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Among the most important decisions facing an attorney in modern litigation is whether to sue in state or federal court. The decision ultimately may determine the length and cost of the litigation, the outcome on the merits, and the likelihood of success on appeal. The choice between state and federal court, however, is not always available to the attorney, since federal courts have limited jurisdiction. Congress has explicitly granted federal courts exclusive jurisdiction over certain federal causes of action. Some statutes, on the other hand, fail to indicate whether Congress intended federal jurisdiction to be exclusive over a particular cause of action. If exclusive jurisdiction has not been specifically granted to the federal courts, state courts presumptively share jurisdiction concurrently with the federal courts. The Racketeer Influenced and Corrupt Organizations Act of 1970 (RICO) does not clearly delegate jurisdictional authority.

3. FRIEDENTHAL, supra note 1, § 2.2. Exclusive federal jurisdiction means that a state court has no jurisdiction to hear the matter. In contrast, when jurisdiction is concurrent, a state court can hear and decide a federal claim. Id.
5. See infra notes 43-64 and accompanying text (discussing presumption of concurrent jurisdiction).
RICO prohibits profiting from a "pattern of racketeering activity." The statute is an attractive area of the law for attorneys because civil plaintiffs can sue for treble damages and attorneys' fees based upon garden variety commercial disputes. Moreover, Congress has explicitly directed the courts to interpret RICO broadly. Although the original purpose of Congress in enacting RICO was to attack the infiltration of legitimate business by organized crime, the majority of RICO claims have been asserted against persons not associated with professional criminal organizations. The expanded use of RICO against so-called "legitimate" business has prompted a great deal of debate. Critics perceive

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8. The expression "garden-variety" as used in RICO cases refers to "fraudulent" conduct in the marketplace that, without reliance upon RICO, is subjected to regulation pursuant to statutory schemes or traditional common law doctrines. Guide to RICO 27 (Corp. Prac. Series, BNA 1986).


11. A.B.A., SEC. OF CORP. BANKING & BUS. L., REPORT OF THE AD HOC CIVIL RICO TASK FORCE 55 (1985) [hereinafter cited as ABA Report]. Of the reported civil RICO cases decided at the trial court level, 40% involved securities fraud and 37% involved common law fraud in a commercial or business setting. Only 9% of the civil RICO cases involved allegations of criminal activities of a type generally associated with "professional criminals." Id. at 55-56. Of RICO cases filed between November 1985 and June 1986, 34% involved securities transactions and 30% involved commercial and contract disputes. Kennedy, Civil RICO in the Antitrust Context, 55 Antitrust L.J. 463, 487 (1986). Moreover, the number of cases appears to be spiralling upwards. See generally Lauter & Strasser, Holding Pattern: Civil RICO, Nat'l L.J., Dec. 30, 1985-Jan. 6, 1986, at S-9 (one major securities firm currently has 253 RICO suits pending); Galen, Litigation Blitz Hits Accountants, Nat'l L.J., June 16, 1986, at 27 ("virtually all securities cases brought today include a RICO claim"). The use of RICO against businesses and professions has increased dramatically. Nathan, Doubling the Treble Damage Option: What an Antitrust Practitioner Needs to Know About RICO, 52 Antitrust L.J. 327, 327 (1983). See also Ginger, Business' Civil RICO Liability Goes Unchecked: No Previous Conviction Required, 24 AM. BUS. L.J. 179, 179 (1986) (federal courts flooded with RICO claims against banks, accountants, and securities brokers); Flaherty, A RICO Crisis, Nat'l L.J., Aug. 13, 1984, at 1 [hereinafter cited as RICO Crisis] (during last seven years, RICO has become a principal claim in a broad range of commercial disputes); Guide to RICO, supra note 8, passim (discussing use of RICO in various civil contexts). Interestingly, big business has aggressively asserted RICO claims against competitors. See Blakey, The Act Is Neither Anti-Business Nor Pro-Business, It's Pro-Victim, Nat'l L.J., Aug. 26, 1985, at 25 [hereinafter cited as Pro-Victim]. The RICO suits being brought by large corporations are also settling for huge sums of money. For example, IBM's RICO suit against Hitachi Ltd. for alleged theft of computer software settled for approximately $200 million. Id.

12. "To some, the federal racketeering act is a good law getting bad press. To others, it's a bad law in need of redress. And, to those who are listening to both sides, it seems like a fundamentally sound law that could use some careful adjustment." Anderson,
that RICO is being asserted successfully in civil cases in which Congress did not intend the statute to be used. These critics therefore call for either the courts or Congress to narrow the statute. The United States Supreme Court has nevertheless assented to the broad application the lower courts have given to RICO’s substantive provisions. The liberal interpretation of RICO’s substantive provisions has recently been extended to its procedural provisions by the California Supreme Court in Cianci v. Superior Court.

The Cianci court determined that state courts have concurrent jurisdiction over claims arising under RICO. RICO is already an alluring area of the law to attorneys. The allure of bringing a RICO claim can only increase if the claim may be brought in state court as well as in federal court. Concurrent jurisdiction will therefore increase pressure on Congress to amend the statute.

Part I of this Note discusses the legal background of the jurisdictional dispute over claims arising under RICO. Part II sets forth the facts of the Cianci case and the decision of the California Supreme Court. Finally, the legal ramifications of the court’s ruling are examined in part III.

I. LEGAL BACKGROUND

A. RICO

Congressional hearings during the 1960s demonstrated the extent to which criminal organizations had corrupted or taken over legit-
imate businesses, unions, and units of state and local government. RICO was incorporated as Title IX of the Organized Crime Control Act of 1970 to bolster the anti-organized crime effort. In general, the statute prohibits persons associated with enterprises involved in interstate commerce from conducting, or conspiring to conduct, business affairs through a “pattern of racketeering activity.” RICO strengthened the evidence gathering process, established new penal prohibitions, and provided new remedies and increased sanctions.

In addition to allowing the government to impose criminal and civil sanctions, RICO also created a private right of action for treble damages. The many supporters of a private civil enforce-
ment scheme viewed civil RICO not only as a remedy for the honest businessman who was damaged by unfair competition from the racketeer businessman, but also as an additional deterrent to RICO violations through private attorneys general. Thus, through RICO, Congress sought the eradication of organized crime from the United States.

Although RICO was established in 1970, the civil bar essentially ignored the statute for more than a decade. Over the last seven years, however, the use of RICO has dramatically increased.

U.S.C.A. § 1964(c) (West 1984). The private right of action was incorporated into RICO so that private persons could supplement enforcement by the Department of Justice by acting as "private attorneys general," as well as provide a deterrent to potential violators of the statute. See infra note 31 and accompanying text. Private plaintiffs may also be entitled to equitable relief. See Guide to RICO, supra note 8, at 11 (noting that the courts are split on the availability of private injunctive relief under RICO); but see Religious Technology Center v. Wollersheim, 796 F.2d 1076 (9th Cir. 1986) (denying equitable relief). Punitive damages are not recoverable under RICO, although a RICO claim can often be coupled with common law fraud claims under which punitive damages generally are recoverable. Guide to RICO, supra note 8, at 11-12. 30. Pro-Victim, supra note 11, at 24. Following the McClellan hearings, those recommending or showing support for a treble damages provision in RICO included the President's Crime Commission of 1967, the ABA, the National Chamber of Commerce, and the Judicial Conference of the United States. Id. 31. 115 CONG. REC. 6993 (1969).

32. Id. See also Guide to RICO, supra note 8, at 5. The purpose of RICO was "the elimination of the infiltration of organized crime and racketeering activity into legitimate organizations operating in interstate commerce." Id. at 5 (citing S. REP. No. 617, 91st Cong., 1st Sess. 76 (1969)). Since Congress could not constitutionally enact a crime punishing only "mobsters," the statute proscribed certain kinds of conduct most commonly associated with the activities of organized crime when attempting to gain control or influence over "legitimate" enterprises. Id. See also Blakey & Golstock, "On the Waterfront"—RICO and Labor Racketeering, 1980, 17 AM. CRIM. L. REV. 341, 342 (1980). 33. Hartwell, Criminal RICO and Antitrust, 52 ANTITRUST L.J. 311, 311 (1983). See generally Blakey, The RICO Civil Fraud Action in Context: Reflections on Bennett v. Berg, 58 NOTRE DAME L. REV. 237 (1982) (private bar first discovered the potential of RICO in 1979); Tartow, Using the RICO Statute in Civil Litigation, Nat'l L.J., May 24, 1982, at 17. "Until recently, the criminal provisions of the statute were virtually the only source of RICO litigation . . . . [T]he civil bar remained essentially oblivious to the enormous potential of RICO civil actions." Id. 34. ABA REPORT, supra note 11, at 53a Table. Of the 270 federal district court RICO decisions prior to 1985, only 3% were decided during the 1970s. In the 1980s, use of RICO increased by 2% in 1980, 7% in 1981, 13% in 1982, 33% in 1983, and 43% in 1984. Id. See supra note 11 (breakdown of substantive law during this period). Much of this increase has been attributed to the 1981 decision of the United States Supreme Court in United States v. Turkette, 452 U.S. 576 (1981), which determined that RICO applies to both "legitimate" and "illegitimate" enterprises. 452 U.S. at 587. Steinhouse, supra note 9, at 307. The number of suits is climbing even faster since Sedima, S.P.R.L. v. Imrex Co., 105 S. Ct. 3275 (1985), in which the Supreme Court held that RICO must be liberally construed by the courts. Lauter & Strasser, supra note 11, at 16. See also Galen, supra note 11, at 26 (Sedima is expected to open the door for an even greater number of suits); Kennedy, supra note 11, at 487 Appendix C (the vast majority of post-Sedima RICO cases involve securities, contractual, or commercial disputes).
has proved to be an alluring area of the law for a number of reasons. The statute permits a prevailing party to recover litigation costs, attorneys’ fees, and treble damages for injuries resulting from a violation of RICO.\(^{35}\) In addition, a RICO claim may be based upon a variety of “predicate offenses” including mail, wire, and securities fraud.\(^{36}\) Mail fraud and wire fraud actions have historically been treated as ordinary commercial disputes restricted to state courts under common law principles of tort or contract law.\(^{37}\) RICO allows these traditional state-law claims to be brought directly into federal court, essentially federalizing the common law of fraud.\(^{38}\)

Furthermore, Congress has explicitly directed the courts to interpret the statute broadly.\(^{39}\) The congressional mandate of liberal

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\(^{35}\) 18 U.S.C.A. § 1964(c) (West 1984) provides that “[a]ny person injured by reason of a violation of section 1962 of this chapter . . . shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.” Id. RICO also contains liberal procedural provisions governing, among other things, venue and jurisdiction. Guide to RICO, supra note 8, at 5-6. See 18 U.S.C.A. §§ 1965-1968 (West 1984). Section 1965 allows nationwide service of process wherever the person “resides, is found, has an agent, or transacts his affairs.” Id. § 1965(d) (West 1984). Under § 1965, RICO provides broad venue provisions which allow a RICO civil action to be brought where the defendant “resides, is found, has an agent, or transacts his affairs.” Id. § 1965(a) (West 1984). In addition, venue may be asserted over “other parties” if venue is already established over at least one defendant, and if “the ends of justice so require,” even though serving or joining these parties would ordinarily be improper. Id. § 1965(b) (West 1984). See Guide to RICO, supra note 8, at 12; Farmer’s Bank of Delaware v. Bell Mortgage Corp., 577 F. Supp. 34, 35 (D. Del. 1978). Furthermore, § 1965 allows subpoenas of witnesses to be served in any judicial district, although only actions brought by the government can utilize the broadened subpoena power. Guide to RICO, supra note 8, at 12.

