No. 04-3719

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Keith McFarland,
Plaintiff-Appellant,

v.

Paul Weil, Marshall & Stevens,
Incorporated, Carl Hogan, Jr., et al.,
Defendants-Appellees.

Appeal From The United States District Court
For the Southern District of Illinois,
Case No. 03-C-433
The Honorable Judge Michael J. Reagan

BRIEF AND REQUIRED SHORT APPENDIX OF PLAINTIFF-APPELLANT, KEITH MCFARLAND

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April 14, 2005

DISCLOSURE STATEMENT

1. The full name of every party that the attorney represents in this case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

   KEITH D. MCFARLAND

2. The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

   Daniel F. Goggin, Attorney at Law.

3. If the party or amicus is a corporation:
   i) Identify all its parent corporations, if any; and
   ii) list any publicly held company that owns 10% or more of the party's or amicus' stock.

   N/A

CERTIFICATION

I certify that the information provided on this disclosure statement is accurate.

April 20, 2005 BY: ______________________________

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JURISDICTIONAL STATEMENT

The United States District Court for the Southern District of Illinois sat in subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331, since the action arises under the laws of the United States. This action is authorized pursuant to 18 U.S.C. § 1864©), and is based on 18 U.S.C. § 1962(d) conspiracies to violate 18 U.S.C. § 1962©).

Plaintiff-Appellant, resides at Greenville, Illinois, in the Southern District of Illinois. Defendant-Appellee, Bryan Cave LLP, has law offices in the State of Illinois and conducts business in the Southern District of Illinois. Defendant-Appellee, Marshall & Stevens, Incorporated, has appraisal offices in Illinois and conducts business in the Southern District of Illinois.

This Court has jurisdiction pursuant to 28 U.S.C. § 1291. Final Judgment was entered on September 21, 2004, dismissing Plaintiff-Appellant's second amended complaint with prejudice. Plaintiff-Appellant's Notice of Appeal was timely filed on October 20, 2004.

STATEMENT OF THE ISSUES

A. Whether a terminated employee can maintain a RICO conspiracy claim against employer, law firm and client when termination was a direct result of law firm and client illegally conspiring with employer for the specific purpose of terminating employee?

B. Whether a terminated employee can maintain a RICO conspiracy claim against employer, law firm and client when termination was a direct result of law firm and client using racketeering funds to acquire control over employer for the specific purpose of terminating employee?

C. Whether a violation of the Hobbs Act (18 U.S.C. § 1951) is an actionable predicate act when it is the proximate cause of the injury asserted?

STATEMENT OF THE CASE

This case involves the dismissal of a claim by Plaintiff-Appellant under Racketeer Influenced Corrupt Organizations Act (RICO), 18 U.S.C. § 1962(d).

Plaintiff-Appellant was an appraiser and employee of the appraisal firm of Marshall & Stevens Incorporated. When Carl G. Hogan, Sr. Passed away in 2001, his three sons acting as co-executors retained attorney Paul Weil with the law firm of Bryan Cave LLP to prepare necessary estate tax returns.

Plaintiff-Appellant filed his second amended complaint against Marshall & Stevens, Incorporated, Paul Weil and Bryan Cave LLP , and the three Hogan Brothers. He claimed that the Hogan Brothers and Paul Weil on behalf of Bryan Cave LLP illegally conspired to violate RICO by acquiring false asset appraisal values for the purpose of filing false federal and state estate tax returns. Plaintiff-Appellant contended that Paul Weil through illegal means asserted pressure on him to join the conspiracy and sign false appraisal value reports. After he refused to participate, Plaintiff-Appellant asserts that Weil, Bryan Cave LLP and the Hogan Brothers paid Marshall & Stevens, Incorporated to join the conspiracy for the purpose of removing and firing Plaintiff-Appellant and procuring appraisals containing false values. According to Plaintiff-Appellant, the illegal activity of the Defendants-Appellees eventually ended up causing his termination of employment.

Marshall & Stevens, Incorporated filed its motion to dismiss the second amended complaint predicated on failure to state a claim. The other defendants-appellees joined together and filed a similar motion to dismiss.

The district court dismissed the second amended complaint RICO claim based on the Supreme Court's holding in *Beck v. Prupis*, 529 U.S. 494 (2000). That case held that a terminated employee lacks standing to maintain a RICO conspiracy claim because the act of termination, though an overt act in furtherance of the conspiracy, is not a predicate act or otherwise wrongful under the RICO Act.

The District Court dismissed the RICO claim with prejudice because it believed in light of *Beck v. Prupis* Plaintiff-Appellant could not prove a RICO claim since he was not injured by an act of racketeering.

STATEMENT OF THE FACTS

On January 14, 2001, Carl G. Hogan, Sr., passed away at his New Hampshire residence leaving behind a substantial sized estate. [SA 6].[1]

The Estate of Carl G. Hogan, Sr., was probated in the Cheshire County Probate Court at Keene, New Hampshire. Defendants, Carl G. Hogan, Jr., Brian J. Hogan and David Hogan, were the co-executors of said estate, and are herein referred to as the "Hogan Brothers". [SA 6].

The Hogan Brothers sought the counsel of Paul Weil for preparation and filing of Federal Form 706, which is the Federal Estate Tax form used to report any such tax liability. Paul Weil was an attorney for the law firm of Bryan Cave LLP. [SA 6,7].

