

**The Extraterritorial Application of RICO:
A Matter of First Impression in the Eleventh Circuit**

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In *Liquidation Commission of Banco Intercontinental, S.A. v Luis Alvarez Renta*, 530 F.3d 1339 (11th Cir. 2008) the Eleventh Circuit, as a matter of first impression, concluded that the federal RICO statute can be applied extraterritorially *if* conduct material to the completion of the racketeering occurs in the United States *or* if significant effects of the racketeering are felt here.

The receiver for an insolvent Dominican bank, Banco Intercontinental, S.A., (“BanInter”) brought a lawsuit in the Southern District of Florida against Luis Alvarez Renta, a dual citizen of the United States and the Dominican Republic, alleging that Renta had wrongfully diverted millions of dollars in bank funds and asserting claims under the Racketeer Influenced and Corrupt Organizations Act (RICO). The United States District Court for the Southern District of Florida entered judgment, upon a jury verdict, in favor of the Receiver of the Liquidation Commission of Banco Intercontinental, S.A. (“Commission”). Renta appealed.

The case resulted from the 2003 collapse of BanInter. At the time, BanInter was among the largest banks in the Dominican Republic. After its collapse, the affairs of the bank were taken over by the Commission. Renta was accused of wrongfully diverting millions of dollars to finance his personal and other business ventures. He regularly conducted business in the State of Florida and was allegedly illegally transferring funds controlled by BanInter. These transfers involved banks located in the State of Florida and were a significant contributing cause of the failure of the bank. The *Renta* court recognized that although this is a case of first impression in the Eleventh Circuit, and other circuits have been divided on the issue of the extraterritorial application of RICO, the more widely accepted view is that RICO may be applied extraterritorially. The test being, whether the conduct material with the completion of the racketeering occurs in the U.S. or if the significant effects of the racketeering are felt here. *North South Fin. Corp. v. Al-Turki*, 100 F.3d 1046, 1051 (2d Cir. 1996); *Poulos v. Caesars World, Inc.*, 379 F.3d 654, 663-64 (9th Cir. 2004). Parenthetically, in addition to the RICO claim filed in the Southern District of Florida, a related case was filed by the Commission in the Dominican Republic against other defendants. The appellate court concluded that although almost all of the effects of the fraud were felt in the Dominican Republic, significant contacts between the fraud in the United States had occurred through the use of local Florida banks that assisted in facilitating the transfers to invoke the extraterritorial application of RICO.

The *Renta* court further found that “[w]here a federal statute is involved... a choice of law analysis does not apply in the first instance. The initial question is whether congress intended the statute in question to apply to conduct occurring outside the United States. This is a question of statutory interpretation... not a question of choice of law. *Orion Tire Corp. v. Goodyear Tire & Rubber*, 268 F.3d 1133, 1137 (9th Cir. 2001); *see also United States v. Plummer*, 221 F.2d 1298, 1304-06 (11th Cir. 2000) (whether a statute applies extraterritorially is a matter of statutory interpretation).

American courts, when exercising jurisdiction over international securities frauds claims, have adopted the binary inquiry that calls for the application of the conduct test and effects test: (1) whether the wrongful conduct occurred in the United States, *and* (2) whether the wrongful conduct had a substantial effect in the United States or upon United States citizens. Where appropriate, the two parts of the tests are applied together because “an admixture or combination of the two, often gives a better picture of whether there is sufficient United States involvement to justify the exercise of jurisdiction by an American court.” *Morrison v. National Australia Bank, Ltd.*, 547 F.3d 167 (2d Cir. 2008). In *Morrison*, the court understood that the issue boiled down to what conduct comprised the heart of the alleged fraud as the effects in that case were felt only in Australia and not in the United States. The court in *Morrison* concluded that they did not have subject matter jurisdiction because the actions taken, or not taken, by the defendant in Australia were significantly more central to the fraud and more directly responsible for the harm to investors than the acts that took place in Florida. *Id* at 177

Thus, borrowing the analysis in securities related fraud cases, the Eleventh Circuit held in *Renta* that the conduct test alone will satisfy the extraterritorial application of RICO *only* insofar as the conduct analysis demonstrates that significant conduct (underlying predicate acts) in furtherance of the RICO conspiracy occurred in the United States. Recognizing that the “effects” test was not satisfied because the damage and harm had been felt predominantly in the Dominican Republic where the bank was based and where the majority of depositors and creditors were located, the court concluded that extraterritorial jurisdiction could be derived from the conduct test only. Although, the *Renta* case also involved a significant amount of conduct abroad, the court found that because the scheme was carried out by directing transfers of funds to and from accounts at U.S. banks, including the U.S. bank account of the victim bank, that BanInter should have recourse to U.S. courts and its remedies.

The impact of *Renta* may result in the further opening of the litigation flood gates in the Eleventh Circuit for cases where the victims of the alleged conspiracy are overseas and the damages are only manifested or felt abroad. The ability to successfully bring a RICO claim under these circumstances, will not only ensure access to potential damages that may not be recoverable outside the U.S., but also add the potential of treble damages and recovery of attorney’s fees.