\(^{36}\) See 18 U.S.C.A. § 1961(1) (West 1984). Other offenses considered “racketeering activity,” and serving as “predicate” acts for a RICO lawsuit include federal substantive law, such as murder, kidnapping, arson, extortion, drug-dealing, fraud, and transporting stolen property interstate. Id.

\(^{37}\) Cole & McNamara, supra note 9, at 22. “Until the advent of civil RICO, private litigants had no access to the mail or wire fraud statutes . . . . [A] myriad of disputes which would in the past have been resolved under traditional theories of law may now be raised . . . under RICO.” Id.

\(^{38}\) Guide to RICO, supra note 8, at 16. “Given the prevalence of the use of the mails, interstate telephone calls, telexes, and wire transfers in commercial transactions, [RICO] undoubtedly does federalize state common law fraud.” Steinhouse, supra note 9, at 309. Common law fraud is frequently defined by very liberal standards. Id. See also Anderson, supra note 12, at 28 (as long as the mailings are sent to further the scheme, the mailings themselves need not contain any misrepresentations); Nathan, supra note 11, at 336 (very easy to satisfy common law fraud requirements). Furthermore, the United States Supreme Court has strongly suggested that civil RICO requires only a “preponderance of the evidence” standard rather than the far more difficult “proof beyond a reasonable doubt” standard. See Sedima, S.P.R.L. v. Imrex Co., 105 S. Ct. 3275, 3282-83 (1985). Thus, the attorney with a detailed understanding of the mailand wire-fraud statutes can utilize RICO to its fullest potential. See Guide to RICO, supra note 8, at 23-27 (detailed discussion of the mailand wire-fraud statutes).

\(^{39}\) See Pub. L. No. 91-452, § 904(a), 84 Stat. 947 (1970) (RICO is to “be liberally
RICO interpretation has resulted in the successful assertion of a RICO cause of action in an ever-increasing variety of commercial cases, resulting in wide-ranging criticism that the treble damages statute is being abused. There is even speculation that a "RICO bar" exists, specializing in RICO suits.\(^4\)

Construed to effectuate its remedial purposes\(^4\). RICO is unique among federal laws because it expressly directs courts to liberally interpret the statute, and because RICO creates both a criminal offense and a civil cause of action from existing crimes. Coffield, supra note 9, at 380; Guide to RICO, supra note 8, at 14. However, few of the legislative statements supporting a broad and liberal construction of the statute were made with reference to RICO's private civil provisions. Sedima, 105 S. Ct. at 3290 (Powell, J., dissenting). Nevertheless, a majority of the United States Supreme Court in Sedima concluded that since RICO's purposes are most evident in the private right of action provision, the congressional liberal construction mandate should be applied when construing the private right of action. Id. at 3283 n.10, 3286.

40. Guide to RICO, supra note 8, at 19. "Litigators, never at a loss for ingenuity, naturally [find] the prospect of treble damages under Section 1964(c) (as well as the possibility of invoking what might otherwise be unavailable federal jurisdiction) very inviting for garden-variety fraud claims." Parnes v. Heinhold Commodities, Inc., 548 F. Supp. 20, 23 (N.D. Ill. 1982) (emphasis original). Indeed, RICO litigation has multiplied at an explosive rate during the 1980s, due mostly to the inclusions of the criminal mail and wire fraud statutes among the list of predicate acts upon which a RICO claim may be based. Guide to RICO, supra note 8, at 20, 22. See also ABA Report, supra note 11, at 55 (37% of civil RICO cases based upon mail or wire fraud). Before its debut, RICO was criticized by some members of Congress who viewed the statute as an "invitation for disgruntled and malicious competitors to harass innocent businessmen . . . ." H.R. Rep. No. 1549, 91st Cong., 2d Sess. 187, reprinted in 1970 U.S. Code Cong. & Admin. News 4007, 4083 (dissenting views of Representatives Conyers, Mikva, and Ryan). Indeed, the fact that only nine percent of the RICO cases involved Mafia-type activities supports the Congressmen's fears. See ABA Report, supra note 11, at 55-56. These statistics, in large part, motivated the ABA's Ad Hoc Civil RICO Task Force to recommend that the statute be overhauled, observing that "as currently applied, the statute is grossly overbroad, encompassing business transactions that could not have been foreseen or intended by Congress when it passed these provisions." Id. at 1. See Civil RICO Claims Can Be Brought in State Court, CAL. BUS. L. REP. (CEB) at 237 (May 1986) [hereinafter cited as Civil RICO Claims].

41. The essence of the RICO controversy arises from two aspects of the statute. First, the fact that RICO claims are brought against so-called "legitimate" business, is deemed by some to be an "abuse" of a powerful legal weapon intended to be used primarily against organized crime. See Nathan, supra note 11, at 342. Others, however, note that since fraud costs the nation upwards of $200 billion each year, "RICO properly applies to [fraud] no matter who engages in it." Blakey, A Vital Hedge Against Corporate Fraud, N.Y. Times, Jan. 5, 1986, at F2, col. 1. A second alleged abuse of the statute centers around the incentive to settle a RICO claim. A RICO defendant is subjected to the threat of a triple damage award and the stigma of a "racketeer" label. See Nathan, supra note 11, at 342. Commentators suggest that RICO suits are therefore being brought as strike suits to coerce settlement from so-called "deep pockets," persons and businesses not traditionally considered to be "organized crime." Horn, The Venue of the Debate Shifts from the Courts to the Congress, Nat'1 L.J., Aug. 26, 1985, at 24; see also O'Brien, Victims Or Racketeers, N.Y. Times, Jan. 5, 1986, at F2, col. 1 ("legitimate businesses are more intimidated by RICO than by gangsters").

B. Concurrent Jurisdiction

When establishing a new federal cause of action, Congress can either vest jurisdiction exclusively in the federal courts or confer jurisdiction concurrently upon both state and federal courts. If the statute expressly states whether jurisdiction is exclusive or concurrent, resolution of the question is not a problem. Determining congressional intent becomes far more complex, however, when the statute is silent as to state court jurisdiction.

In response to the difficulty posed by congressional silence, the United States Supreme Court, in the seminal case of *Claflin v. Houseman*, established the presumption that state courts have concurrent subject-matter jurisdiction over federal causes of action. Experts consider the presumption to reflect the understanding of the founding fathers of our nation, as seen in their writings and debates, and in the Constitution itself. The *Claflin* rule remained unchanged for over a century until *Gulf Offshore Oil Co. v. Mobil Oil Corp.* when the United States Supreme Court articulated the current standard for determining whether a federal claim can be brought in state court.

In *Gulf Offshore*, the Court determined that Congress may confine jurisdiction of a federal law to the federal courts either

44. Id.
45. Id. See also id. at 359. Congress has, with relatively few exceptions, rarely considered questions of jurisdictional allocation when enacting substantive legislation. Id.
46. 93 U.S. 130 (1876).
47. Id. at 136. The *Claflin* Court articulated the presumption of concurrent jurisdiction when Congress is silent as follows: "Where jurisdiction may be conferred on the United States courts, it may be made exclusive where not so by the Constitution itself; but, if exclusive jurisdiction be neither express or implied, the State courts have concurrent jurisdiction whenever, by their own constitution, they are competent to take it." Id.
49. 453 U.S. 473 (1981); see Charles Dowd Box Co. v. Courtney, 368 U.S. 502, 508 (1962) (stating that the presumption has remained unmodified since *Claflin*).
50. *Gulf Offshore*, 453 U.S. at 478. *Gulf Offshore* was an indemnity action. One of Gulf Offshore's employees was injured while being evacuated from an offshore drilling platform during a storm. The employee was injured while attempting to board a vessel chartered by Mobil. Id. at 475-76. The platform was located above the seabed of the Outer Continental Shelf. The *Gulf Offshore* Court had to determine whether federal courts have exclusive jurisdiction over personal injury and indemnity cases arising under the Outer Continental Shelf Lands Act (OCSLA), 67 Stat. 462 (1953) (codified as amended at 43 U.S.C.A. §§ 1331-1356 (West 1986)). *Gulf Offshore*, 453 U.S. at 475.
implicitly or explicitly.\textsuperscript{51} Three factors which can rebut the presumption of concurrent jurisdiction were set forth by the \textit{Gulf Offshore} Court.\textsuperscript{52} The Court first stated that the presumption can be rebutted by showing that the explicit wording of the statute confers exclusive jurisdiction.\textsuperscript{53} The \textit{Gulf Offshore} decision emphasized, however, that the mere grant of jurisdiction to the federal courts does not deprive a state court of concurrent jurisdiction over a matter of federal law.\textsuperscript{54} The Court next declared that the presumption may be rebutted by demonstrating that the legislative history unmistakably implies that Congress intended jurisdiction to be exclusive.\textsuperscript{55} Finally, the Court determined that the presumption may be rebutted by showing that state court jurisdiction is clearly incompatible with the federal interests involved.\textsuperscript{56} To establish "clear incompatibility" under \textit{Gulf Offshore}, a court must consider the desirability of uniform interpretation of the specific federal statute,\textsuperscript{57} the expertise of federal judges in that area of federal law,\textsuperscript{58} and the assumed greater hospitality of federal courts to distinctively federal claims.\textsuperscript{59}

