

**UNITED STATES V. INTERNATIONAL
LONGSHOREMEN'S ASSOCIATION:
ANALYZING THE CIVIL RICO
SUIT AND ITS
IMPLICATIONS FOR THE FUTURE**

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INTRODUCTION

Labor racketeering—organized crime's exploitation of labor unions¹—has been around almost as long as the unions themselves. Indeed, when it comes to some unions, it can be very difficult to separate the two. One such union, the International Longshoremen's Association (ILA), has been referred to as “virtually a synonym for organized crime in the labor movement,” suffering the practical rule of Cosa Nostra² for decades. The government, at both the state and federal level, has made periodic efforts to rid the union of organized crime, from the Waterfront Commission's attempts to combat corruption in the 1950s, to the successful civil Racketeer Influenced and Corrupt Organizations Act (RICO) suit against a number of ILA local chapters in 1993. Despite the success against *local* labor chapters, however, it was not until 2005 that the powers of a civil RICO suit were brought to bear against the *international* ILA organization, in *United States v. International Longshoremen's Ass'n (ILA International Case)*.³ Yet surprisingly, the court in that case dismissed the action for failure to state a claim on which relief could be granted based on three major flaws with the complaint: (1) inadequate incorporation of exhibits; (2) deficient

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1. JAMES JACOBS, *MOBSTERS, UNIONS AND FEDS: THE MAFIA AND THE AMERICAN LABOR MOVEMENT* 1 (2006).

2. I use the term “Cosa Nostra” in this Note rather than the commonly used “La Cosa Nostra” in an effort to be more historically accurate. Mob member Joseph Valachi was the first on record to refer to the American Mafia as “Cosa Nostra,” meaning “our thing.” The subsequent addition of “La” to the beginning of the phrase is ungrammatical (“the our thing”). See JACOBS, *supra* note 1, at xi.

3. 518 F. Supp. 2d 422 (E.D.N.Y. 2007).

pleading of certain offenses; and (3) an incoherent RICO enterprise.⁴

Since the Department of Justice has been extremely successful in its civil RICO prosecutions against mob-infiltrated labor unions, including the recent litigation against the ILA locals, this result merits scrutiny. Specifically, it raises the question of whether the court's ruling represents a straightforward legal decision consistent with the existing civil RICO landscape, or whether it actually denotes a substantial change in judicial interpretation of RICO. This Note concludes that two of the complaint's defects, namely the inadequate incorporation of exhibits and the deficient pleading of predicate acts, are fairly uncomplicated and curable. On the other hand, the court's rationale for rejecting the RICO enterprise may prove more troubling for the federal government.

In the *ILA International Case*, the government had alleged that the common purpose of the enterprise was "to exercise corrupt control and influence over labor unions and businesses operating on the Waterfront . . . in order to enrich" the defendants, but it simultaneously claimed that not all members of the enterprise shared this "common" purpose.⁵ The court refused to find the existence of an enterprise that did not have one common purpose shared by all defendants, and it posited that it would be extremely difficult, if not impossible, for the government to assert a common purpose which would encompass all defendants. While the litigation in this case is ongoing as of this Note's publication, the court's skepticism towards the RICO enterprise raises an issue that had previously escaped examination, and the government may have to develop new strategies to escape the dismissal of its amended complaint. Regardless of whether the government's litigation is ultimately successful in this case, the court's opinion could influence future jurisprudence.

Part I briefly elucidates the importance of the case, tracing the ILA's history of corruption, the use of the RICO statute as a weapon for combating such corruption, and the successful civil RICO case previously brought against the ILA locals. Part II turns to the case itself, examining its outcome in detail. To assist in understanding the case's conclusion, and whether it represents a substantial change to civil RICO interpretation, this Note compares it to the RICO suit against the ILA locals. This analysis ultimately reveals that although the court's findings of fault with the document incor-

4. *Id.*; see also *infra* Part II.B.

5. *Id.* at 432.

poration and the pleading of the offenses was, perhaps, unremarkable, the government should be concerned about the court's rejection of the alleged RICO enterprise. Finally, Part III explains why, regardless of the outcome of this specific case, the court's concerns with the RICO enterprise could have repercussions for future litigation, and offers two suggestions for how the government may adapt its strategies accordingly.

I.

THE IMPORTANCE OF THE *ILA* *INTERNATIONAL CASE*

A. *Cosa Nostra and the ILA*

The International Longshoremen's Association (ILA) first appeared in the late nineteenth century.⁶ While its activities originally centered on the Great Lakes region, its influence soon spread across the country,⁷ and "nowhere was the ILA's expansion to have more of a lasting influence on the union than its arrival in the Port of New York."⁸ Within the New York area, the ILA's activities revolved around the "Waterfront," a term generally used to encompass several ports, including the ports of New York and New Jersey, their common harbor, and a conglomeration of business and commercial activities taking place within that area.⁹

Criminal groups controlled the ILA even before *Cosa Nostra* took the reins.¹⁰ Paolo Vaccarelli, also known as Paul Kelly, the leader of the brutal Five Points Gang, introduced a criminal ele-

6. The Beginnings of the ILA, http://www.ilaunion.org/history_begin.html (last visited Feb. 3, 2010).

7. Creation of the ILA, http://www.ilaunion.org/history_creation.html (last visited Feb. 3, 2010).

8. ILA Membership Grows, http://www.ilaunion.org/history_membership.html (last visited Feb. 3, 2010).

9. Amended Complaint at ¶ 1, *United States v. Int'l Longshoremen's Ass'n.*, 518 F. Supp. 2d 422 (E.D.N.Y. 2007) (No. 05-CV-3212), 2006 WL 730989 [hereinafter *ILA International Complaint*]. The Waterfront gained notoriety in the 1954 film "On the Waterfront," in which longshoreman Terry Malloy, played by Marlon Brando, famously fought back against his mob-controlled union's corrupt boss. *See ON THE WATERFRONT* (Horizon Pictures 1954) ("I coulda been a contender.").

10. The ILA was far from the first union to fall under mob control. As far back as the nineteenth century, labor unions have faced organized crime infiltration. *See* JACOBS, *supra* note 1, at 7. In addition, by the early twentieth century, some unions were actually inviting professional criminals to join them, hiring them for protection in clashes with employers. *Id.* at 24. These gangsters, however, found the unions comfortable places to stay after their immediate services were no longer needed, and they sought to retain control through various methods, including brute force. *Id.* at 24. Of course, all of this is not to suggest that

ment to Waterfront activities in the early twentieth century.¹¹ It was Irishman Joseph P. Ryan, however, who brought the Waterfront solidly into the depths of corruption with his rise to the ILA presidency in 1927.¹² With the Irish taking hold of the north piers, the Italians saw an opportunity in Brooklyn, and Emil Camarda became the ILA International vice president and official head of six Brooklyn locals.¹³ In 1937, Anthony Anastasio followed as vice president of the International and president of the largest ILA local, Local 1814, maintaining control until his death in 1963.¹⁴ Under Anastasio's leadership, the ILA became intertwined with Cosa Nostra: Anastasio's own organized crime group was taken over by the Gambino crime family.¹⁵ Indeed, organized crime and corruption became so tangled with the ILA that in 1953, the American Federation of Labor, with whom the ILA had been affiliated, instructed the ILA to remove criminals and corrupt officials from office.¹⁶ The ILA did not meet the AFL's demands, and the union was expelled from the AFL that same year.¹⁷ After Anastasio's death, his positions as president of Local 1814 and vice president of the International were handed down to his son-in-law, Anthony

most or even many labor unions suffer from organized crime's influence. In addition, the words of historian John Hutchinson bear repeating:

Corruption owes little more to immoral union leaders than it does to predatory employers who, throughout the history of American business, have sought by cheating and violence to circumvent the strictures of competition, unionization, and the law. It is a companion of the corruption in politics and law enforcement which for generations has characterized some of the major cities of the nation, sheltering the guilty and embroiling the innocent in crime. . . . It thrives in the procedural jungle of the American criminal law. It stems from the social conditions of the cities It has, finally, drawn strength from a public philosophy which, in electing for the competitive society, has tended to trumpet only its virtues, according either praise or tolerance to the victors in a battle lightly burdened with rules.

JOHN HUTCHINSON, *THE IMPERFECT UNION: A HISTORY OF CORRUPTION IN AMERICAN TRADE UNIONS* 7-8 (1972).

11. HUMBERT S. NELLI, *THE BUSINESS OF CRIME* 245-46 (1976).

12. *See id.* Starting with Ryan's ILA presidency in 1927 and continuing for at least the next twenty-five years, the Irish were able to control the Hudson River piers based on Ryan's winning personality; he was "tolerant of poor morals and the evils of the industry, light in his claims on the employers, casual in his concern for the longshoremen." *Id.* *See also* HUTCHINSON, *supra* note 10, at 95.

13. NELLI, *supra* note 11, at 245-46. The six locals were 327, 327-1, 338, 338-1, 1199, and 1199-1. *Id.*

14. ALAN A. BLOCK, *THE BUSINESS OF CRIME* 162-63 (1991). *See also* JACOBS, *supra* note 1, at 26.

15. JACOBS, *supra* note 1, at 26.

16. *Id.* at 82-83.

17. *Id.* at 83.

Scotto, who later assumed a leadership role in the Gambino family as a capo (captain), further cementing Cosa Nostra control.¹⁸

Under the mob's influence, Waterfront activities grew to include stealing from the piers, hijacking vessels between the piers and the terminals, collecting employer kickbacks in exchange for work guarantees, and loan-sharking.¹⁹ Cosa Nostra control spread throughout the Port of New York, with the Gambino family controlling the New York side, and the Genovese family controlling the New Jersey side.²⁰ Local and federal initiatives to control the mob's influence were irregular and yielded only moderate success. The New York-New Jersey Waterfront Commission, formed in 1953, made some attempt to rid the harbor of organized crime.²¹ Its efforts, however, also had the unintended consequence of spreading the mob's influence as far south as Miami; ILA affiliates sent packing by the Waterfront Commission merely made their way toward sunnier skies and new opportunities for power.²² The 1970s saw a dramatic FBI-led investigation, known as UNIRAC (for "union racketeering"), which attempted to combat ILA corruption in New York, Miami, Wilmington, Charleston, and Mobile.²³ UNIRAC led to over one hundred convictions, but, by the next decade, the Reagan-appointed President's Commission on Organized Crime (PCOC) concluded that "[c]orrupt practices . . . already have begun to return to the Atlantic and Gulf Coast docks."²⁴ During its 1981 hearings on Waterfront crime and corruption, the Senate Permanent Subcommittee on Investigations noted that corruption "bred by organized crime [was] still 'business as usual' in some port cities,"²⁵ and "convicted union officials . . . still [held] office or exert[ed] control over the ILA through associates or surrogates."²⁶ By 1984, the Senate Permanent Subcommittee on Investigations noted that,

18. BLOCK, *supra* note 14, at 163–64.

19. NELLI, *supra* note 11, at 247.

20. JACOBS, *supra* note 1, at 50.

21. *Id.*

22. BLOCK, *supra* note 14, at 151.

23. JACOBS, *supra* note 1, at 50–51.

24. PRESIDENT'S COMMISSION ON ORGANIZED CRIME, *THE EDGE: ORGANIZED CRIME, BUSINESS AND LABOR UNIONS* 65 (1986).

25. G. Robert Blakey, *The RICO Civil Fraud Action in Context: Reflections on Bennett v. Berg*, 58 NOTRE DAME L. REV. 237, 309 n.176 (alterations in original) (citing *Waterfront Corruption: Hearings before the Permanent Subcomm. on Investigations, Comm. on Governmental Affairs*, 97th Cong. 3 (1981) (statement of Sen. Sam Nunn)).

26. *Id.* (alterations in original) (citing *Waterfront Corruption: Hearings before the Permanent Subcomm. on Investigations, Comm. on Governmental Affairs*, 97th Cong. 4 (1981) (statement of Sen. Sam Nunn)).

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payoffs were a part of virtually every aspect of the commercial life of a port. Payoffs insured the award of work contracts and continued contracts already awarded. Payoffs were made to insure labor peace and allow management to avoid future strikes. Payoffs were made to control a racket in workmen's compensation claims. Payoffs were made to expand business activity into new ports and to enable companies to circumvent ILA work requirements. . . . [Shipping companies] treat payoffs as a cost of doing business.²⁷

Periodic clean-up attempts failed to prevent the PCOC from bemoaning, fifty years after Cosa Nostra took control, that the ILA remained "virtually a synonym for organized crime in the labor movement."²⁸

B. *Combating Mob Influence in Unions through RICO*

The long history of corruption within labor unions such as the ILA not only led to commissions and investigations but also the creation of legislation intended, in part, to save the unions from the mob. When Senator John L. McClellan introduced the Organized Crime Control Act in 1969, he spoke of combating organized crime's takeover of legitimate organizations, including labor unions, and he expressed concern that unions "have been persuaded for labor peace to countenance gambling, loansharking and pilferage."²⁹ Thus, the Organized Crime Control Act, which includes the RICO statute, was intended as a weapon against labor racketeering from the start.