In June of 2001, Paul Weil, Bryan Cave LLP, through Weil, and the Hogan Brothers conspired to generate false state and federal estate tax returns for the Estate of Carl G. Hogan, Sr., by acquiring, inter alia, appraisals of estate assets containing false and fraudulent information and values. The conspiracy consisted of a scheme whereby Paul Weil and Bryan and Cave LLC, through Weil, would engage an appraisal firm for making appraisals of certain assets of the Estate of Carl G. Hogan, Sr. Weil and Bryan Cave LLP would then illegally and inappropriately interfere with the appraisal firm's ability to prepare accurate appraisals by providing said firm with false legal conclusions and information regarding matters affecting the values of certain assets. The scheme

[1] References are made to either attached appendix as [A #] or separate appendix as [SA #]. The separate appendix contains one document, the second amended complaint, therefore no parallel citations are made.

also provided that the Hogan Brothers would assist Paul Weil and Bryan Cave LLP in interfering with said appraisals by personally providing, or having the employees the Estate's companies provide agents of the appraisal firm false information about assets of the companies and/or the accounting records of said companies. [SA 7].

After the initial enterprise and conspiracy was formed, the enterprise retained the appraisal firm Marshall & Stevens, Incorporated to prepare appraisals of certain assets of the Estate of Carl G. Hogan, Sr. [SA 8].

Marshall & Stevens, Incorporated agreed for a certain fee to prepare appraisals on various assets of the Estate of Carl G. Hogan, Sr. The preparation of the those appraisals is referred to herein as the "Hogan File". [SA 8].

At the time the Hogan File began, the plaintiff, Keith McFarland, had been employed with Marshall & Stevens, Incorporated for more than 15 years. [SA 2]. He served as Appraisal Director in the St. Louis office of Marshall & Stevens, Incorporated and his duties included reviewing reports by other appraisers in the office regarding the ethical and legal compliance of certain undertakings by the other appraisers in completing assignments. As such, the other appraisers would from time to time report to the plaintiff if he or she believed someone was attempting to procure a false or otherwise unethical determination of value in an appraisal. [SA 8].

Plaintiff was assigned to completing the appraisal of Hogan Real Estate

Development Partnership. Other appraisers in his office were assigned work on four other businesses in the Hogan File. [SA 9].

Prior to his issuing his first draft appraisal on or about July 23, 2001, the plaintiff received reports by the other appraisers working on the Hogan File that the attorneys (Paul Weil and others at Bryan Cave LLP) were asserting undue pressure on them to state false and fraudulent values in their appraisals. Undue pressure included false and misleading information being provided by said attorneys through telephone calls, emails, faxes, letters and in person conversations. [SA 9].

In early September the plaintiff received false communications by telephone from Paul Weil regarding a proposed bridge project which Weil believed would lower the value of the property for which the plaintiff was compiling an appraisal. [SA 9].

On July 23, 2001, the plaintiff submitted his draft appraisal of the Hogan Real Estate Development Partnership. [SA 9].

On September 3, 2001, the plaintiff was summoned to a conference room at Marshall & Stevens, Incorporated for a teleconference meeting with Paul Weil and some of the other appraisers working on the Hogan File. During the teleconference Paul Weil attempted to influence the plaintiff's conclusions as to value by asserting false information regarding EPA issues involving certain real estate. The plaintiff opined that it would be illegal and unethical to use the suggested reduction in value ordered by

Weil based on hypothetical EPA issues. The plaintiff refused to modify his appraisal based on such information and refused to participate in the scheme at which time Paul Weil, through acts of extortion, threatened to ruin Plaintiff's career and lively hood by emailing every law firm in the St. Louis area and seeing to it that he would never work as an appraiser again if he didn't join the enterprise, in violation of 18 U.S.C. § 1951. [SA 9,10].

After the teleconference meeting, and based on information provided by Marshall & Stevens, Incorporated's employees, the plaintiff concluded that the entire Hogan File had been illegally influenced and that it would be a felony for his firm to provide final appraisals based on the illegally influenced values that had been generated. [SA 10].

Marshall & Stevens, Incorporated thereafter renegotiated its fee with the enterprise and agreed to participate in the enterprise and conspiracy by providing false appraisal values for the purpose of federal and state estate tax returns. [SA 10].

Marshall & Stevens, Incorporated, as a new member of the Enterprise, opined with the other members of the conspiracy that the plaintiff had become a problem in that he would not participate in the fraud. It was believed that he might even alert government officials regarding the scheme. It was therefore agreed that Plaintiff would be removed from working on the Hogan File and later terminated after sufficient time had passed. Further it was agreed that all prior draft appraisals and file documents at Marshall &

Stevens, Incorporated would have to be destroyed for which Marshall & Stevens, Incorporated would have to purchase a paper shredder. [SA 10 & 26].

Through his employment with Marshall & Stevens, Incorporated, Plaintiff learned that the defendants were attempting to file false federal and state estate tax returns by intentionally understating the asset appraisal values by tens of millions of dollars. The defendants did in fact file false federal and state estate tax returns thereby defrauding the United States and the State of New Hampshire. [SA 11].

The defendants, in violation of 18 U.S.C. § 1957**,** sought to engage in monetary transactions involving criminally derived property in excess of $10,000.00, by dispersing funds from the Estate of Carl G. Hogan, Sr., to certain legatees knowing that said funds would be illegally acquired or retained due to the filing of a false federal and state estate tax returns. [SA 12].

Plaintiff refused to participate in deriving false value conclusions and refused to sign or affix his signature to said appraisal which effectuated him being removed from working on the Hogan File by the enterprise and then later being terminated from employment with Marshall & Stevens, Incorporated. [SA 12,13].

On or about September 5, 2001, after Plaintiff had been removed from the Hogan File, Paul Weil and Marshall& Stevens, Incorporated agreed to destroy all prior appraisal drafts in violation of 18 U.S.C. § 1510 knowing the plaintiff was either likely to tell law enforcement officials about the illegal activity or otherwise be questioned by law enforcement officials about such activity [SA 13 & 26].

On September 24, 2001, the enterprise through Paul Weil modified Plaintiff's original appraisal draft in violation 18 U.S.C. § 1510, knowing the plaintiff was either likely to tell law enforcement officials about the illegal activity or otherwise be questioned by law enforcement officials about such activity. [SA 13 & 24].

