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A Uniform Limitations Period for Civil RICO

The Racketeer Influenced and Corrupt Organizations Act\(^1\) (RICO) does not contain an express statute of limitations for civil actions.\(^2\) Consequently, the courts have applied the limitations period for the state statute most analogous to the civil RICO action.\(^3\)

RICO's unique structure, however,\(^4\) combined with its breadth

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4. RICO presents a special problem for determining limitations periods. RICO is a crime of association, which is violated by "any person . . . associated with any enterprise. . . the activities of which affect . . . commerce, conduct[ing] . . . [the] enterprise's affairs through a pattern of racketeering." 18 U.S.C. § 1962 (1982). RICO provides a civil remedy of treble damages for "[a]ny person injured in his business by reasons of a violation of section 1962." 18 U.S.C. § 1964(c) (1982). The statute defines racketeering activity to include a variety of predicate offenses. The statute provides that:

"[R]acketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to un-
and remedial policies, make finding an analogous state statute of limitations difficult. A RICO claim consists of an association of predicate acts, most of which are also state offenses. One RICO claim, however, can consist of many different types of predicate offenses, including securities fraud, mail fraud, and wire fraud, each of which could have a different limitations period when analogized to state law. Furthermore, the predicate offenses comprising the RICO claim may occur in two or more different states, or may involve multistate corporations, making it difficult to choose which state law should govern the limitations period for the RICO offense. This has resulted in a lack of uniformity in limitations peri-

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lawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), sections 2314 and 2315 (relating to interstate transportation of stolen property), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), or (D) any offense involving fraud connected with a case under title 11, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States. 18 U.S.C. § 1961(1) (1982).


5 Congress created RICO to provide a broad federal weapon against organized crime, and provided a civil remedy of treble damages to encourage private litigants to eradicate organized crime and its infiltration into legitimate businesses. See The Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922-23 (1970) (Statement of Findings and Purpose); Blakey, The Civil RICO Fraud Action in Context: Reflections on Bennet v. Berg, 58 NOTRE DAME L. REV. 237, 280 (1982); Sedima, 105 S. Ct. at 3275, 3287 (1985) (“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 purpose.’ Statement of Findings and Purpose, Pub. L. No. 91-452, 84 Stat. 922-23 (1970). The statute’s ‘remedial purposes’ are nowhere more evident than in the provision of a private action for those injured by racketeering injury.”).

The legislative history makes clear that Congress designed RICO to reach a wide variety of offenses, and civil RICO has become a very powerful tool against business crime, especially since the Supreme Court decided Sedima, S.P.R.L. v. Imrex Co., 105 S. Ct. 3275 (1985) (holding that RICO does not require that a private action can only proceed against a defendant who has already been convicted of a predicate act or of a RICO violation, nor does it require the plaintiff to suffer a “racketeering injury” to bring a private RICO action).

6 18 U.S.C. § 1965(a) (1982) provides: “[a]ny civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.” Once the court determines the place of accrual, borrowing statutes will bar an action in the forum state if it would be barred in the jurisdiction of accrual. Special Project, Time Bars in Specialized Common Law Federal Rights of Action, 65 CORNELL L. REV. 1011, 1095 (1980). The court, however, must determine where a multistate RICO action “accrued.” Courts in jurisdictions without borrowing statutes will decide whether the forum state’s interests and contacts with the cause of action are stronger than those of the state of accrual.
ods among jurisdictions and among decisions within the same jurisdiction.\textsuperscript{7}

This note examines whether the methods used by courts in establishing limitations periods for RICO satisfy the functions of RICO and the purposes underlying statutes of limitation. Part I describes the general rule of adoption of state law. Part II criticizes the two approaches used by courts in determining a limitations period for civil RICO actions. Part III concludes that an express limitations period for civil RICO would best serve the functions of RICO and the policy concerns underlying limitations periods in general. Until Congress enacts such a provision, however, courts, to achieve uniformity, should apply the limitations period of the most analogous federal statute—the four year limitations period of the federal antitrust laws.