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\textsuperscript{51} \textit{Gulf Offshore}, 453 U.S. at 478. \\
\textsuperscript{52} Id. The Court stated that "the presumption of concurrent jurisdiction can be rebutted by an explicit statutory directive, by unmistakable implications from legislative history, or by a clear incompatibility between state-court jurisdiction and federal interests." \textit{Id. Accord Dowd Box Co.}, 368 U.S. at 508. \\
\textsuperscript{53} \textit{Gulf Offshore}, 453 U.S. at 478. Determining whether the statute explicitly confers exclusivity merely requires analysis of the express statutory language. See, e.g., \textit{id.} at 478-79 (jurisdictional provision of OCSLA silent); Valenzuela v. Kraft, 739 F.2d 434 (9th Cir. 1984) (jurisdictional provision of Title VII, Civil Rights Act of 1964, silent). \\
\textsuperscript{54} See \textit{Gulf Offshore}, 453 U.S. at 479. The Court noted that although Congress granted the federal courts original jurisdiction over OCSLA cases, "[i]t is black letter law . . . that the mere grant of jurisdiction to a federal court does not operate to oust a state court from concurrent jurisdiction over the cause of action." \textit{Id.} at 478-79 (citations omitted). \\
\textsuperscript{55} \textit{Id.} at 478. In \textit{Gulf Offshore}, one of the petitioner's arguments was premised upon a perceived incompatibility between exclusive federal sovereignty over the Outer Continental Shelf and state court jurisdiction over controversies relating to the Shelf. \textit{Id.} at 480. The Court determined that the congressional assertion of exclusive \textit{political} jurisdiction over the Shelf does not evince congressional intent to assert exclusive federal \textit{judicial} jurisdiction over controversies arising from activities in the area. \textit{Id.} at 479-82. Instead, the Court set forth several factors generally recommending exclusive federal court jurisdiction over a particular matter. \textit{Id.} at 483-84. \\
\textsuperscript{56} \textit{Id.} at 478. \\
\textsuperscript{57} \textit{Id.} at 483-84. The Court stated that uniform interpretation of OCSLA was unnecessary since, although the personal injury action was brought under federal law, the content of that law is borrowed from the law of the adjacent state. \textit{Id.} at 484. The Court thus concluded that "[t]here is no need for uniform interpretation of laws that vary from State to State." \textit{Id.} \\
\textsuperscript{58} \textit{Id.} at 484. The Court determined that because state judges have greater expertise
According to *Gulf Offshore*, the courts may therefore examine the language, structure, legislative history, and underlying policies of the particular federal law to determine whether the state courts have concurrent jurisdiction over the matter arising under that law. 60 Defeating the presumption of concurrent jurisdiction under *Gulf Offshore* is, however, especially difficult when the legislative history of the federal statute is minimal. 61 The legislative history concerning RICO is problematic in this regard. 62 There is no evidence that Congress ever expressly considered the question of jurisdiction over RICO causes of action. 63 Nevertheless, most of the courts addressing the issue of jurisdiction over RICO claims before 1986 determined that RICO required exclusive federal jurisdiction. 64

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60. Id.
61. See generally id. at 477-84. In *Gulf Offshore*, the Court concluded that "nothing in the language, structure, legislative history, or underlying policies of OCSLA suggests that Congress intended federal courts to exercise exclusive jurisdiction over personal injury actions arising under OCSLA." Id. at 484.
62. See, e.g., id. at 484 (nothing in the language of the statute, legislative history, or policies underlying OCSLA suggests a congressional intent of exclusive jurisdiction). But see Valenzuela v. Kraft, 739 F.2d 434, 435-36 (9th Cir. 1984) (inferred congressional intent regarding jurisdiction over Title VII actions (Civil Rights Act of 1964) by looking at nonjurisdictional provisions).
63. See Flaherty, *Two States Lay Claim to RICO*, Nat'l L.J., May 7, 1984, at 10. As Robert Blakey, the principal draftsman of RICO, put the problem, "[t]here is nothing on the face of the statute or in the legislative history" that touches on the question of jurisdiction. "To my knowledge, no one even thought of the issue." Nevertheless, in Blakey's opinion, "courts can infer from the statute that if Congress had thought about it, they would have made [jurisdiction] exclusive." Id.
64. Prior to *Cianci v. Superior Court*, no federal appellate court had affirmatively addressed the issue of state court jurisdiction over RICO claims. See infra note 243 (discussing post-*Cianci* federal court decisions). Dicta in some federal court decisions indicated some support for favoring the presumption of concurrent jurisdiction. However, the only two district courts which, in an in-depth analysis, applied the *Gulf Offshore* factors to RICO, ruled in favor of exclusive federal jurisdiction. *Compare* County of Cook v. Midcon Corp., 574 F. Supp. 902, 912 (N.D. Ill. 1983), aff'd, 773 F.2d 892 (7th Cir. 1985) and Kinsey v. Nestor Exploration Ltd.-1981A, 604 F. Supp. 1365, 1370-71 (1985) (exclusive federal jurisdiction over RICO claims) and *County of Cook v. Midcon Corp.*, 574 F. Supp. 902, 912 (N.D. Ill. 1983), aff'd, 773 F.2d 892 (7th Cir. 1985) (exclusive federal jurisdiction over RICO claims).
C. Jurisdiction Over RICO Claims

Section 1964(c) of RICO provides that claims for violations of the statute "may" be brought in a federal court. According to Gulf Offshore, statutory language can defeat the presumption of concurrent jurisdiction only if the language explicitly limits jurisdiction to the federal courts. Since the term "may" in RICO's jurisdictional provision does not clearly and expressly limit jurisdiction, the courts have uniformly determined that the first Gulf Offshore factor is not satisfied. The second Gulf Offshore factor, that Congress "unmistakably intended" federal exclusivity over RICO claims, has proved to be a common ground for courts to find that the concurrent jurisdiction presumption is rebutted.

While legislative history concerning the intended scope of RICO's criminal scheme is abundant, there is very little documentation of

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65. 18 U.S.C.A. § 1964(c) (West 1984) provides that "[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefore in any appropriate United States District Court." 18 U.S.C.A. § 1964(c) (West 1984) (emphasis added).

66. See supra notes 53-54 and accompanying text (discussion of the first Gulf Offshore factor rebutting the normal presumption).

67. Kinsey, 604 F. Supp. at 1370 (infer); Midcon, 574 F. Supp. at 911-12 (infer). As the California Supreme Court in Cianci put the resolution of the first Gulf Offshore factor, "[i]t is not argued, nor could it be, that the provisions creating a private right of action expressly confines jurisdiction over RICO claims to the federal courts." Cianci, 40 Cal. 3d at 910, 710 P.2d at 378, 221 Cal. Rptr. at 577 (emphasis added) (citations omitted).

68. See supra note 55 and accompanying text (discussing second Gulf Offshore factor).
the intended scope of the statute's private civil scheme.\textsuperscript{69} In fact, no legislative history exists expressing congressional intent on the question of jurisdiction.\textsuperscript{70} In \textit{County of Cook v. Midcon Corp.},\textsuperscript{71} the district court nevertheless concluded that the similarities between RICO and an antitrust provision indicated that Congress "unmistakably intended" that jurisdiction over RICO causes of action be exclusive.\textsuperscript{72} The jurisdictional language in RICO repeats practically verbatim section 4 of the Clayton Act,\textsuperscript{73} an antitrust statute.\textsuperscript{74} Section 4 has been consistently interpreted to confer exclusive jurisdiction on the federal courts.\textsuperscript{75} The \textit{Midcon} court concluded that since Congress must have known that courts had construed virtually identical language as giving federal courts exclusive jurisdiction over antitrust claims, the use of the same language in RICO manifested unmistakable congressional intent to confer similar jurisdiction over claims arising under RICO.\textsuperscript{76}

Whereas the court in \textit{Midcon} based its determination on an antitrust analogy, another court, in \textit{Kinsey v. Nestor Exploration Ltd.-1981A},\textsuperscript{77} focused upon RICO as a complete statutory scheme to determine that Congress intended RICO claims to lie exclusively in the federal system. In \textit{Kinsey}, the court refused to infer that congressional silence in section 1964(c), a single narrow provision, was equivalent to an affirmative grant of jurisdiction to the states.\textsuperscript{78} The court, guided by a ninth circuit appellate court decision in...

\textsuperscript{69} Sedima, S.P.R.L. v. Imrex Co., 741 F.2d 482, 488 (2d Cir.), rev'd on other grounds, 105 S. Ct. 3275 (1985); see also Horn, supra note 41, at 36 (the legislative history "is almost entirely devoted to the problem of the infiltration of Mafia-type criminals into legitimate business"); supra notes 23-27 and accompanying text (discussion of RICO's legislative history).

\textsuperscript{70} See supra note 63 (principal draftsman of RICO stating that the issue of jurisdiction was never discussed).

\textsuperscript{71} 574 F. Supp. 902 (1983), aff'd, 773 F.2d 892 (7th Cir. 1985).

\textsuperscript{72} Id. at 912.


\textsuperscript{76} Midcon, 574 F. Supp. at 912. See Levinson v. American Accident Reinsurance Group, 503 A.2d 632, 635 (1985). In \textit{Levinson}, the court agreed with the district court's legislative analysis in \textit{Midcon}, and further stated that "it is an accepted principle of statutory construction that the legislature has constructive knowledge of judicial interpretations of existing statutes when drafting new legislation." Id. But see \textit{Midcon}, 773 F.2d at 905 n.4 (doubting the sufficiency of analogizing to the antitrust laws to rebut the normal presumption that state courts share concurrent jurisdiction over federal statutes).

\textsuperscript{77} 604 F. Supp. 1365 (E.D. Wash. 1985).

\textsuperscript{78} See id. at 1370-71.
volving Title VII actions (Civil Rights Act of 1964), concluded in favor of exclusivity by looking at RICO as a complete statutory scheme. Looking at the underlying statute, the court observed that the overall congressional intent of RICO was to halt the expansion of organized racketeering activities. The court noted that to reach this end, Congress created a new cause of action, along with a number of procedural mechanisms available only to the federal courts. The Kinsey court deduced that reserving the procedural power necessary to implement the underlying objectives of RICO solely with the federal system sufficiently established that Congress unmistakably intended exclusive federal jurisdiction over RICO claims, thus rebutting the concurrent jurisdiction presumption of the second Gulf Offshore factor.

Prior to late 1985, no court applied the third Gulf Offshore factor concerning the "clear incompatibility" of federal interests with state court adjudication to the RICO statute. In 1985, however, the United States Supreme Court rendered a landmark decision concerning RICO interpretation which has since been used in the jurisdictional analysis. Although the decision did not involve the question of jurisdiction, the Supreme Court, in Sedima, S.P.R.L.