RICO proscribes "racketeering activity,"³⁰ which the statute defines to include felonies such as "murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or

27. BLOCK, *supra* note 14, at 145 (citing PERMANENT SUBCOMM. ON INVESTIGATIONS OF THE COMM. ON GOVERNMENTAL AFFAIRS, WATERFRONT CORRUPTION, S. REP. NO. 98-154, at 1 (1984)).

28. PRESIDENT'S COMMISSION ON ORGANIZED CRIME, *supra* note 24, at 33.

29. Blakey, *supra* note 25, at 257. McClellan also spoke against what he saw as the consequences of organized crime's move into unions:

Control of labor supply through control of unions can prevent the unionization of some industries or can guarantee sweetheart contracts in others. It provides the opportunity for theft from union funds, extortion through the threat of economic pressure, and the profit to be gained from manipulation of welfare and pension funds and insurance contracts. . . . All of this, of course, makes a mockery of much of the promise of social legislation of the last half century.

Id.

30. Organized Crime Control Act of 1970, 18 U.S.C. § 1962 (2006).

dealing in a controlled substance or listed chemical”³¹ Of course, all of the listed offenses were illegal before RICO. The specified “racketeering activities” are of keen importance, however, as RICO specifically punishes a “pattern of racketeering activities,” not a single action.³² The requisite “pattern of racketeering activities” is defined as “at least two acts of racketeering activity” occurring within a ten-year period.³³ In addition, to establish a RICO violation it is necessary to prove the existence of an “enterprise,” which may take one of two forms.³⁴ First, an enterprise may be “any individual, partnership, corporation, association, or other legal entity.”³⁵ Second, it can be “any union or group of individuals associated in fact, though not a legal entity.”³⁶ This latter type of enterprise is known as an “association in fact.”³⁷ The Supreme Court has held that the definition of “enterprise” encompasses purely illegitimate as well as legitimate organizations.³⁸

There are four major categories of RICO violations.³⁹ First, the statute prohibits a person from using any income derived from a pattern of racketeering activity, or the proceeds from such income, to acquire an interest in, establish, or operate an enterprise.⁴⁰ Second, it is a violation for a person to acquire an interest in an enterprise, or control an enterprise, through a pattern of racketeering activity.⁴¹ Third, it is unlawful to conduct or participate in an enterprise’s affairs through a pattern of racketeering activity.⁴² Finally, RICO forbids conspiracy to violate any of the first three provisions.⁴³

31. § 1961(1)(A)–(B).

32. §§ 1961(5)–1962(a).

33. *Id.* The ten-year period excludes any period of incarceration. § 1961(5).

34. § 1962(c).

35. § 1961(4). The Supreme Court has stated that this type of enterprise “encompasses organizations such as corporations and partnerships, and other ‘legal entities.’” *United States v. Turkette*, 452 U.S. 576, 581 (1981).

36. § 1961(4). The Supreme Court has pointed out that the primary difference between the two categories of enterprise is that “[e]ach category describes a separate type of enterprise to be covered by the statute—those that are recognized as legal entities and those that are not. The latter is not a more general description of the former.” *Turkette*, 452 U.S. at 582.

37. 5B FEDERAL PROCEDURE, LAWYERS EDITION § 10:219 (2008).

38. *Turkette*, 452 U.S. at 580–81.

39. These summaries of RICO violations are, necessarily, greatly simplified.

40. § 1962(a); *see also* G. Robert Blakey & Ronald Goldstock, “*On the Waterfront*”: *RICO and Labor Racketeering*, 17 AM. CRIM. L. REV. 341, 349 (1979–1980).

41. § 1962(b); *see also* Blakey & Goldstock, *supra* note 40.

42. § 1962(c); *see also* Blakey & Goldstock, *supra* note 40.

43. § 1962(d); *see also* Blakey & Goldstock, *supra* note 40.

The last item to note in the statute is the provision allowing for two types of civil remedies for RICO violations.⁴⁴ First, victims of RICO violations may sue violators for treble damages.⁴⁵ Second, the Attorney General of the United States may bring proceedings against RICO violators.⁴⁶ If the government is successful, a civil RICO suit may wrest control of an enterprise from a defendant, forbid a defendant from taking part in similar enterprises in the future, and dissolve the enterprise itself.⁴⁷

The civil remedies available have given the government a significant advantage in combating criminal organizations: in a civil RICO suit, the government need only prove violations by a preponderance of the evidence rather than by the stricter “beyond a reasonable doubt” standard they would face in a criminal trial for the same offenses.⁴⁸ Therefore, even if the government is unable to prove criminal liability, it can impose massive penalties and organizational reform through civil RICO liability. Indeed, over the years, the government has instigated almost two dozen civil RICO labor racketeering lawsuits—and it has never lost a case.⁴⁹

44. § 1964. Criminal penalties exist as well, although they are outside the purview of this Note. Briefly, they include fines, imprisonment, and forfeiture of property. § 1963. While individual defendants in this case have been prosecuted under the criminal RICO provisions, *see generally infra* Part II.B.1–2, this Note focuses on the civil RICO angle.

45. § 1964(c).

46. § 1964(b).

47. § 1964(a) (A court may “order[] any person to divest himself of any interest, direct or indirect, in any enterprise; impos[e] reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in . . . ; or order[] dissolution or reorganization of any enterprise . . .”).

48. “Since the government is seeking civil remedies—rather than criminal penalties—under the RICO statute, it must prove each element of the statute by a preponderance of the evidence.” *United States v. Local 1804-1, Int’l Longshoremen’s Ass’n*, 812 F. Supp. 1303, 1309-10 (S.D.N.Y. 1993) (citing *Liquid Air Corp. v. Rogers*, 834 F.2d 1297, 1302 (7th Cir. 1987); *United States v. Local 560, Int’l Bhd. of Teamsters*, 780 F.2d 267, 279–80 n.12 (3rd Cir. 1985); *United States v. Local 359, United Seafood Workers*, 705 F. Supp. 894, 897 (S.D.N.Y. 1989), *aff’d in part, remanded in part*, 889 F.2d 1232 (2d Cir. 1989); *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 491 (1985) (“That the offending conduct is described by reference to criminal statutes does not mean that its occurrence must be established by criminal standards . . .”).

49. *See JACOBS, supra* note 1, at 143.

C. The Previous ILA Civil RICO Suit

One important civil RICO suit, *United States v. Local 1804-1, International Longshoremen's Ass'n (ILA Local Case)*,⁵⁰ culminated in 1993. The *ILA Local Case* is relevant to this Note for two reasons. First, it represents one of a very small number of civil RICO labor racketeering cases that have actually gone to trial,⁵¹ and it therefore provides one of the fullest pictures of the judicial perspective on such lawsuits. Second, the *ILA Local Case* is extremely similar to the subsequent case tackling the international organization, the *ILA International Case*, on which this Note focuses, and it therefore provides an excellent point of comparison from which to examine the latter case.⁵²

The *ILA Local Case* included as defendants six ILA local affiliates,⁵³ thirty-six current and former officers of the locals, members of the Genovese and Gambino crime families, two Waterfront employers, and two Waterfront employers' organizations.⁵⁴ The locals, the Waterfront employers, and the employers' organizations were included as nominal defendants, meaning they did not stand accused of committing RICO violations themselves. The government included the nominal defendants in the complaint only to obtain complete relief.⁵⁵ Before the court made its determination of liability, however, all but four defendants defaulted or entered consent agreements with the government.⁵⁶

50. 812 F. Supp. 1303.

51. Out of all the civil RICO cases involving labor unions, only two required trials: the *ILA Local Case* and *United States v. Local 560, Int'l Bhd. of Teamsters*, 581 F. Supp. 279 (D.N.J. 1984). One additional case required a hearing for the court to grant the government's request for preliminary injunction, which was later converted to a final decree. See *United States v. Local 30, United Slate, Tile, and Composition Roofers*, 686 F. Supp. 1139 (E.D. Pa. 1988), *aff'd* 871 F.2d 401 (3d Cir. 1989). All other civil RICO labor racketeering cases "were resolved by negotiated consent decrees that included appointment of a trustee or monitor." JACOBS, *supra* note 1, at 143.

52. See *infra* notes 633–666 and accompanying text.

53. Specifically locals 1804-1, 1588, 1814, 1809, 824, and 1909. *Local 1804-1*, 812 F. Supp. at 1308 n.1.

54. *Id.*

55. See *id.* at 1308 n.2. By "complete relief," the court presumably meant that the nominal defendants were included in the RICO enterprise in order to allow for the civil RICO statutory relief, including reorganization of the enterprise and appointment of trustees over the locals.

56. *Id.* The remaining four were Donald Carson, Anthony Gallagher, George Lachnicht, and Venero Mangano. *Id.* Carson was the secretary-treasurer of Locals 1587 and 1588 from 1972–1988, and he was the executive vice president of the International. *Id.* at 1317. Gallagher "is connected with several high level figures in the Genovese family" and he "owned a number of Waterfront business." *Id.* at

The government alleged that the enterprise conducted its affairs through a pattern of racketeering activity, a RICO violation,⁵⁷ and that each defendant had committed numerous predicate acts.⁵⁸ The enterprise alleged in the complaint was the “Waterfront,” or “the ‘unholy alliance’ among the ILA, ILA union officials, Waterfront businessmen, members of the Genovese organized crime family in New Jersey, and members of the Gambino organized crime family and their henchmen, the Westies, in Brooklyn and Manhattan.”⁵⁹ The enterprise’s alleged common objective was “the corrupt control and influence of Waterfront industry and labor unions in order to enrich themselves and their associates.”⁶⁰ After a bench trial, the court concluded that there was an association-in-fact RICO enterprise.⁶¹ The court also found that the defendants remaining in the suit had engaged in predicate acts, violating RICO.⁶²

The court’s opinion in the *ILA Local Case* is essential to evaluating the opinion and repercussions of the subsequent *ILA International Case*. As the *ILA International* court noted in its opinion,

The predicate acts alleged in the ILA Local Civil RICO Case are different in the details than the predicate acts alleged in this action, but similar in the overall picture they convey of the Waterfront unions and businesses having been infiltrated by agents of organized crime for the purpose of pressing those legitimate businesses and organizations into service as “cash cows” for the Mafia.⁶³

1317. Lachnicht was a longshoreman and vice president of Local 1588 for roughly thirty years. *Id.* at 1318. Mangano, at the time of the trial, was the underboss of the Genovese crime family. *Id.* at 1316.

57. See Organized Crime Control Act of 1970, 18 U.S.C. § 1962(c) (2006).

58. *Local 1804-1*, 812 F. Supp. at 1309. In its amended complaint, the government also alleged violation of § 1962(b), as well as two violations of § 1962(d) in conspiring to violate § 1962(b) and (c). The government alleged the same predicate acts for each claim. The court notes, however, that “[a]pparently the government has abandoned these [additional] claims, for it failed to propose findings of fact and conclusions of law with regard to these claims.” *Id.* at 1309 n.5.

59. *Id.* at 1310.

60. Amended Complaint ¶ 70, *United States v. Local 1804-1, Int’l Longshoremen’s Ass’n*, 812 F. Supp. 1303 (S.D.N.Y. 1993) (Nos. 90-CV-0963; 90-CV-5618) [hereinafter *ILA Local Complaint*].

61. *Local 1804-1*, 812 F. Supp. at 1315.

62. *Id.* at 1349–50. The predicate acts included embezzlement, extortion, Taft-Hartley Act violations, and wire fraud. See *id.*

63. *United States v. Int’l Longshoremen’s Ass’n*, 518 F. Supp. 2d 422, 447 (E.D.N.Y. 2007).

Additionally, both cases alleged that the “Waterfront Enterprise” was composed of “Waterfront businesses and organizations as well as organized crime families and their agents,”⁶⁴ and they alleged the same common purpose of the enterprise.⁶⁵ Finally, the *ILA International* court itself recognized that “the closest parallel to the theory of the Government’s case and the types of relief it seeks in this case is the civil action in [the *ILA Local Case*].”⁶⁶ Therefore, it is both relevant and helpful to examine the two cases for parallels.

II.

UNITED STATES V. INTERNATIONAL LONGSHOREMEN'S ASSOCIATION

On July 6, 2005, the federal government commenced a civil RICO lawsuit against the international ILA organization.⁶⁷ The complaint alleged that “the Genovese and Gambino crime families conspired with their associates occupying high-ranking positions in legitimate Waterfront operations, particularly the ILA and several associated labor organizations, to extend and maintain the influence of organized crime through a pattern of racketeering activity including extortion, money laundering, and mail and wire fraud.”⁶⁸ Unlike the RICO suit involving the ILA locals, the case against the international organization culminated years later⁶⁹ with the dismissal of the complaint.⁷⁰ Considering the government’s stellar track record in civil RICO cases involving mob-infiltrated labor unions,⁷¹ this result merits serious consideration. Was the dismissal in the *ILA International Case* based on straightforward legal flaws in the

64. *Id.* The alleged enterprises differed slightly; for example, the *ILA International Case* obviously named the international ILA organization as a member of the enterprise, while the *ILA Local Case* did not. However, “a substantial degree of overlap exists.” *Id.* at 448.