I. Judicial Approaches in Determining Statute of Limitations

When a federal statute does not contain an express limitations period, the general rule is that a court should adopt the limitations period for the most analogous state statute, as long as it is not inconsistent with the policy of the federal statute.\textsuperscript{8} This practice permits state legislatures to determine the appropriate limitations period for federal statutes, thus allowing them to incorporate their substantive policies by filling in the gaps left by these statutes.\textsuperscript{9} The problem with RICO is deciding on what factors to analogize. In determining the appropriate statute of limitations for a RICO

\textsuperscript{7} Compare Durante Bros. \& Sons, 755 F.2d at 249 (uniform period of three years applies to civil RICO claims), and Teltronics Services, 587 F. Supp. at 733 (E.D.N.Y 1984) (uniform period of three years applies to civil RICO claims) with Fustok v. Commodity Services, Inc., 618 F. Supp. 1076, 1081 (S.D.N.Y. 1985) (six year period for fraud applied; rejected a uniform period), and Estee Lauder, 621 F. Supp. 689 (six year period for fraud applied; rejected a uniform period).


\textsuperscript{9} Special Project, \textit{supra} note 6, at 1043-44. When Congress omits a statute of limitations, it is not presumed that they intended that no time bar should exist for the statute. We can infer that Congress knows the law, and thus knows that courts will look for an analogous state statute if such statute would not be inconsistent with the intent and policies of the federal statute. Occidental Life Ins. Co. v. EEOC, 432 U.S. 355, 367 (1977); Del Costello v. International Bhd. of Teamsters, 462 U.S. 151, 158-59 & n.12 (1983).

In Occidental Life, the EEOC sued Occidental alleging that Occidental used sexually discriminatory employment practices which violated Title VII of the Civil Rights Act of 1964. 432 U.S. at 357-58. Congress intended that employment discrimination claims be settled administratively, if possible, and the Act requires that the EEOC exhaust administrative remedies before resorting to court action. \textit{Id.} at 368. The analogous state statute had a limitations period of one year, and the court decided that a one year time limit would frustrate Congress' intent by not allowing the EEOC sufficient time to try to settle the claims administratively. \textit{Id.} at 371-72.
claim, courts have analogized to a variety of factors, including facts, remedy, and policy.

Generally, courts use two approaches to characterize a civil RICO claim. One approach characterizes a civil RICO claim in terms of its underlying predicate acts (the "particularistic approach"). The other characterizes a civil RICO claim as a claim in itself, separate from its underlying predicate acts (the "separate act approach").

A. The Particularistic Approach: Underlying Predicate Acts

The particularistic approach adopts the limitations period that would apply to the state law action most analogous to the predominant predicate offense. For example, in *Fustok v. Conticommodity Services, Inc.*, the plaintiff brought a civil RICO claim against a group of investors, alleging predicate acts of mail fraud and wire fraud. The defendants argued for the three year limitations period which applied to state law actions to recover for a liability, penalty, or forfeiture. The plaintiff argued that because the alleged predicate acts were mail fraud and wire fraud, the appropriate limitations period was the six year period for common law fraud. The District Court for the Southern District of New York admitted that decisions determining the statute of limitations for civil RICO actions were inconsistent within the Second Circuit. Nevertheless, the general trend favored a case-by-case, particularistic approach, at least where the character of the underlying offense was fraud. The court decided that the appropriate limitations period was to be derived from the state cause of action which most closely resembled

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11 In *Fustok*, the plaintiff brought actions under both the Commodity Exchange Act and RICO. The bases of the Commodity Exchange Act and RICO allegations were that the defendants reallocated 200 losing silver futures contracts originally bought for someone else to plaintiff's trading account, and further failed to supervise the handling of the account. *Id.* at 1077.
12 *Id.* at 1077.
13 *Id.* at 1080.
14 *Id.*
15 *Id.* at 1080. A Second Circuit case, *Durante Bros. & Sons, Inc. v. Flushing Nat'l Bank*, 755 F.2d 239 (2d Cir.), *cert. denied*, 105 S. Ct. 3530 (1985), held that the appropriate statute of limitations for the civil RICO claim was the three year period provided by N.Y. Civ. Prac. Law § 214 (2) (McKinney Supp. 1986), the period for which the defendants argued. However, two previous district court cases within the circuit had arrived at conflicting conclusions. *Estee Lauder, Inc. v. Harco Graphics, Inc.*, 621 F. Supp. 689 (S.D.N.Y. 1984), rejected the idea of a uniform period for all RICO actions and adopted the six year period for fraud as most suited to the facts of the case. In contrast, *Teltronics Services, Inc. v. Anaconda-Ericsson, Inc.*, 587 F. Supp. 724 (E.D.N.Y. 1984), rejected the idea of variable limitations periods and adopted the three year period given by N.Y. Civ. Prac. Law § 214 (2) (McKinney Supp. 1986) to be the uniform period for civil RICO actions.
the basis of the RICO complaint, the underlying predicate act. The court therefore applied the six year limitations period for state fraud actions. In doing so, the court rejected a Second Circuit case, *Durante Bros. & Sons v. Flushing National Bank*, which held that the three year period governing actions to enforce a liability created by statute should be the uniform period for civil RICO actions.