79. See Valenzuela v. Kraft, 739 F.2d 434 (9th Cir. 1984). In Valenzuela, the court held that federal courts possess exclusive jurisdiction over Title VII actions. The ninth circuit used the Gulf Offshore factors as the framework for its jurisdictional analysis. The court first noted that the jurisdictional provision in Title VII does not expressly state that federal jurisdiction shall be exclusive. Id. at 435. The court determined, however, that the presumption of concurrent jurisdiction was rebutted because the underlying statute contained references to procedural mechanisms which were available only in the federal system. Id. at 435-36. In addition, the court stated that although it could find no legislative history concerning the question of jurisdiction, "the absence of reference to the state courts combined with Congress’s affirmative references to the [district courts of the United States] suggests an intent to make federal jurisdiction exclusive." Id. at 436. The analysis by the ninth circuit in Valenzuela is strong indication that the court would conclude in favor of exclusivity over RICO claims. Therefore, a federal district court in California analogizing to Valenzuela would likely reach a conclusion different than the California Supreme Court in Cianci.

81. Id. at 1371.
82. Id. See note 35 (discussing RICO's procedural provisions). The Kinsey court noted that the following provisions were available only in the federal system: 18 U.S.C.A. §§ 1963 (West 1984) (criminal prosecutions exclusively federal by unmistakable implication), 1965 (extended venue and process provisions applicable only in federal courts), 1967 (limited to actions involving the United States), 1968 (only Attorney General may act thereunder). Kinsey, 604 F. Supp. at 1371. Although the court did not expressly state, a number of the predicate offenses involve federal crimes which clearly can only be prosecuted in a federal court.
84. See supra note 64 (listing cases addressing RICO jurisdiction question, none discussing the third Gulf Offshore factor).
v. Imrex Co., 85 affirmed the congressional mandate that RICO’s substantive provisions are to be read broadly to effectuate the statute’s remedial purposes, and rejected attempts by the lower courts to judicially contain expansive interpretations of the statute. 86

In Sedima, the Supreme Court observed that the primary intent of Congress in enacting RICO was to prevent the infiltration of legitimate businesses by organized crime. 87 The Court noted an American Bar Association report which showed that by 1984 only nine percent of all RICO cases involved allegations of the type of criminal activities generally associated with professional criminals. 88 The Court also noted the strong criticism surrounding the almost exclusive application of RICO against so-called “legitimate” businesspersons. 89 The Sedima majority, however, assented to the broad interpretation being accorded RICO by the lower courts, and emphasized that Congress intended that RICO’s substantive provisions be read broadly. 89 The Court emphatically stated that any limitations on the applicability of RICO were for Congress to make, not the courts. 89

II. THE CASE

In Cianci v. Superior Court, 92 the California Supreme Court applied the United States Supreme Court’s broad directive in Sedima to RICO’s jurisdictional provision. 93 Applying the Gulf Off-
shore factors to RICO, the Cianci court determined that the presumption of concurrent jurisdiction was not rebutted. Of several state court opinions addressing the question of jurisdiction over RICO claims, Cianci is the first case to conclude, based upon a thorough analysis, that state courts have concurrent jurisdiction.

A. The Facts

Cianci v. Superior Court arose from a dispute between two groups of doctors over the establishment, funding, and operation of a hyperbaric medicine (HBO) department at a hospital facility. The action was brought by a group of doctors who invested in a limited partnership formed to buy the equipment for an HBO department at Brookside Hospital in San Pablo, California. The limited partners filed a complaint against the corporation formed to operate the HBO department, and against the general partners, Dr. Paul Cianci and Dr. John Poppingo, who were also the never addressed the question of jurisdiction over RICO claims. On the other hand, the Sedima Court rejected an opportunity to narrow RICO's scope, and sanctioned the statute's use against "legitimate" business. In Sedima, the Court reversed, by a five to four vote, a lower court holding that a plaintiff must plead a racketeering injury in a civil RICO cause of action. Sedima, 105 S. Ct. at 3277, 3285. The Court also held that there is no requirement that a RICO treble damage action can proceed only against a defendant who has already been convicted of a predicate act or of a RICO violation. Id. at 3277, 3284.

94. Cianci, 40 Cal. 3d at 916, 710 P.2d at 382, 221 Cal. Rptr. at 582.
96. Hyperbaric medicine involves the periodic administration of pure oxygen in a pressurized chamber, and is the treatment of choice for decompression sickness (commonly called "the bends"), gas gangrene, carbon monoxide poisoning, and air embolism. Hyperbaric medicine is also useful as supplementary therapy in the handling of problem wounds and life-threatening infections, including burn therapy, crushed limbs, and high-risk plastic surgery. Cianci, 40 Cal. 3d at 907 n.1, 710 P.2d at 376 n.1, 221 Cal. Rptr. at 575 n.1.
97. Id. at 907, 710 P.2d at 376, 221 Cal. Rptr. at 575.
99. Ventox, Inc. (Ventox) was the California corporation formed to operate the hyperbaric medicine department at Brookside under an agreement with the hospital. Dr. Cianci and Dr. Poppingo owned all Ventox stock equally. Dr. Cianci was the medical director of the hyperbaric medicine department at Brookside when the action was commenced. Id.
corporation’s sole shareholders. The complaint alleged breaches of fiduciary duty. The limited partners sought a dissolution of the partnership, an accounting, damages, and impression of a constructive trust on certain assets of the general partners. Dr. Cianci filed a cross-complaint against the limited partners, Dr. Poppingo, and Dr. Poppingo’s attorneys. The cross-complaint alleged, among other things, violations of, and conspiracy to violate, RICO. The RICO action was based upon a letter and phone calls from Dr. Poppingo’s attorney, which Dr. Cianci alleged was part of a fraudulent scheme to gain control of the HBO department at Brookside Hospital.

The trial court sustained demurrers to the RICO claims on the ground that federal courts have exclusive jurisdiction over RICO causes of action. The California Supreme Court, in a matter of first impression, concluded that the trial court erred in sustaining

100. Id.
101. Return to Alternative Writ of Mandate (Burns group), Cianci v. Superior Court, No. 258115, at 9 (Cal. Sup. Ct. Jun. 1985) (copy on file at Pacific Law Journal) [hereinafter cited as Alternative Writ]. The complaint alleged that the general partners, through Ventox, took certain funds from the limited partnership and applied them to the creation and operation of the same hyperbaric medicine department involving the limited partnership. Thus, the limited partners claimed deprivation of funds which should have gone to the limited partnership. Id. at 9-10.
103. Id. at 908 n.2, 710 P.2d at 376 n.2, 221 Cal. Rptr. at 576. See also Cal. Bus. & Prof. Code §§ 16700-16758 (West 1964) (Cartwright Act).
104. The cross-complaint alleged intentional and negligent interference, and conspiracy to interfere, with the right to practice hyperbaric medicine (the first through sixth causes of action); violation of, and conspiracy to violate, RICO (the seventh and eighth causes of action); and conspiracy to violate the Cartwright Act (the ninth cause of action). Cianci, 40 Cal. 3d at 908, 710 P.2d at 376, 221 Cal. Rptr. at 576. See also Cal. Bus. & Prof. Code §§ 16700-16758 (West 1964) (Cartwright Act).
105. Petition, supra note 98, at 9; Return to Alternative Writ (Berger group), Cianci v. Superior Court, No. 258115, at 8-9 (Cal. Super. Ct., Contra Costa County 1985) (copy on file at Pacific Law Journal). Dr. Cianci alleged that these communications were for the purpose of causing Brookside to refrain from entering into a tentative agreement with Dr. Cianci to continue as medical director of the HBO department, and threatening to sue the hospital if that agreement was made. Petition, supra note 98, at 9.
106. Id. at 908 n.2, 710 P.2d at 376 n.2, 221 Cal. Rptr. at 576 n.2. The California Supreme Court issued a peremptory writ of mandate to review the trial court’s rulings. Despite a traditional reluctance to employ a prerogative writ to review rulings on pleadings, the court intervened in the Cianci case because of the significant legal importance and timeliness of the issues presented. Id.
the demurrers to the RICO claims. The court held that states have concurrent jurisdiction over claims arising under RICO.

B. The Majority Opinion

In an opinion written by Justice Mosk, the California Supreme Court ruled that state courts have jurisdiction concurrently with
federal courts over claims arising under RICO. The decision of the court was based upon an analysis of the Gulf Offshore factors. First, the court examined whether RICO explicitly conferred exclusive jurisdiction to the federal courts. Second, the legislative history of RICO was reviewed to determine whether exclusive jurisdiction was unmistakably implied. Finally, the court discussed whether state court jurisdiction was clearly incompatible with the federal interests involved.

1. Silence of Section 1964(c)

The Cianci court observed that the language of RICO’s jurisdictional provision does not explicitly limit jurisdiction to the federal courts. Section 1964(c) of RICO does not state, nor even suggest, that jurisdiction over RICO claims should be exclusive. Section 1964(c) merely provides that RICO claims “may” be brought in a United States district court. Moreover, the court noted, as did the United States Supreme Court in Gulf Offshore, that the mere grant of jurisdiction to the federal courts does not deprive a state court from hearing the matter. The court thus found that the presumption of concurrent jurisdiction was not rebutted by the first Gulf Offshore factor, the explicit wording of the statute.

2. Lack of Congressional Intent

The majority next analyzed the legislative history behind RICO to determine if Congress unmistakably intended section 1964(c) to confer exclusive jurisdiction. The Cianci court acknowledged that two federal district courts had concluded in favor of exclusive

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112. Id. at 916, 710 P.2d at 382, 221 Cal. Rptr. at 582.
113. See id. at 909-16, 710 P.2d at 377-82, 221 Cal. Rptr. at 577-82.
114. See infra notes 117-21 and accompanying text.
115. See infra notes 122-31 and accompanying text.
116. See infra notes 132-42 and accompanying text.
117. Cianci, 40 Cal. 3d at 910, 710 P.2d at 378, 221 Cal. Rptr. at 578.
118. Id. See also supra note 63 and accompanying text (statement by principal draftsman of RICO that Congress did not consider the question of jurisdiction when enacting RICO).
119. Cianci, 40 Cal. 3d at 910, 710 P.2d at 378, 221 Cal. Rptr. at 578. See also supra note 65 (language of jurisdictional provision).
120. Cianci, 40 Cal. 3d at 910-11, 710 P.2d at 378, 221 Cal. Rptr. at 578. See also supra note 54 and accompanying text (United States Supreme Court in Gulf Offshore Oil Co. v. Mobil Oil Corp., 453 U.S. 473 (1981), discussing effect of mere grant of jurisdiction to the federal courts).
121. Cianci, 40 Cal. 3d at 910-11, 710 P.2d at 378, 221 Cal. Rptr. at 577-78.
federal jurisdiction over RICO claims.\textsuperscript{122} The majority rejected the reasoning of the decision in \textit{County of Cook v. Midcon Corp.}\textsuperscript{123} as superficial, stating that the analogy to an antitrust prototype falls short of establishing an unmistakable implication that Congress intended exclusive jurisdiction over RICO claims.\textsuperscript{124} The majority opinion also determined that the \textit{Kinsey v. Nestor Exploration Ltd.-1981A}\textsuperscript{125} decision had read the statute too narrowly in determining that the reliance of RICO on federal procedural devices showed an unmistakable congressional intent to limit jurisdiction to the federal courts.\textsuperscript{126} In addition, the \textit{Cianci} majority concluded that the \textit{Kinsey} result contradicted the subsequent United States Supreme Court's decision in \textit{Sedima, S.P.R.L. v. Imrex Co.}\textsuperscript{127}

