14-826-cv(L)

14-832-cv (con)

United States Court of Appeals for the Second Circuit

CHEVRON CORPORATION,

Plaintiff/Appellee,

v.

STEVEN R. DONZIGER, THE LAW OFFICES OF STEVEN R. DONZIGER, DONZIGER & ASSOCIATES, PLLC, HUGO GERARDO CAMACHO NARANJO , JAVIER PAIGUAJE PAYAGUAJE,

Defendants/Appellants.

(*Caption Continued on Inside Cover*)

On Appeal from the United States District Court for the Southern District of New York (The Honorable Lewis A. Kaplan)

BRIEF OF WASHINGTON LEGAL FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFF/APPELLEE, URGING AFFIRMANCE

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October 8, 2014

STRATUS CONSULTING, INC., DOUGLAS BELTMAN, ANN MAEST,

Defendants/Counter-Claimants,

PABLO FAJARDO MENDOZA, LUIS YANZA, FRENTE DE DEFENSA DE LA AMAZONIA, aka AMAZON DEFENSE FRONT, SELVA VIVA SELVIVA CIA, LTDA, MARIA AGUINDA SALAZAR, CARLOS GREGA HUATATOCA, CATALINA ANTONIA AGUINDA SALAZAR, LIDIA ALEXANDRA AGUINDA AGUINDA, PATRICIO ALBERTO CHIMBO YUMBO, CLIDE RAMIRO AGUINDA AGUNIDA, LUIS ARMANDO CHIMBO YUMBO, BEATRIZ MERCEDES GREFA TANGUILA, LUCIO ENRIQUE GREFA TANGUILA, PATRICIO WILSON AGUINDA AGUNIDA,CELIA IRENE VIVEROS CUSANGUA, FRANCISCO MATIAS ALVARADO YUMBO, FRANCISCO ALVARADO YUMBO, OLGA GLORIA GREFA CERDA, LORENZO JOSÉ ALVARADO YUMBO, NARCISA AIDA TANGUILA NARVAEZ, BERTHA ANTONIA YUMBO TANGUILA, GLORIA LUCRECIA TANGUI GREFA, FRANCISCO VICTOR TRANGUIL GREFA, ROSA TERESA CHIMBO TANGUILA, JOSÉ GABRIEL REVELO LLORE, MARÍA CLELIA REASCOS REVELO, MARÍA MAGDALENA RODRI BARCENES, JOSÉ MIGUEL IPIALES CHICAIZA, HELEODORO PATARON GUARACA, LUISA DELIA TANGUILA NARVÁEZ, LOURDES BEATRIZ CHIMBO TANGUI, MARÍA HORTENCIA RIVER CUSANGUA, SEGUNDO ÁNGEL AMANTA MILÁN, OCTAVIO ISMAEL CÓRDOVA HUANCA, ELÍAS ROBERTO PIYAHUA PAYAHUAJE, DANIEL CARLOS LUSITAND YAIGUAJE, BENANCIO FREDY CHIMBO GREFA, GUILLERMO VICENTE PAYAGUA LUSITANDE, DELFÍN LEONIDAS PAYAGU PAYAGUAJE, ALFREDO DONALDO PAYAGUA PAYAGUAJE, MIGUEL MARIO PAYAGUAJE PAYAGUAJE, TEODORO GONZALO PIAGUAJ PAYAGUAJE, FERMÍN PIAGUAJE PAYAGUAJE, REINALDO LUSITANDE YAIGUAJE, LUIS AGUSTÍN PAYAGUA PIAGUAJE, EMILIO MARTÍN LUSITANDE YAIGUAJE, SIMÓN LUSITANDE YAIGUAJE, ARMANDO WILFRIDO PIAGUA PAYAGUAJE, ÁNGEL JUSTINO PIAGUAG LUCITANT, KEMPERI BAIHUA HUANI, AHUA BAIHUA CAIGA, PENTIBO BAIHUA MIIPO, DABATO TEGA HUANI, AHUAMIE HUANI BAIHUA, APARA QUEMPERI YATE, BAI BAIHUA MIIPO, BEBANCA TEGA HUANI, COMITA HUANI YATE, COPE TEGA HUANI, EHUENGINTO TEGA, GAWARE TEGA HUANI, MARTIN BAIHUA MIIPO, MENCAY BAIHUA TEGA, MENEMO HUANI BAIHUA, MIIPO YATEHUE KEMPERI, MINIHUA HUANI YATE, NAMA BAIHUA HUANI, NAMO HUANI YATE, OMARI APICA HUANI, OMENE BAIHUA HUANI, YEHUA TEGA HUANI, WAGUI COBA HUANI, WEICA APICA HUANI, TEPAA QUIMONTARI WAIWA, NENQUIMO VENANCIO NIHUA, COMPA GUIQUITA, CONTA NENQUIMO QUIMONTARI, DANIEL EHUENGEI, NANTOQUI NENQUIMO, OKATA QUIPA NIHUA, CAI BAIHUA QUEMPERI, OMAYIHUE BAIHUA, TAPARE AHUA YETE, TEWEYENE LUCIANA NAM TEGA, ABAMO OMENE, ONENCA ENOMENGA, PEGO ENOMENGA, WANE IMA, WINA ENOMENGA, CAHUIYA OMACA, MIMA YETI,