Another case, *Stevens Operating, Inc. v. Home State Savings*, used the *Fustok* approach by analogizing the underlying predicate offenses to a state cause of action. In *Stevens Operating*, fraud was the underlying predicate offense. The court carefully considered which state statute of limitations was most similar to the RICO claim by looking at three possible choices: a six year period for liability created by statute, a four year period for fraud, and a one year period for statutes imposing a penalty or forfeiture. The court quickly dismissed the third choice, stating that RICO was not a punitive statute, despite the availability of treble damages. The court also rejected the first choice because "RICO cre-

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16 618 F. Supp. at 1081.
17 Id. The court stated that "the complaint . . . alleges fraud in vivid detail." Id.
18 755 F.2d 239 (2d Cir.), cert. denied, 105 S. Ct. 3530 (1985). In *Durante*, the Second Circuit reversed a lower court's opinion which applied a one year statute of limitations for causes of action to recover overcharges of interest to a RICO claim whose underlying offense was the collection of an unlawful debt. The Second Circuit found that "[t]here is no state analog to the present civil RICO claim" and adopted a catch-all statute, the three year statute of limitations governing state actions to enforce a liability created by statute. *Id.* at 249.
19 Id. The defendants in *Fustok* contended that the *Durante* court's holding, which selected the three year statute, was meant to apply to all civil RICO claims in the Second Circuit, regardless of the underlying predicate offense. The plaintiff, however, argued that *Durante* applied where the underlying predicate offense of a civil RICO claim is the collection of an unlawful debt. The *Fustok* court agreed with the plaintiff and thus relied on its own reasoning. 618 F. Supp. at 1080-81.
20 105 F.R.D. 7 (S.D. Ohio 1984). In an action alleging breach of contract and fraud, the defendants sought to file an amended cross claim adding a fraud count under civil RICO.
21 Id. at 11.
22 Id.
23 Id. Accord *State Farm Fire & Cas. Co. v. Estate of Caton*, 540 F. Supp. 673, 685 (N.D. Ind. 1982) (nature of civil RICO action held remedial, not punitive; limitations period for statutory penalties inappropriate); *D'Iorio v. Adonizio*, 554 F. Supp. 222, 232 (M.D. Pa. 1982) (despite treble damages provision, civil RICO action is not an action for civil penalty or forfeiture; therefore limitations period for civil penalties is inappropriate). But see *Electronics Relays (India) Pvt., Ltd. v. Pascente*, 610 F. Supp. 648, 651-52 (N.D. Ill. 1985) (civil RICO action is best characterized as a treble damages action; the limitations period for personal injury-penalty applies); *Teltronics Services, Inc. v. Anaconda-Ericsson, Inc.*, 587 F. Supp. 724, 733 (E.D.N.Y. 1984) (civil RICO action characterized as an action to recover upon a liability, penalty, or forfeiture created by statute).