Also contemplated in the conspiracy to violate 18 U.S.C. § 1962©) was that the participants of the enterprise would necessarily violate the 18 U.S.C. § 1341 mail fraud, and 18 U.S.C. § 1343 wire fraud provisions of law by utilization of the United States Postal Service and telephone/email communications to facilitate the scheme. [SA 13,14].

From July of 2001 to July of 2002 the enterprise transmitted dozens of letters, telephone calls and emails through either the U.S. Postal Service or wire communication in interstate commerce, for the purpose of executing their conspiracy. [SA 14 & 24-62].

SUMMARY OF THE ARGUMENT

The facts of the present case are distinguishable from those in *Beck v. Prupis*, 529 U.S. 494 (2000). The plaintiff's role in that case in contrast to Plaintiff-Appellant's role in the present case would compel the conclusion that the rule in *Beck v. Prupis* would not be applied to bar recovery in the present case.

It is clear that the proximate cause of Plaintiff-Appellant's termination was the expansion of the conspiracy to include his employer for the specific purpose of his termination and acquiring his work product. Qualifying predicate acts were likely committed in expanding the conspiracy to include the employer.

The Supreme Court did not define what other "unlawful acts" can qualify for causing RICO injuries other than the predicate acts listed 18 U.S.C. § 1961(1). It would appear, however, that there is little room to conclude anything other than the high court meant that the act of conspiring (§ 1962(d)) to violate any of the substantive paragraphs of § 1962(a), (b) or ©), could serve as the unlawful act if it were the proximate cause of the injury asserted. In the present case we know Plaintiff's injury was caused by his employer joining the conspiracy. The act of the employer joining the conspiracy was a substantive violation of both § 1962(a) and ©). Plaintiff-Appellant can therefore successfully claim an illegal conspiracy under (d) to violate those provisions which caused his injury.

On a more direct point, without the inquiry into *Beck v. Prupis*, the trial court simply overlooked the fact that Plaintiff-Appellant has successfully pled a Hobbs Act violation which directly caused his damages. A Hobbs Act violation is a predicate act as defined in 18 U.S.C. § 1961(1).

ARGUMENT

I. Standard of Review.

The Appellate Court reviews a district court's decision to dismiss a RICO claim *de novo*, taking all facts alleged in the complaint, as well as any reasonable inferences from those facts, in the light most favorable to the plaintiff. *Schiffels v. Kemper Financial Services*, 978 F.2d 344 (7th Cir. 1992). The Appellate Court will affirm the district court's order of dismissal only if it appears beyond doubt that the plaintiff can prove no set of facts which would entitle the plaintiff to relief. *Goren v. New Vision International*, 156 F.3d 721 (7th Cir. 1998).

II. Plaintiff's Cause of Action is not Barred by Application of the Supreme Court's Holding in *Beck v. Prupis*, 529 U.S. 494 (2000).

Having determined that Plaintiff-Appellant was a terminated employee, the District Court failed to give consideration to the alleged facts which distinguish Plaintiff-Appellant's RICO claim from the failed RICO claim in *Prupis.* The relationship between Plaintiff-Appellant and the original RICO conspirators sets the present case apart from *Prupis*, and even though Plaintiff-Appellant was terminated by his employer, the proximate cause of his damages were the unlawful acts by others including his employer.

A. Plaintiff-Appellant's case is factually distinguishable from *Beck v. Prupis.*

For analysis purposes, the striking impression of the facts in the present case is that one doesn't have to hypothesize that there was an underlying RICO scheme which took place. A reading of the exhibits to the seconded amended complaint (SA 24-62) leaves no doubt that the defendants-appellees were violating the RICO act.

A thorough review of the facts in the present case illustrates in comparison that the reasoning adopted by the Supreme Court in *Beck v. Prupis*, 529 U.S. 494 (2000) does not bar Plaintiff-Appellant's RICO conspiracy claim.

In *Beck v. Prupis*, Beck was hired to serve as president and as a member of the board of directors of an insurance holding corporation, SIG. SIG was Beck's employer. *Beck v. Prupis*, 162 F. 3d 1090, 1094 (11th Cir. 1998). As president, Beck learned that some of SIG's directors and officers were engaging in acts of racketeering. The activity amounted to using the company's money for personal use, scamming monies from construction contractors, and producing false financial statements to mislead regulators, shareholders, and creditors. *Beck v. Prupis*, 529 U.S. 494, 498 (2000). Beck tried to stop the activity of the officers and directors internally which failed. Thereafter the officers and directors involved procured a false evaluation of Beck's performance so that SIG could terminate him without breaching his employment contract. The day after the report was presented to SIG's board of directors Beck was terminated. *Id.* at 498.

The Supreme Court concluded in *Prupis* that, ". . . a person may not bring suit under § 1964©) predicated on a violation of § 1962(d) for injuries caused by an overt act that is not an act of racketeering or otherwise unlawful under the statute." *Beck v. Prupis* at 507.

From the point of view of the conspiracy in *Beck v. Prupis*, Beck did not play any part in the scheme. The racketeering activity began without his knowledge. He did not perform any wrongful acts for the conspiracy, either known or unknown. When he discovered the scheme, he was easily terminated without any additional racketeering activity by the conspirators. As his employer, the company simply terminated him.

What Plaintiff-Appellant has alleged in the present case sets it far apart from the facts and reasoning of *Beck v. Prupis*.

Plaintiff-Appellant had for more than 15 years been an appraiser for Marshall & Stevens, Incorporated. One day in 2001, the Hogan File was placed in his responsibility. Unknowingly at first, he began not only performing an appraisal for the conspiracy, but also assuming the managerial responsibility over several other appraisals of assets for the conspiracy. At that time Marshall & Stevens, Incorporated had not joined the scheme. Plaintiff-Appellant was not at that time vulnerable to a termination like in *Beck v. Prupis* because his employer was not part of the scheme. Rather, it was Paul Weil, Bryan Cave LLP and the Hogan Brothers committing the racketeering activities.

