

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MESSODY J. PERLBERGER, : CIVIL ACTION  
etc. :  
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v. :  
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NORMAN PERLBERGER, : NO. 97-4105  
et al. :  
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M E M O R A N D U M

**Padova, J.**

February 20, 1998

Plaintiff Messody J. Perlberger ("Plaintiff"), individually and on behalf of her two minor daughters, brings this action against her ex-husband and the father of her children, Norman Perlberger ("Defendant Perlberger"), and other Defendants alleging that the Defendants participated in a fraudulent scheme to conceal the true value of Defendant Perlberger's income during the couple's divorce proceedings. Plaintiff alleges violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C.A. §§ 1961-68 (West 1984 & Supp. 1997), by use of mail and wire fraud, in violation of 18 U.S.C.A. §§ 1341 and 1343 (West 1984 & Supp. 1997). In addition, Plaintiff brings claims based in state law against the Defendants.

Before the Court are two Motions to Dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(6), on the ground that the Complaint does not state a claim under RICO, and that because there is no other basis for federal jurisdiction, the Court

should dismiss Plaintiff's state claims. The first Motion is filed by Defendants G. Daniel Jones and Jones, Hayward and Lenzi (the "Accountant Defendants"). The other Motion is filed by Defendant Perlberger and the remaining Defendants (the "Attorney Defendants").<sup>1</sup> For the reasons that follow, the Court will deny both of the Motions.

I. PROCEDURAL BACKGROUND

By Order filed on September 18, 1997, the Court granted in part and denied in part Motions to Dismiss filed by the Defendants. The Court dismissed Count II (Civil Conspiracy, 18 U.S.C. §§ 1985 and 1986), Count IV (Violation of the Federal Family Support Act of 1988, 42 U.S.C. § 601), and Count V (Violation of the First and Fourteenth Amendments). As a result, the only Federal claim remaining in Plaintiff's Complaint was Count III (Violation of RICO). The Court granted Plaintiff leave to amend her Complaint as to her RICO claim.

Plaintiff's Complaint also included the following state law claims -- Count I (Fraud), Count VI (Intentional Infliction of Emotional Distress), and Count VII (Personal Injury). The Court deferred ruling on whether the Court would exercise jurisdiction

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<sup>1</sup>The two Motions raise similar and sometimes identical arguments. In addition, the Accountant Defendants' Motion incorporates by reference the arguments raised in the Attorney Defendants' Motion. Therefore, the Court will address both of the Motions together in this Memorandum and Order.

over Plaintiff's state claims until Plaintiff had the opportunity to amend her RICO claim.

On December 8, 1997, Plaintiff filed a RICO Case Statement and an Amended Count III of Complaint. In response, Defendants renewed their Motions to Dismiss Plaintiff's RICO claim and her state law claims.

## II. FACTUAL BACKGROUND

For the purposes of analyzing Defendants' Motions, the Court will treat the RICO Case Statement and Amended Count III of the Complaint as part of Plaintiff's Complaint. See Lorenz v. CXS Corp., 1 F.3d 1406, 1413 (3d Cir. 1993)(relying on a RICO Case Statement in assessing a motion to dismiss); Brokerage Concepts, Inc. v. U.S. Healthcare, Inc., Civ.A.No. 95-1698, 1995 WL 455969 at \*13 n. 1 (E.D.Pa. July 27, 1995)(stating "[t]he RICO case statement will be regarded as a pleading in this action")(citing Greek Radio Network of America v. Vlasopoulos, 731 F. Supp. 1227, 1234 n.12 (E.D. Pa.1990)(referring to Complaint and RICO Case Statement collectively as "the Complaint")). The factual background set forth in this section is derived from the allegations in the Complaint, the RICO Case Statement, and Amended Count III.

