



defendants in Count III include certain local union officers,<sup>3</sup> members,<sup>4</sup> and the local union's attorney.<sup>5</sup> The named defendants in Count IV include the International Brotherhood of Teamsters ("IBT")<sup>6</sup>, its president, James P. Hoffa ("Hoffa"), as well as local IBT union officers,<sup>7</sup> members,<sup>8</sup> and attorney.<sup>9</sup>

Presently before the court are the following: (1) the motion of defendant McNamara to dismiss the complaint as to Counts III and IV; (2) the combined motion of defendants Smith and Keyser to dismiss the complaint as to Counts III and IV; (3) the combined motion of defendants Brainard, Oswald, Argeros, Heim and Vanderwoude to dismiss the complaint as to Counts III and IV; (4) the motion of defendant Reilly to dismiss the complaint as to Counts III and IV; and (5) the combined motion of defendants IBT and Hoffa to dismiss the complaint as to Count IV.

## **BACKGROUND**

The instant case involves allegations of a conspiracy among some of the union officers, certain union members and the state to violate plaintiff's federal civil rights. The plaintiff, a union

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<sup>3</sup> The named defendant union officers in Count III include Gerald McNamara ("McNamara"), James E. Smith ("Smith") and Edward F. Keyser ("Keyser").

<sup>4</sup> The named defendant union members in Count III include Charles Argeros ("Argeros"), Sean Heim ("Heim"), Paul Vanderwoude ("Vanderwoude") and Leo Reilly ("Reilly").

<sup>5</sup> The named local union attorney in Count III is Norton Brainard ("Brainard").

<sup>6</sup> IBT is a national labor organization which governs local union chapters and its members. Compl. ¶ 12.

<sup>7</sup> The named defendant union officers in Count IV include McNamara, Smith and Keyser.

<sup>8</sup> The named defendant union members in Count IV include William Oswald ("Oswald"), Argeros, Heim, Vanderwoude and Reilly.

<sup>9</sup> The named local union attorney in Count IV is Brainard.

member and state parolee,<sup>10</sup> asserts that defendants plotted to revoke his parole after he refused to support their candidate during a battle for control of a local union. The specific facts of plaintiff's complaint are set forth below.

Sometime before February 28, 1999, several individuals allegedly agreed to a scheme in which John Morris ("Morris"), the duly elected leader of Local Union 115 of the International Brotherhood of Teamsters ("Local 115"), would be ousted from certain union leadership positions. Compl. ¶¶ 19, 20. In order to accomplish this goal, these individuals struck a deal with James P. Hoffa ("Hoffa"), the president of the International Brotherhood of Teamsters ("IBT"). Under the arrangement, if Hoffa imposed an emergency trusteeship on Local 115, and thus enabled local union members and officers to oust Morris from his leadership positions, then Hoffa would be allowed to fill these vacancies with "his people." Id. at ¶ 20. Plaintiff, who alleges that his entry into Local 115 enabled him to fulfill a condition of his state parole, was informed of this arrangement on February 28, 1999. He was asked for his support, but he declined to provide it. Id. at ¶ 20, 31. Plaintiff's refusal to offer his support, however, did not thwart the plan. On November 15, 1999, Hoffa, as promised, imposed an emergency trusteeship on Local 115, effectively ousting Morris from his union positions. Id. ¶ 22.

One week after the change in leadership, union officers Sean Heim ("Heim"), Charles Argeros ("Argeros"), Paul Vanderwoude ("Vanderwoude") and Leo Reilly ("Reilly") went to Huff Paper Co., where plaintiff was employed, and informed the present Local 115 members who supported Morris that if they did not cooperate with the new IBT leadership they would "not get any representation whatsoever." Id. at ¶ 23. At this time, Heim directly threatened the grandson of

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<sup>10</sup> Plaintiff served forty months in a federal prison and some time in a state prison for possession of marijuana with the intent to deliver. Compl. at ¶ 31.

Morris with bodily harm. Id. Two days later, plaintiff and six other Local 115 members filed a grievance at the Local 115 Union Hall based on the above statements and threats. Id. at ¶ 24.