65. *See id.* at 448.

66. *Id.* at 446.

67. The government’s first complaint was filed on this date. Complaint, *United States v. Int’l Longshoremen’s Ass’n*, 518 F. Supp. 2d 422 (E.D.N.Y. 2007) (No. 05-CV-3212). An amended complaint was subsequently filed on February 21, 2006. *ILA International Complaint*, *supra* note 9. This Note will examine only the amended complaint, and all references to the complaint refer to the February 21 filing.

68. *Int’l Longshoremen’s Ass’n*, 518 F. Supp. 2d at 426.

69. The decision in the *ILA International Case* was issued on November 1, 2007. *Id.* at 422.

70. *See id.* (dismissed under FED. R. CIV. P. 12(b)(6) for failure to state a claim on which relief could be granted).

71. *See supra* note 49 and accompanying text.

complaint, or does it represent a break from past RICO interpretation? And what does the outcome mean for future civil RICO suits?

A. *Facts of the Suit*

The suit involved three groups of defendants: nominal defendants, ILA officer defendants, and Cosa Nostra defendants. The government did not allege that the nominal defendants had committed any RICO violations, but it joined them in order to facilitate “the full relief sought in this action.”⁷² The nominal defendants included, first and foremost, the ILA, but also the Management-International Longshoremen’s Association Managed Health Care Trust Fund (MILA),⁷³ the Metropolitan Marine Maintenance Contractors’ Association (METRO),⁷⁴ METRO-ILA Funds,⁷⁵ the Board of Trustees of each METRO-ILA Fund, the ILA executive vice president, the ILA general vice president, the ILA general organizer, and twenty-four vice presidents.⁷⁶ The Cosa Nos-

72. *Int’l Longshoremen’s Ass’n*, 518 F. Supp. 2d at 427. The court noted that the nominal defendants were presumably joined under FED. R. CIV. P. 19(a), although the government did not specifically cite to the Rule; in any event, none of the nominal defendants objected that their joining in this action fell outside the scope of Rule 19, so the court did not examine the issue further. *See id.* at 427 n.5. For the reader’s background:

Rule 19(a) is applicable when nonjoinder would have either of the following effects. First, it would prevent complete relief from being accorded among those who are parties to the action or, second, the absentee claims an interest relating to the subject matter of the action and is so situated that the nonparty’s absence from the action will have a prejudicial effect on that person’s ability to protect that interest or will leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations. . . . There is no precise formula for determining whether a particular nonparty must be joined under Rule 19(a). The decision has to be made in terms of the general policies of avoiding multiple litigation, providing the parties with complete and effective relief in a single action, and protecting the absent persons from the possible prejudicial effect of deciding the case without them.

7 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1604 (3d ed. 2008).

73. MILA is a benefit fund that provides the majority of ILA members with health insurance. *Int’l Longshoremen’s Ass’n*, 518 F. Supp. 2d at 428.

74. METRO is “an association of employers engaged in interstate commerce on the Waterfront, who . . . employ ILA members.” *Id.* at 428–29.

75. METRO and ILA Locals 1804-1 and 1814 created several funds together: the METRO-ILA Fringe Benefit Fund, the METRO-ILA Pension Fund, and the METRO-ILA Individual Account Retirement Fund. *Id.*

76. *Id.* at 427–29.

tra defendants in the suit were identified as Peter Gotti,⁷⁷ Anthony Ciccone,⁷⁸ Jerome Brancato,⁷⁹ and James Cashin.⁸⁰ The ILA officer defendants were John Bowers, Sr.,⁸¹ Robert E. Gleason,⁸² Harold J. Daggett,⁸³ Arthur Coffey,⁸⁴ and Albert Cernadas.⁸⁵

The government's complaint alleged that the ILA officer defendants and the Cosa Nostra defendants committed two violations of RICO: conspiracy to acquire an interest in an enterprise through racketeering activity and conspiracy to participate in an enterprise through racketeering activity.⁸⁶ The government alleged fifteen predicate racketeering acts, including extortion,⁸⁷ conspiracy to extort,⁸⁸ wire fraud,⁸⁹ mail fraud,⁹⁰ money laundering,⁹¹ and money conspiracy.⁹² Again, the government did not assert that the nominal defendants committed any RICO violations.⁹³

77. Gotti was allegedly the boss of the Gambino crime family. *See id.* at 429. He ceased to be an active defendant in the case when he entered a consent decree with the government, which resolved the government's claims against him and enjoined him from "participating in the affairs of the ILA or the Waterfront Enterprise in any way." *Id.*

78. Ciccone was alleged to be a captain in the Gambino crime family. *See id.*

79. Brancato was alleged to be a soldier in the Gambino family. *See id.*

80. Cashin was alleged to be an associate of the Genovese organized crime family as well as a former ILA official. *See id.*

81. Bowers was executive vice president of the ILA for twenty-four years before becoming president in 1987. *See id.* at 429. The government also claimed that Bowers was an associate of the Genovese family. *See id.* at 430.

82. Gleason was the ILA's secretary-treasurer and a member of MILA Board. *See id.* at 430.

83. Daggett was the ILA's assistant general organizer, Local 1804-1's president, and an MILA Board member. *See id.* He was further alleged to be a Genovese family associate. *See id.*

84. Coffey was the vice president of the ILA Executive Council as well as an official in various ILA district and local organizations and a member of the MILA Board. *See id.*

85. Cernadas was the executive vice president of the ILA and a MILA Board member. *See id.* Cernadas also entered into a consent decree with the government, under which he resigned from his ILA positions and agreed not to hold any position in the ILA or the Waterfront Enterprise at any time in the future. *See id.*

86. *See id.* at 431. Specifically, "The Amended Complaint alleges two counts of RICO conspiracy—conspiracy to violate 18 U.S.C. § 1962(c) . . . in violation of § 1962(d) . . . and conspiracy to violate § 1962(b) in violation of § 1962(d)." *Id.*

87. *Id.* at 433, 435, 438–42.

88. *Id.*

89. *Id.* at 433, 435, 438–40.

90. *Id.* at 436–38.

91. *Id.* at 441.

92. *Id.*

93. *See id.* at 427 n.5.

The government alleged that the “Waterfront Enterprise” was composed of:

[T]he ILA and certain of its subordinate components, namely, the Atlantic Coast District, the South Atlantic & Gulf Coast District, Locals 1, 824, 1235, 1588, 1804-1, 1814, 1922, 1922-1, and 2061; certain current and former ILA officials; certain welfare benefit and pension benefit funds managed for the benefit of ILA members, namely, MILA, the METRO-ILA Funds, the ILA Local 1922 Health and Welfare Funds, the ILA-Employers Southeast Florida Ports Welfare Fund; certain businesses operating on or about the Waterfront; an “employer association” operating on or about the Waterfront, namely METRO; certain members and associates of the Genovese and Gambino crime families; and certain businesses operating in the Port of Miami.⁹⁴

The government claimed the enterprise’s purpose was to “exercise corrupt control and influence over labor unions and businesses operating on the Waterfront, the Port of Miami and elsewhere in order to enrich themselves and their associates.”⁹⁵

The government sought several varieties of relief, such as the enjoinder of any defendant found to have violated RICO from having any involvement with the ILA and its funds, holding a position of trust in any labor union, or having any involvement with any pensions or welfare trusts.⁹⁶ Most importantly, the government asked the court to appoint a trustee for the ILA and its funds in order to provide strict oversight and combat corruption.⁹⁷ The ILA moved to dismiss, in a motion attacking the complaint as it applied to all defendants.⁹⁸

B. The Outcome: Consistent with Existing RICO Law or Substantially Different?

In the end, the court concluded that the complaint was fatally flawed in three respects. Specifically, the court found that the incorporation of the attached pleadings was defective, the allegations of the predicate acts were deficient, and the allegations of a RICO enterprise were incoherent. As discussed, the outcome in the *ILA International Case* was strikingly different from that of the *ILA Local*

94. *Id.* at 431–32 (quotations omitted).

95. *Id.* at 432.

96. See *ILA International Complaint*, *supra* note 9, at 76–77, 79–81.

97. See *id.* at 78–79, 82–84.

98. See *Int’l Longshoremen’s Ass’n*, 518 F. Supp. 2d at 459.

Case, in spite of the fact that the two cases bear many similarities of form, involving similar predicate acts, many of the same defendants, and similar enterprises with identical purposes.⁹⁹ This Note proceeds to compare the flawed elements of the *ILA International* complaint with the successful *ILA Local* complaint and the court's subsequent holdings. In doing so, this Note explores whether the *ILA International Case* substantially deviates from past interpretations of RICO law, as well as what the court's holdings will mean for the government in the future.

1. Sufficiency of the Complaint Under Rule 8(a)

The court in the *ILA International Case* quickly concluded that the pleading in the complaint was "incoherent" and violated Federal Rule of Civil Procedure 8(a)¹⁰⁰ for three major reasons.¹⁰¹ First, the court took issue with the incorporation of the government's exhibits. The government attached to the complaint more than 400 pages of exhibits, including criminal indictments and civil pleadings from previous litigation.¹⁰² However, the court noted that "nowhere in the . . . Complaint does the Government expressly incorporate by reference any portions of the attached exhibits."¹⁰³ For example, in identifying Albert Cernadas as a defendant, the complaint noted that he had been indicted for certain offenses in a criminal case, then stated, "A copy of the Indictment is annexed as Exhibit 1."¹⁰⁴ Discussing the same prosecution in reference to defendant Arthur Coffey, the complaint instructed, "See Exhibits 1 and 2."¹⁰⁵ In detailing the alleged predicate acts, the complaint's language continued to be imprecise; to take one example:

On March 17, 2003, Defendants ANTHONY CICCONE and JEROME BRANCATO were convicted of violating and conspiring to violate RICO in *United States v. Gotti, et al.*, No. 02 Cr. 606 (FB), found to have committed racketeering acts . . . and convicted of committing these acts as separate counts in the indictment.¹⁰⁶

99. *See supra* notes 6363–66 and accompanying text.

100. FED. R. CIV. P. 8(a) ("[A] pleading that states a claim for relief must contain," *inter alia*, "a short and plain statement of the claim showing that the pleader is entitled to relief.>").

101. *Int'l Longshoremen's Ass'n*, 518 F. Supp. 2d at 460.

102. *See id.* at 460–61.

103. *Id.* at 461.

104. *ILA International Complaint*, *supra* note 9, ¶ 20.

105. *Id.* ¶ 23.

106. *Id.* ¶ 113.

The government did not, however, specifically state that it was incorporating any attached document or any specific paragraph; rather, “[e]ach exhibit [wa]s simply noted in passing”¹⁰⁷

The lack of explicit incorporation became even more significant when the court pointed out that essential elements of predicate acts were not found on the face of the complaint, such as the “use of threatened or actual force and the identity of the victim with respect to several of the extortion acts, or a use of the mails or wires with respect to most of the mail or wire fraud acts”¹⁰⁸ While the government argued that the elements were incorporated by reference to exhibits, the court disagreed, pointing out that the complaint did not *expressly* incorporate any specific sections of the exhibits.¹⁰⁹ Rather, the court acerbically stated that it was “compelled to decline the Government’s request to abolish or ignore the modest pleading requirements imposed on it by Federal Rule of Civil Procedure 8(a).”¹¹⁰

In evaluating the incorporation flaws in the *ILA International Case*, a comparison to the *ILA Local Case*, which expressly incorporated exhibits, is illustrative.¹¹¹ In contrast to the language in the *ILA International* complaint, the complaint in the *ILA Local Case* attached the indictments and judgments of conviction from multiple criminal cases, then explicitly incorporated specific counts of the attachments; for example:

Copies of the indictment and the judgments of conviction . . . are attached to this Complaint as Exhibit A. Plaintiff incorporates by reference Counts 1 through 6, 8 through 11, and 13 through 84 of that indictment and repeats and realleges those counts as if fully set forth herein.¹¹²

The complaint employed similar language to incorporate sections of additional indictments, informations, and judgments of

107. *Int’l Longshoremen’s Ass’n*, 518 F. Supp. 2d at 462.

108. *Id.* at 461. For further discussion of the missing elements, see *infra* Part II.B.2.

109. See *Int’l Longshoremen’s Ass’n*, 518 F. Supp. 2d at 461. The court recognized that there is “no prescribed procedure for referring to incorporated matter,” but “the references to prior allegations must be direct and explicit, in order to enable the responding party to ascertain the nature and extent of the incorporation.” *Id.* (citing 5A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1326 (3d ed. 2008)).

110. *Int’l Longshoremen’s Ass’n*, 518 F. Supp. 2d at 461.

111. In fact, the court made such a comparison. See *id.* at 462 n.71.

112. *ILA Local Complaint*, *supra* note 60, ¶ 75.

conviction.¹¹³ The specificity of the *ILA Local* complaint highlights the flaws in the *ILA International* complaint's incorporations.