Plaintiff-Appellant then realized there was racketeering activity with respect to the appraisals and that he had unknowingly been assisting the conspirators. The big event occurs on September 3, 2001. The conspirators (which still do not include his employer) demanded Plaintiff-Appellant join the conspiracy and commit racketeering acts, and they threatened his livelihood if he refused join.

When Plaintiff-Appellant refused to join the racketeering activity, the conspirators didn't have the luxury of simply terminating him like in *Beck v. Prupis*, 529 U.S. 494 (2000). He was not the law firm's employee nor its clients'. The conspirators could have simply fired Marshall & Stevens, Incorporated and moved on to a another puppet appraisal firm. But it is likely that too much time and resources had been spent with Marshall & Stevens, Incorporated and the conspirators needed the materials produced by Plaintiff-Appellant to continue the pursuit of the conspiracy. One can reasonably infer that the conspirators needed to lure Marshall & Stevens, Incorporated into the conspiracy so that they could terminate Plaintiff-Appellant's involvement while at the same time procure the false appraisal values with the use of the work production that Plaintiff-Appellant had already rendered.

Plaintiff-Appellant was at that time a target of the racketeering scheme and that fact is paramount to the analysis. They needed to get rid of him yet at the same time retain the appraisal work that he had done and overseen in a managerial position.

It is then alleged that the Bryan Cave LLP and the Hogan Brothers brought Marshall & Stevens, Incorporated into the conspiracy by renegotiating its fee for the appraisal work. Once that was secure, the conspiracy could hit its target by terminating Plaintiff-

Appellant and using his work product in the Hogan File.

Since Plaintiff-Appellant was not an employee of the law firm, and it needed the fruits of his labor, the law firm had to target Plaintiff-Appellant by acquiring control of his employer (bringing Marshall & Stevens, Incorporated into the scheme) so that it could terminate his involvement and secure his appraisal information. These facts separate the present case from the reach of the rule set out in *Beck v. Prupis*, 529 U.S. 494 (2000).

B. The trial court erred in concluding that Plaintiff's damages resulted from only the act of his termination of employment.

The above argument illustrates the factual relationship that existed between Plaintiff-Appellant (the employee) and the racketeering conspirators (which initially did not include his employer). Since they wanted him terminated from working on the Hogan File but also wanted to use what he had already produced, Plaintiff-Appellant and his employer became targets of the conspiracy. Thus, the cause of Plaintiff-Appellant's damages due to termination is directly related to his refusal to join the initial conspiracy.

The Supreme Court set out the causation rule for such relationships in *Holmes v. Securities Investor Protection Corporation*, 503 U.S. 258 (1992). It held in part that, ". . . 'proximate cause' requires some direct relationship between the injury asserted and the injurious conduct alleged". *Id.* at 259.

At issue before the court in *Holmes* was, inter alia, a RICO claim based on 18 U.S.C. § 1962©). The plaintiff in that case was the Securities Investor Protection Corporation (SIPC), which in essence serves as an insurer for customers whose stock brokers go broke. SIPC alleged that due to a stock manipulation scheme by several defendants it had to cover losses of two dealer-brokers that were in liquidation. The Supreme Court reasoned in *Holmes* that the racketeering activity of the stock manipulation scheme was too remote and speculative as it related to the damages incurred by SIPC because it was contingent on acts of third persons. In other words, there was no "direct relationship" between the injury asserted and the injurious conduct alleged. *Holmes* at 259.

The present case passes the *Holmes* proximate cause test. Plaintiff-Appellant was terminated as an employee by his employer. But there is an undeniable direct relationship between his termination and the object of the conspiracy. The original conspiracy of using false appraisals to file false federal and state estate tax returns had to be amended once Plaintiff-Appellant learned of the wrongful conduct and refused to participate in it. The conspirators, Paul Weil, Bryan Cave LLP, and the Hogan Brothers had to pay additional funds to Marshall & Stevens, Incorporated to join the conspiracy. This allowed the original conspirators to control the termination of Plaintiff-Appellant and retain the benefits of his appraisal work produced to that point in time.

There is nothing remote about Plaintiff-Appellant's termination as it relates to

Marshall & Stevens, Incorporated joining the conspiracy. They were directly related. The main pursuit of the conspiracy was to file false estate tax returns. The point and target of joining Marshall & Stevens, Incorporated in the conspiracy was to terminate Plaintiff-Appellant's involvement while at the same time retaining his work product. Undoubtedly, the predicate acts laid out in Plaintiff-Appellant's second amended complaint facilitated Marshall & Stevens, Incorporated joining the conspiracy and the termination of Plaintiff-Appellant. [SA 13-16]

Plaintiff-Appellant's injury was directly related to Marshall & Stevens, Incorporated joining the racketeering activity of the conspiracy. The holding by the Supreme Court in *Holmes v. Securities Investor Protection Corporation*, 503 U.S. 258 (1992) does not bar his claim since his injuries were proximately caused by the racketeering acts of Marshall & Stevens, Incorporated and the other conspirators.

C. The expansion of the conspiracy to include Plaintiff-Appellant's employer was wrongful under the RICO act.

In the preceding argument one has to assume that many predicate acts (18 U.S.C. § 1961(1)) were committed during the process of securing Marshall & Stevens, Incorporated a place in the conspiracy. However, that same conclusion can be reached without finding a predicate act recognized under 18 U.S.C. § 1961(1) and at the same time lie squarely within the boundaries of the Supreme Court's holding in *Beck v. Prupis*, 529 U.S. 494 (2000).

Again, the Supreme Court held in *Prupis* that, ". . . a person may not bring suit under § 1964©) predicated on a violation of § 1962(d) for injuries caused by an overt act that is not an act of racketeering *or otherwise unlawful under the statute*." *Beck v. Prupis* at 507 (emphasis added).