Plaintiff alleges the following.<sup>2</sup> In 1996, she discovered that Defendants had devised and perpetrated a fraudulent scheme whereby Defendant Perlberger was able to conceal the true value of his income from both Plaintiff and the Court of Common Pleas of Montgomery County, which had jurisdiction over the Perlbergers' divorce proceedings. (Compl. at ¶ 20(B)(e).) By means of this fraudulent scheme, Defendant Perlberger misrepresented the value of his income by more than half. (Id. at ¶ 20(B)(a).)

As a result of Defendants' fraudulent conduct, the awards for child support and alimony ordered by the Court of the Common Pleas were less than they would have been if the Court of Common Pleas had known Defendant Perlberger's true income. Consequently, Plaintiff and her two minor children lost more than eighty per cent of their former income and suffered a diminution in their quality of life. (Id. at ¶¶ 22 and 32.) They also have suffered in a myriad of other ways, including humiliation, loss of self-esteem, anxiety, loss of health, and exacerbation of health problems. (Id. at ¶¶ 33-40.) The fraudulent scheme is not complete, continues to the present, and will continue into

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<sup>2</sup>In her RICO Case Statement and Amended Count III, Plaintiff has provided additional detail concerning the alleged fraudulent scheme that forms the basis of her RICO claim. The Court does not intend to repeat all of those allegations here. Instead, the Court will describe the scheme and include certain details to illustrate how the scheme allegedly operated.

the future as long as Defendant Perlberger is subject to an obligation to support Plaintiff and her children. (Am. Count III at ¶ 14.)

The fraudulent scheme operated as follows. In 1986, Defendant Perlberger decided to divorce Plaintiff. (Id. at ¶ 16.) Rather than leave his wife and commence divorce proceedings immediately, he devised a scheme, whereby he would initiate an extra-marital affair for the purpose of shielding his assets and income from scrutiny in his anticipated divorce from Plaintiff. (Id. at ¶ 17.) To that end, while he was still living with Plaintiff and their children, he began a romantic relationship with Diane J. Strausser, a client he was representing in her divorce proceedings. (Id. at ¶ 20.) On May 4, 1987, he left his marital residence and began living with Ms. Strausser. (Id. at ¶ 23.) On May 6, 1987, he filed a divorce complaint against Plaintiff in the Montgomery County Court of Common Pleas. (Id. at ¶ 24.)

In June 1987, Defendant Perlberger settled Ms. Strausser's divorce case for \$850,000 in cash plus other property. (Id. at ¶ 25.) At Defendant Perlberger's suggestion, Ms. Strausser purchased a house in Lionville, Pennsylvania for \$420,000 where they could live together. (Id. at ¶ 28.) Although he contributed his own funds to purchase the property, the deed for the Lionville property was put only in Ms. Strausser's name so

that he could conceal his interest in the property and prevent Plaintiff from making a claim on the property during the Perlbergers' divorce proceedings.<sup>3</sup> (Id. at ¶¶ 30-34.)

In June 1988, Defendant Perlberger left the law firm of Blank, Rome, Comiskey & McCauley ("Blank Rome"), where he was a partner, to start his own law firm, which came to be called Perlberger Law Associates. (Id. at ¶ 40.) At the time of his departure from Blank Rome, he had a substantial sum of money in a capital account owed to him by Blank Rome. (Id. at ¶ 41.) Instead of directly investing the money from the capital account in his new business and running the risk that the money would be considered a marital asset and therefore subject to a claim by Plaintiff, Defendant Perlberger used Ms. Strausser to obtain financing, in the form of a \$500,000 line of credit, for his new law firm. (Id. at ¶¶ 42-48.) He persuaded Ms. Strausser to secure the line of credit so that he was able to conceal the use of funds from the Blank Rome capital account to establish his new law firm and to argue successfully in the divorce proceedings

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<sup>3</sup>Plaintiff alleges on information and belief that the Accountant Defendants were involved in the negotiations for and the purchase of the Lionville property and were aware of and conspired with Defendant Perlberger to use Ms. Strausser to minimize the apparent amount of his assets and income in order to defraud Plaintiff. Plaintiff further alleges on information and belief that the Accountant Defendants were also involved in negotiations for and the purchase of two other expensive homes by Ms. Strausser for the benefit of Defendant Perlberger and in furtherance of the fraudulent scheme perpetrated by Defendants.

that his new law firm was not a marital asset. (Id. at ¶¶ 49-50.)