Furthermore, the *ILA International* court pointed out that, aside from a lack of express incorporation, two major problems remained with the complaint. First, "the Government's proposed method of pleading necessary elements of its RICO claim by incorporating factual allegations contained in several prior lengthy criminal and civil RICO pleadings is . . . a blatant violation of Rule 8(a)(2) . . .,"¹¹⁴ which requires a plaintiff to give a "short and plain statement of the claim showing that the pleader is entitled to relief."¹¹⁵ Noting that one of the purposes of this requirement is to put the defendant on notice of the claim against him,¹¹⁶ the court stated that the voluminous attachments did not provide fair notice of the RICO claims.¹¹⁷ Indeed, the court posited that accepting the complaint and attachments in their present form would force the defendants to "respond in their Answer not only to each of the 258 paragraphs of the . . . Complaint, but also to each and every paragraph of every attached pleading . . ."¹¹⁸ The *ILA Local* complaint only highlights this flaw. As noted, the *ILA Local* complaint expressly incorporated specific sections of exhibits, rather than referring to attachments as a whole. Therefore, the defendants in the *ILA Local Case* were on notice of the relevant allegations without sifting through hundreds of additional pages.

Finally, while the *ILA International* court could theoretically incorporate the exhibits in their entirety, rather than puzzling out which paragraphs the government intended to incorporate, the court pointed out that a third, even deeper issue would arise under comprehensive incorporation: such a strategy "would render the . . . Complaint utterly incoherent."¹¹⁹ Several attached exhibits alleged the existence of several different enterprises, many of them dissimilar from the Waterfront Enterprise of the *ILA International* complaint. The *ILA International Case*, of course, alleged ILA involvement in the enterprise, as did an attached complaint from another civil suit.¹²⁰ However, attached criminal indictments indicated that the ILA had been an unwitting victim of the mob's

113. *See id.* ¶¶ 78, 83, 86, 87, 89, 90, 91.

114. *Int'l Longshoremen's Ass'n*, 518 F. Supp. 2d at 463.

115. FED. R. CIV. P. 8(a)(2).

116. *See Int'l Longshoremen's Ass'n*, 518 F. Supp. 2d at 463 (citing *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988)).

117. *Id.* at 463.

118. *Id.* at 464.

119. *Id.* at 462 n.72.

120. *See id.* at 445.

activities and not a member of any RICO enterprise.¹²¹ As the court succinctly stated, “[I]f all of the allegations in the prior pleadings are deemed to be incorporated into the . . . Complaint, then the . . . Complaint would become an unintelligible morass of self-contradictory allegations.”¹²²

Considering each of the government’s arguments in support of incorporating the exhibits in the complaint, the court’s decision seems undeniably correct. In addition, it is not inconsistent with the RICO interpretations used in the *ILA Local Case*. The complaint in the *ILA Local Case* expressly and carefully incorporated the necessary information from the attached exhibits, and it properly put the defendants on notice as to what the allegations against them were. Moreover, the incorporated exhibits in the *ILA Local* complaint were not contradictory. The divergence between the two complaints satisfactorily accounts for the difference in outcome.

2. Sufficiency of the Pleading of Certain Predicate Offenses

While the complaint’s failure to adhere to Rule 8(a) would be sufficient to justify dismissal under Rule 12(b)(6), the *ILA International* court further identified two major flaws in the pleading of several predicate acts: failure to adequately plead the elements of mail and wire fraud, and failure to adequately plead the elements of extortion.

a. The Pleading of Mail and Wire Fraud

First, the court noted that nine of the alleged predicate acts constituted violations of mail and wire fraud statutes.¹²³ Federal Rule of Civil Procedure 9(b) states that “[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.”¹²⁴ This heightened pleading requirement “applies to allegations of mail or wire fraud alleged as predicate acts in a RICO complaint.”¹²⁵ As a result, a RICO complaint alleging mail or wire fraud must set forth “the contents of the communications, who was involved, where and when they took place, and ex-

121. *See id.* at 443–44.

122. *Id.* at 462–63 n.72.

123. *Id.* at 477 & n.92.

124. FED. R. CIV. P. 9(b).

125. *Int’l Longshoremen’s Ass’n*, 518 F. Supp. 2d at 479 (citing *First Capital Asset Mgmt., Inc. v. Satinwood, Inc.*, 385 F.3d 159, 178 (2d Cir. 2004); *see also* *Bernstein v. Misk*, 948 F. Supp. 228, 239 (E.D.N.Y. 1997); 5 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, *FEDERAL PRACTICE & PROCEDURE* § 1251.1 (3d ed. 2004)).

plain why they were fraudulent,”¹²⁶ although the messages need not carry fraudulent statements themselves, so long as they “are used to further the fraudulent scheme.”¹²⁷

The court concluded that the government’s allegations of mail and wire fraud fell short of these standards for at least three reasons. First, the government did not specifically identify the use of mail or wires in the majority of the alleged fraud schemes.¹²⁸ The government argued that it satisfied this element through the incorporation of several criminal indictments, which themselves alleged specific mailings and wire use.¹²⁹ As previously discussed, however, the attempt to incorporate the lengthy exhibits into the complaint itself violated Rule 8(a)(2), and therefore the allegations could not be considered part of the complaint. The government’s argument failed.¹³⁰

Furthermore, even if the indictments could be incorporated, the complaint would still be inadequate under the heightened pleading requirement of Rule 9(b).¹³¹ The allegations in the attached indictments merely identified dates, names, and addresses related to certain telephone conversations or mailings, without specifying any precise statements or indicating how the statements related to the fraudulent schemes.¹³² Under Rule 9(b), the allegations would not be adequate.

Finally, in three of the specified fraudulent schemes, the government did not even attempt to incorporate allegations of wire and mail use, arguing that specific pleading was unnecessary, as “[e]vidence of mailings made in furtherance of the other fraud schemes alleged in the Complaint has been produced by the United States or is otherwise available to, or in the possession of, the Defendants.”¹³³ Unfortunately for the government, the court rejected this novel position.¹³⁴ While conceding that in some cases

126. *Int'l Longshoremen's Ass'n*, 518 F. Supp. 2d at 479 (quoting *Mills v. Polar Molecular Corp.*, 12 F.3d 1170, 1176 (2d Cir. 1993)).

127. *Id.* at 479 (citing *Schmuck v. United States*, 489 U.S. 705, 714–15 (1989)).

128. *See id.* at 478.

129. *See id.*

130. *See id.* at 478–79; *see also supra* Part II.B.1.

131. *See Int'l Longshoremen's Ass'n*, 518 F. Supp. 2d at 479–80.

132. *See id.* at 480.

133. *Id.*

134. *Id.* at 481. The court noted, “The Government cites no authority in support of the proposition that a RICO plaintiff can satisfy Rule 9(b)’s pleading requirement by simply asserting that evidence of wrongdoing is ‘available to, or in the possession of, the Defendants’” *Id.* at 480.

specific pleading is not possible and therefore not strictly required, such as when the necessary information is in the “exclusive control” of the defendants,¹³⁵ the court rejected such leniency in this case.¹³⁶ Rather, it explained, “If the Government possesses these mailings, as it logically must in order to produce them to the defendants, then it should have no trouble conforming the allegations in the . . . Complaint to the requirements of Rule 9(b) with respect to them.”¹³⁷ Additionally, if the evidence was in the exclusive control of the defendants, the government should have alleged as much; it also should have alleged that the messages furthered the fraudulent scheme or contained fraudulent statements.¹³⁸ As the government failed to note *any* use of mail or wires in relation to these schemes, however, the complaint clearly failed to meet the pleading requirements.¹³⁹ In consequence, the court found the complaint to be defective, beyond the issues with the Rule 8(a) requirements. The analysis of the mail and wire fraud schemes pleadings does not seem to present any break with precedent; indeed, a portion of the opinion was devoted to rejecting the government’s creative interpretation of Rule 9(b).¹⁴⁰ Comparison with the *ILA Local Case* further demonstrates that the *ILA International* court’s decision on this point was very straightforward.

The government in the *ILA Local Case* did not allege any wire fraud, and it alleged only one violation of the mail fraud statute in its complaint. The government claimed that certain defendants embezzled funds from Local 1814 and covered up their activities by sending false annual reports to the United States Federal Election Commission.¹⁴¹ In contrast to the inadequate allegations of the use of the mail in the *ILA International Case*, the complaint in the *ILA Local Case* identified the senders and recipients of the mailings, the relevant time frame, the statements contained in the mailings, and why those statements were fraudulent:

The defendants named in ¶ 92 above, for the purpose of executing the scheme to defraud described herein, placed and caused to be placed in an authorized depository, to be delivered by the United States Postal Service to the United States

135. *Id.* at 480 (evaluating such a holding in *New England Data Servs., Inc. v. Becher*, 829 F.2d 286, 290 (1st Cir. 1987)).

136. *Id.* at 480–81.

137. *Id.* at 481.

138. *See id.*

139. *See id.*

140. *See id.* at 480–81.

141. *ILA Local Complaint*, *supra* note 60, ¶¶ 92–96.

Federal Elections Commission, annual reports from 1981 through 1988 inclusive, which annual reports contained the false representations and material omissions of fact identified in ¶¶ 92–95 above.¹⁴²

Therefore, as the plaintiff in the *ILA Local Case* specifically alleged all the necessary elements of mail fraud, including those required under the heightened pleading standard, it comes as no surprise that the *ILA International* complaint was dismissed, while the *ILA Local* complaint was not.

b. The Pleading of Extortion

The *ILA International* court further determined that the government failed to adequately plead all of the elements of extortion in two predicate acts.¹⁴³ Extortion, according to federal statute, is “the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.”¹⁴⁴ The *ILA International* complaint conspicuously lacked any allegations of the use of force, violence, or fear in relation to two claimed predicate acts of extortion.¹⁴⁵ The government attempted to circumvent this issue, arguing that it had no burden to prove that any of the alleged extortion schemes involved direct threats, since “[w]here a union has a long history of corruption, fear can be invoked in subtle and indirect ways.”¹⁴⁶ The court, however, pointed out that the government was unable to cite any authority to support the claim that “extortion . . . may be pleaded without even identifying the victims of the alleged extortion and indicating that *some* use or threat of force, however indirect, was used to compel their consent to part with property.”¹⁴⁷

The government also advanced a second, more convoluted argument as to why the extortion allegations in the complaint were sufficient. It claimed the allegations of extortion were supported by previous appellate rulings in two criminal cases, which upheld the convictions of two of the *ILA International* defendants for extortion based on the same acts alleged in the *ILA International Case*.¹⁴⁸ The court disagreed with this logic as well, pointing out that neither of

142. *Id.* ¶ 96.

143. *See Int'l Longshoremen's Ass'n*, 518 F. Supp. 2d at 483.

144. Hobbs Act, 18 U.S.C. § 1951(b)(2) (1946).

145. *See Int'l Longshoremen's Ass'n*, 518 F. Supp. 2d at 483.

146. *Id.* at 482 (quoting *United States v. Local 1804-1, Int'l Longshoremen's Ass'n*, 812 F. Supp. 1303, 1343 (S.D.N.Y. 1993)).

147. *Id.* at 483.

148. *See id.* at 482.

the cited opinions confronted the issue of whether every element of extortion was satisfactorily alleged in the pleadings, and “even if they had, the resolution of those cases would not be dispositive” of whether the complaint was satisfactory.¹⁴⁹ In the end, the court maintained that the plaintiff’s failure to allege any force, threat, or violence in relation to the extortion allegations meant that the government failed to state claims of extortion.¹⁵⁰

The result in the *ILA International Case* is entirely compatible with the *ILA Local Case*. Examining the language of the *ILA Local* complaint, it is clear that the allegations of extortion in that case did, in fact, conform to pleading requirements, explicitly stating all necessary elements. For instance, in claiming the extortion of Local 1804-1 members, the government asserted that the

Defendants . . . obtained and attempted to obtain money and property from the membership of 1804-1 . . . with . . . [the members’] consent induced by the wrongful use of actual and threatened force, violence, and/or fear, including fear of physical and economic injury; that is, that among other means, the defendants did create and attempt and conspire to create a climate of intimidation and fear which demonstrated that ILA Local 1804-1 was under the control of, and acting on behalf of, La Cosa Nostra figures.¹⁵¹

More specific allegations followed, including a list of mob figures and other criminals occupying Local 1804-1 offices and a list of violent incidents “publicly connected to La Cosa Nostra in order to maintain control of ILA Local 1804-1 and the Waterfront.”¹⁵² This pattern of alleging the appropriate elements of the offense of extortion, followed by further details, appears throughout the complaint.¹⁵³ Considering the obvious differences in the pleadings of

149. *Id.* at 482–83.

150. *See id.* at 483.

151. ILA Local Complaint, *supra* note 60, ¶ 76.

152. *Id.* ¶ 77.

