see also McCarthy v. Recordex Serv., Inc.,* 80 F.3d 842, 855 (3d Cir.1996) ("Significantly, antitrust standing principles apply equally to allegations of RICO violations."). Therefore, much (if not all) of what we have said above in our discussion of antitrust standing applies to the Funds' RICO claims. We discuss here, however, the specific requirements for stating a claim under RICO, to better explicate our reasons for finding that all of plaintiffs' claims must fail for being too remote and speculative.

In *Holmes,* the Court addressed the directness inquiry when it explained that "a plaintiff who complained of harm flowing merely from the misfortunes visited upon a third person by the defendant's acts was generally said to stand at too remote a distance to recover." *Holmes,* 503 U.S. at 268–69, 112 S.Ct. 1311. This was primarily because (1) the more indirect the injury, "the more difficult it becomes to ascertain the amount of a plaintiff's damages attributable to[defendant's wrongdoing], as distinct from other, independent, factors"; (2) allowing recovery by indirectly injured parties would require complicated rules for apportioning damages; and (3) direct victims could generally be counted on to vindicate the policies underlying the relevant law. *Id.* at 269–70, 112 S.Ct. 1311.

1. Directness of the Injury

The plaintiff in *Holmes* alleged that the defendants had conspired to manipulate certain stock prices, which led to losses for brokers, which led to the brokers' inability to return investments of customers who had *not* bought the manipulated stock.[FN14] In the present case, the tobacco companies are in the position of the stock manipulators in *Holmes,* while the smokers—the third party linking the plaintiffs and defendants—are in the same position as the brokers; the plaintiff Funds, who suffered a loss because of the harm that the defendants brought upon the third party, are in the same position as the brokers' customers who did not invest in the manipulated stock.[FN15] The Supreme Court in *Holmes* ***933** held that the causal connection between the nonpurchasing investors and the stock manipulators was too attenuated for the plaintiffs to have RICO standing.

FN14. The plaintiff in *Holmes* was actually a private nonprofit corporation, the Securities Investor Protection Corporation ("SIPC"), which was required by federal law to reimburse the losses of certain investors. After paying for the losses of investors who had not invested in the defrauded securities, the SIPC asserted claims against those engaged in the fraud, as a subrogee. In discussing the causation chain in *Holmes,* we omit this additional link, as the SIPC stood in the investors' shoes for purposes of its claims.

FN15. In the present case, the allegations of fraud and conspiracy directed at the Funds themselves might make the Funds more like the brokers' customers who *did* buy the manipulated stock. The Court in *Holmes* noted that these customers might have a RICO claim against the defendants, though it declined to reach this issue. *See Holmes,* 503 U.S. at 272 n. 19, 112 S.Ct. 1311. We note, however, that the defrauded investors in *Holmes* would have been able to allege direct injury from the fraud (i.e., their losses derived directly from the fraud, without any intervening links), while the Funds here, even if they were direct targets of the tobacco companies' fraud, did not suffer damages until this fraud prevented them from encouraging their participants to smoke less or not at all, which led to an increased incident of smoking-related illnesses, which in turn led to the Funds' increased expenses. *See supra* at 927–28.

The Court reasoned as follows: "If the nonpurchasing customers were allowed to sue, the district court would first need to determine the extent to which their inability to collect from the broker-dealers was the result of the alleged conspiracy to manipulate, as opposed to, say, the brokerdealers' poor business practices or their failures to anticipate developments in the financial markets." *Id.* at 272–73, 112 S.Ct. 1311. Applied to the present case, if the Funds are allowed to sue, the court would need to determine the extent to which their increased costs for smoking-related illnesses resulted from the tobacco companies' conspiracy to suppress health and safety information, as opposed to smokers' other health problems, smokers' independent (i.e., separate from the fraud and conspiracy) decisions to smoke, smokers' ignoring of health and safety warnings, etc.[FN16] As in *Holmes,* this causation chain is much too speculative and attenuated to support a RICO claim.

FN16. While this complex determination militates against allowing the Funds to bring their remote claim, it addresses one of defendants' objections, that allowing the Funds (rather than smokers) to bring claims for smoking-related illnesses would nullify the defendants' traditional defenses, such as assumption of risk and comparative negligence. These defenses presumably would be available in the present case, in the sense that smokers' own wrongdoing (or ignoring of known risks) would be a factor in establishing and measuring the link between the tobacco companies' actions and the Funds' damages.