Once his new law firm was operational, he employed Ms. Strausser as an office administrator and client counselor, and paid her an inflated salary reflected on the payroll of Perlberger Law Associates. (Compl. at ¶ 20(B)(c); Am. Count III at ¶¶ 51-53.) Defendant Perlberger and the Accountant Defendants structured Ms. Strausser's salary to pay Defendant Perlberger's daily expenses so that he could maintain his lavish lifestyle while he continued to represent that he had little personal income of his own.<sup>4</sup> (Id. at ¶ 20(B)(a)-(e).) By minimizing the amount of income he reported in the divorce proceedings, Defendant Perlberger was able to decrease his financial exposure and liability to Plaintiff. (Id.) Defendant Perlberger had the Accountant Defendants prepare a fraudulent "joint financial statement" for use in his divorce proceedings, which inaccurately reflected substantial assets owned by Ms. Strausser, minimized the extent of Defendant Perlberger's own assets, and hid the value of Perlberger Law Associates. (Am. Count III at ¶¶ 60-61.) For their role in the scheme, the Accountant Defendants received

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<sup>4</sup>In similar fashion, Perlberger Law Associates also paid extravagant fees to Professional Link and Professional Leasing, two fictitious business names assigned to Ms. Strausser, for leasing artwork and furniture Ms. Strausser used in the firm. (Am. Count III at ¶ 54.) In addition, Perlberger Law Associates paid for Ms. Strausser's luxury car payments and expenses, American Express payments, and other benefits. (Id.)

substantial fees, payments, and benefits. (Id. at ¶ 65.)

On or about 1992, when Defendant Perlberger's personal and professional relationship with Ms. Strausser ended, Amy S. Lundy Brennan, an attorney employed by and currently married to Defendant Perlberger, replaced Ms. Strausser as the conduit to shelter Defendant Perlberger's income. (Compl. at ¶¶ 23-26.) Ms. Brennan was paid an inflated salary by Perlberger Law Associates, and the Accountant Defendants structured payments to Defendant Brennan in the same manner and to the same end as they had done with the payments to Ms. Strausser. (Id.)

Another component of the fraudulent scheme to decrease the amount of Defendant Perlberger's reported income and assets in the divorce proceedings allegedly involved Defendant Rothenberg, an attorney. (Am. Count III at ¶¶ 89-92.) Defendant Rothenberg helped Defendant Perlberger shelter his income by sharing fees and "holding" cases for Defendant Perlberger, including a substantial caseload of asbestos personal injury cases, which had substantial settlement value. (Id.) In this way, substantial marital assets were concealed from Plaintiff. (Id.)

Plaintiff alleges that documents necessary to perpetrate the fraudulent scheme were exchanged among the Defendants by use of the United States Mail and facsimile transmission and that discussions by the Defendants relating to the fraudulent scheme were held on the telephone. (Id. at ¶¶ 31, 38, 46, 52, 55, 59,

62, 71, 85, 87, and 91.)

### III. LEGAL STANDARD

A claim may be dismissed under Fed.R.Civ.P. 12(b)(6) only if the plaintiff can prove no set of facts in support of the claim that would entitle her to relief. ALA, Inc. v. CCAIR, Inc., 29 F.3d 855, 859 (3d Cir. 1994). The reviewing court must consider only those facts alleged in the complaint and accept all of the allegations as true. Id.; see also Rocks v. Philadelphia, 868 F.2d 644, 645 (3d Cir. 1989) (holding that in deciding a motion to dismiss for failure to state a claim, the court must "accept as true all allegations in the complaint and all reasonable inferences that can be drawn therefrom, and view them in the light most favorable to the nonmoving party"). A motion to dismiss a RICO claim is to be considered in accordance with the same "liberal standard which applies to Rule 12(b)(6) motions to dismiss non-RICO claims." Rose v. Bartle, 871 F.2d 331, 355-56 (3d Cir. 1989).