The \textit{Cianci} court determined that Congress unmistakably intended that section 1964(c) be liberally construed to effectuate the statute's remedial purposes.\textsuperscript{128} The court noted that in \textit{Sedima}, the United States Supreme Court had declined to limit the scope of RICO's substantive provisions, in part because narrowing RICO's substantive provisions would create inappropriate and unnecessary obstacles in the way of a private litigant.\textsuperscript{129} The \textit{Cianci} court

\begin{itemize}
\item \textsuperscript{122} \textit{Id.} at 911, 710 P.2d at 378 n.3, 380, 221 Cal. Rptr. 578, 580 n.3.
\item \textsuperscript{123} 574 F. Supp. 902 (1983), aff'd, 773 F.2d 892 (7th Cir. 1985).
\item \textsuperscript{124} \textit{Cianci}, 40 Cal. 3d at 911, 710 P.2d at 378, 221 Cal. Rptr. at 578. \textit{See supra} notes 71-76 and accompanying text (discussion of \textit{Midcon}). The majority's analysis regarding the similarity of RICO and Clayton Act provisions is similar to that of a federal district court. \textit{See State Farm Fire & Casualty Co. v. Estate of Caton}, 540 F. Supp. 673 (E.D. La. 1983), \textit{rev'd and remanded on other grounds}, 698 F.2d 1295 (5th Cir. 1983). \textit{See also} Nathan, \textit{supra} note 11, at 356 (discussing \textit{State Farm}, and the use of antitrust precedent in RICO interpretation). The court in \textit{State Farm Fire & Casualty Co. v. Estate of Caton} held that while the death of a wrongdoer would abate a treble damage remedy under the antitrust laws, it did not abate a treble damage claim under civil RICO. \textit{State Farm}, 540 F. Supp. at 682. The court stated that RICO was "cast as a separate statute intentionally to avoid the restrictive precedent of antitrust jurisprudence." \textit{Id.} at 680. The \textit{State Farm} court concluded that "to burden RICO with restrictive antitrust precedents would be contrary to the express legislative history." \textit{Id.} However, the congressional motivation for enacting a separate statute from the Clayton Act is far from clear, since Congress utilized the same language for civil RICO that had been used in the Clayton Act, and since the legislative history repeatedly indicates that the antitrust case law would be available to guide the interpretation of RICO. Nathan, \textit{supra} note 11, at 356-57. Some experts, therefore, are of the opinion that antitrust precedent should guide the interpretation of RICO's provisions. \textit{Id.} at 358. \textit{See also} notes 71-76 and accompanying text (\textit{Midcon} court's analysis of this issue).
\item \textsuperscript{125} 604 F. Supp. 1365 (1985).
\item \textsuperscript{126} \textit{Cianci}, 40 Cal. 3d at 914 n.3, 710 P.2d at 380 n.3, 221 Cal. Rptr. at 580 n.3. \textit{See supra} notes 77-83 and accompanying text (discussion of \textit{Kinsey}).
\item \textsuperscript{127} \textit{Cianci}, 40 Cal. 3d at 914 n.3, 710 P.2d at 380 n.3, 221 Cal. Rptr. at 580 n.3. \textit{See Sedima, S.P.R.L. v. Imrex Co.}, 105 S. Ct. 3275 (1985).
\item \textsuperscript{128} \textit{Cianci}, 40 Cal. 3d at 912, 710 P.2d at 379, 221 Cal. Rptr. at 579.
\item \textsuperscript{129} \textit{Id.}
\end{itemize}
deduced that exclusive jurisdiction would similarly create an inappropriate obstacle for RICO plaintiffs by barring an injured party from seeking redress in a convenient forum. Because there was no evidence sufficient to imply that Congress unmistakably intended exclusive jurisdiction over RICO claims, the majority concluded that the presumption of concurrent jurisdiction was not rebutted by the second Gulf Offshore factor.

3. Minimal Incompatibility Between Federal Interests and State Court Jurisdiction

Finally, the majority looked at whether state court jurisdiction would be "clearly incompatible" with the federal interests involved in RICO. To establish "clear incompatibility" under Gulf Offshore, the Cianci court had to consider the desirability of uniform interpretation of RICO, the expertise of federal judges in RICO cases, and the assumed greater hospitality of federal courts to RICO as a distinctively federal claim. First, the majority concluded that the congressional goal of uniformity in the interpretation of RICO would not be frustrated by concurrent jurisdiction. The court declared that the scope of three out of the four elements comprising a RICO violation are "indisputably detailed and clear" after the United States Supreme Court's decision in Sedima. Although the Cianci court acknowledged that the scope of the remaining element was somewhat amorphous, the court expressed confidence that the statute's legislative history would adequately limit state court expansion of RICO.

130. Id.
131. Id. at 912-14, 710 P.2d at 378-80, 221 Cal. Rptr. at 578-80.
132. See supra notes 56-59 and accompanying text (discussing Gulf Offshore "clear incompatibility" factors).
133. Cianci, 40 Cal. 3d at 914, 710 P.2d at 380, 221 Cal. Rptr. at 580. See supra note 57 and accompanying text (discussion of the first Gulf Offshore incompatibility consideration, the need for uniformity in interpretation).
134. Cianci, 40 Cal. 3d at 915, 710 P.2d at 381, 221 Cal. Rptr. at 580. The elements comprising a RICO violation are (1) conduct, (2) of an enterprise, (3) constituting a pattern, (4) of racketeering activity. See supra note 26 (elements of RICO cause of action). The elements which the Cianci court declared were "unambiguous" after the United States Supreme Court's Sedima decision are "conduct," "of an enterprise," and "of racketeering activity." Cianci, 40 Cal. 3d at 915, 710 P.2d at 381, 221 Cal. Rptr. at 580.
135. Cianci, 40 Cal. 3d at 915, 710 P.2d at 381, 221 Cal. Rptr. at 580.
136. See supra note 134 (pattern).
137. Cianci, 40 Cal. 3d at 915, 710 P.2d at 381, 221 Cal. Rptr. at 580-81. But see infra note 227 (definition of pattern still uncertain); infra notes 225-30 (discussion of how state court judges may well expand upon existing federal law).
The second *Gulf Offshore* consideration, that RICO requires the expertise of federal judges, was also resolved in favor of concurrent jurisdiction.138 The majority observed that state courts are well equipped to handle RICO cases since the statute’s list of predicate offenses includes state law violations.139 A state court judge, therefore, should have an understanding of RICO comparable to that of a federal court judge.140 Because a RICO cause of action can be based upon a violation of state law, the court also rejected the final *Gulf Offshore* consideration, that state judges will be more hostile to RICO claims than will federal judges.141 The court thus concluded that the presumption of concurrent jurisdiction was not rebutted by showing a clear incompatibility between state court jurisdiction and federal interests.142

**C. Dissenting Opinion**

The dissenting opinion, written by Justice Lucas,143 followed the analysis of both the *Kinsey* and *Midcon* courts, and concluded that Congress unmistakably intended to restrict jurisdiction over RICO claims solely to the federal courts.144 The dissent first agreed with the district court in *Midcon* that the striking similarity between section 1964(c) of RICO and section 4 of the Clayton Act demonstrated that Congress purposefully modeled the two jurisdictional provisions after one another.145 The dissent observed that the courts have uniformly held that section 4 of the Clayton Act confers exclusive jurisdiction.146 Because of the striking similarity of section

138. *Id.* at 915, 710 P.2d at 381, 221 Cal. Rptr. at 581. See *supra* note 58 and accompanying text (discussion of the second *Gulf Offshore* incompatibility consideration).

139. *Cianci*, 40 Cal. 3d 915, 710 P.2d at 381, 221 Cal. Rptr. at 581. The court observed that 23 states have already enacted "little RICO" state statutes, and 6 additional states have such statutes pending. *Id.* at 916, 710 P.2d at 381, 221 Cal. Rptr. at 581. See, e.g., CAL. PENAL CODE §§ 186-186.8 (West 1970). Many of these "little RICO" state statutes also provide civil remedies, including injunctive relief. State RICO statutes have already been frequently used. *Cianci*, 40 Cal. 3d at 916, 710 P.2d at 381, 221 Cal. Rptr. at 581.

140. *See Cianci*, 40 Cal. 3d at 916, 710 P.2d at 381, 221 Cal. Rptr. at 581. "While federal judges must be presumed to have greater expertise over [federal law violations], state judges must be presumed to have greater expertise over the state violation." *Id.*

141. *Id.*

142. *Id.* at 916, 710 P.2d at 382, 221 Cal. Rptr. at 581.

143. *See supra* note 111 (Lucas, J., joined by Grodin, J.).

144. *See Cianci*, 40 Cal. 3d at 925-26 & n.1, 710 P.2d at 388 & n.1, 221 Cal. Rptr. at 588 & n.1 (dissent noting that the courts in *Midcon*, *Kinsey*, and *Greenview* held in favor of exclusive jurisdiction).

145. *Id.* at 926, 710 P.2d at 389, 221 Cal. Rptr. at 589. See *supra* notes 71-76 and accompanying text (discussion of *Midcon* court analysis).