The Court did not elaborate on "otherwise unlawful" but the options of what it meant are very limited if not in the singular. Subparagraphs (a), (b), ©) and (d) of § 1962 each prohibits a certain kind of activity. To do one of those activities presumably is "unlawful under the statute".

Paragraph (d) makes it illegal to conspire to violate (a), (b) or ©). Remembering that ©) is only illegal with predicate acts committed per § 1961(1), could a paragraph (d) conspiracy to violate paragraph ©) ever ripen into an overt act in furtherance of the conspiracy that causes injury to another person? Sure it could, ask Plaintiff-Appellant.

The hunt here is for an act, other than a § 1961 predicate act, that is otherwise unlawful under the statute as was expressed by the Supreme Court in *Beck v. Prupis.* In the present case we have that acts by the original conspirators (Weil, Bryan Cave LLP and Hogans) and Marshall & Stevens Incorporated forming a new conspiracy towards the ultimate end of tax evasion but with the added and intended target of terminating Plaintiff-Appellant and acquiring his work product for the benefit of the scheme. That very agreement, to include Marshall & Stevens Incorporated, is illegal and unlawful under paragraph (d), assuming a valid racketeering enterprise is intended per paragraph ©). This must have been what the Supreme Court meant by overt acts that are otherwise unlawful under the statute.

If the very act of joining Marshall & Stevens, Incorporated is unlawful under the RICO act, the Plaintiff-Appellant has made his case because the rest is resolved supra with the proximate cause test in *Holmes v. Securities Investor Protection Corporation*, 503 U.S. 258 (1992), or Plaintiff-Appellant's termination was directly related to Marshall & Stevens, Incorporated joining the conspiracy.

In *Beck v. Prupis*, 529 U.S. 494 (2000) the Supreme Court left this very issue open to a case by case analysis. Justice Thomas wrote for the majority:

> "As at common law, a civil conspiracy plaintiff cannot bring suit under RICO based on injury cause by any act in furtherance of a conspiracy that might have caused the plaintiff injury. Rather, consistency with the common law requires that a RICO conspiracy plaintiff allege injury from an act that is analogous to an 'act' of tortious character,' see 4 Restatement (Second) of Torts § 876, Comment b, meaning an act that is independently wrongful under RICO. The specific type of act that is analogous to an act of tortious character may depend on the underlying substantive violation the defendant is alleged to have committed." *Beck v. Prupis* at 505, 506.

In the present case, the original conspirators are charged with racketeering under § 1962©). The target of their scheme was to file false estate tax returns for which they need to brow beat an appraisal firm for inaccurate appraisals. When Plaintiff-Appellant refuses to join the activity the conspirators seek out and join his employer in the conspiracy which is by 1962 an illegal agreement. For analysis, assume the requirements of paragraph ©) are met but none of the predicate acts directly caused Plaintiff-Appellant's termination. Can Plaintiff-Appellant then maintain his action under RICO under the theory that the agreement for Marshall & Stevens, Incorporated to join the conspiracy was an unlawful act under the RICO statute which proximately caused his termination?

It would appear the Supreme Court implied that the circumstances of each will have to be evaluated on a case by case basis. And, the above argument compels an affirmative conclusion to the preceding question, not only for the stated claim, but a claim based on 18 U.S.C. 1962(a).

Plaintiff-Appellant did not set out specifically in the second amended complaint a claim for damages for a substantive violation of 18 U.S.C. § 1962(a), but the facts have been sufficiently alleged to entitle him to relief thereon. Paragraph (a) makes it illegal for anyone who has received income from racketeering activity to use that money in any manner to acquire an interest in an entity or operation affecting interstate commerce.

Plaintiff-Appellant's contention is that Weil, Bryan Cave LLP and the Hogan Brothers conspired (18 U.S.C. §1962(d)) with Marshall & Stevens Incorporated to violate 18 U.S. C. § 1962(a) when Marshall & Stevens, Incorporated either sold the authority, or for a fee agreed to terminate Plaintiff-Appellant after his refusal to participate in the illegal tax fraud scheme.

It would follow, under this theory, that Plaintiff-Appellant's injury was directly related to the original conspirators acquiring an interest in his employer, which as is set out above, was for the very purpose of terminating Plaintiff-Appellant and acquiring his work product in the Hogan file.

D. *Schiffels v. Kemper* survives *Beck v. Prupis*.

It would appear at first impression that *Beck v. Prupis*, 529 U.S. 494 (2000) overruled in part this Court's opinion in *Schiffels v. Kemper Financial Services, Incorporated*, 978 F.2d 344 (7th Cir. 1992) with respect to whether or not a terminated employee may maintain a RICO conspiracy claim. One would be inclined to go with that impression in as much as it was clearly stated in *Schiffels* that to recover in RICO, an injurious overt act does not have to be a racketeering act so long as it was made in furtherance of the conspiracy. *Beck v. Prupis* appears to mandate an opposite conclusion.

But applying the logic argued above by Plaintiff-Appellant it is quite arguable that Schiffels's RICO claim would still prevail despite *Beck v. Prupis*. Schiffels first contended that Richards carried out a RICO scam to defraud mutual funds. Then, after she discovered the fraud and became a threat to him, he expanded the conspiracy with Kemper and its employees to cover up the scheme and terminate Schiffels.

If there was a valid underlying racketeering enterprise, then when Kemper and its employees joined by agreeing to participate, which included terminating Schiffels, an unlawful agreement under 18 U.S.C. § 1962(d) was formed. That wrongful act, though not a predicate act, could quite conceivably be the proximate cause of Schiffels's termination and actionable under RICO as argued above. To find otherwise would mean the many victims like Plaintiff-Appellant and Schiffels would be locked out of the courthouse as far as seeking remedy for injuries caused by really hideous activities.