153. *See id.* ¶¶ 80, 99, 102, 104. Moreover, it is interesting to note that the *ILA Local* court was not disposed to allow the government to slip predicate offenses through without fully satisfying its burden; it ultimately determined after trial that two alleged predicate acts of extortion remained unproven by the government, specifically because the government was unable to prove the element of actual or threatened force, violence, or fear. *See United States v. Local 1804-1, Int’l Longshoremen’s Ass’n*, 812 F. Supp. 1303, 1326, 1334, 1337–38 (S.D.N.Y. 1993). While explicitly noting that “fear can be invoked in subtle and indirect ways,” *id.* at 1335, the *ILA Local* court was no more willing than the *ILA International* court to ignore the required elements of extortion.

extortion between the two cases, the difference in outcome is unsurprising.

Despite the similarities between the cases, the *ILA International* court's finding of inadequately incorporated exhibits and inadequately pleaded predicate acts was consistent with existing RICO interpretation. The issues that the government faces in the ongoing case¹⁵⁴ are not based on novel interpretations of RICO law. Moreover, the government most likely will be able to fix the two flaws through more comprehensive pleading, including specific incorporation of exhibits and allegations of all relevant elements of the predicate acts.

3. The Alleged Waterfront Enterprise as an "Association-in-Fact"

Beyond the complaint's violation of Rule 8(a) and its inadequate pleading of predicate offenses, the court unexpectedly found another major flaw in the failure to allege an enterprise satisfying the requirements of RICO.¹⁵⁵ While the court's rulings on the other two flaws appear consistent with the existing legal landscape and suggest that the flaws are curable, the ruling on the RICO enterprise is inconsistent with the *ILA Local Case*, which had proven similar in so many other respects. Indeed, the court's interpretation of RICO as it relates to the enterprise in this case could be considered a substantial modification of prior RICO interpretation and one that may trouble the government in the future.

In making its decision, the *ILA International* court first reviewed the pleading requirement for a RICO enterprise, observing that it is necessary to "plead and prove the existence of a group of individuals or other legal entities operating as a continuing unit with a formal or informal structure and united by some common purpose in order to state a valid claim."¹⁵⁶ The court then went on to conclude

154. A second amended complaint is currently before the court. *See* Second Amended Complaint, Int'l Longshoremen's Ass'n, CV-05-3212 (E.D.N.Y. Jan. 2, 2008) [hereinafter Second Amended Complaint].

155. *Int'l Longshoremen's Ass'n*, 512 F. Supp. 2d at 475.

156. *Id.* at 474. This explicit pleading requirement applies to an "association-in-fact," one type of RICO enterprise; any enterprise composed of more than one individual or organization, which together do not comprise a legal entity, is considered an association-in-fact. *See supra* notes 36–37 and accompanying text. An association-in-fact differs from an alleged enterprise consisting of a legal entity, such as a single corporation. *See id.* To be precise, a legal entity must also operate as a unit with a structure, united by a common purpose, to be considered an enterprise, but it is generally easy to satisfy these elements based on the legal definition of the entity. *See, e.g.,* United States v. Kirk, 844 F.2d 660, 664 (9th Cir. 1988); Bennett v. Berg, 685 F.2d 1053, 1060–61 (8th Cir. 1982).

that the alleged enterprise in the complaint was insufficient to satisfy the requirements of RICO.¹⁵⁷

One obvious problem with the alleged enterprise, which the court duly noted, was its ambiguity.¹⁵⁸ First of all, it failed to indicate which specific individuals and legal entities were involved in the enterprise. Its reference to “certain current and former ILA officials,” “certain members and associates of the Genovese and Gambino crime families,” and “certain businesses operating in the Port of Miami” was far from clear.¹⁵⁹ Additionally, the complaint “le[ft] a plethora of unanswered questions” as to purpose, membership, structure.¹⁶⁰ Based solely on these facts, it was virtually inevitable that the alleged enterprise would be found deficient. These problems, however, are curable, requiring only that the government be more thorough in making its allegations.

The more troublesome issue for the government is the court’s finding that the alleged enterprise was incoherent, based on the fact that the nominal defendants did not share the enterprise’s common purpose.¹⁶¹ The nominal defendants, as previously discussed, were joined in the litigation to effect full relief; they were not accused of any wrongdoing or any RICO violation.¹⁶² While the government contended that the common purpose of the enterprise was “to exercise corrupt control and influence over labor unions and businesses operating on the Waterfront, the Port of Miami and elsewhere in order to enrich themselves and their associates,”¹⁶³ the

157. See *Int’l Longshoremen’s Ass’n*, 512 F. Supp. 2d at 477.

158. See *id.* at 475.

159. *Id.* at 431–32.

160. *Id.* at 475. The court continues with a list of missing information:

For example, who are the unnamed ‘current and former ILA officials’ and ‘certain businesses operating on or about the Waterfront’ that are members of the Waterfront Enterprise? What criteria distinguish a Waterfront entity that is a member of the Waterfront Enterprise from one that is not? What is the organizational structure of the Waterfront Enterprise? Who is in charge of it? How are instructions conveyed between its members? How does one become a member of, or terminate membership in, the Waterfront Enterprise? . . . [W]hat common purpose unites the members of the Waterfront Enterprise, what is the purpose of the enterprise itself?

Id. The “examples” seem, perhaps, excessive; one could envision an adequately pleaded association-in-fact without specific details on how instructions are conveyed between its members. The point, however, is that the complaint sorely lacks basic information regarding the structure, function, and indeed existence of the enterprise—and this point is well-taken.

161. *Id.* at 476–77.

162. *Id.* at 427; see also *supra* note 722 and accompanying text.

163. ILA International Complaint, *supra* note 9, ¶ 68.

court ultimately found that “the ‘common purpose’ alleged in paragraph 68 [of the complaint was] only the Racketeering Defendants’ common purpose, not the common purpose of the Waterfront Enterprise.”¹⁶⁴ Explicit questioning during oral argument revealed the true nature of the alleged common purpose, undermining the claim as it applied to the nominal defendants. The colloquy between the judge and the Assistant United States Attorney during oral argument is enlightening:

THE COURT: When in Paragraph 68 [of the complaint] you say, the defendants’ common purpose, does that include the nominal defendants as well?

[GOVERNMENT]: It does not.

. . . .

[GOVERNMENT]: Your Honor, the United States tried to take great pains . . . in distinguishing between the ILA and the Metro Funds and MILA and people such as Mr. Daggett and Mr Bowers and Mr. Gleason

THE COURT: So when in paragraph 68 it provides, the defendants’ common purpose, that does not include the nominal defendants?

[GOVERNMENT]: That is correct, Your Honor.¹⁶⁵

For the government to state that certain defendants and alleged members of the enterprise did not share the purpose of the enterprise seems, at best, self-defeating, and at worst, an admission that no common purpose existed. As an association-in-fact enterprise *must* have a common purpose to be cognizable, a lack of common purpose means no enterprise legally exists.¹⁶⁶

Moreover, even if the government explicitly claimed that the nominal defendants shared the enterprise’s common purpose, the allegation would prove untenable: the nominal defendants, who were not accused of wrongdoing or any RICO violation, logically could not share the fraudulent purpose of “exercise[ing] corrupt control”¹⁶⁷ over the Waterfront.¹⁶⁸ As a result, the court believed that, even under a generous interpretation,

164. *Int’l Longshoremen’s Ass’n*, 518 F. Supp. 2d at 476–77.

165. *Id.*

166. *See* *United States v. Turkette*, 452 U.S. 576, 583 (1981) (noting that an association-in-fact enterprise is “a group of persons associated together for a common purpose of engaging in a course of conduct”).

167. ILA International Complaint, *supra* note 9, ¶ 68.

168. Hypothetically, the government may be holding on to evidence that the nominal defendants have engaged in fraudulent and corrupt conduct, although it

[T]he . . . Complaint depicts the Waterfront Enterprise as a quasi-discrete commercial ecosystem, populated by various entities interconnected in a web of personal and commercial relationships that evolves organically as each entity *pursues its own interests, some of which coincide with those of other denizens of the Waterfront commercial habitat and others being quite adversely aligned*.¹⁶⁹

Therefore, it refused to “abet the Government’s effort to stretch the concept of a racketeering enterprise beyond all recognition in order to bring various otherwise disinterested parties within its scope, even for the worthwhile purpose of combating the influence of organized crime on the Waterfront.”¹⁷⁰ As an enterprise must be united by a common purpose to satisfy RICO, the allegation of this enterprise was doomed to fail.

This ruling, while logically coherent, was also strikingly novel. The court’s refusal to incorporate the nominal defendants into the RICO enterprise, based on the lack of any common purpose, represents a significant break from existing RICO interpretations. Comparison to the *ILA Local Case* emphasizes the difference.

In contrast to the *ILA International* court’s decision, the court in the *ILA Local Case* found in favor of the government and imposed civil RICO liability on the defendants.¹⁷¹ As part of this decision, the court specifically found the existence of a RICO enterprise.¹⁷² In terms of the defendants involved, the *ILA Local Case* is very similar, though not identical, to the *ILA International Case*.¹⁷³ Likewise, in both cases the government identified the union groups and several organizations only as nominal defend-

chose, for some reason, not to pursue the nominal defendants for violating RICO (which encompasses most, if not all, varieties of corrupt activity). This scenario seems highly unlikely, however, considering the aggressive breadth and reach of the complaint, and this Note assumes that the nominal defendants are not accused of RICO violations or any wrongdoing because the government does not have evidence that they engaged in any fraudulent or corrupt conduct.

169. *Int’l Longshoremen’s Ass’n*, 518 F. Supp. 2d at 475–76 (emphasis added).

170. *Id.* at 477.

171. See *supra* note 62 and accompanying text.

172. See *supra* note 61 and accompanying text.

173. See *supra* notes 63–66 and accompanying text.

ants, not RICO violators,¹⁷⁴ and it also alleged the same common enterprise purpose in both.¹⁷⁵

Given the similarities between the purported enterprises in the two cases, therefore, the difference in result is striking. In contrast to the holding of the *ILA International Case*, the court in the *ILA Local Case* specifically held that the government had demonstrated the existence of the Waterfront enterprise.¹⁷⁶ The evidence the *ILA Local* court relied upon consisted of public records, expert and eyewitness testimony, and the fruits of electronic surveillance.¹⁷⁷ Indeed, based primarily on these reports, the court explicitly found that Cosa Nostra had controlled the Waterfront since the 1950s.¹⁷⁸ Further, the court cited a string of cases to support the claim that the mob's stranglehold continued unabated to date¹⁷⁹ before turning back to the reports and ultimately relying on their conclusions that "the ILA remains a 'nest for waterfront pirates—a racket, not a union.'"¹⁸⁰

After making these findings of fact, the court reviewed its interpretation of an "enterprise," particularly noting that "[t]he language and legislative history of the statute indicates that Congress sought to define the term 'enterprise' as broadly as possible."¹⁸¹ Furthermore, "[t]he statute makes explicit reference to unions and businesses, and several courts have held that unions and businesses

174. *United States v. Local 1804-1, Int'l Longshoremen's Ass'n*, 812 F. Supp. 1303, 1308 n.2 (S.D.N.Y. 1993); *see also* *ILA Local Complaint*, *supra* note 60, ¶¶ 51–54 (noting that each employer defendant is "named for purposes of effecting complete relief as a representative of a class of employers which engage in business directly or indirectly affecting the Waterfront and commerce").

175. *See Local 1804-1*, 812 F. Supp. at 1310.

176. *Id.* at 1311–12.

177. *Id.* at 1311. The court took particular notice of three official reports detailing investigations of organized crime and the ILA: (1) PRESIDENT'S COMMISSION ON ORGANIZED CRIME, *supra* note 24; (2) PERMANENT SUBCOMM. ON INVESTIGATIONS OF THE COMM. ON GOVERNMENTAL AFFAIRS, WATERFRONT CORRUPTION, S. REP. NO. 98-369 (1984); and (3) *Organized Crime: 25 Years After Valachi: Hearings Before the Permanent Subcomm. on Investigations*, 100th Cong. (1988). *Local 1804-1*, 812 F. Supp. at 1312. These reports, as a whole, document the mob's infiltration of the ILA and reveal the extent of organized crime's control over a period of years. *Id.*

178. *Local 1804-1*, 812 F. Supp. at 1313.

179. *See id.* at 1313 & n.13 (citing cases).

180. *Id.* at 1314 (citing PRESIDENT'S COMMISSION ON ORGANIZED CRIME, *supra* note 24, at 33).

181. *Id.* at 1314. The court further pointed out that a RICO enterprise may be legitimate, illegitimate, or a combination, and that the parties involved in the enterprise need not have any legal or official association between themselves. *Id.* at 1314–15 (citing *United States v. Turkette*, 452 U.S. 576, 580–82, 585 (1981)).

can constitute RICO enterprises.”¹⁸² For instance, the *ILA Local* court noted that the Fulton Fish Market was adjudged to be a RICO enterprise in *United States v. Local 359, United Seafood Workers*,¹⁸³ despite the confluence of businesses and the Seafood Workers union.¹⁸⁴ Based on this law, the *ILA Local* court held that the disparate defendants composed an association-in-fact enterprise.¹⁸⁵

The result in the *ILA Local Case*, concerning the enterprise, is the opposite of the result in the *ILA International Case*. This difference could, theoretically, stem from the fact that the defendants in the *ILA Local Case* did not challenge the existence of the Waterfront Enterprise. Only four defendants, out of an original group of more than eighty, elected to pursue a trial to judgment, as the vast majority of the defendants defaulted or entered into consent decrees.¹⁸⁶ These individuals, moreover, chose not to argue against the Waterfront Enterprise’s existence,¹⁸⁷ and the court specifically acknowledged that the existence of the enterprise was subject to “one-sided . . . trial proofs.”¹⁸⁸

In contrast, the defendants vigorously challenged the alleged enterprise in the *ILA International Case*, claiming it “encompass[e] a host of unspecified individuals . . . and unspecified businesses . . . whose operations relate in any manner to the transaction of com-

182. *Id.* at 1314 (citing *United States v. Stolfi*, 889 F.2d 378, 380 (2d Cir. 1989)).