### IV. DISCUSSION

#### A. The Purpose of RICO

As an initial matter, Defendants advance a policy argument in an attempt to defeat Plaintiff's civil RICO claim. According to Defendants, the racketeering activities embraced by the RICO

statute "must include 'crimes that have been traditionally associated with transgressions of racketeers.'" (Defs.' Mot. at 10 (quoting Tabas v. Tabas, 47 F.3d 1280, 1290 (3d Cir. 1995)).) Although Defendants admit that courts have recognized the viability of RICO claims in situations not involving organized crime, Defendants argue that RICO was not enacted to provide a Federal forum to an individual dissatisfied with a divorce decree. (Accountant Defs.' Mot. at 3.)

The broad sweep of the civil RICO statute has been the subject of much debate and criticism by commentators and jurists alike. But in this Circuit it is clear that a plaintiff can state a RICO claim even if the claim is based on acts that fall outside the scope of traditional racketeering activities of organized crime. In interpreting H.J., Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 109 S. Ct. 2893 (1989), the Court of Appeals for the Third Circuit ("Third Circuit") in Tabas upheld a broad reading of the RICO statute.

Although Defendants rely on Tabas in support of their argument that the Court should dismiss Plaintiff's RICO claim on policy grounds, they quote Tabas out of context. The Third Circuit expressly states that civil RICO claims need not be based on crimes traditionally associated with racketeers (e.g., murder, bribery, extortion, and kidnapping). Tabas, 47 F.3d at 1290. "Racketeering activity," within the meaning of civil RICO, can

also be based on other Federal offenses, such as mail and wire fraud. Id. The Third Circuit recognized that the inclusion of mail and wire fraud within the scope of civil RICO extends RICO beyond the world of racketeers to the realm of common law, "garden variety" fraud found in commercial litigation. Id. Nevertheless, the Third Circuit did not place any limits on the scope of civil RICO in Tabas. Here, Plaintiff's RICO claim is based on Defendants' alleged mail and wire fraud. Although the alleged fraudulent scheme perpetrated by the Defendants may be accurately described as "garden variety" fraud, Tabas, 47 F.3d at 1290, such a characterization is not fatal to Plaintiff's RICO claim under the current state of the law.

Defendants next argue that they have not found any cases in Pennsylvania in which civil RICO has been used to attack a divorce decree, child support order, or alimony award. (Accountant Defs.' Mot. at 3.) Although the Court also has not found any such Pennsylvania cases, the Court has found a number of Federal cases where courts have entertained civil RICO claims relating to family law matters. E.g., Grimmett v. Brown, 75 F.3d 506 (9th Cir. 1996); Calcasieu Marine Nat. Bank v. Grant, 943 F.2d 1453 (5th Cir. 1991). With Tabas as guidance and with the decisions of other courts in mind, the Court will not dismiss Plaintiff's RICO claim on policy grounds.

B. Statute of Limitations

Defendants argue that the statute of limitations has run on Plaintiff's RICO claim and that it should be dismissed because it is untimely.