III. The District Court Plainly Erred in not Considering the Hobbs Act Violation Alleged by Plaintiff-Appellant.

The District Court summarily dismissed this case on the issue of standing in light of its interpretation of *Beck v. Prupis*, 529 U.S. 494 (2000). Or in other words, since Plaintiff-Appellant was a terminated employee there is no way he can maintain a RICO loss claim, so says *Prupis* . Lost in the District Court's summation, was the fact that Plaintiff-Appellant alleged in his second amended complaint that when he refused to participate in the scheme Paul Weil threatened him illegally under the Hobbs Act, which is a predicate act per § 1961(1). The last paragraph of page 9 of said second amended complaint reads:

> "During said teleconference the Enterprise, through Paul Weil, attempted to influence the plaintiff' conclusions as to value asserting false information regarding EPA issues involving certain real estate. The plaintiff opined that it would be illegal and unethical to use the reduction in value ordered by Weil based on hypothetical EPA issues. The plaintiff refused to modify his appraisal based on such information and refused to participate in the Enterprise at which time the Enterprise, through Paul Weil, through acts of extortion, threatened to

> ruin plaintiff's career and lively hood by emailing every law firm in the St. Louis area and seeing to it that he would never work as an appraiser again if he didn't join the Enterprise, all in violation of 18 U.S.C. § 1951." [SA-9,10].

This is a predicate act, which is directed at and related to ruining his career. Doesn't this get Plaintiff-Appellant the *Holmes* proximate cause connection to his termination?

A reading of the Hobbs Act [A-11] appears to make Weil's subsequent dealing and conspiring with Marshall & Stevens, Incorporated to get rid of Plaintiff-Appellant, all part of the same offense, or predicate act. Which makes his termination directly related to the predicate act, or the Hobbs Act violation.

The Hobbs Act is codified at 18 U.S.C. § 1951, and reads in part as:

> "18 U.S.C. § 1951. Interference with commerce by threats or violence.
>
> (a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both."

It is clear that Plaintiff-Appellant alleged that Paul Weil threatened him in his business and property by threatening to call every attorney in the St. Louis area and see to it that he never worked as an appraiser again. That conduct is clearly a Hobbs Act violation and a predicate act under 18 U.S.C. § 1961(1). Common sense would dictate that the termination of Plaintiff-Appellant following such a threat would meet the proximate cause test under *Holmes.* Further, it would appear the wording of 18 U.S.C. §

1951(a) makes any conspiracy involved with such a threat an included offense. Thus, when Paul Weil eventually reached out and conspired with Marshall & Stevens, Incorporated to terminate Plaintiff-Appellant, he was continuing the Hobbs Act violation and including Marshall & Stevens, Incorporated in it.

Plaintiff-Appellant was terminated as a direct result and proximate cause of the illegal threats that Paul Weil made to him. Those threats were predicate acts of which included the subsequent conspiring with Plaintiff-Appellant's employer to have him terminated. On this issue alone Plaintiff-Appellant's RICO claim should move forward as *Beck v. Prupis*, 529 U.S. 494 (2000) does not prohibit this very type of case, being an injury caused by a predicate act.

CONCLUSION

Wherefore, for the foregoing reasons, Plaintiff-Appellant, Keith McFarland, respectfully requests this Court to reverse the decision rendered by the District Court and remand this case to the District Court, in its entirety, or for whatever relief this Court deems just.

Respectfully Submitted
KEITH MCFARLAND

____
Daniel F. Goggin, His Attorney

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F.R.A.P. 32(a)(7) CERTIFICATION

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 6,508 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using WordPerefect Suite 10, Palatino Linotype, twelve (12) point font.

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April 14, 2005

CIRCUIT RULE 30(d) STATEMENT

Pursuant to Circuit rule 30(d), I hereby certify that all material required by Circuit Rule 30(a) is included in the following appendix and that all material required by Circuit Rule 30(b) is included in *Appellant's Separate Appendix.*

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CIRCUIT RULE 31(e) CERTIFICATION

Pursuant to Circuit Rule 30(e), I hereby certify that the appendix materials of *Separate Appendix* are not available electronically.

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April 14, 2005

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 14, 2005, two copies of the Brief of Plaintiff-Appellant Keith McFarland, including two copies of the Separate Appendix, as well as a digital version containing the Brief, were served on attorneys of record by depositing the same in the United States Mail, postage prepaid, to the following addresses:

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Keith McFarland

No. 04-3719

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Keith McFarland,
Plaintiff-Appellant,

v.

Paul Weil, Marshall & Stevens,
Incorporated, Carl Hogan, Jr., et al.,
Defendants-Appellees.

Appeal From The United States District Court
For the Southern District of Illinois,
Case No. 03-C-433
The Honorable Judge Michael J. Reagan

REQUIRED SHORT APPENDIX
OF PLAINTIFF-APPELLANT

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

KEITH McFARLAND	**)**	
	)	
Plaintiff,	**)**	
	)	
vs.	**)**	**Case No. 03-cv-0433-MJR**
	)	
BRYAN CAVE LLP,	**)**	
PAUL WEIL,	**)**	
MARSHALL & STEVENS INC.,	**)**	
CARL G. HOGAN, JR.,	**)**	
BRIAN J. HOGAN, and	**)**	
DAVID HOGAN	**)**	
	)	
Defendants.	**)**	

MEMORANDUM and ORDER

REAGAN, District Judge:

Plaintiff Keith McFarland filed in this Court his three-count second amended complaint against Defendants Bryan Cave LLP (Bryan Cave), Paul Weil, Marshall & Stevens Inc. (M&S), Carl G. Hogan, Jr., Brian J. Hogan, and David Hogan (Doc. 23). The complaint arises out of McFarland's allegations that Defendants entered into a "conspiracy" to violate RICO by allegedly agreeing to file a false federal estate tax return for the estate of Carl G. Hogan, Sr. Count One claims the Defendants violated the Racketeer Influenced and Corrupt Organizations Act (RICO), **18 U.S.C. 1962(d).** Count Two alleges the Defendants tortiously interfered with McFarland's contractual rights. Count Three alleges the Defendants slandered McFarland's character.