183. 705 F. Supp. 894 (S.D.N.Y. 1989), *aff’d in part, remanded in part*, 889 F.2d 1232 (2d Cir. 1989).

184. *Local 1804-1*, 812 F. Supp. at 1315 (citing *Local 359*, 705 F. Supp. at 897). Note, however, that while the *ILA Local* court implies that the court in the Fulton Fish Market case *found* the existence of the enterprise, the language of the opinion actually suggests that the existence of the enterprise may not have been contested, with the court ambiguously stating, “It is agreed that the Fulton Fish Market is an ‘enterprise’ within the meaning of the statute” without further discussion. *Local 359*, 705 F. Supp. at 897.

185. *Local 1804-1*, 812 F. Supp. at 1315.

186. *Id.* at 1308. The four were Donald Carson, Anthony Gallagher, George Lachnicht, and Venero Mangano. *See id.*

187. *Id.* at 1310.

188. *Id.* A number of parties, which had previously settled with the government, proceeded to submit an amicus curiae brief, expressing concern with the one-sided presentation of issues and the possible consequences for the settling parties, should the court’s decision fail to consider all interests. *See id.* Despite the lack of litigation, the *ILA Local* court indicated it had “no intention of merely ‘rubber stamping’ the government’s proposed findings of fact,” and that it endeavored to make “independent inquiries into the evidence presented by the government, and reach[e] the conclusion that the Waterfront constitutes an enterprise within the meaning of the RICO statute only after careful scrutiny of the government’s case.” *Id.* at 1311.

merce in the Ports of New Jersey, New York, Miami or elsewhere,” and that “no meaningful basis exists on which to fully evaluate the formation of the group, its continuity or structure.”¹⁸⁹ Indeed, even the heading of the ILA’s memorandum on this point was unequivocal: “The Alleged Enterprise is not a Decipherable, Let Alone a Functioning, Unit.”¹⁹⁰ The court in the *ILA International Case* was not blind to the difference in outcome from the *ILA Local Case* but rather was inclined to blame the variation on adversarial strategies.¹⁹¹ Therefore, it is logical to assume that the lack of argument regarding the enterprise’s composition in the *ILA Local Case* may have affected that court’s ultimate decision.

At a deeper level, however, the difference in rulings between the two ILA cases on the existence of the enterprise may not be attributed solely to the ambivalent defense of the *ILA Local Case*. The *ILA Local* court did not expressly consider the validity of the alleged enterprise’s “common purpose” or how that purpose applied to the nominal defendants. While the *ILA Local* defendants may not have litigated the point, the presence of a common purpose is an element of an association-in-fact RICO enterprise, and therefore the factfinder must theoretically determine whether a common purpose exists.¹⁹² Nonetheless, no discussion of the common purpose appears in the court’s ultimate opinion. The court first examined the relationship between organized crime and the ILA, and it then proceeded to conclude that there existed an “asso-

189. *United States v. Int’l Longshoremen’s Ass’n*, 518 F. Supp. 2d 422, 474–75 (E.D.N.Y. 2007). The defendants did not fully explore the idea that the enterprise’s alleged “common purpose” did not apply to the nominal defendants, but they did note in passing that “many of the constituents of the so-called Waterfront Enterprise frequently have conflicting interests.” Memorandum of Law in Support of Nominal Defendant International Longshoremen’s Ass’n, AFL-CIO’s Motion to Dismiss the Amended Complaint, Or, In the Alternative, To Strike Certain Allegations of the Amended Complaint at 33, *Int’l Longshoremen’s Ass’n*, 518 F. Supp. 2d 422 (No. 05-CV-3212), 2006 WL 1785478 [hereinafter Defendant’s Memorandum of Law].

190. Defendant’s Memorandum of Law, *supra* note 189, at 30.

191. *See Int’l Longshoremen’s Ass’n*, 518 F. Supp. 2d at 477 n.91 (“The Court recognizes that the definition of the Waterfront Enterprise in this action, while not precisely identical to the enterprise alleged in the ILA Local Civil RICO Case, is nevertheless quite similar to the enterprise that was held by Judge Sand [in the ILA Local case] to be sufficiently pleaded and proved . . . [A]s Judge Sand noted in his written opinion in the ILA Local Civil RICO Case, the sufficiency of the 1990 [ILA Local case] pleading with respect to the allegations pertaining to the Waterfront Enterprise was never challenged in that case.”).

192. *United States v. Turkette*, 452 U.S. 576, 583 (1981) (An “enterprise is an entity, for present purposes a group of persons associated together for a common purpose of engaging in a course of conduct.”).

ciation in fact.”¹⁹³ While the court mentioned the alleged objective enterprise in its preliminary comments,¹⁹⁴ it did not explicitly examine the validity of the allegation, and further, it did not explicitly consider the objective as applied to the nominal defendants.

Without any comments on the issue, it is impossible to determine whether the *ILA Local* court believed it was unnecessary for the stated objective to apply to all nominal defendants, or whether the issue simply escaped the court’s notice amongst the complicated allegations and voluminous evidence, reports, and arguments before it. If the latter, it also remains unclear whether the court would have come to a different conclusion about the existence of the enterprise if it had considered the “common purpose” requirement. It is highly significant, however, that the *ILA Local Case* stands in a long line of civil RICO lawsuits against mob-infiltrated labor unions which included nominal defendants as members of the enterprise.¹⁹⁵

Therefore, it certainly appears that the *ILA International* court’s consideration of the enterprise’s common purpose, and more significantly, its finding that the purpose could not apply to the nominal defendants, represents a substantial twist to existing civil RICO law. However, this determination does not merely signify a noteworthy break from general civil RICO interpretation; it suggests that the government could face serious trouble in future RICO liti-

193. *Local 1804-1*, 812 F. Supp. at 1315.

194. *See id.* at 1310.

195. *See, e.g.*, *United States v. Mason Tenders Dist. Council of Greater New York*, No 94-CV-6487, 1994 WL 742637, at *2 (S.D.N.Y. Dec. 27, 1994) (noting, in judgment of consent decree, the inclusion of nominal defendants, who the government accused of “no wrongdoing whatsoever”); *United States v. Dist. Council*, 778 F. Supp. 738, 757–58 (S.D.N.Y. 1991) (government alleged that “the District Council, its constituent Local Unions and the District Council Benefit Funds . . . constitute an enterprise,” and joined the District Council under Rule 19(a) even though it was not accused of wrongdoing; the court held the “District Council is properly included as a nominal defendant because it would be necessary to effectuate the relief sought by the government”) (citation omitted); *United States v. Local 359, United Seafood Workers*, 705 F. Supp. 894, 897 (S.D.N.Y. 1989) (“The only allegation of crime against the union itself is the claim of illegal receipt of money, in violation of the Taft-Hartley Act, for which the union was convicted in 1981. As the issues are now defined, the Government does not contend that this matter is of any relevance to the question of whether [certain individual defendants] should be replaced by a trustee and later by newly elected officers. However, the union remains as a defendant in the case because it would be affected by the relief the Government requests against [the individual defendants.]”), *aff’d in part, remanded in part*, 889 F.2d 1232 (2d Cir. 1989). Of course, in most RICO cases involving labor unions, the defendants enter consent decrees, and so the issue is not explicitly discussed. *See* JACOBS, *supra* note 1, at 143.

gation against labor unions controlled by the mob. The complaint's Rule 8(a) flaws, its improper pleading of predicate offenses, and its inadequacy in identifying the structure of the enterprise may be cured, theoretically, through more diligent lawyering. In stark contrast, the *ILA International* court's ruling suggests that the problem of formulating a common purpose that envelops the nominal defendants in the enterprise may actually be impossible.

By definition, the nominal defendants in this case were not accused of any wrongdoing.¹⁹⁶ Yet the racketeering defendants, including the ILA officer defendants and the Cosa Nostra defendants, were "alleged to have conspired together to conduct the pattern of racketeering activity set forth in the . . . Complaint."¹⁹⁷ While a RICO enterprise may be composed of both legal and illegal enterprises, all of the entities in an association-in-fact must be united by a common purpose.¹⁹⁸ Even more significantly, the Second Circuit has held unequivocally that "[f]or an association of individuals to constitute an enterprise, the individuals must share a common purpose to engage in a particular *fraudulent course of conduct* and work together to achieve such purposes."¹⁹⁹ It would be difficult for the government to craft an alleged common purpose encompassing both nominal defendants and racketeering defendants, regardless of whether the asserted purpose was fraudulent in nature; it is even more challenging to see how the government may assert that innocent parties share a fraudulent purpose.²⁰⁰

The government attempted to sidestep this issue by claiming that the common purpose of the enterprise did not apply to the nominal defendants.²⁰¹ Pursuit of this strategy, however, would mean that the nominal defendants, including the ILA, could not be considered a part of the enterprise.²⁰² One of the most important forms of relief that the government seeks in civil RICO cases against mob-infiltrated labor unions has been the imposition of a trusteeship over the union, installing a court-appointed steward to investi-

196. See *Int'l Longshoremen's Ass'n*, 518 F. Supp. 2d at 427.

197. *Id.*

198. See *United States v. Turkette*, 452 U.S. 576, 583 (1981).

199. *Int'l Longshoremen's Ass'n*, 518 F. Supp. 2d at 476 (emphasis added, alteration in original) (quoting *First Capital Asset Mgmt. v. Satinwood, Inc.*, 385 F.3d 159, 174 (2d Cir. 2004)); see also *City of New York v. Smokes-Spirits.com, Inc.*, 541 F.3d 425, 447 (2d Cir. 2008); *First Nationwide Bank v. Gelt Funding Corp.*, 820 F. Supp. 89, 98 (S.D.N.Y. 1993), *aff'd*, 27 F.3d 763 (2d Cir. 1994).

200. See *Int'l Longshoremen's Ass'n*, 518 F. Supp. 2d at 476.

201. See *supra* notes 167–68168 and accompanying text.

202. Note again the directive that the members of the enterprise *must* share a common purpose. See *Turkette*, 452 U.S. at 576, 583.

gate and combat internal corruption.²⁰³ For instance, in the *ILA International Case*, the government sought, amongst other relief, the appointment of an officer to oversee the ILA and associated organizations and funds, “until such time as these entities are free from corruption, domination, control, and LCN infiltration”²⁰⁴

This drastic reorganization and oversight of the nominal defendants corresponds to the court’s power under the civil RICO statute to “reorganize . . . any enterprise.”²⁰⁵ Since this remedy specifically applies to RICO enterprises, however, nominal parties not included in the enterprise do not fall under this authority. Failing to include the nominal defendants in the enterprise, therefore, leaves the court without power to effect the massive reorganization and imposition of a trusteeship permitted under the civil RICO statute, and the government’s efforts to reform a union and free it from corruption will become frustrated.

203. In a typical civil RICO suit involving a union and organized crime, [t]he judge is . . . asked to appoint a trustee empowered to initiate disciplinary charges against union officers and members who violate the decree, union constitution, or bylaws; administer the union’s affairs; design and implement a fair election, and monitor a new regime for conformity with the decree, the union’s constitution, and federal laws. . . . ‘Winning’ a civil RICO labor racketeering case by achieving a favorable decree does not necessarily ensure that the racketeer-ridden union will be successfully reformed. These cases are won or lost in the remedial phase.

JACOBS, *supra* note 1, at 142–43. The first case to impose such relief was *United States v. Local 560, Int’l Bhd. of Teamsters*, 581 F. Supp. 279 (D.N.J. 1984), *aff’d*, 780 F.2d 267 (3d Cir. 1985). The court in *Local 560* justified the imposition of a trusteeship as necessary due to “the likelihood of continued violations,” and it stated that the trusteeship would remain in effect “for such time as is necessary to foster the conditions under which reasonably free supervised elections can be held.” 581 F. Supp. at 337. Since then, approximately nineteen trusteeships have been imposed over mob-infiltrated labor unions; they have experienced varying levels of success. JACOBS, *supra* note 1, at 242–45.