146. *Cianci*, 40 Cal. 3d at 926, 710 P.2d at 389, 221 Cal. Rptr. at 589.
4 of the Clayton Act and RICO's jurisdictional provision, Justice Lucas concluded that the Midcon court's analysis was correct, and that Congress unmistakably implicated exclusive federal jurisdiction.\footnote{\textit{Id.}}

Justice Lucas also determined that the majority had improperly focused on the predicate offenses when establishing congressional intent.\footnote{\textit{Id.}} The Kinsey court's concentration on the overall statutory scheme was, in the dissent's opinion, the proper focus.\footnote{\textit{Id.}} Lucas observed that Congress did not enact RICO for the purpose of imposing federal liability for state business fraud claims.\footnote{\textit{Id.}} He noted that the overall objective of RICO primarily focused on organized crime.\footnote{\textit{Id.}} Justice Lucas further stated that RICO was enacted to prevent and punish wide reaching criminal schemes affecting interstate commerce.\footnote{\textit{Id.}} According to this analysis, the concentration on interstate commerce exhibits the congressional intent that RICO have a broad, interstate application, thus indicating the need to restrict RICO jurisdiction to the federal courts.\footnote{\textit{Id.}}

The dissent also argued that the procedural powers necessary to implement the statute's objectives are reserved exclusively to the federal courts.\footnote{\textit{Id.}} For example, Justice Lucas noted that section 1965 of RICO provides extended venue and process provisions applicable only in federal courts.\footnote{\textit{Id.}} He observed that Congress does not, however, have the ability to similarly extend the jurisdictional reach of state courts.\footnote{\textit{Id.}} By extending the procedural powers of federal courts, and by using federal definitions as a substantive part of RICO, the dissent followed Kinsey in concluding that Congress "unmistakably intended" that RICO causes of action could only be brought in the federal courts.\footnote{\textit{Id.}}

\begin{footnotes}

\footnotenum\textit{Id.}
\footnotenum\textit{Id.} at 928, 710 P.2d at 390, 221 Cal. Rptr. at 590.
\footnotenum\textit{Id.} at 927, 710 P.2d at 389, 221 Cal. Rptr. at 589. \textit{See supra} notes 77-83 and accompanying text (discussion of \textit{Kinsey} court analysis).
\footnotenum\textit{Id.} at 927, 710 P.2d at 389, 221 Cal. Rptr. at 589. \textit{See supra} notes 23-32 and accompanying text (discussion of RICO's primary goal).
\footnotenum\textit{Cianci}, 40 Cal. 3d at 928, 710 P.2d at 390, 221 Cal. Rptr. at 590. \textit{See supra} notes 85-91 and accompanying text (\textit{Sedima} Court's discussion of congressional intent).
\footnotenum\textit{Cianci}, 40 Cal. 3d at 928, 710 P.2d at 390, 221 Cal. Rptr. at 590.
\footnotenum\textit{Id.} at 927, 710 P.2d at 389, 221 Cal. Rptr. at 589.
\footnotenum\textit{Id.} at 927, 710 P.2d at 389, 221 Cal. Rptr. at 590.
\footnotenum\textit{Id.} at 928, 710 P.2d at 390, 221 Cal. Rptr. at 590.
\footnotenum\textit{Id.} at 929, 710 P.2d at 391, 221 Cal. Rptr. at 590. \textit{See also supra} notes 77-83 and accompanying text (discussion of \textit{Kinsey} court analysis); \textit{supra} note 79 (discussion of the ninth circuit's analysis of jurisdiction issue concerning Title VII cases).
\end{footnotes}
Justice Lucas concluded that the third *Gulf Offshore* factor, the incompatibility between federal interests and state court jurisdiction, also rebutted the usual presumption in favor of concurrent jurisdiction.\(^{158}\) Lucas asserted that the complexity of RICO itself gravitates toward federal exclusivity.\(^{159}\) Although federal courts have been hearing RICO cases since the statute’s inception in 1970, Lucas noted that the federal courts are divided over interpretations of RICO.\(^{160}\) He observed that permitting concurrent jurisdiction would only bring state courts into the already divided area of RICO interpretation.\(^{161}\) Expansion of jurisdiction could therefore, in the dissent’s view, result in even more variant interpretations and unintended uses of the statute.\(^{162}\) In addition, Lucas observed that since many of the predicate offenses which may constitute a RICO violation include federal law, state courts will often need to interpret federal statutes when deciding disputes involving a RICO cause of action.\(^{163}\) The dissent argued that federal courts are far more familiar with the interpretation of federal law than are state courts.\(^{164}\) According to the Lucas analysis, the federal interests involved are therefore “clearly incompatible” with state court jurisdiction.

Justice Lucas asserted an additional policy consideration favoring exclusive jurisdiction. Because most of the RICO civil actions are asserted against “legitimate” businesspersons, the stigma of being labeled a “racketeer” may create an incentive to settle RICO cases.\(^{165}\) Lucas also speculated that the imposition of treble damages for a RICO violation creates a strong incentive for settlement of even meritless cases, since the federal courts are in conflict over the scope of the statute’s substantive provisions.\(^{166}\) Incentives to settle, in the dissent’s opinion, can only increase if state court decisions are added to already conflicting federal court decisions.\(^{167}\) Thus, Justice Lucas concluded that concurrent jurisdiction may

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\(^{158}\) *Cianci*, 40 Cal. 3d at 926, 710 P.2d at 389, 221 Cal. Rptr. at 589.

\(^{159}\) *Id.* at 929, 710 P.2d at 391, 221 Cal. Rptr. at 591.

\(^{160}\) *See id.* at 929 n.6, 710 P.2d at 391 n.6, 221 Cal. Rptr. at 591 n.6 (examples of issues where federal courts are split). *See also infra* note 227 (further examples of uncertain areas).

\(^{161}\) *Cianci*, 40 Cal. 3d at 930, 710 P.2d at 392, 221 Cal. Rptr. at 591.

\(^{162}\) *Id.*

\(^{163}\) *Id.* *See supra* notes 36-38 and accompanying text (discussing predicate acts).

\(^{164}\) *Cianci*, 40 Cal. 3d at 930, 710 P.2d at 392, 221 Cal. Rptr. at 591.

\(^{165}\) *Id.* *See supra* notes 11-13, 34 & 40-41, and accompanying text; *infra* note 232 and accompanying text (use of RICO’s assertion against so-called “legitimate” businesses).

\(^{166}\) *Cianci*, 40 Cal. 3d at 930, 710 P.2d at 391-92, 221 Cal. Rptr. at 591.

\(^{167}\) *Id.* at 930, 710 P.2d at 392, 221 Cal. Rptr. at 591.
enhance RICO’s use for the same sort of extortion the statute was designed to attack.\textsuperscript{168}

### III. LEGAL RAMIFICATIONS

Besides the procedural advantages inherent in a RICO cause of action,\textsuperscript{169} an attorney may believe that bringing a client’s RICO action in state court increases the chances of success.\textsuperscript{170} For example, an attorney may wish to avoid bringing a case in federal court because of the heightened formality and enhanced possibility of sanctions for inadequate legal analysis.\textsuperscript{171} The availability of a state court system as the forum ultimately can be the difference between winning and losing a RICO case.\textsuperscript{172} The ruling of the California Supreme Court in \textit{Cianci v. Superior Court} in favor of concurrent jurisdiction permits the attorney to bring a client’s RICO cause of action in state court to take advantage of the more favorably perceived state forum.\textsuperscript{173} Moreover, the potential positive ramifications of bringing a RICO cause of action in state court extend to both the procedural and substantive law areas involved.\textsuperscript{174}

\textsuperscript{168} Id. See infra notes 232-41 and accompanying text (discussing the use of concurrent jurisdiction as an additional means to coerce settlement of RICO claims).

\textsuperscript{169} See supra notes 35 & 82 (RICO’s procedural provisions). RICO contains several procedural rules that may impact significantly on the viability of a RICO cause of action. Sections 1965-1968 contain liberal procedural provisions, including extended personal jurisdiction and venue provisions. See id. Most courts have determined that a “preponderance of the evidence” standard applies, even when a criminal prosecution of the same predicate offense would require proof “beyond a reasonable doubt.” Guide to RICO, supra note 8, at 13. Indeed, although the United States Supreme Court declined to rule on the burden of proof question, the Court indicated that a “preponderance test” seemed proper. Id. (citing Sedima, S.P.R.L. v. Imrex Co., 105 S. Ct. 3275, 3282 (1985)). RICO does not specify a statute of limitations for civil actions. The approach accepted by most courts is to look to the most closely analogous state statute of limitations. The question of what statute of limitations should apply to civil actions, however, is unsettled. Id.

\textsuperscript{170} When a RICO cause of action is brought in federal court, parties are entitled to the broad discovery rights of the Federal Rules of Civil Procedure. Conceivably, a defendant could be exposed to pretrial discovery concerning every aspect of its business over a 10 year period. Id. at 14. However, whether Congress has the constitutional power to require state courts to follow the Federal Rules of Civil Procedure is unclear. Valenzuela v. Kraft, 739 F.2d 434, 436 (9th Cir. 1984).

\textsuperscript{171} See Kirsch, supra note 1, at 34 (quoting one attorney as follows: “We find that about 90 percent of our cases are brought in state court . . . while 10 years ago more than half were brought in federal court.”).

\textsuperscript{172} Id. See infra notes 185-203 and accompanying text (discussing the “black robe” factor for avoiding federal court).

\textsuperscript{173} Kirsch, supra note 1, at 31.

\textsuperscript{174} See supra note 46-50 and accompanying text (discussing concurrent jurisdiction).
The advent of concurrent jurisdiction, however, also brings potential negative ramifications. Concurrent jurisdiction may cause the expansion of federal laws.\textsuperscript{175} Further, the uncertainty which exists concerning RICO’s scope of application may also result in the statute’s increased use as a device to coerce settlement of meritless cases.\textsuperscript{176}

A. Potential Positive Ramifications of Concurrent Jurisdiction

The following discussion is not intended to set forth an exhaustive list of the differences between the two court systems, but merely to provide factors which might influence an attorney contemplating a RICO cause of action to file his action in state court.

1. The Doe Factor

Procedural differences between the state and federal court systems are numerous.\textsuperscript{177} For example, federal law does not permit the use of “Does,” or other fictitious defendants.\textsuperscript{178} Moreover, all defendants must be named and served with process prior to the expiration of the statute of limitations.\textsuperscript{179} Under California law, a defendant not only may be named a “Doe” defendant, but may also be served with process up to three years after the action has been filed, even though the statute of limitations has expired.\textsuperscript{180} Thus, while the attorney in federal court may be prohibited from adding a defendant, the attorney may be able to add that same “Doe” defendant in a state court proceeding.

\textsuperscript{175} See infra notes 210-14 and accompanying text (discussing substantive advantages). See also Redish & Muench, supra note 43, at 334. These positive ramifications may also be practical in effect. If the number of RICO claims begin to inundate the federal court system, concurrent jurisdiction would allow a distribution of the projected case load among the federal and state judicial systems. Id. See also infra note 231 and accompanying text (discussing potential federal law expansion). Concurrent jurisdiction could therefore do much to alleviate the overload within the federal judiciary. Redish & Muench, supra note 43, at 334. In addition, situations may arise where, for the convenience of the parties, the number of available forums should be increased. Id.

\textsuperscript{176} See infra notes 226-31 and accompanying text (discussing potential RICO as an incentive to settle).

\textsuperscript{177} See generally Kirsch, supra note 1, at 31 (discussing primary differences between federal and state court).

\textsuperscript{178} See id. at 34 (discussing the federal rule, but stating that a recent ninth circuit decision, Lindley v. General Elec. Co., 780 F.2d 797 (9th Cir. 1986), cert. denied, 106 S. Ct. 2926 (1986), suggests California’s rule applies in a diversity action).