Now before the Court is Defendant M&S' "Motion to Dismiss the Second Amended Complaint for Failure to State a Claim" (Doc. 28) and memorandum of law in support (Doc. 29) and Defendants Bryan Cave and the Hogans' "Motion to Dismiss Complaint and Memorandum in Support" (Doc. 31). McFarland responded in opposition to M&S' motion at Doc. 37, to which M&S replied at Doc. 39. McFarland responded in opposition to Defendants Bryan Cave and the Hogans' motion at Doc. 36, to which Defendants Bryan Cave and the Hogans replied at Doc. 40. The Court begins its analysis with a brief recitation of the key facts and procedural history.

<u>Key Facts and Procedural History</u>

In 2001, McFarland worked as an appraiser for M&S, an appraisal firm. On January 14, 2001, Carl G. Hogan, Sr., died. His three sons, Defendants herein, were the co-executors of his estate. Bryan Cave, a St. Louis based law firm, engaged M&S to assist in the preparation of a federal estate tax return for the estate of Carl G. Hogan, Sr. (the Hogan estate). M&S then assigned McFarland to provide assistance by preparing appraisals for the Hogan estate.

McFarland states in his complaint that he submitted a draft proposal concerning one of the assets included in the Hogan estate, and the parties herein disagreed regarding the values he submitted. McFarland claims he was asked to assert false values and thereby participate in a tax fraud scheme, but refused to participate. Consequently, McFarland claims he was removed from working on the Hogan file and after some time passed, later terminated.

McFarland then filed his original one-count complaint in this Court bringing a civil cause of action for conspiracy under RICO pursuant to this Court's jurisdiction under **18 U.S.C. 1331** (Doc. 1). Defendants then filed motions to dismiss the complaint (Docs. 4 and 6) and thereafter, McFarland sought leave to amend his complaint (Doc. 11). The Court granted McFarland leave to file his first amended complaint and McFarland did so, adding his claim for tortious interference with contract pursuant to this Court's supplemental jurisdiction under **18 U.S.C. 1367** (Doc. 16).

The Court then held an off-the-record status conference in this matter on November 19, 2003, during which the Court alerted McFarland's counsel as to the heightened pleading requirements for fraud claims alleged under RICO and that McFarland must plead in good faith and be able to prove all allegations. The Court then granted McFarland leave to file a second amended complaint. *See* Doc. 20. McFarland then filed his second amended complaint on December 29, 2003 (Doc. 23) in which he added a third count, the slander count. In his second amended complaint, McFarland seeks injunctive relief, lost income and pre-judgment interest, compensation for past and future pecuniary losses, and compensation for past and future non-pecuniary losses. McFarland also seeks benefit of RICO's treble damages provision as well as punitive damages.

<u>Applicable Legal Standards</u>

When reviewing a complaint in the context of a dismissal motion filed under **FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)**, the Court accepts as true all well-pled factual allegations and resolves in the plaintiff's favor all reasonable inferences. ***Echevarria v. Chicago Title & Trust Co.*, 256 F.3d 623, 625 (7th Cir. 2001), *citing Transit Express, Inc. v. Ettinger*, 246 F.3d 1018, 1023 (7th Cir. 2001).**

Dismissal for failure to state a claim is proper only if the plaintiff can prove no set of facts in support of his claims which would entitle him to relief. ***Alper v. Altheimer & Gray*, 257 F.3d 680, 684 (7th Cir. 2001), *citing Conley v. Gibson*, 355 U.S. 41, 45-46 (1957), and *Veazey v. Communications & Cable of Chicago, Inc.*, 194 F.3d 850, 854 (7th Cir. 1999). *Accord Galdikas v. Fagan*, 342 F.3d 684, 686 (7th Cir. 2003)("Dismissal is proper if it appears beyond doubt that the plaintiffs cannot prove any set of facts entitling them to relief.").**

If it is possible to hypothesize a set of facts, consistent with the complaint, that would entitle the plaintiff to relief, dismissal under **Rule 12(b)(6)** is inappropriate. ***Alper* at 684, *quoting Veazey*, 194 F.3d at 854.**

Analysis

In M&S' motion to dismiss and memorandum in support, M&S argues that Count One should be dismissed as: (1) McFarland lacks standing under ***Beck v. Prupis*, 529 U.S. 494 (2000)**, as he has not been injured by an act of racketeering; (2) McFarland's injuries are insufficient to give rise to a RICO cause of action; (3) there is no causal connection between McFarland's alleged injuries and Defendants' purported RICO violations; and (4) McFarland fails to plead the essential elements of his RICO claim (Docs. 28 and 29). The rest of the Defendants in their motion to dismiss and memorandum in support argue that Count One should be dismissed as: (1) McFarland lacks standing under RICO as he has not been injured by an act of racketeering; (2) McFarland has not alleged a pattern of racketeering; and (3) McFarland fails to plead his RICO claim with particularity. As both of the motions to dismiss argue Count One should be dismissed as to all Defendants as McFarland lacks standing to bring the RICO claim since he has not been injured by an act or racketeering, and this issue is dispositive, the Court declines to address the other issues raised by the Defendants.

In his second amended complaint McFarland bases his RICO claim on **18 U.S.C. 1962(c)** and **(d)**. RICO creates a civil cause of action for "any person injured in his business or property by reason of a violation of Section 1962." ***Beck v. Prupis,*** **529 U.S. 494, 495 (2000)(quoting 18 U.S.C. 1964(c)). Section 1962(c)** makes it unlawful for:

> any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

Section 1962(d), in turn, provides that "it shall be unlawful for any person to conspire to violate any of the provisions of section (a), (b) or (c) of this section."