204. ILA International Complaint, *supra* note 9, at 83.

205. Organized Crime Control Act of 1970, 18 U.S.C. § 1964(a) (2006); *see also Local 560*, 780 F.2d at 295 (“Section 1964(a) of the RICO Act enables the district court, in its discretion, to employ a wide range of civil remedies. . . . Indeed, the House Report which accompanied the proposed RICO Act stated that ‘[it] contains broad provisions to allow for reform of corrupted organizations. Although certain remedies are set out, the list is not meant to be exhaustive, and the only limit on remedies is that they accomplish the aim set out of removing the corrupting influence and make due provision for the rights of innocent persons.’ . . . Moreover, we take careful note of the Supreme Court’s instruction in *Sedima v. Imvrex Co. Inc.* . . . regarding the interpretation of the RICO Act[:] ‘RICO is to be read broadly. This is the lesson not only of Congress’ self-consciously expansive language and overall approach, but also of its express admonition that RICO is to “be liberally construed to effectuate its remedial purposes.”’ (footnotes and internal citations omitted)).

R

R

The *ILA International* court's decision to analyze the enterprise's common purpose as it applies to nominal defendants leaves the government between a rock and a hard place. Crafting a common purpose which envelopes the nominal defendants seems impossible, while leaving the nominal defendants out of the enterprise would defeat a primary purpose of the civil RICO suit. The court itself acknowledged that excluding the nominal defendants from the enterprise and "limiting the alleged enterprise to that relatively narrow group [of Racketeering Defendants] might create *potentially insurmountable* obstacles to the Government's efforts to impose equitable relief on some of the nominal defendants in this action."²⁰⁶ Therefore, while the court's other findings of flaws in the complaint may be overcome, the court's analysis of the enterprise not only represents a break with prior judicial practice, but it represents a significant challenge that the government will have to face in future litigation.²⁰⁷

III. WHERE DOES THE GOVERNMENT GO FROM HERE?

As discussed, two of the court's holdings in the *ILA International Case*, regarding the inadequate incorporation of exhibits and the deficient pleading of certain offenses, present largely straightforward issues for the government. The holding regarding the enterprise, on the other hand, could create major obstacles in future civil RICO suits against mob-infiltrated labor unions. This Note will now turn to the ongoing litigation in this case and then explain why, even if the government ultimately succeeds in this specific lawsuit, the enterprise problem could persist going forward. It will also offer two potential options that may help the government proceed in future litigation.

A. *The Significance of the Court's Holding for Future Litigation*

Months after the dismissal of the *ILA International* complaint, the government filed an amended complaint.²⁰⁸ Upon examination, it appears that this complaint may be capable of surmounting some of the issues that doomed the first complaint. First, the at-

206. *United States v. Int'l Longshoremen's Ass'n*, 518 F. Supp. 2d 422, 477 (E.D.N.Y. 2007) (emphasis added).

207. This discussion is not meant to imply that the *ILA International* court's ruling was incorrect—it was simply unexpected.

208. See Second Amended Complaint, *supra* note 154.

tached exhibits are explicitly incorporated.²⁰⁹ This time, the clear incorporation of specific exhibit segments may enable the government to avoid the “unintelligible morass of self-contradictory allegations” which characterized the earlier complaint.²¹⁰

Second, the allegations of predicate acts have been tailored to conform more closely to the pleading requirements. The allegations of mail and wire fraud now include the dates of the communications, the intended recipient of the communication, and in some cases a notation of who initiated the communication.²¹¹ This particularity may be enough to satisfy the heightened pleading requirements for the fraud allegations under Rule 9(b).²¹² In addition, each allegation of extortion includes a statement that the defendants used “wrongful use of threatened and actual force, violence and fear.”²¹³ As a result, it appears that some of the essential elements of the alleged extortion offenses that did not appear on the face of the first complaint are now adequately pleaded.

Third, the government has taken pains to expand its description of the RICO enterprise. In contrast to the vague enterprise alleged to encompass unknown individuals and businesses in the first complaint, the new complaint identifies each individual, group, and organization by name.²¹⁴ In addition, the government has devoted over two pages to describing the enterprise’s organiza-

209. See, e.g., *id.*, ¶ 117 (“The United States incorporates by reference Count I, Racketeering Act I, and Count 3 of the Indictment in *United States v. Gotti, et al.*, No. 02 Cr. 606 (E.D.N.Y.).”).

210. *Int’l Longshoremen’s Ass’n*, 518 F. Supp. 2d at 462 n.72.

211. Second Amended Complaint, *supra* note 154, ¶¶ 196, 223.

212. See *supra* note 1244. However, there remains a dearth of allegations as to how the messages furthered the fraudulent schemes, which could cause problems for the government. R

213. Second Amended Complaint, *supra* note 1544, ¶ 122. R

214. *Id.* ¶ 72. In this round, the enterprise is alleged to include

the ILA and ILA Locals 1, 1804-1, 1814, 1922, 1922-1, and 2062; current ILA Executive Officers JOHN BOWERS, ROBERT E. GLEASON and HAROLD J. DAGGETT; former ILA Officers Albert Cernadas, ARTHUR COFFEY and Frank ‘Red’ Scollo; MILA, the ILA Local 1922 Health and Welfare Fund, the ILA-Employers Southeast Florida Ports Welfare Fund; METRO and the METRO-ILA Funds; members and associates of the Genovese and Gambino crime families, particularly ANTHONY ‘SONNY’ CICCONE, JEROME BRANCATO, JAMES CASHIN and the Conspirators Not Named as Defendants as described in paragraphs 41 through 50, namely, George Barone, Liborio Bellomo, Thomas Cafaro, Pasquale Falcetti, Andrew Gigante, Vincent Gigante, Alan Longo, Ernest Muscarella, Michael Ragusa, Lawrence Ricci, Charles Tuzzo, Peter Gotti, Primo Cassarino, Vincent Nasso and Louis Valentino.

Id.

tion and structure.²¹⁵ However, the alleged common purpose of the enterprise remains essentially the same as in the first complaint, albeit in a slightly expanded form.²¹⁶ Furthermore, the government has again included nominal defendants as members of the RICO enterprise,²¹⁷ presumably sharing its common purpose. The complaint suggests no alternate purpose for the nominal defendants.

Litigation is ongoing, and defendants in the case insist that the new complaint is no more acceptable than the previous one.²¹⁸ It does not appear that the amended complaint makes any significant changes to the alleged common purpose of the enterprise or posits any new theory as to how the nominal defendants may share the common purpose. The government's undoing may be its failure to adequately address the *ILA International* court's ruling regarding the enterprise.

Regardless of the outcome of this particular case, however, the *ILA International* court's unusual analysis of RICO law, as it applies to nominal defendants included in an enterprise, will remain noteworthy. If the court dismisses the amended complaint, basing its decision at least in part on the same objection to the enterprise, the court's interpretation of that aspect of RICO law will become further cemented, potentially gaining wider notice and influencing other courts. If, on the other hand, the government ultimately wins its case, the previous holding would still retain significant impor-

215. *Id.* ¶¶ 73–79.

216. *Id.* ¶ 73 (“The purpose of the Enterprise has been to obtain money or other property on the Waterfront and the Port of Miami through extortion or fraud . . .”). The section on the alleged purpose goes on to state that the money and property obtained includes:

(a) ILA union positions, wages, and accompanying employee benefits, from the membership of the ILA; (b) the rights of the ILA membership to democratic participation in union affairs; (c) the rights of the ILA membership to the honest services of the ILA's officers, agents, delegates, employees and representatives; (d) money and economic benefits in benefit plan transactions from ILA-sponsored pension and welfare benefit funds and the funds' participants and beneficiaries; (e) the rights of ILA-sponsored pension and welfare benefit funds and the funds' participants and beneficiaries to the honest services of benefit plan trustees and fiduciaries; and (f) money from businesses.

Id.

217. *See supra* note 214.

218. “[T]he Second Amended Complaint not only repeated, but in some instances compounded, the errors that were fatal to its prior pleading.” Nominal Defendant Int'l Longshoremen's Ass'n, AFL-CIO's Reply Memorandum of Law in Further Support of its Motion to Dismiss the Second Amended Complaint Or, In the Alternative, To Strike Certain Allegations of the Second Amended Complaint at 1, No. 05-CV-3212 (E.D.N.Y. June 30, 2008), 2008 WL 3854641.

tance. Current RICO jurisprudence has already been challenged by the court's initial dismissal of the complaint. In future lawsuits in which nominal defendants are alleged to be members of a RICO enterprise, including cases brought by the Department of Justice, defendants may have a new weapon in their arsenal for challenging the existence of a cognizable enterprise. The mere fact that the *ILA International* court held the enterprise invalid, based on the lack of a common purpose encompassing all defendants, has the potential to substantially alter the legal environment. It only remains to be seen who takes notice of this novel theory. Indeed, in other jurisdictions, the success or failure of the second amended complaint will be irrelevant, as it is only binding precedent in its own federal district; the key question will be whether other courts find the *ILA International* court's reasoning persuasive. Therefore, even if the government eventually wins this particular case, it may find itself facing the same argument and the same "potentially insurmountable obstacles"²¹⁹ in future civil RICO litigation.

B. Potential Strategies for Future Litigation

This Note does not suggest that the government will ultimately prove unable to surmount the challenge posed by the *ILA International Case*. Indeed, several civil RICO cases involving captive labor unions suggest possible strategies for avoiding the enterprise problem. Among these are the dual enterprise model or the respondeat superior model.

First, one of the earliest union RICO cases, *United States v. Local 560, International Brotherhood of Teamsters*,²²⁰ used what this Note will call the "dual enterprise model." In that case, the government alleged the existence of two separate enterprises: the Provenzano Group Enterprise and the Local 560 Enterprise.²²¹ The Provenzano Group, comprised of individuals with ties to Local 560, was alleged to have committed RICO violations.²²² On the other hand, the members of the Local 560 Enterprise, including Local 560, its benefit funds, and its severance pay plan, were innocent of wrongdoing. The lawsuit claimed that the Provenzano Group maintained control of the Local 560 Enterprise through racketeer-

219. *United States v. Int'l Longshoremen's Ass'n*, 518 F. Supp. 2d 422, 477 (E.D.N.Y. 2007).

220. *United States v. Local 560, Int'l Bhd. of Teamsters*, 581 F. Supp. 279 (D.N.J. 1984), *aff'd* 780 F.2d 267 (3d Cir. 1985).

221. *Id.* at 283.

222. *Id.* at 283, 289–90. The group was named after Anthony Provenzano, a ringleader. *Id.*

ing activity, and that the Provenzano Group's purpose was to exploit the union.²²³ The court agreed with the government, finding the existence of both enterprises and holding that the Provenzano Group was liable for RICO violations.²²⁴ Significantly, the court ruled that the "institutional defendants . . . were the victims," and that there was "no basis for retaining [any of the Local 560 Enterprise members] as a defendant in this action, except insofar as it is necessary to retain Local 560 as a nominal defendant to effectuate the equitable relief heretofore specified"²²⁵

The dual enterprise model was thus successful in the *Local 560* case. Three aspects of the model are important. First, alleging two enterprises allows the government to craft two separate "common purposes," one to fit each enterprise.²²⁶ Second, alleging two enterprises allows the court to find one group of defendants liable for RICO violations based on that group's control of the innocent enterprise, while simultaneously finding that the innocent enterprise had committed no wrongdoing.²²⁷ Third, the court's finding that the nominal defendants compose a cognizable RICO enterprise also permits reorganization of that enterprise under the civil RICO statute.²²⁸ Based on these three features, the dual enterprise model could prove promising for the government in overcoming a holding such as that in the *ILA International Case*. It avoids the problem of finding one common purpose to fit both organized crime figures and innocent union participants in a single enterprise, yet the court will still be able to order civil RICO relief. In short, the strategy could circumvent the issue entirely.

But this strategy may not succeed in all jurisdictions, since it relies on an enterprise composed entirely of nominal defendants, having no illegitimate or fraudulent purpose. While associations-in-fact are generally criminal, the Supreme Court has not issued a clear ruling as to whether an association-in-fact, by definition, may also encompass a legitimate enterprise. *United States v. Turkette* held that an association-in-fact may be partly criminal, or it may be *purely* criminal, but it did not comment on whether it may also be purely legitimate.²²⁹ The subsequent case of *Russello v. United States*²³⁰

223. *See id.* at 284, 337.

224. *Id.* at 303–04, 335.

225. *Id.* at 337 (citation omitted).

226. *See id.*

227. *See id.*

228. *See id.*; *see also* § 1964(a) (allowing reorganization of a RICO enterprise).

229. *United States v. Turkette*, 452 U.S. 574, 576, 580 (1981).

230. 104 U.S. 16 (1983).

noted that the definition of “enterprise” includes “legal entities” and “illegitimate associations-in-fact,” but the court likewise failed to indicate whether a legitimate association-in-fact could also be a RICO enterprise.²³¹

The circuits have failed to come to an agreement on this issue. As previously discussed, the Second Circuit requires the individuals composing an association-in-fact RICO enterprise to share “a common purpose to engage in a particular fraudulent course of conduct.”²³² Wholly innocent nominal defendants could not logically share a purpose to engage in fraudulent conduct, so the Second Circuit may reject an enterprise composed solely of nominal defendants.