\textsuperscript{179} See id. (discussing the federal rule).

\textsuperscript{180} See id. (discussing the California rule).
2. The Money Factor

The decision to bring suit in either the state or federal system can also have a dramatic effect upon the cost of the litigation. All federal cases filed in California must be tried in one of the five district courts located in either San Francisco, Los Angeles, Sacramento, San Diego, or Fresno. Litigation in state court may be far more convenient and less expensive for litigants, attorneys, and witnesses who live outside one of the few cities with federal courthouses. Further, an attorney too far from a federal court city may prefer to empanel a jury consisting of local residents.

3. The Black Robe Factor

An attorney may prefer to file a client's action in state court because of the effect a particular state or federal judge may have upon various aspects of the litigation. The federal courts are administered under a "single-judge" system. Cases are generally assigned to one judge who presides over each aspect of the case, including discovery, law and motion proceedings, settlement conferences, applications for emergency relief, and the trial itself. A federal judge is therefore familiar with the status of each case on his or her docket. Moreover, the judge has a vested interest in the prompt resolution of each case in his or her docket, in order to avoid a large backlog of cases.

State courts, on the other hand, are administered under a "multijudge" system. Cases filed in state court are usually placed on a master calendar, under which judges do not have to control their own docket of cases. Moreover, each aspect of a case filed in state court, such as discovery, law and motion proceedings, settlement conferences, and trial, is usually heard by a different judge. Thus, state court judges may have less of an interest than their

181. Id. at 35.
182. Id.
183. Id.
184. Id.
185. Id. at 32-33; Civil RICO Claims, supra note 40, at 238.
186. Kirsch, supra note 1, at 32; Civil RICO Claims, supra note 40, at 238.
187. Kirsch, supra note 1, at 32; Civil RICO Claims, supra note 40, at 238.
188. Civil RICO Claims, supra note 40, at 238.
189. Kirsch, supra note 1, at 32.
federal counterparts in the case as a whole.\textsuperscript{190} For example, pretrial motions are heard by a Law and Motion judge, who frequently has thirty or more motions on his or her daily calendar, and usually has fewer clerks to help with this accumulation than a federal court judge.\textsuperscript{191} As a result, many practitioners believe the chance of a case surviving pretrial motions to dismiss are much higher in state court than in federal court.\textsuperscript{192}

If the case survives pretrial motions to dismiss, the "black robe" factor can also affect the odds for surviving motions to dismiss during the trial.\textsuperscript{193} A state court judge ordinarily is not assigned to try the case until the first day of trial, but the same federal court judge presiding over pretrial matters remains as the trial judge.\textsuperscript{194} Moreover, while a state court judge can be removed from trying a case by a peremptory challenge,\textsuperscript{195} no similar rule for mandatory removal is provided by the Federal Rules of Civil Procedure.\textsuperscript{196} Thus, many practitioners believe the chances are also much better in state court for surviving motions to dismiss during trial.\textsuperscript{197}

Finally, the amount of control an individual judge exerts upon a case can drastically affect both the attorney and client. The attorney may view jury selection as a crucial opportunity to familiarize the jury with both the attorney and the case.\textsuperscript{198} In state court, the attorney conducts \textit{voir dire}.\textsuperscript{199} In federal court, however, \textit{voir dire} is conducted by the judge.\textsuperscript{200} Federal courts also are perceived to have a heightened formality, and are so rulebound that an attorney often becomes inundated with paperwork.\textsuperscript{201} Because of the heightened formality, federal court judges also tend to be much more abrupt and terse with an attorney than state court judges, and federal judges have a greater tendency to impose financial sanctions upon attorneys and their clients for frivolous motions and discovery abuses.\textsuperscript{202} Thus, to increase their control

\begin{footnotes}
\begin{enumerate}
\item[190.] Id.
\item[191.] \textit{Civil RICO Claims, supra} note 40, at 238.
\item[192.] Kirsch, supra note 1, at 32; \textit{Civil RICO Claims, supra} note 40, at 238.
\item[193.] \textit{Civil RICO Claims, supra} note 40, at 238.
\item[194.] Id.; Kirsch, supra note 1, at 32.
\item[195.] See \textit{CAL. Crw. PROC. CODE} § 170.6 (West 1982).
\item[196.] Kirsch, supra note 1, at 32.
\item[197.] \textit{Civil RICO Claims, supra} note 40, at 238.
\item[198.] Kirsch, supra note 1, at 32.
\item[199.] See \textit{id}.
\item[200.] Id.
\item[201.] Id. at 32-33.
\item[202.] Id. \textit{See also} Adams & Nolin, \textit{Pretrial Abuses Now Punished by U.S. Courts}, Nat'l
\end{enumerate}
\end{footnotes}
over trial matters and to lessen the chance of sanctions, attorneys may prefer to take advantage of concurrent jurisdiction and file their action in a state court.\textsuperscript{203}

4. The Jury Box Factor

Many attorneys favor having their case heard by a state court jury as opposed to a jury in federal court.\textsuperscript{204} Federal courts in California empanel only six jurors, and a unanimous jury verdict...

\textsuperscript{203} L.J., Mar. 17, 1986, at 15 (discussing increase in federal court sanctioning of attorneys and clients for pretrial abuses). Congress amended the Federal Rules of Civil Procedure in 1980 and 1983 to encourage courts to address the problem of pretrial abuse which was rampant during the 1970s and early 1980s, but for which federal court judges were apparently reluctant to impose sanctions. Shaffer, \textit{Rule 11 and the Prefiling Duty}, Nat'l L.J., Aug. 18, 1986, at 28; Adams & Nolin, \textit{supra}, at 15. Currently, at least six rules contain sanction provisions to control pretrial abuses. \textit{See Fed. R. Civ. P. 11, 16, 26, 30, 37 & 45. See also Dombroff, Attorneys in Affirmed Pleadings Risk Sanctions, Nat'l L.J., Jan. 27, 1986, at 15; Shaffer, \textit{supra}, at 28 (both discussing the background, requirements, and impact of Rule 11). Cf. \textit{id.} (citing Pravic v. United States Indus. Clearing, 109 F.R.D. 620 (E.D. Mich. 1986) (Rule 11 sanctions levied against an attorney who failed to confirm a legal opinion he had received from other counsel)). Rules allowing a party to seek recourse when deposition abuse occurs add to the reluctance of an attorney to bring an action in the federal system. \textit{See Adams & Nolin, \textit{supra}, at 15; Fed. R. Civ. P. 30, 37 & 45. Under Rule 37, sanctions can be awarded for inadvertent failures to comply with a court's directive regarding a deposition. Adams & Nolin, \textit{supra}, at 15. Rule 26(g), concerning discovery requests, gives the judge a great deal of flexibility to impose sanctions, permitting the imposition of sanctions without an existing order compelling behavior, and even in the absence of a motion for sanctions. Rule 26(g) sanctions can even be imposed where the bulk of the discovery requests are simply out of proportion to the case. \textit{Id.} Moreover, the express language of the rule does not limit the sanctions available. \textit{See id.} (Rule 26(g) specifies only an "appropriate sanction"). Rule 26(g) sanctions also appear to be mandatory once a violation of the rule occurs. Thus, the reluctance of federal judges to impose sanctions for pretrial misconduct has greatly decreased. Shaffer, \textit{supra}, at 28.

A recent study by the Federal Judicial Council indicates that federal judges are more willing than previously to sanction lawyers for insufficient prefiling inquiry. \textit{Id.} An attorney may therefore feel that bringing a client's action in state court will lessen the chance of sanctions.


\textsuperscript{204} \textit{Civil RICO Claims, supra} note 40, at 238.
is required. Further, attorneys litigating in federal court are not permitted to approach the jury during opening statements, examination of witnesses, or closing arguments. California courts, however, empanel twelve-member juries, and require only a three-fourths majority to prevail. Attorneys litigating in a California court can also lean on the rail of the jury box if they so desire. Many attorneys believe that the composition of state court jury panels and the greater informality of state courts generally tend to favor the plaintiff’s case, and can actually enhance a jury verdict.

5. The Expansion Factor

The choice between the state and federal systems may prove especially valuable when attorneys seek to have a judge or jury apply RICO’s substantive provisions to a particular factual situation. A RICO cause of action can be based upon any number of violations of state law. State court judges are far more familiar with the law of their own jurisdictions than are federal court judges. Familiarity with state law means that it will be applied more often. State judges may therefore be more expansive in applying state law in close cases. This “expansion factor” of state court jurisdiction over RICO claims may prove invaluable to a RICO plaintiff asserting his or her claim in a situation when the attorney is unsure whether a RICO violation has been committed.

B. Potential Negative Ramifications of Concurrent Jurisdiction

Although the ability to choose between the federal and state systems presents an attorney with several possible advantages, con-
current jurisdiction also presents potential negative legal ramifications. Concurrent jurisdiction may create a trap for unwary plaintiffs and their attorneys. Federal substantive law may also be unintentionally expanded by state court judges deciding RICO causes of action. Finally, concurrent jurisdiction may enhance the use of RICO for purposes of extortion, a consequence which the statute was originally designed to prevent.

1. Trap for Unwary Plaintiffs

The federal courts have been hearing RICO cases since the statute's inception in 1970, and therefore have far more experience with RICO litigation than state courts. State courts, however, are not bound by the decisions of the federal district or appellate courts when deciding state substantive law, which comprise several of the predicate offenses upon which a RICO cause of action may be based. A state court may therefore decide that a RICO violation has occurred in a situation in which a federal court judge has already denied the assertion of RICO.

The risk that concurrent jurisdiction will adversely affect a defendant is minimized by federal procedural rules. If a RICO defendant perceives that his chances of successfully defending against the lawsuit are enhanced in a federal court, the defendant can simply remove the plaintiff's action to a federal court. Thus,
Cianci may be a trap for an unwary plaintiff's counsel who wants to add a RICO treble damages claim to a non-RICO fraud claim based upon state law. Instead of being afforded the benefits of state court, the plaintiff may unexpectedly have to litigate in federal court.

Further, a plaintiff who brings his non-RICO action in state court may find that the defendant has filed a counter-claim alleging a RICO violation based upon either mail or wire fraud. The non-RICO plaintiff may prefer that a federal court judge resolve the RICO dispute because of the increased chance that a state court judge will find a RICO violation. Only the defendant, however, can remove the action to federal court. The non-RICO plaintiff might find that concurrent jurisdiction may therefore create a trap for unwary plaintiffs.