Defendants,

ANDREW WOODS, LAURA J. GARR, H5,

Respondents.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed.R.App.P. 26.1, the Washington Legal Foundation (WLF) states that it is a corporation organized under § 501(c)(3) of the Internal Revenue Code. WLF has no parent corporation and does not issue stock, and no publicly held company enjoys a 10% or greater ownership interest.

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BRIEF OF WASHINGTON LEGAL FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFF/APPELLEE, URGING AFFIRMANCE

INTERESTS OF *AMICUS CURIAE*

The Washington Legal Foundation (WLF) is a public interest law firm and policy center with supporters in all 50 states.[1] WLF regularly appears before federal and state courts to promote economic liberty, free enterprise, a limited and accountable government, and the rule of law.

In particular, WLF has litigated to maintain the integrity of the judicial process and to provide adequate remedies for business entities that fall victim to extortionate activities. *See, e.g., CSX Transportation, Inc. v. Gilkison*, 406 Fed. Appx. 723 (4th Cir. 2010); *In re Congoleum: Gilbert Heintz & Randolph, LLP v. U.S. Trustee*, No. 06-1897 (D.N.J. 2006).

WLF strongly supports the right and duty of an American court to police the conduct of those within the jurisdiction of the court, particularly conduct that threatens the integrity of the judicial process. Where, as here, there is evidence that those within the jurisdiction of the New York federal courts have operated a racketeering enterprise designed to extort billions of dollars from an American

[1] All parties have consented to the filing of this brief. Pursuant to Fed.R.App.P. 29(c)(5), WLF states that no counsel for a party authored this brief in whole or in part; and that no person or entity, other than WLF and its counsel, contributed monetarily to the preparation and submission of this brief.

corporation, WLF believes it is wholly appropriate for the court to enter an order designed to prevent them from continuing to carry out their racketeering scheme.

WLF is sympathetic to the concerns of the business community that the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961, *et seq.*, is invoked reflexively and too frequently by civil litigants engaged in otherwise garden-variety commercial disputes. Civil RICO's treble damages provision attracts opportunistic attorneys willing to assert RICO claims in "everyday fraud cases brought against respected and legitimate enterprises." *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 499 (1985). But such concerns are misplaced in this case: the district court found that Appellants engaged in extensive, persistent, and organized criminal conduct of the very sort that Congress sought to target when it adopted RICO. WLF believes that invocation of RICO is particularly appropriate where, as here, the plaintiff's principal goal is to prevent the defendants from continuing to inflict injury through their criminal activities rather than to recover a punitive monetary award.

WLF's brief focuses solely on legal issues arising from Appellee's RICO claims. WLF does not address other issues raised by this appeal.

STATEMENT OF THE CASE

The facts of this case are set out in detail in Appellee's brief. WLF wishes

to highlight several facts of particular relevance to the RICO issues on which this brief focuses.

Appellee Chevron filed this lawsuit in 2011 against attorney Steven Donziger and other U.S. and Ecuadorian parties, alleging, *inter alia*, that Donziger violated RICO by participating in the conduct of an enterprise through a pattern of racketeering activity (in violation of 18 U.S.C. § 1962(c)) and by conspiring to violate the substantive provisions of RICO (in violation of 18 U.S.C. § 1962(d)). Chevron identified three separate strands of Donziger's alleged wrongdoing. First, it alleged that Donziger orchestrated a long-running scheme to secure a fraudulent judgment against Chevron in Ecuador. Second, it alleged that Donziger used the Ecuador lawsuit as the linchpin of a scheme to coerce Chevron into paying billions of dollars; the scheme included securing criminal charges against Chevron supporters, touting environmental claims against Chevron that Donziger knew to be fraudulent, and initiating vexatious enforcement actions. Third, Chevron alleged that when it initiated court proceedings to investigate Donziger's conduct, Donziger engaged in a campaign of deception to evade detection—including issuing false and misleading statements and corrupting witness testimony.