Civil RICO claims are subject to a four-year statute of limitations.<sup>5</sup> Agency Holding Corp. v. Malley-Duff & Assocs., Inc., 483 U.S. 143, 156, 107 S. Ct. 2759, 2767 (1987). Until last year, two alternate rules for determining when a civil RICO claim accrues -- the "injury and pattern discovery" rule and the "last predicate act" rule -- were followed in the Third Circuit. Keystone Ins. Co. v. Houghton, 863 F.2d 1125, 1130 (3d Cir. 1988). Under the "injury and pattern discovery" rule, "the limitations period starts to run when a plaintiff knew or should have known that the RICO claim (including a 'pattern of racketeering activity') existed." Klehr v. A.O. Smith Corp., \_\_\_ U.S. \_\_\_, 117 S. Ct. 1984 (1997)(citing Keystone, 863 F.2d at 1130)). Under the "last predicate act" rule, the Third Circuit added the following exception to the "injury and pattern discovery" rule:

[I]f, as part of the same pattern of racketeering activity, there is further injury to the plaintiff or further predicate acts occur, . . . the accrual period shall run from the time when the plaintiff knew or should have known

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<sup>5</sup>Defendants incorrectly argue that the applicable statute of limitations for plaintiff's civil RICO claim is the limitations period under Pennsylvania law for opening or vacating a divorce decree on the basis of fraud. (Defs.' Mot. at 3.)

of the last injury or the last predicate act which is part of the same pattern of racketeering activity. The last predicate act need not have resulted in injury to the plaintiff but must be part of the same pattern.

Id.

In Klehr, the Supreme Court overruled the "last predicate act" rule of accrual set forth by the Third Circuit in Keystone.<sup>6</sup> Although Klehr abrogates Keystone with respect to the "last predicate act" rule, the Supreme Court did not address the "injury and pattern discovery" rule also followed in the Third Circuit. Therefore, the "injury and pattern discovery" rule set forth in Keystone continues to be good law in the Third Circuit.

Plaintiff alleges in her Complaint that she discovered in 1996 that Defendants had devised and perpetrated a fraudulent scheme to conceal Norman Perlberger's assets and income from her. (Compl. at ¶ 20.) For the purposes of analyzing Defendants' Motions, the Court accepts as true Plaintiff's allegation concerning her discovery of her injury and Defendants' pattern of racketeering activities. Plaintiff filed her Complaint on June 18, 1997, within the applicable four year limitations period. Therefore, the Court will deny Defendants'

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<sup>6</sup>In Klehr, the Supreme Court declined to resolve the question of when a civil RICO cause of action accrues, even though a split of authority in the Courts of Appeals exists as to this question.

Motions to Dismiss Plaintiff's RICO claim on statute of limitations grounds.

C. Plaintiff's RICO Claim

Four distinct RICO violations are defined in 18 U.S.C. §§ 1962(a)-(d). Plaintiff alleges violations of all four subsections of Section 1962. There are common elements in all four offenses. A RICO claim under Section 1962 must allege "(1) the conducting of (2) an enterprise, (3) through a pattern, (4) of racketeering activity." Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496, 105 S. Ct. 3275, 3285 (1985).

1. Enterprise

The Attorney Defendants argue that Plaintiff has failed adequately to allege a distinct enterprise. The "distinctiveness" requirement applies to Section 1962(c) claims. Jaguar Cars, Inc. v. Royal Oaks Motor Car Co., Inc., 46 F.3d 258, 268 (3d Cir. 1995)(under Section 1962(c), "a claim simply against one corporation as both 'person' and 'enterprise' is not sufficient"). "[A] viable § 1962(c) action requires a claim against defendant 'persons' acting through a distinct 'enterprise.'" Id.

With respect to Plaintiff's Section 1962(c) violation, the Court finds that Plaintiff has adequately alleged a distinct

enterprise. The named Defendants are all "persons" for purposes of Plaintiff's Section 1962(c) claim. 18 U.S.C.A. § 1961(3) (West 1984)(a "person" includes any individual or entity capable of holding legal or beneficial interest in property). An "enterprise" includes "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C.A. § 1961(4)(West 1984). The distinctiveness requirement bars a claim against, for example, a single entity as both "person" and "enterprise." Plaintiff's Section 1962(c) claim is not based on such a scenario. Rather, Plaintiff alleges that a group of five individuals and two professional corporations are the persons liable and that the enterprise is the association-in-fact of those persons. As such, the allegations of Plaintiff's Complaint satisfy the distinctiveness requirement for her Section 1962(c) claim. Shearin v. E.F. Hutton Group, Inc., 885 F.2d 1162, 1165-66 (3d Cir. 1989)(three corporate defendants, alleged to be persons under RICO, also together form an association-in-fact enterprise).<sup>7</sup>