Some circuits, specifically the First, Seventh, and Eleventh, appear to agree with the Second Circuit that an association-in-fact RICO enterprise must be illegitimate or have an illegitimate purpose.²³³ On the other hand, it is far from clear whether this judicial interpretation is consistent with the original intention of the RICO statute.²³⁴ Moreover, not all circuits require an enterprise’s purpose to involve fraudulent conduct, or they may not have fully considered the question.²³⁵ Notwithstanding the circuit split, the dual

231. *Id.* at 24 (citing *Turkette*, 452 U.S. at 580–93).

232. *United States v. Int’l Longshoremen’s Ass’n*, 518 F. Supp. 2d 422, 476 (E.D.N.Y. 2007) (quoting *First Capital Asset Mgmt. v. Satinwood, Inc.*, 385 F.3d 159, 174 (2d Cir. 2004)); *see also* *City of New York v. Smokes-Spirits.com, Inc.*, 541 F.3d 425, 447 (2d Cir. 2008); *First Nationwide Bank v. Gelt Funding Corp.*, 820 F. Supp. 89, 98 (S.D.N.Y. 1993), *aff’d*, 27 F.3d 763 (2d Cir. 1994).

233. *See* *United States v. Cianci*, 378 F.3d 71, 79 (1st Cir. 2004) (“[E]nterprise’ has been interpreted *inter alia* to include (1) legal entities such as legitimate business partnerships and corporations, and (2) illegitimate associations-in-fact marked by an ongoing formal or informal organization of individual or legal entity associates who or which function as a continuing organized crime unit ‘for a common purpose of engaging in a course of conduct.’”) (citations omitted); *Emery v. Am. Gen. Fin., Inc.*, 134 F.3d 1321, 1325 (7th Cir. 1998) (Posner, J.) (noting that an “association in fact” is “a polite name for a criminal gang or ring”); *United States v. Castro*, 89 F.3d 1443, 1459 (11th Cir. 1996) (defining “an enterprise specifically formed for illegal purposes” as an “association in fact”).

234. *See* G. Robert Blakey & Brian Gettings, *Racketeer Influenced and Corrupt Organizations (RICO): Basic Concepts-Criminal and Civil Remedies*, 53 *TEMP. L.Q.* 1009, 1025 (1980) (“Associations in fact are often formed for the purpose of engaging in criminal activities, but their purposes may be legitimate as well.”) (citing *COMM. ON THE JUDICIARY, ORGANIZED CRIME CONTROL ACT OF 1969*, S. Rep. No. 617, at 158 (1969)).

235. The question, in fact, would not commonly arise, as most association-in-fact enterprises *do* have illicit purposes, such as narcotics distribution or illegal gambling. Some circuits state in their opinions that an enterprise must have a common purpose, without discussing whether the purpose must be criminal; however, the enterprises in these opinions generally have unquestionably criminal pur-

enterprise model of the *Local 560* case could be a potential option for the government in certain jurisdictions, as it avoids the logical inconsistency inherent in a “common purpose” encompassing both RICO violators and nominal defendants.

Of course, this analysis assumes that the government would generally seek to include more than one nominal defendant within the “innocent enterprise” in a civil RICO suit, and therefore it would need to demonstrate an association-in-fact enterprise. If the government only wished to obtain relief against a single nominal defendant, such as one union local, the relevant enterprise would not be an association-in-fact, but rather a legal entity.²³⁶ As legal entities are incontestably enterprises for the purposes of RICO,²³⁷ the government would have no trouble in this scenario following the dual enterprise model of *Local 560*, regardless of a particular jurisdiction’s requirements for an association-in-fact. Presumably, however, the government would seek to impose civil RICO remedies on a number of individuals and legal units in most, if not all, RICO labor cases,²³⁸ and therefore an association-in-fact would be a necessary component of the suit.²³⁹

poses. See *United States v. Richardson*, 167 F.3d 621, 625 (D.C. Cir. 1999) (purpose to obtain money through robbery); *United States v. Gray*, 137 F.3d 765, 772 (4th Cir. 1998) (purpose of trafficking drugs); *United States v. Darden*, 70 F.3d 1507, 1520 (8th Cir. 1995) (purpose of trafficking drugs). This silence, therefore, may indicate either that the question has not been considered or that the purpose need not be criminal.

236. See Organized Crime Control Act of 1970, 18 U.S.C. § 1961 (2006); see also *supra* notes 355–366.

237. *Id.*

238. The *ILA International Case* named upwards of thirty nominal defendants. See *United States v. Int’l Longshoremen’s Ass’n*, 518 F. Supp. 2d 422, 427–29 (E.D.N.Y. 2007).

239. Another, similar option would be to litigate the case under § 1962(b), as in the *Local 560* case, but to sue each RICO violator individually, rather than fitting all “guilty” defendants together into one guilty enterprise. This strategy would still allow for the separation of the guilty defendants from the innocent union components. The nominal defendants may be included within the innocent enterprise for reorganization purposes, and the fraudulent purpose of each individual RICO violator would not be imputed to the enterprise. Although this strategy may be rather unwieldy due to the sheer number of defendants, it would save the government the effort of proving two separate enterprises instead of one. On the other hand, in order to include all relevant parties within the innocent enterprise, the government would still need to demonstrate an association-in-fact, rather than relying on the existence of a single legal entity. See *supra* notes 36–37 and surrounding text. Therefore, the strategy may be successful in some jurisdictions as an alternative to the dual enterprise model, but the Second Circuit and similar jurisdictions would still require the association-in-fact enterprise to have a fraudulent

Apart from the dual enterprise model, a second potential strategy also appears in the *Local 560* case, as well as a handful of other civil RICO cases: imputing guilt to the institutional units based on the wrongful acts of individual agents based on the common law principle of respondeat superior.²⁴⁰ The principle of respondeat superior has appeared in civil RICO lawsuits involving captive labor unions. For instance, the court in *Local 560* noted that it would be permitted “to attribute the misconduct of the individual defendants to these institutional [nominal] defendants”²⁴¹ if the court found “(1) that the individual defendants committed the acts of racketeering in the scope of their employment, and (2) that they thereby intended to advance the affairs of the institutional defendants.”²⁴² Similarly, the court in *United States v. Local 30, United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Ass’n*²⁴³ imputed the actions of union agents to the union itself. After union employees and agents were convicted of criminal RICO violations, the court held that the individual defendants were estopped from litigating the same claims in a civil RICO suit, and that “[t]he statutory estoppel provided in [RICO] operates against the Union defendant as well, because the Union (the principal) is estopped and bound by the actions of its agents (the Union officials and representa-

purpose in order to be cognizable, and thus the outcome would be the same as under the dual enterprise model.

240. See, e.g., *United States v. Local 295 of Int’l Bhd. of Teamsters*, No. 90-CV-0970, 1991 WL 35497, at *1 (E.D.N.Y. Mar. 8, 1991); *United States v. Local 30, United Slate, Tile and Composition Roofers, Damp and Waterproof Workers Ass’n* 686, F. Supp. 1139, 1166 (E.D. Pa. 1988). Respondeat superior has been defined as follows:

[A]n employer [is] strictly liable—that is to say, regardless of the presence or absence of fault on the employer’s part—for torts committed by his employees in the furtherance of his business; in legalese, it ‘imputes’ the employee’s negligence to his employer, thus making the employer’s own lack of fault immaterial.

Rosenthal & Co. v. Commodity Futures Trading Comm’n, 802 F.2d 963, 966 (7th Cir. 1986). Respondeat superior may still apply when the acts are criminal in nature. See *Local 1814, Int’l Longshoremen’s Ass’n v. N.L.R.B.*, 735 F.2d 1384, 1395 (D.C. Cir. 1984) (citing RESTATEMENT (SECOND) OF AGENCY § 231 at 512 (1957)). It may also apply when the agent’s acts are predominantly motivated by self-interest. *Id.* at 1395 (citing RESTATEMENT (SECOND) OF AGENCY § 236 & cmt. b (1957)).

241. *United States v. Local 560, Int’l Bhd. Of Teamsters*, 581 F. Supp. 279, 337 (D.N.J. 1984), *aff’d* 780 F.2d 267 (3d Cir. 1985).

242. *Id.* Of course, the court in *Local 560* exculpated the nominal defendants, as it did not find that the individual defendants intended to advance the interests of the nominal defendants. See *id.*

243. 686 F. Supp. 1139 (E.D. Pa. 1988).

tives).”²⁴⁴ In a third example, *United States v. Local 295 of International Brotherhood of Teamsters*,²⁴⁵ the government suggested that the union defendants could be held liable for the actions of the individual defendants on a similar theory of vicarious liability.²⁴⁶

In short, case law suggests a straightforward application of agency liability theory to labor unions in civil RICO cases. The key requirements are that the individual defendants committed the predicate acts in the scope of their employment and that the defendants intended their acts to benefit the unions.²⁴⁷ If the government were able to demonstrate these two elements, therefore, the theory could potentially help the government to overcome the challenge presented by the *ILA International* decision.²⁴⁸ Instead of conceding that a union, or nominal defendant, had committed no RICO violations, the government may instead attempt to impute liability based on the actions of the union’s employees and agents. For instance, in the *ILA International Case*, several *ILA* officers stood accused of RICO violations.²⁴⁹ If a court holds that the RICO enterprise’s common purpose must apply to nominal defendants, the government may argue that the theory of vicarious liability supports a common purpose consistent with that of the individual defendants. In addition, this strategy would not be compromised where a jurisdiction requires the common purpose to be fraudulent; imputing liability based on acts of racketeering would presumably comprise a common purpose of racketeering, which is clearly fraudulent.

The difficulty with this strategy may lie in convincing a court that vicarious liability actually translates to a “purpose” to engage in the relevant conduct in the context of a RICO enterprise. A distinction could arise between technical liability for specific acts and an actual purpose to commit the acts, with the latter perhaps requiring an awareness or agreement that the former does not.

No court has directly addressed this specific issue, so it remains unclear whether a court, faced with the issue, would impute a criminal purpose. One could certainly argue that a nominal defendant does not share a common purpose when it is liable merely for the

244. *Id.* at 1166.

245. No. 90-CV-0970, 1991 WL 35497 (E.D.N.Y. Mar. 8, 1991).

246. *Id.* at *1.

247. *Local 560*, 581 F. Supp. 279, 337 (D.N.J. 1984); see also *Local 295 of Int’l Bhd. of Teamsters*, 1991 WL 35497, at *1.

248. See *United States v. Int’l Longshoremen’s Ass’n*, 518 F. Supp. 2d 422, 483 (E.D.N.Y. 2007).

249. See *supra* notes 86–93 and accompanying text.

actions of its agents—actions that the nominal defendant may not even know about. On the other hand, respondeat superior as a theory depends on a kind of legal fiction, and courts are routinely willing to hold entities liable for the actions of their agents. Perhaps the fiction may be extended to find the nominal defendants shared the enterprise's purpose; imputing purpose is not a big step from imputing acts. This strategy remains untested, but it could hold promise for the future. The broadening of the respondeat superior theory used in previous labor racketeering cases could convince a court that nominal defendants may be included in an association-in-fact, even one with a criminal purpose. At the least, it presents the government with another option to avoid a ruling such as that faced in the *ILA International Case*.²⁵⁰

CONCLUSION

Considering organized crime's long-standing infiltration of the ILA, it was curious that the government waited as long as it did to address corruption through RICO. The successful civil RICO suit against the local ILA chapters seemed to pave the way for action against the international unit. When the suit was finally brought, however, the dismissal of the complaint contrasted sharply with the *ILA Local Case's* success, as well as the government's success in all other previous civil RICO suits involving labor racketeering.

Just how momentous was the court's rejection of the complaint in the *ILA International Case*? Does the court's decision indicate that the complaint's fatal flaws were primarily superficial failings that the government may easily rectify? Or do the holdings suggest that the *ILA International* court has made deep, significant changes to RICO interpretation? Upon examination, two issues appear to be fairly superficial: the failure to properly incorporate exhibits, and the failure to adequately plead several predicate acts. Comparison to the *ILA Local Case* supports the observation that the court's rejection of these flaws was consistent with current interpretations of RICO. Moreover, the comparison also reveals that these flaws are curable, as the *ILA Local* complaint avoided many of these flaws despite the similarity of the issues between the two cases.

One holding, on the other hand, appears to be a substantial deviation from prior RICO interpretation, namely the court's rejection of the alleged enterprise, based on the finding that the enterprise's alleged common purpose did not apply to the nominal defendants. Not only is this evaluation of the enterprise signifi-

250. See *Int'l Longshoremen's Ass'n*, 518 F. Supp. 2d at 483.

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cantly different from the *ILA Local Case* and other RICO cases brought against mob-infiltrated labor unions, it could also present a serious challenge for the government in future cases, regardless of how the *ILA International Case* eventually plays out in ongoing litigation. If other defendants or other courts pick up on the court's reasoning in its dismissal of the complaint, they may use or consider the issue in future litigation. As no court appeared to have considered this particular issue previously, the court's ruling could prove influential. The government may be able to avoid the issue in the future by using a dual enterprise or respondeat superior model. As for just how significant the *ILA International* court's ruling will prove to be, only time will tell.