Following trial, the district court in March 2014 issued a 497-page Opinion that is a damning indictment of Donziger's conduct. The Opinion's detailed

findings of fact confirmed virtually every allegation raised by Chevron.

In particular, the district court concluded that Donziger violated RICO and that the violation injured Chevron—and, if not enjoined, would continue to injure Chevron. SPA 365-419. It concluded that Donziger's litigation team was a RICO "enterprise," defined by statute as a group of individuals "associated together for a common purpose of engaging in a course of conduct." SPA 365-67. *See* 18 U.S.C. § 1961(4).[2] It further concluded that Donziger violated § 1962(c) by conducting the affairs of the enterprise "through a pattern of racketeering activity," SPA 367-69, and that the pattern continued for at least five years. SPA 399. Among the "predicate acts" cited by the district court in support of its "pattern of racketeering activity" finding were extortion (SPA 369-391), wire fraud (SPA 391-394), money laundering (SPA 394-399), obstruction of justice and witness tampering (SPA 399-403), and violations of the Travel Act through furtherance of violation of the Foreign Corrupt Practices Act (SPA 403-410).

The district court also concluded that Chevron suffered injuries that were proximately caused by the pattern of racketeering activity orchestrated by Donziger, and that it would continue to suffer injuries unless Donziger's conduct

[2] Donziger's litigation team is referred to herein as "the LAP team." The district court referred to the Ecuador lawsuit as the "Lago Agrio" case and referred to the plaintiffs in that lawsuit as "Lago Agrio Plaintiffs" or "LAPS."

were enjoined. SPA 413-417. The court cited "[t]he attachment of Chevron's property, including the arbitration award, in Ecuador" as one of the Chevron injuries proximately caused by Donziger's RICO violations. SPA 403. The district court also found that Donziger violated 18 U.S.C. § 1962(d) by conspiring with at least two other individuals to conduct the affairs of their enterprise through a pattern of racketeering. SPA 419.

In light of its finding that Donziger's unlawful conduct would continue to injure Chevron unless enjoined and that Chevron lacked an adequate remedy at law, the district court granted equitable relief, including: (1) a constructive trust for Chevron on Donziger's rights to receive any benefits from the Lago Agrio case; and (2) an injunction against instituting enforcement proceedings in the United States on the Lago Agrio judgment. SPA 487-491.

SUMMARY OF ARGUMENT

Donziger asserts on appeal that Chevron has failed to state a cause of action under RICO. That assertion is remarkable in light of his failure to challenge virtually all of the district court's detailed factual findings. Those findings are more than sufficient to demonstrate that Donziger conducted the affairs of the LAP team through a pattern of racketeering activity.

Donziger asserts that the district court failed to require Chevron to

demonstrate that it suffered any injury. That assertion misreads the district court's Opinion. The district court made numerous findings that Chevron proved that it has suffered injury and is likely to continue to do so. *See, e.g.*, SPA 415. Chevron elected to seek only injunctive relief, not an award of damages, in these proceedings. But it nonetheless demonstrated that it suffered economic loss, and Donziger makes no assertion that the district court's injury findings were clearly erroneous. Moreover, the district court found that Chevron's injuries were proximately caused by Donziger's RICO violations. SPA 416 ("Chevron's injuries are not indirect, incidental, or unintended—they were the very result Donziger sought by his predicate acts.").

Donziger suggests that perhaps "Chevron's own illegal pollution" was an independent cause of its injuries, Donziger Br. at 113, but he does not seek to rebut the district court's factual finding that Chevron's injuries were "a product of the predicate acts," including: (1) promising a $500,000 bribe to the Ecuador trial judge in return for signing the Judgment ghostwritten by the LAP team; (2) ghostwriting the report of the supposedly independent expert (Richard Cabrera) retained by the Ecuador court to measure damages, and then falsely portraying Cabrera's multi-billion dollar damages finding as the work of an impartial and independent expert, even though the LAP team had bribed Cabrera; (3) multiple

acts of wire fraud to carry out their scheme; and (4) violations of the Travel Act to facilitate the bribes paid to Cabrera, which payments violated the Foreign Corrupt Practices Act's anti-bribery provisions. SPA 414-15.