2. Apportionment of Damages and Vindication by Oth ers

As noted above, the Court in *Holmes* expressed two further concerns (in addition to the directness factor) that supported its conclusion that nonpurchasing investors did not have standing: (1) the court would need to apportion treble damages between the brokers and the nonpurchasing customers, and (2) the brokers could vindicate the RICO claims themselves. *See id.* at 273, 112 S.Ct. 1311. As we noted in our discussion of the Funds' antitrust claims, more directly injured parties, i.e., smokers, would be unlikely to bring federal claims against the tobacco companies for the same damages claimed by the Funds. Yet, as we also noted above, Fund participants who have not been fully reimbursed for their out-of-pocket costs that are traceable to defendants' alleged fraud and conspiracy might bring RICO or antitrust claims. Therefore, as in *Holmes,* a court adjudicating the Funds' RICO claims would need to consider the appropriate apportionment of damages between smokers and others such as the Funds who suffered economic losses as a result of the tobacco companies' alleged fraudulent acts.

It is true that the final concern—that another party could better vindicate the RICO claims—may not be as fully applicable to this case as to *Holmes* because the Funds allege that they suffered far

greater economic damages than smokers themselves, many of whom were reimbursed for their direct pecuniary losses. Yet we are unconvinced that this distinction is sufficient to overcome the concerns about apportioning damages and, most fundamentally, the remoteness of the Funds' alleged ***934** RICO injuries from any wrongdoing on the part of the tobacco companies. *Cf.* *Brokerage Concepts, Inc. v. U.S. Healthcare, Inc.*, 140 F.3d 494, 521 (3d Cir.1998) (finding RICO standing when defendant targeted plaintiff's contractual partner, plaintiff's injury arose from loss of that contract, and that contractual relationship "was a direct target of the alleged scheme—indeed, interference with that relationship may well be deemed the linchpin of the scheme's success").[FN17]

FN17. Because of our conclusion that plaintiffs' RICO and common-law fraud claims fail for lack of proximate cause, we need not reach defendants' alternative argument that these claims were not pled with sufficient particularity. *See* Fed.R.Civ.P. 9(b) ("In all averments of fraud ..., the circumstances constituting fraud ... shall be stated with particularity."). We note, however, that plaintiffs' allegations are fairly general in nature and do not include "specific allegations as to which fraudulent tactics were used against" specific plaintiffs. *Rolo v. City Investing Co. Liquidating Trust,* 155 F.3d 644, 659 (3d Cir.1998). On the other hand, we have cautioned that courts should "apply the rule with some flexibility and should not require plaintiffs to plead issues that may have been concealed by the defendants," *id.* at 658, as is alleged to have happened here.

D. *Summary of Federal Claims*

At this point in contemporary history, there can be little doubt that the tobacco companies' products have caused smokers to contract certain illnesses and that the plaintiff Funds (and others) have borne some of the costs of these illnesses by reimbursing their participants for their health care expenditures. It is therefore quite possible that some of these health care providers and payers have had to cut back on their coverage of other medical problems in order to fund the costs of smoking-related illnesses, causing other Fund participants to pay out-of-pocket expenses they otherwise would not have paid. It also may be the case that unions and their members have been forced to accept lower wage increases or to forgo benefit improvements in order to achieve contract settlements with employers that included sufficient contributions to the Funds to pay for smoking related illnesses. All of these parties—non-smoking Fund participants, unions, union members, employers—can claim to have suffered some injury arising out of the tobacco companies' conduct. At some point, however, the causal link between defendants' actions and the negative effects that eventually result is not proximate enough to meet the prudential requirements for antitrust or RICO standing. In this case, for the reasons set forth *supra* at 922–34, we believe that this necessary proximate-cause connection is missing.[FN18] Therefore, plaintiffs' federal claims based on alleged violations of the antitrust laws and the RICO statute were properly dismissed by the District Court.

FN18. There is arguably a tension between our decision here that the tobacco companies cannot be held liable for the damages suffered by entities that paid for smoking-related illnesses, and the fact that these same tobacco companies recently agreed to pay more than $200 billion to settle claims brought by attorneys general for the states' similar costs of their citizens' smoking-related illnesses. We note in this regard that an explanation for the putative tension may be found in any number of places, including state laws conferring standing and broad rights of recovery on states for wrongdoing against their citizens or their coffers, as well as the political power of governmental bodies—and the threat of legislative action—that is lacking in this case brought by private entities. We need not, of course, engage these matters here.

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C.A.3 (Pa.),1999.
Steamfitters Local Union No. 420 Welfare Fund v. Philip Morris, Inc.
171 F.3d 912, 1999-1 Trade Cases P 72,479, RICO Bus.Disp.Guide 9672, 23 Employee Benefits Cas. 1141