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<sup>7</sup>In their original Motion to Dismiss, the Accountant Defendants argued that Plaintiff had failed adequately to allege the existence of an enterprise and so her RICO claim should be dismissed. Plaintiff's RICO claim was not fully developed in her Complaint, and therefore Defendants' challenge to the enterprise requirement was framed in a very general manner. Pursuant to the Court's Order, Plaintiff filed a RICO Case Statement and Amended Count III in which she provided greater detail concerning the nature and extent of the alleged fraudulent scheme and the role

2. Pattern of Racketeering Activity

Defendants also argue that Plaintiff has failed to adequately allege a pattern of racketeering activity as required to maintain a RICO claim. A "pattern of racketeering activity" requires the occurrence of at least two acts of racketeering activity (i.e., predicate acts) within a ten year period. 18 U.S.C. § 1961(5). Plaintiff has alleged numerous predicate acts, based on mail and wire fraud in violation of 18 U.S.C. §§ 1341 (mail fraud) and 1343 (wire fraud), dating from 1987 to the present.

The Accountant Defendants argue that Plaintiff has alleged only two predicate acts that involve them, that one of these predicate acts is insufficiently pled, and that, therefore, Plaintiff has not pled a pattern of racketeering activity that implicates them. The Court disagrees. Plaintiff has alleged numerous predicate acts involving the Accountant Defendants related to the following matters: the preparation of a fraudulent "joint financial statement" for Defendant Perlberger and Ms. Strausser for use in the Perlbergers' divorce proceedings; the

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played by each Defendant in the scheme. In their Supplemental Memorandum in support of their Motion to Dismiss, the Accountant Defendants made no attempt to reargue the enterprise issue in light of the amended RICO claim. Because the Accountant Defendants do not identify the ways in which Plaintiff's allegations concerning the existence of a RICO enterprise are insufficient, the Court will dismiss the Accountant Defendants' Motion on this ground.

purchase of the Lionville property and other properties by Ms. Strausser; the financing of Perlberger Law Associates by Ms. Strausser; the payments by Perlberger Law Associates to Ms. Strausser; and the transfer of income and assets of Defendant Perlberger and Perlberger Law Associates to Defendant Brennan. The Court finds that Plaintiff has adequately pled two predicate acts against the Accountant Defendants.

In addition to the above requirements, the predicate acts must (1) be related and (2) amount to or pose a threat of continued criminal activity. H.J., Inc., 492 U.S. at 239, 109 S. Ct. at 2900. The Accountant Defendants also argue that Plaintiff has failed adequately to allege the continuity requirement. This requirement refers either to a closed period of repeated conduct or to past conduct that by its nature projects into the future with a threat of repetition. Id., 492 U.S. at 241-42, 109 S. Ct. at 2902.

A party alleging a RICO violation may demonstrate continuity over a closed period by pleading a series of related predicate acts extending over a substantial period of time. Id. Although neither the Supreme Court nor the Third Circuit has defined with precision the length of time necessary to establish closed-ended continuity, it is not necessary for the Court to reach that issue in this case. Plaintiff's Complaint alleges predicate acts that were perpetrated over a period of time in excess of three years.

A scheme lasting over three years extends over a substantial period of time and therefore constitutes the type of long-term criminal conduct that RICO was enacted to address. Tabas, 47 F.3d at 1294. The Court finds that Plaintiff's Complaint contains adequate allegations to meet the closed-ended continuity requirement.