Donziger complains that civil RICO is being invoked too frequently in matters far afield from the concerns that gave rise to adoption of the statute in 1970 (the need for new tools to combat organized criminal activity), and that "[t]he district court's decision . . . takes this extension of RICO to the point of absurdity." Donziger Br. 110. WLF strongly disagrees with Donziger's characterization of this lawsuit. The pattern of racketeering activity that the district court found to exist here—activity that has continued for at least five years—is precisely the sort of organized criminal activity Congress sought to address when it adopted RICO. Indeed, a review of Second Circuit case law demonstrates that the activities in which the LAP team was found to have engaged are remarkably similar to the sorts of activities for which the United States has prosecuted organized crime figures under RICO over the past 40 years.

Finally, Donziger contends that district courts are not authorized to award injunctive relief in civil RICO actions filed under 18 U.S.C. § 1964(c). That contention is without merit. RICO grants district court's broad jurisdiction "to prevent and restrain violations of section 1962" and lists numerous types of

injunctive relief as included among the types of "appropriate orders" that a district court may issue in an effort to "prevent and restrain" RICO violations. 18 U.S.C. § 1964(a). Nothing in the statute suggests that those broad remedial powers are unavailable to the district court when the RICO action is filed by a private party instead of by the United States.

ARGUMENT

I. THE TRIAL COURT'S FACTUAL FINDINGS AMPLY SUPPORT ITS CONCLUSIONS THAT DONZIGER VIOLATED RICO AND THEREBY INJURED CHEVRON

The district court's Opinion concluded that Donziger orchestrated a campaign against Chevron that included a years-long pattern of criminal acts, including extortion, wire fraud, money laundering, obstruction of justice, witness tampering, and bribery of foreign officials. The court further concluded that the campaign would likely continue unless enjoined, and that it proximately caused injury to Chevron. Those findings amply support the court's decision to find Donziger liable for violating RICO and to provide injunctive relief.

The substantive RICO provision that Donziger was held to have violated states:

> It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering

activity or collection of unlawful debt.

18 U.S.C. § 1962(c).

Donziger contends that the district court's finding that he violated RICO "takes the extension of RICO to the point of absurdity." Donziger Br. at 110. He contends that Congress's purpose in enacting RICO was to seek the eradication of organized crime in the United States but that the "lure of triple damages" was causing civil RICO claims to be applied in ways that Congress never intended. *Id.* at 109. Yet despite those contentions, Donziger challenges none of the factual findings that formed the basis for the district court's imposition of RICO liability.

Liability under § 1962(c) required a finding that Donziger conducted the affairs of the LAP team through a "pattern of racketeering activity."[3] Donziger apparently asserts that RICO liability is precluded unless the "pattern" of activity proven by the plaintiff is one that is characteristic of well-established criminal organizations, such as the American Mafia. *Id.* at 109-110. The Supreme Court has explicitly rejected that contention. *H.J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229 (1989). The Court stated unequivocally, "[T]he argument for

[3] "Racketeering activity" is defined in RICO to mean "any act or threat involving" specified state-law crimes, any "act" indictable under various specified statutes, and certain federal "offenses." 18 U.S.C. § 1961(1). The term "pattern" is not fully defined; RICO says merely that a "pattern" requires "at least two acts of racketeering activity" within a ten-year period. 18 U.S.C. § 1961(5).

reading an organized crime limitation into RICO's pattern concept, whatever the merits and demerits of such a limitation as an initial legislative matter, finds no support in the Act's text, and is at odds with the tenor of its legislative history." *Id.* at 244.

The district court found that Donziger committed numerous offenses that fall within RICO's definition of "racketeering activity," including extortion, wire fraud, money laundering, obstruction of justice, witness tampering, and bribery of foreign officials. The offenses are so numerous that Donziger could not plausibly assert that they do not constitute a "pattern," and he makes no effort to do so. The only predicate offense finding he challenges is the district court's finding that his conduct amounted to extortion. He asserts that his activities in connection with the Ecuadorian litigation were not "extortion" but rather "an exercise of the freedom to speak and to petition government of the sort the First Amendment is designed to protect." Donziger Br. 110. Chevron has cogently explained why efforts to corrupt the legal process are not First Amendment-protected activities, Chevron Br. 99-101, and WLF will not repeat those arguments here. Suffice it to say, the district court's findings that Donziger committed numerous other predicate acts besides extortion (findings that he has not challenged on appeal) are more than adequate by themselves to support the finding of RICO liability.

