

US Supreme Court Permits Foreign Plaintiff to Bring RICO Suit for Evading Attempts to Enforce an International Arbitral Award

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The US Supreme Court has opened the door for foreign plaintiffs to sue under the Racketeer Influenced and Corrupt Organizations Act (RICO). RICO is a powerful statute that allows recovery of treble damages and attorneys' fees for unlawful acts performed by an organization or enterprise. On June 22, 2023, in a 6-3 opinion in *Yegjazaryan v. Smagin* and *CMB Monaco v. Smagin*, the Court permitted a foreign plaintiff to sue under RICO to assist enforcement of an international arbitral award where the defendant attempted to frustrate enforcement of the award in the United States. In a prior case, *RJR Nabisco, Inc. v. European Community*, 579 U.S. 325, 346 (2016), the Court held that plaintiffs must plead a "domestic injury" to bring a RICO claim. In *Yegjazaryan*, the Court clarified that a foreign plaintiff suing under RICO can suffer a domestic injury when the circumstances surrounding the injury indicate it arose in the United States. The Court concluded that the "domestic-injury" inquiry is "context specific," and that courts should look at "the nature of the alleged injury, the racketeering activity that directly caused it, and the injurious aims and effects of that activity." The Court resolved a circuit split, rejecting a bright-line rule that strictly barred foreign plaintiffs from satisfying the domestic-injury requirement by virtue of their foreign residence. This decision has the following implications:

- Foreign judgment creditors holding international arbitration awards will increasingly look to enforce those awards in the United States.
- The prospect of facing treble damages under a RICO claim will cause judgment debtors to carefully consider their approach to resisting the payment of any judgments.
- Banks and other third parties are at risk of being subjected to a RICO suit for assisting judgment debtors in their efforts to frustrate enforcement of awards.
- Lower courts will provide further clarity on the contours of the "context specific" inquiry. However, judgment creditors will likely need to take certain specific steps to ultimately assert a successful RICO claim. Some of those steps may include first confirming their awards and judgments in US

courts, and establishing the judgment debtor's pattern of unlawful evasion of collection of the award or judgment.

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