In December 1999, the Honorable John R. Padova of this court granted a preliminary injunction sought by Morris with reference to the emergency trusteeship, which led to the holding of trusteeship hearings by the IBT from January through early March 2000. Id. at ¶ 26, 27. These hearings were held in order to meet the IBT's requirements for imposing an emergency trusteeship. Id. ¶ 27. During the pendency of these hearings, plaintiff and other Local 115 members, believing the trusteeship was imposed for inappropriate reasons and that the IBT hearings were "a kangaroo court," picketed outside the Local 115 Union Hall. Id. ¶¶ 28, 29.

On March 14, 2000, in response to the preceding events, plaintiff filed charges with the National Labor Relations Board ("NLRB"). Id. ¶ 30. One of the charges cited the threats that had been made to Morris' grandson. Id. The NLRB then scheduled a meeting with plaintiff for May 5, 2000. Id. The purpose of the meeting was for plaintiff to provide testimony and sign an affidavit in support of the charges. Id.

On May 3, 2000, plaintiff attended his regularly scheduled meeting with his federal probation officer, Magdelyn Baez ("Baez"). Id. at ¶ 32. At the meeting, Baez informed plaintiff that Norton Brainard ("Brainard"), the attorney for Local 115, had sent her a videotape of him on the picket line and that Brainard claimed that this behavior was a violation of plaintiff's supervised release. Id. Although Baez did not believe that plaintiff had violated the terms of his federal supervised release by picketing, she did caution him to be careful about what he said and did on the picket line. Id. She also indicated to plaintiff that Brainard and Gerald McNamara ("McNamara"), an officer in Local 115, had been seeking his arrest for the past six months. Id. The next day, David Knorr ("Knorr"), plaintiff's state parole agent, left a citation at plaintiff's home directing

him to appear at Knorr's office on the following day, May 5, 2000, which also happened to be the day that plaintiff was scheduled to provide testimony at the NLRB meeting. Id. at ¶ 33.

When plaintiff arrived at Knorr's office on May 5, 2000, he was arrested and put in a holding cell. Id. at ¶ 34. Approximately ten minutes after being placed in the holding cell, Knorr arrived and said: "You don't have a clue why I'm arresting you. . . . Because you are a f----- goon and thug for Johnny Morris and you're a-- is going to jail and let's see him get you out of this." Id. at ¶ 35. While plaintiff was in the holding cell, Knorr conducted an allegedly illegal search of plaintiff's car. Id. at ¶ 36. During that search, three utility knives and a cell phone were found. Id. At 2:00 p.m., Knorr and four parole officers took plaintiff to his home where they conducted an allegedly illegal search of his house. Id. at ¶ 37. Nothing was found during the search of plaintiff's home. Id. Plaintiff was then sent to Graterford Prison, where he remained for one week while Knorr prepared the parole violation charges against him. Id. at ¶ 38.

Plaintiff was subsequently charged with four violations of his state parole. Id. Upon being informed of these charges, plaintiff requested a full parole panel hearing, which was granted and set for June 6, 2000. Id. at ¶ 39. Shortly before the hearing date, an additional charge was brought against plaintiff based on an allegation by William Oswald ("Oswald"), a member of Local 115, that he had been threatened and harassed by plaintiff at work. Id. At the June 6, 2000 parole hearing, Oswald provided allegedly false testimony consistent with his allegation of plaintiff's assaultive behavior. Id. at ¶ 40. Based on this testimony, the parole board revoked plaintiff's parole and incarcerated him for thirteen months, causing him to lose his job with Huff Paper Co. Id. at ¶¶ 4, 41.

Based on the aforementioned events, on December 31, 2001, plaintiff filed the instant complaint. Plaintiff alleges that various combinations of the above named defendants violated or

conspired to violate provisions of the RICO statute. In response, defendants filed numerous motions to dismiss. Presently before the court are defendants' motions to dismiss Counts III and IV of plaintiff's complaint pursuant to Rule 12(b)(6).