Therefore, in order to have standing under RICO, McFarland must have sustained an injury to his business or property that was proximately caused by some act of the Defendants that was an "act of racketeering or otherwise unlawful under [RICO]." ***Beck v. Prupis,*** **529 U.S. 494, 495 (2000).** ***See also*** **18 U.S.C. 1964(c) (conferring RICO standing on any person injured in his business or property by reason of a violation of Section 1962).** The Defendants argue that McFarland has not been injured by an act of racketeering sufficient to bring a RICO claim in light of the Supreme Court's decision in ***Beck v. Prupis,*** **529 U.S. 494 (2000)**. The Court agrees.

In ***Beck***, the plaintiff, a former president, CEO, director and shareholder of a corporation that wrote surety bonds for construction contractors, sued the corporation's senior officers and directors asserting a civil cause of action under **Section 1964(c)**. The plaintiff discovered the defendants were demanding fees from contractors in exchange for qualifying them for the corporation's surety bonds, diverting corporate funds for personal uses, and submitting false financial statements to regulators, shareholders and creditors. ***Beck*, 529 U.S. at 498.** The plaintiff's theory was that his injury was proximately caused by an overt act, the termination of his employment, done in furtherance of the defendants' conspiracy, and that **Section 1964(c)** therefore provided a cause of action. The Supreme Court held that termination of employment is not a racketeering activity, and as such, is not a sufficient overt act so as to bring a civil RICO conspiracy claim under **Section 1964(c)** for a violation of **Section 1962(d)**. ***Id.* at 500.**

McFarland argues that the case at bar is distinguishable from ***Beck*** in that he was engaged in commerce that was being utilized as a tool for the conspiracy, and if the Defendants had not interfered with that commerce, McFarland would have produced the accurate appraisals. However, this argument still ignores the fact that what *proximately caused* McFarland injury, was the termination of his employment bringing the case within the ambit of ***Beck***. All the damages he seeks result from his loss of employment as an appraiser for M&S.

In McFarland's second amended complaint, he pleads that: "Plaintiff refused to participate in deriving false value conclusions and refused to sign or affix his signature to said appraisal which effectuated him being removed from working on the Hogan File by the enterprise and then later being terminated from employment with [M&S]" (Doc. 23). It is that termination the injuries stem from, and while he may have a wrongful termination claim, wrongful termination is not a racketeering act. ***Cf. O'Malley v. O'Neill*, 887 F.2d 1557 (11th Cir. 1987)(neither retaliatory discharge for blowing the whistle or refusal to participate in illegal activity are grounds for a RICO conspiracy claim); *Bowman v. Western Auto Supply Co.*, 985 F.2d 383 (8th Cir. 1993); *Miranda v. Ponce Fed. Bank*,**

948 F.2d 41 (1st Cir. 1991). ***Reddy v. Litton Indus., Inc.,*** **912 F.2d 291, 294-95 (9th Cir. 1990);** ***Hecht v. Commerce Clearing House, Inc.,*** **897 F.2d 21 (2d Cir. 1990).** The rationale behind the requirement that a plaintiff's injuries must have been proximately caused by acts of racketeering is that RICO was enacted with an express target – racketeering activity – and only those injuries that are proximately caused by racketeering activity should be actionable under the statute. ***Beck v. Prupis,*** **162 F.3d 1090 (11th Cir. 1998).** As a result, McFarland does not have standing to bring a RICO claim as he has not been injured by an act of racketeering.

This Court, following the guidance of the United States Court of Appeals for the Seventh Circuit, liberally grants leave to amend complaints. Indeed, in the instant case McFarland is on his third attempt to state a viable RICO claim. The Court, as stated earlier, cautioned McFarland regarding the heightened pleading requirements for a civil RICO claim. The facts of this case are fatal to pleading a viable RICO case such that further amendment would be futile because Plaintiff cannot plead he was injured by an act of racketeering. Consequently, dismissal herein lies with prejudice.

Conclusion

The Court hereby **GRANTS in part** and **DENIES AS MOOT in part** Defendant Marshall & Stevens, Inc.'s motion to dismiss (Doc. 28) and Defendants Bryan Cave LLP, Carl G. Hogan, Jr., Brian J. Hogan, Jr., and David Hogan's motion to dismiss (Doc. 31). The motions are *granted* in that the Court **DISMISSES** ***with prejudice*** Count One of Plaintiff McFarland's second amended complaint. As the Court dismisses the sole federal law claim, the court *denies as moot* without prejudice the rest of the motions as they pertain to the state law causes of action since the Court declines to exercise supplemental jurisdiction over the state law claims pursuant to **28 U.S.C. 1367(c)(1)**. ***See, e.g., Centres, Inc. v. Town of Brookfield, Wisc.,*** **148 F.3d 699, 704 (7th Cir. 1998).** Accordingly, the Court

DISMISSES ***without prejudice*** Counts Two and Three of Plaintiff McFarland's second amended complaint due to lack of subject matter jurisdiction. This matter is now **CLOSED**.

IT IS SO ORDERED.

DATED this 21st day of September, 2004.

s/Michael J. Reagan
MICHAEL J. REAGAN
United States District Judge

18 U.S.C. § 1962. Prohibited Activities.

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprises affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

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18 U.S.C. § 1964. Civil remedies.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

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18 U.S.C. § 1341. Frauds and swindles.

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

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18 U.S.C. § 1343. Fraud by wire, radio, or television.

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

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18 U.S.C. § 1510. Obstruction of criminal investigations.

(a) Whoever willfully endeavors by means of bribery to obstruct, delay, or prevent the communication of information relating to a violation of any criminal statute of the United States by any person to a criminal investigator shall be fined under this title, or imprisoned not more than five years, or both.

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18 U.S.C. § 1957. Engaging in monetary transactions in property derived from specified unlawful activity.

(a) Whoever, in any of the circumstances set forth in subsection (d), knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than $10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b).

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18 U.S.C. § 1951. Interference with commerce by threats or violence.

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

(b) As used in this section —

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means 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.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.