Donziger contends that proof of injury is an element of a civil RICO action and asserts, "Chevron has not alleged any actual damages or identified specific losses." Donziger Br. 112. That assertion is incorrect. Chevron elected to seek only injunctive relief (not monetary damages) in these proceedings, but it nonetheless demonstrated that it suffered economic loss. *See, e.g.*, SPA 307, SPA 415 (district court finding that Chevron was injured by the attachment of its property in Ecuador, including a $96 million arbitration award issued against the Republic of Ecuador.) Donziger has not challenged any of the district court's injury findings.

Also unavailing is Donziger's contention that Chevron failed to establish that its injuries were proximately caused by his RICO violations. Donziger Br. 113. The district court explicitly found proximate cause, concluding that Chevron's injuries "were the very result Donziger sought by his predicate acts." SPA 416. At trial, Donziger contended that injuries suffered by Chevron as a result of legal proceedings in Ecuador cannot be said to have been proximately caused by him because judgments rendered in Ecuador are "the result of an independent actor's discretion," thereby "breaking the chain of causation" between the RICO violations and Chevron's injuries. SPA 415. The trial court rejected that contention, concluding that Donziger's wholesale corruption of the legal

proceedings in Ecuador meant that court decisions and "the orders attaching Chevron's assets were not truly the 'independent actions of third . . . parties.'" *Id.* (quoting *Hemi Grp., LLC v. City of New York*, 559 U.S. 1, 15 (2010)). The district court also made factual findings that the intermediate appellate court in Ecuador did not conduct a *de novo* review of the trial court decision ghostwritten and paid for by the LAP team, and thus that the appellate court decision did not break the causal chain. SPA 425-28. Those factual findings are well supported by the evidence, and Donziger has not attempted to demonstrate that they are clearly erroneous.

In the face of the district court's voluminous findings that Chevron's injuries were a product of his extensive and well-documented RICO violations, SPA 414-15, Donziger's only response is that the district court did not adequately rule out another possible "independent" cause of Chevron's injuries: "Chevron's own illegal pollution." Donziger Br. 113. But regardless of whether Chevron may have caused pollution in Ecuador (despite never having conducted any drilling operations there), the district court properly concluded that any such pollution was not the cause-in-fact of Chevron's injuries, because there has never been an uncorrupted judicial determination that Chevron is responsible for pollution.

II. THE PATTERN OF RACKETEERING ACTIVITY IN THIS CASE IS STRIKINGLY SIMILAR TO THE RACKETEERING ACTIVITY PREVALENT IN NUMEROUS CRIMINAL PROSECUTIONS OF ORGANIZED CRIME FIGURES

Donziger repeats a refrain often voiced by those sued under 18 U.S.C. § 1964(c), which creates a cause of action for "any person injured in his business or property by reason of a violation of RICO" and provides that a successful claimant "shall recover threefold the damages he sustains and the cost of suit." Donziger asserts that this lawsuit is far afield from the sorts of suits contemplated by Congress when it adopted RICO for the purpose of "eradicat[ing] organized crime in the United States." Donziger Br. 109. WLF has considerable sympathy for legitimate businesses who find themselves named as defendants in RICO lawsuits only because the lure of triple damages has prompted a rival to repackage a garden-variety business dispute into a "racketeering" claim. But Donziger deserves no such sympathy; his activities are much more closely akin to the activities of mobsters criminally prosecuted for RICO violations than they are to the activities of the typical business named as a defendant in a lawsuit filed under § 1964(c).

A striking feature of Donziger's criminal behavior is how long it has persisted; the district court found that he conducted the affairs of the LAP team through a "pattern of racketeering activity" for at least five years. A common

feature of many RICO prosecutions of organized crime figures is that the defendants have been engaged in criminal activity for many years. Indeed, this Court concluded in one recent decision reviewing a criminal conviction of an organized crime figure under RICO that "continuity of criminal activity . . . is *the hallmark* of racketeering." *United States v. Pizzonia*, 577 F.3d 455, 465 (2d Cir. 2009). The district court's findings of fact well document Donziger's similarly persistent pattern of predicate offenses over an extended period of time.