### STANDARD OF REVIEW

In ruling on a motion to dismiss for failure to state a claim upon which relief may be granted, the court must accept as true all well-pleaded allegations of fact in the plaintiff's complaint, and any reasonable inferences that may be drawn therefrom, and must determine whether "under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." Nami v. Fauver, 82 F.3d 63, 65 (3d Cir.1996) (citations omitted). But a court need not credit a complaint's "bald assertions" or "legal conclusions" when deciding a motion to dismiss. In re Burlington Coat Factory Securities Litigation, 114 F.3d 1410, 1429-30 (3d Cir.1997) (citations omitted). Claims should be dismissed under Rule 12(b)(6) only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

### DISCUSSION

The Racketeering Influenced and Corrupt Organizations Act is both a civil and a criminal statute. While RICO was designed to eradicate organized crime in the United States, it also created a civil cause of action for any person injured in his business or property by reason of a violation of Section 1962 of Title 18.<sup>11</sup> Beck v. Prupis, 529 U.S. 494, 495-496 (2000). To pursue a civil RICO

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<sup>11</sup> 18 U.S.C. § 1964(c) provides:

claim, “a plaintiff must first demonstrate that the defendant committed a violation of one or more subsections of [S]ection 1962, and second, that the violation was a substantial cause of the injury to his business or property.” Rehkop v. Berwick Healthcare Corp., 95 F.3d 285, 288 (3d Cir. 1996) (citing Shearin v. E.F. Hutton Group, Inc., 885 F.2d 1162, 1164 (3d Cir. 1989) (abrogated on other grounds)).

In the instant case, plaintiff asserts two civil RICO claims: a substantive claim under Section 1962(c) (Count III) and a conspiracy claim under Section 1962(d) (Count IV). In their motions to dismiss Counts III and IV of the complaint, defendants’ primary arguments, among other things, include: that plaintiff fails to adequately allege the elements of a Section 1962(c) claim; that plaintiff lacks standing to bring a civil RICO claim because he fails to show that he sustained an injury upon which he could recover under RICO; that plaintiff fails to show a causal connection between his injury and the alleged RICO violation; and, that plaintiff fails to allege sufficient facts to establish a conspiracy in violation of Section 1962(d).

The court, however, is unable to rule on these motions without further information. The court finds it impossible to discern the plaintiff’s legal theories or analyze the defendants’ arguments based on the facts alleged in the complaint. Thus, the plaintiff is required to file a RICO statement within 20 days of this order. Glessner v. Kenny, 952 F.2d 702, 712 n.9 (3d Cir. 1991) overruled on other grounds by, Jaguar Cars, Inc. v. Royal Oaks Motor Car Co., Inc., 46 F.3d 258 (3d Cir.1995) (encouraging district courts to require RICO Case Statement and noting that “[c]ourts may consider the RICO case statement in assessing whether plaintiffs’ RICO claims

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Any person injured in his business or property by reason of a violation of section 1962 of [RICO] may sue therefor in any appropriate United States district court and may recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney fee.

should be dismissed”).

The RICO Case Statement shall be in a form that uses the numbers and letters set forth below and shall include the following information:

1. State as to the plaintiff the alleged injury and the alleged cause thereof.
2. State as to each defendant:
  - a. the alleged misconduct; and
  - b. the basis of liability;
3. As the complaint alleges a violation of 18 U.S.C. § 1962(c):
  - a. Describe in detail the alleged enterprise. A description of the enterprise

shall include the following information:

- 1) The names of the individuals, partnerships, corporations, associations or other legal entities that allegedly constitute the enterprise;
- 2) The structure, purpose, function and course of conduct of enterprise;
- 3) Whether any defendants are employees, officers or directors of the alleged enterprise;
- 4) Whether any defendants are associated with the enterprise;
- 5) How each defendant conducted or participated, directly or indirectly, in the conduct of the enterprise’s affairs;
- 6) Whether you are alleging that the defendants are individuals separate from the alleged enterprise, that the defendants are the enterprise itself, or members of the enterprise;
- 7) Whether the same entity is both the liable “person” and the “enterprise” under 1962(c); and