2. Expansion Of Federal Law

Concurrent jurisdiction over RICO claims may result in the expansion of federal laws. The resolution of a RICO claim may depend upon the state court's interpretation of federal substantive law as the predicate offense upon which the RICO cause of action is based. Numerous issues involving the interpretation of RICO's provisions remain ambiguous after Sedima. Even if a state court

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221. See Civil RICO Claims, supra note 40, at 238 ("Cianci may be a trap for unwary plaintiffs").
222. Id.
223. See, e.g., supra notes 96-106 and accompanying text (discussion of Cianci case, in which plaintiff brought non-RICO claims and defendant cross-complained a RICO cause of action).
224. See supra notes 210-14 and accompanying text (discussing how state court judges may be more expansive in applying the law in close cases).
225. See supra note 220 (concerning removal).
226. Id. See also supra note 56 (predicate offenses include both state and federal substantive law).
227. At least one of the essential elements in establishing a RICO cause of action is unclear. Presently, a "pattern of racketeering activity" requires at least two acts of "racketeering activity" within 10 years of each other to establish the requisite "pattern." 18 U.S.C.A. § 1961(5) (West 1976). The United States Supreme Court, in a footnote in Sedima, suggested that two isolated acts may not necessarily suffice to establish a "pattern." GUIDE TO RICO, supra note 8, at 7 (citing Sedima, S.P.R.L. v. Imrex Co., 105 S. Ct. 3275, 3285 n.14 (1985)). Nevertheless, the lower federal courts are divided concerning a more narrow construction of the pattern requirement. Id. at 8. Section 1962(a) of RICO prohibits the use of income derived from a "pattern of racketeering activity" to acquire a financial interest in an enterprise. GUIDE TO RICO, supra note 8, at 8. See 18 U.S.C.A. § 1962(a) (West 1984). Whether the "person" and the "enterprise" in a RICO action brought under section 1962(a) can constitute the same entity is unclear. GUIDE TO RICO, supra note 8, at 9. The question of what statute of limitations applies to civil RICO actions is
judge bases his decision upon marginal or unpersuasive authority, the federal system may be unable to overturn the extension of federal law. If the state court decision was based on independent and adequate state grounds, the Supreme Court is precluded from deciding the correctness of a state court’s rulings on issues of state law simply because those issues arise in a case that also raises federal questions. Therefore, if a state judge found that a RICO defendant violated two state law predicate offenses and one federal law predicate offense, the state law ruling would be sufficiently broad to support the state court’s judgment. The United States Supreme Court would thus lack jurisdiction to review the judgment, regardless of the correctness of the state court’s resolution of the RICO cause of action. The potential for state expansion of federal law would therefore be magnified if the advent of concurrent jurisdiction results in a flood of RICO cases being brought in state court.

3. Incentive for Settlement

The potential for the expansion of RICO by state court interpretations may also result in the statute’s increased use as an
incentive for settlement.\textsuperscript{232} RICO is a vague area of the law.\textsuperscript{233} The more vague an area of the law is, the greater the chance that the law will be found to apply to a specific factual situation.\textsuperscript{234} The chances of application are enhanced by the United States Supreme Court's mandate in \textit{Sedima}, that RICO's substantive provisions are to be interpreted broadly.\textsuperscript{235} The incentive to settle a RICO claim becomes quite high, if one adds to the above factors, the potential for a treble damage award and the stigmatization of the RICO defendant as a "racketeer."\textsuperscript{236}
The incentive to settle a RICO case can only increase by allowing an additional jurisdictional option to potential RICO plaintiffs. State court judges determining the scope of RICO's substantive provisions will increase the divisiveness and inconsistency already existing among federal court judges. State court judges may also be more willing to find a RICO violation in a close case where the RICO cause of action is based upon state law, since state judges may be more liberal in applying the familiar law of their own jurisdiction. Thus, while concurrent jurisdiction gives RICO increased flexibility to deal with some situations, it also increases the possibility the statute will be abused in other circumstances. A RICO plaintiff may therefore use concurrent jurisdiction, and the increased uncertainty of RICO's scope of application that will follow, to enhance an already strong incentive to settle even meritless cases. As pointed out by Justice Lucas in his dissenting opinion in Cianci, Congress may thus find that RICO is being successfully used for the same sort of extortion the statute was enacted to prevent.

CONCLUSION

RICO has already undergone severe criticism for the statute's increasingly broad application to situations unanticipated by Congress, especially the assertion of the statute against so-called "l"
"legitimate" businesspersons not associated with criminal organizations. The alarming figures contained in the American Bar Association study alerted Congress and the courts to what many experts consider an abuse of the statute. The United States Supreme Court in Sedima noted the abuse, but concluded that any restrictions upon RICO's application are for Congress to impose, not the courts. The California Supreme Court decision in Cianci extended Sedima's liberal directive to the procedural areas of the statute. Attorneys will undoubtedly choose the state system when they feel their chances of success are better by having the action decided in a state court rather than in a federal court. State courts may therefore be handling a larger number of RICO claims in the near future. The number of RICO claims in the state system may well exceed the number of such claims previously brought in the federal system as attorneys become more aware of the possible advantages of bringing a RICO claim in a state court. The possible explosion of RICO litigation in the state courts should add to the mounting controversy surrounding the statute.

The increasingly broad sweep of a treble damages statute and the Supreme Court's reluctance to alter RICO's broad application has already pressured Congress to take action to restrict the scope of the statute.242 If Congress determines that concurrent jurisdiction is preferred, changes in RICO's substantive provisions must occur to prevent state judiciaries from improperly expanding the federal laws upon which a RICO cause of action may be based, and to lessen the chance that RICO will be used for the kinds of activities the statute was designed to prevent. Congress may, however, choose to limit the potential for abuse by expressly restricting RICO cases to the federal system. The Cianci decision favoring concurrent jurisdiction, and the recent reliance upon Cianci by some of the

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242. The momentum to change RICO results in part from the expansive interpretation the Supreme Court gave the statute in Sedima. Blodgett, Revamping RICO, 71 A.B.A. J. 32 (Dec. 1985). See also Guide to RICO, supra note 8, at 109 (discussion of four bills introduced in Congress in response to Sedima). There is broad-based support for legislation to amend civil RICO. Id. at 910. Supporters of reform include the ABA, the criminal defense bar, accountants, bankers, securities professionals, insurance companies, and other businesspersons. See id. at 910-12 (setting forth comments from various supporters). The opposition to amending civil RICO has been led by the Justice Department, state attorneys general, and some public interest groups. See id. at 912-16 (setting forth comments from those opposing reform). As of March 1986, four bills had been introduced in the 99th Congress to amend the RICO statute. See Guide to RICO, supra note 8, at 109-10 (discussing the various bills). Even if any of these bills were to pass, none of the bills seeking to amend RICO addresses the issue of jurisdiction. See id. at 109-17.
federal courts,\textsuperscript{243} hastens the need for Congress to take some sort of limiting action.

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\textsuperscript{243} Since the \textit{Cianci} decision, a large and well-supported split concerning whether state courts have jurisdiction to hear RICO claims divides the federal district courts. Two district courts have provided a very detailed analysis for the court’s conclusion. Karel v. Kroner, 635 F. Supp. 725, 728-31 (N.D. Ill. 1986); HMK Corp. v. Walsey, 637 F. Supp. 710, 717-18 (E.D. Va. 1986). Six other district courts have either concluded that jurisdiction over RICO should be concurrent, or suggested this conclusion in a footnote. See, e.g., Carman v. First Nat’l Bank, 642 F. Supp. 862, 864 (W.D. Ky. 1986) (no analysis, but concluding in dictum in favor of concurrent jurisdiction on the basis RICO does not mandate exclusive jurisdiction); Matek v. Murat, 638 F. Supp. 775, 783 n.6 (C.D. Cal. 1986) (footnote suggestion). Two courts have been added to the list of exclusive jurisdiction courts. Massey v. Oklahoma City, 643 F. Supp. 81, 84 (W.D. Okla. 1986); Broadway’s Shoes v. San Antonio Shoe, Inc., 643 F. Supp. 584, 587 (S.D. Tex. 1986). No state’s highest court has addressed the jurisdiction issue since the \textit{Cianci} decision, although a number of decisions have been handed down in Illinois indicating that Illinois state courts are favoring exclusivity. Compare Thrill Car Mfg. Co. v. Lindquist, 495 N.E.2d 1132, 1136 (Dist. Ct. App. Ill. 1986) (exclusive) and Ambassador Office Equip., Inc. v. Gallagher, Nos. 84-2050, 84-2912, slip op. (Dist. Ct. App. Ill. 1986) (exclusive) with Washington Courts Condominium Ass’n-Four v. Washington-Golf Corp., Nos. 85-830, 85-1084, slip op. (Dist. Ct. App. Ill. 1986) (concurrent). If the Illinois Supreme Court determines in favor of exclusive jurisdiction, the state court will be opposite to the federal court in the same geographical jurisdiction. See Karel v. Kroner, 635 F. Supp. 725, 728-31 (N.D. Ill. 1986) (holding for concurrent jurisdiction). California will likely see a similar result, but with the state court determining in favor of concurrent jurisdiction. See Valenzuela v. Kraft, 739 F.2d 434 (9th Cir. 1984) (using the \textit{Gulf Offshore} factors, the court concluded that Congress “unmistakably intended” that jurisdiction is exclusive, despite the fact that jurisdictional analysis of Title VII which does not expressly grant the federal courts exclusive jurisdiction, and the legislative history is silent on the jurisdiction question).

Regardless of the arguments against concurrent jurisdiction over RICO claims, the \textit{Cianci} court’s analysis has gathered support among some of the federal courts. See Carman v. First Nat’l Bank, 642 F. Supp. 862, 864 (W.D. Ky. 1986) (\textit{Cianci} cited as support); Karel v. Kroner, 635 F. Supp. 725, 728-33 (N.D. Ill. 1986) (detailed analysis with full discussion of \textit{Cianci}). Because some of the federal courts are now in favor of concurrent jurisdiction over RICO claims, other state courts will likely follow the lead of the California Supreme Court. The viability of California’s own \textit{Cianci} decision, however, is very questionable since the November 4, 1986 ouster of two of the court’s majority from that decision. Governor Deukmejian has appointed Justice Lucas as the new Chief Justice. The Governor had also previously appointed Justice Panelli to the court. Governor Deukmejian has filled the remaining vacancies with three appointees more likely in agreement with the views of Justice Lucas than with the justices comprising the \textit{Cianci} majority. Thus, the \textit{Cianci} decision may be overturned the next chance the court has to address the RICO jurisdictional issue. On the other hand, the growing support for the \textit{Cianci} decision among the federal district courts, and any limitations which Congress makes with respect to the scope of RICO's substantive provisions, may persuade Justice Lucas, and those initially agreeing with the dissent’s analysis, to alter their position.