In a great many civil RICO lawsuits filed against legitimate businesses, the alleged predicate offenses consist solely of wire fraud and mail fraud; they are the two most easily pled predicate offenses and thus are the offenses most often employed for the purpose of transforming a garden-variety business dispute into a racketeering claim. In contrast, the typical criminal prosecution of an organized crime figure involves a wider variety of predicate offenses that reflect the desire of any criminal organization to avoid detection and ensure its continued existence. The LAP team engaged in the broader range of predicate offenses characteristic of well-organized criminal enterprises.

United States v. Daidone, 471 F.3d 371 (2d Cir. 2006), is illustrative of the racketeering activity often engaged in by organized crime members when conducting the affairs of the criminal organization. Defendant Louis Daidone was

a member of New York City's Luchese organized crime "family." Daidone was convicted of witness tampering by murder as well as conducting the Luchese family's affairs through a pattern of racketeering activity; among his predicate acts were the murders of two family members suspected of cooperating with law enforcement authorities. *Id.* at 373. The Second Circuit upheld the conviction, noting that the murders were sufficiently related to one another to form a "pattern of racketeering activity" because they both served the Luchese family's interests in preserving secrecy and preventing criminal prosecution of family members. *Id.* at 375-76.

Donziger's predicate acts included similar (albeit less violent) efforts to prevent disclosure of the steps taken by the LAP team to corrupt the Ecuadorian legal proceedings. For example, the district court found that Donziger engaged in obstruction of justice by submitting "the deliberately misleading Fajardo Declaration" to many federal courts throughout the county. SPA 400-01. It found that Donziger engaged in witness tampering with respect to the testimony of Mark Quarles. *Id.* at 402-03. It found that Donziger took extraordinary measures to hide the fact that Cabrera, the supposedly independent expert retained by the Ecuadorian court to measure damages, was actually being paid by Donziger and submitting reports ghostwritten by the LAP team. Those secrecy measures

included funneling payments to Cabrera through a "secret account" and referring to Cabrera and others by code names in email messages. SPA 93-94.

Indeed, Donziger even took "extensive steps" designed to hide funds in off-shore accounts to put them "beyond the reach either of U.S. or Ecuadorian courts," SPA 483, thereby guarding against the possibility that Ecuador might assert a right to share in the billions of dollars Donziger sought to extort from Chevron. *See also* SPA 281 n.1110 (Donziger established a Gibraltar company "for receipt and distribution of any funds in consequence of the Judgment.").

Criminal RICO prosecutions of organized crime members often include charges that the criminal organizations bribed government officials and others to obtain special favors or to deter law enforcement. *See, e.g.*, *United States v. Reifler*, 446 F.3d 65 (2d Cir. 2006) (bribes to union officials to induce investment of union pension fund assets in corrupt investment vehicles); *United States v. Zichettello*, 208 F.3d 72 (2d Cir. 2000) (bribes to New York City Transit Police Benevolent Association to influence its investment decisions); *Salinas v. United States*, 522 U.S. 52 (1997) (bribes paid by inmate to sheriff in return for preferential treatment). Donziger's predicate acts were similar: he violated the Travel Act to facilitate the payment of bribes to Cabrera—payments that violated the Foreign Corrupt Practices Act; he promised a $500,000 bribe to the Ecuador

trial judge in return for signing the Judgment ghostwritten by the LAP team.

For whatever reason, Donziger has not yet been indicted for his RICO violations. But in light of the district court's findings regarding the serious and widespread nature of his predicate acts, Donziger should not be credited when he portrays himself as yet another victim of an "absurd" extension of RICO's reach. As adduced above, Donziger's activities have much more in common with the activities of the organized crime figures described in RICO case law than with legitimate enterprises branded as "racketeers" in connection with every-day business disputes.

III. SECTION 1964(a) AUTHORIZED THE DISTRICT COURT TO GRANT CHEVRON INJUNCTIVE RELIEF

Donziger argues alternatively that, even if Chevron has established his liability under RICO, "the statute does not authorize equitable relief in private civil actions." Donziger Br. 115. That argument is inconsistent with 18 U.S.C. § 1964(a)'s express authorization of such relief.