8) Describe the effect of the enterprise on interstate or foreign commerce.

b. Describe in detail the alleged pattern of racketeering activity. A description of the pattern of racketeering activity shall include the following information:

1) The alleged predicate acts (including dates) and the specific statutes that were allegedly violated;

2) Which defendant participated in which alleged predicate act, and how;

3) How the predicate acts form a “pattern of racketeering activity;”

4) Whether and how the alleged predicate acts are related to each other as part of a common plan; and

5) Whether and how the alleged predicate acts amount to or threaten continuous criminal activity.

c. Describe the alleged relationship between the activities of the enterprise and the alleged pattern of racketeering activity and state how the racketeering activity differs from the usual and daily activities of the enterprise, if at all.

4. As the complaint alleges a violation of 18 U.S.C. 1962(d), describe the alleged conspiracy, including:

a. Who engaged in the conspiracy;

b. How they engaged in the conspiracy; and

c. What was the object of the conspiracy.

5. Describe the alleged injury to business or property.

6. Describe the direct causal relationship between the alleged injury and the violation

of the RICO statute.

### **CONCLUSION**

For the reasons set forth above, plaintiff is required to file a RICO Case Statement within 20 days of this order. Accordingly, the court will deny defendants' pending motions to dismiss. Such denial, however, is without prejudice to defendants' rights to file new motions to dismiss based on the allegations contained in the complaint as supplemented by the RICO Case Statement within 20 days of the filing of the RICO Case Statement. An appropriate order follows.



- 3) Whether any defendants are employees, officers or directors of the alleged enterprise;
- 4) Whether any defendants are associated with the enterprise;
- 5) How each defendant conducted or participated, directly or indirectly, in the conduct of the enterprise's affairs;
- 6) Whether you are alleging that the defendants are individuals separate from the alleged enterprise, that the defendants are the enterprise itself, or members of the enterprise;
- 7) Whether the same entity is both the liable "person" and the "enterprise" under 1962(c); and
- 8) Describe the effect of the enterprise on interstate or foreign commerce.

b. Describe in detail the alleged pattern of racketeering activity. A description of the pattern of racketeering activity shall include the following information:

- 1) The alleged predicate acts (including dates) and the specific statutes that were allegedly violated;
- 2) Which defendant participated in which alleged predicate act, and how;
- 3) How the predicate acts form a "pattern of racketeering activity;"
- 4) Whether and how the alleged predicate acts are related to each other as part of a common plan; and
- 5) Whether and how the alleged predicate acts amount to or threaten continuous criminal activity.

c. Describe the alleged relationship between the activities of the enterprise and the alleged pattern of racketeering activity and state how the racketeering activity differs from the usual and daily activities of the enterprise, if at all.

4. As the complaint alleges a violation of 18 U.S.C. 1962(d), describe the alleged conspiracy, including:

- a. Who engaged in the conspiracy;
- b. How they engaged in the conspiracy; and
- c. What was the object of the conspiracy.

5. Describe the alleged injury to business or property.

6. Describe the direct causal relationship between the alleged injury and the violation of the RICO statute.

Upon consideration of (1) the motion of defendant McNamara to dismiss the complaint as to Counts III and IV (Document No. 7); (2) the combined motion of defendants Smith and Keyser to dismiss the complaint as to Counts III and IV (Document No. 5); (3) the combined motion of defendants Brainard, Oswald, Argeros, Heim and Vanderwoude to dismiss the complaint as to Counts III and IV (Document No. 4); (4) the motion of defendant Reilly to dismiss the complaint as to Counts III and IV (Document No. 13); and (5) the combined motion of defendants IBT and Hoffa to dismiss the complaint as to Count IV (Document No. 3); and the plaintiff's responses thereto, IT IS HEREBY ORDERED that defendants' motions to dismiss are DENIED without prejudice to the right of defendants to file new motions to dismiss based on the allegations in the complaint as supplemented by the RICO Case Statement within 20 days of the filing of such Statement.

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William H. Yohn, Jr., Judge