Finally, both the Accountant Defendants and the Attorney Defendants suggest that Plaintiff is the only victim of the alleged fraudulent scheme and therefore the Court should dismiss the RICO claim on this basis. In making this argument, Defendants ignore the fact the Plaintiff brings this lawsuit on behalf of her two minor children as well as on her own behalf. Furthermore, even if the scheme did only injure one victim, that will not necessarily preclude the finding of a pattern of racketeering activity. See Tabas, 47 F.3d at 1306 (remarking "[w]hile it is true that the presence of only one victim, does not necessarily preclude the finding of a RICO pattern, this fact clearly weighs against the finding of continuity")(Greenberg, J., dissenting).<sup>8</sup>

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<sup>8</sup>The Attorney Defendants advance a number of arguments in support of their Motion to Dismiss, including Plaintiff's failure adequately to allege proximate cause and effect on interstate commerce. Although these issues are not fully developed or adequately researched by Defendants, the Court has nevertheless analyzed these issues. The Court finds that Plaintiff has adequately alleged an effect on interstate commerce. Shearin, 885 F.2d at 1165-66. The Court notes that even if Plaintiff had not properly alleged an effect on interstate commerce, such a

For the reasons set forth above, the Court will deny Defendants' Motion to Dismiss Plaintiff's RICO claim.

D. Plaintiff's State Law Claims

In addition to the RICO claim, Plaintiff's Complaint includes state law claims for fraud, intentional infliction of emotional distress, and personal injury. Original diversity jurisdiction over these claims does not exist because complete diversity of citizenship of the parties is lacking. 28 U.S.C. § 1332. Therefore, the Court's jurisdiction over these claims can be based only on principles of supplemental jurisdiction. 28 U.S.C. § 1367.

The Court finds that the state claims are so related to the RICO claim that they form part of the same case or controversy. Therefore, the Court will exercise its supplemental jurisdiction, pursuant to Section 1367(a), over Plaintiff's state claims.

The Accountant Defendants also contend that Plaintiff's state law claims are subject to dismissal under Rule 12(b)(6) for failure to state a claim. In this regard, the Court finds that Plaintiff has alleged fraud with the specificity required by Rule

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defect would not be fatal to her RICO claim. Id. With respect to the proximate cause requirement, a plaintiff must allege that she was injured and that the defendant's violation was the proximate cause of her injury. Holmes v. Securities Investor Protection Corp., 503 U.S. 258, 268, 112 S. Ct. 1311, 1317-18 (1992). The Court finds that Plaintiff has adequately alleged proximate cause.

9(b) of the Federal Rules of Civil Procedure. The Court is also unpersuaded by Defendants' argument that Plaintiff cannot maintain a claim for intentional infliction of emotional distress because their conduct cannot be characterized as outrageous. Defendants have failed to cite to any relevant authority in support of their argument. At this juncture in the proceedings, the Court declines to find, as a matter of law, that the alleged conduct of the Accountant Defendants cannot be characterized as outrageous.

Finally, the Accountant Defendants maintain that they did not owe Plaintiff a duty of care and therefore the Court should dismiss her personal injury claim against them. The only legal support that the Accountant Defendants cite for this argument is Guy v. Liederbach, 459 A.2d 744 (Pa. 1983), in which the Pennsylvania Supreme Court modified the "strict privity" requirement (i.e., that an attorney-client relationship must exist) for a claim by a third-party beneficiary in an attorney malpractice action. Plaintiff does not seek recovery as a third-party beneficiary on a contract for professional services between Defendants Perlberger and Perlberger Law Associates, on the one hand, and the Accountant Defendants, on the other hand. Therefore, the Court will not dismiss this claim on the grounds stated by the Accountant Defendants.

The Court, however, will not treat Count VII as a separate

claim for relief. Rather, the Court will treat the alleged personal injury, and damages therefrom, as derived from Plaintiff's claim for intentional infliction of emotional distress.

An appropriate Order follows.