Section 1964(a) provides:

> The district courts of the United States shall have jurisdiction to prevent and restrain violations of [18 U.S.C. § 1962] by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the

> activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

Section 1964(a) thus provides district courts with broad authority to enter equitable remedies designed to "prevent and restrain" violations of RICO; the injunction issued by the district court in this case falls comfortably within that mandate.

Donziger argues that although district courts are broadly empowered to issue injunctive relief, the statute "limits *who* can seek such equitable relief." Donziger Br. 115. He asserts that only the United States Government is authorized to seek injunctive relief, and that private parties are limited to seeking monetary damages. *Id.* He bases that assertion on § 1964(c), which states in pertinent part:

> Any person injured in his business or property by reason of a violation of [18 U.S.C. § 1962] may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

Donziger reads far too much into the text of § 1964(c). In addition to creating a private right of action, that provision authorizes monetary recoveries well in excess of the private party's actual losses; the party is also entitled to recover treble damages, court costs, and an attorney's fee. But nothing in § 1964(c) limits the district courts' authority (granted by § 1964(a)) to award injunctive relief to a RICO plaintiff in order to "prevent and restrain" RICO violations. As the Supreme Court has explained, "The general rule . . . is that absent clear direction to the

contrary by Congress, the federal courts have the power to award any appropriate relief in a cognizable cause of action brought pursuant to a federal statute." *Franklin v. Gwinnett Cty. Public Schools*, 503 U.S. 60, 70-71 (1992). In this instance, the "clear direction" points the opposite way: § 1964(a) expressly authorizes district courts to issue broad injunctive relief to RICO plaintiffs, in order to "prevent and restrain" RICO violations. *See also, Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946) (stating that '[u]nless otherwise provided by statute, all the inherent equitable powers of the District Court are available for the proper and complete exercise of [equitable] jurisdiction.").

Donziger asserts that § 1964(c)'s express authorization of a suit for treble damages should be viewed as an indication that Congress simultaneously denied private parties authority to seek injunctive relief in their civil RICO suits. That interpretation is not plausible because it would leave no party with authority to seek the permanent injunctive relief that § 1964(a) expressly authorizes district courts to award. Were Donziger's atextual construction of § 1964(c) correct, then the provision authorizing the United States to file civil actions to enforce RICO—18 U.S.C. § 1964(b)—would (based on a similar construction) limit the United States to seeking no more than the forms of relief explicitly set forth in § 1964(b): temporary injunctive relief "[p]ending final determination" of the

government's RICO claim. Thus, neither the United States (in a suit filed under § 1964(b)) nor a private party (in a suit filed under § 1964(c)) would be entitled to seek the *permanent* injunctive relief expressly authorized by § 1964(a), and there are no other remaining categories of RICO plaintiffs who could seek that relief.

Section 1964(a) is unequivocal evidence that Congress contemplated that district courts would grant permanent injunctive relief in "appropriate" RICO cases, *i.e.*, cases in which the plaintiff can establish that it meets the customary equitable criteria, including that it will suffer irreparable harm in the absence of an injunction. Moreover, a decision confirming that injunctive relief is authorized in appropriate civil RICO cases should not result in any increase in civil RICO filings; it is the availability of treble damages, not the availability of injunctive relief for a party that otherwise faces irreparable harm, that attracts opportunistic plaintiffs to assert RICO claims against legitimate businesses in routine commercial disputes. Chevron is not such a plaintiff, as its decision to abjure damages in this case attests. Nor is Donziger being targeted for routine commercial activity.

CONCLUSION

The Washington Legal Foundation respectfully requests that the Court affirm the judgment of the district court.

Respectfully submitted,

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Dated: October 8, 2014

CERTIFICATE OF COMPLIANCE

Pursuant to Fed.R.App.P. 32(a)(7)(C), I hereby certify that the foregoing brief of WLF is in 14-point proportionately spaced Times New Roman type. According to the word processing system used to prepare this brief (WordPerfect 12.0), the word count of the brief is 4,504 words, not including the corporate disclosure statement, table of contents, table of authorities, certificate of service, and this certificate of compliance.

/s/ Richard A. Samp
Richard A. Samp

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of October, 2014, I electronically filed the brief of *amicus curiae* Washington Legal Foundation with the Clerk of the Court for the U.S. Court of Appeals for the Second Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Richard A. Samp
Richard A. Samp