The Sixth Circuit previously held that civil antitrust actions were not penal in nature, despite the availability of treble damages. *Englander Motors, Inc. v. Ford Motor Co.*, 293 F.2d 802 (6th Cir. 1961). The *Stevens* court decided that since the treble damages provision
ates a new remedy, not a new liability.”24 The court adopted the second choice, the four year limitations period for fraud, because fraud was the substantive nature of the underlying predicate offense.25 The court found that the alleged predicate offense was “nothing more than common law fraud allegations clothed in the season’s new fashion: RICO.”26

Characterizing a RICO claim in terms of its underlying predicate acts has the following advantages: (1) the state may define a limitations period which it feels best serves the judicial system; (2) the underlying offenses are easier to conceptualize as the crime, rather than an abstract association of offenses;27 and (3) because almost all the predicate offenses listed28 are state offenses, they are likely to have state statutory limitations periods.29 In contrast, only twenty-three states have similar racketeering acts comparable to RICO.30 Therefore, choosing the limitations period for the

24 Id. Some other courts disagree, perceiving RICO as creating a new liability. See Durante Bros., 755 F.2d at 249 (adopting period governing actions to enforce liability created by statute); Teltronics Services, 587 F. Supp. at 733 (adopting period governing actions to recover upon a liability, penalty, or forfeiture created by statute); Seawell v. Miller Brewing Co., 576 F. Supp. 424, 427 (M.D.N.C. 1983) (adopting period governing liabilities created by statute, either state or federal).

25 105 F.R.D. at 11.

26 Id. Other courts evaluating the limitations problem disagree. These courts perceive RICO as more than just a new remedy for old offenses. See, e.g., Durante Bros., 755 F.2d at 248 (RICO is concerned with much more than the underlying predicate acts; a state law claim can be established without proving most of the elements required to prove a civil RICO claim); Morley v. Cohen, 610 F. Supp. 798, 808 (D. Md. 1985) (RICO does not provide a remedy for the mere commission of predicate acts and there is no commonality of purpose between RICO and the statutory scheme encompassing the predicate acts); Teltronics Services, 587 F. Supp. at 733 (to analogize on the basis of the predicate act would oversimplify the elements of a RICO claim).

27 See note 4 supra.


29 Those predicate offenses that are federal offenses are similar to available state causes of action. For example, wire fraud and mail fraud are analogous to the state cause of action for common law fraud.

state action most analogous to the predicate offense appears to be an easy solution.

Problems, however, exist with this approach. A claimant may allege two or more types of predicate offenses to form the "pattern" of the RICO offense. Each predicate offense may have a different limitations period when analogized to the nearest state cause of action. When this occurs, it is not clear which limitations period should apply. The United States District Court of Minnesota faced this problem in Burns v. Ersek. The complaint alleged underlying predicate acts of securities fraud and mail fraud. Two competing limitations periods existed, the three year period of the state's Blue Sky Act and the six year general limitation period for fraud. The court found that the case was primarily a securities fraud case because the plaintiff referred to mail fraud in only one sentence of the thirty-seven page complaint, whereas securities fraud predominated the complaint. Accordingly, the court applied the three year statute of limitations from the Blue Sky Act, which barred the plaintiff's claim.

Other district courts have used the limitations period of the state law offense most analogous to the dominant predicate act in the RICO complaint. In Eisenberg v. Gagnon, the civil RICO count had underpinnings in securities fraud, mail fraud, and wire fraud. The state's Blue Sky Act provided a three year limitations period for securities fraud. The limitations period for common law fraud, the analogous state cause of action for the mail and wire fraud allegations, was six years. The court found that the allegations of securities fraud in the complaint were insubstantial, and that the RICO count was capable of being sustained solely on the

1608 (Smith Supp. 1985); WASH REV. CODE ANN. §§ 9A.82.010 to .01 (West Supp. 1985); WIS. STAT. ANN. §§ 946.80 to .87 (West Supp. 1984-85).

31 591 F. Supp. 837 (D. Minn. 1984). The plaintiff, a shareholder in Med General, Inc., sued the officers and directors under four theories: violating § 10(b) of the Securities Exchange Act; committing state common law offenses of fraud, deceit, and negligence; violating the state Blue Sky Act; and violating RICO. Id. at 838-39.

32 MINN. STAT. ANN. § 80A.23, subd. 7 (West Supp. 1986).

33 The court stated that the standard for choosing among several local periods is that "which best effectuates the federal policy at issue." 591 F. Supp. at 843 (quoting Charney v. Thomas, 372 F.2d 97, 100 (6th Cir. 1967)). The court, however, never discussed the policies of RICO and how a limitations period can best effectuate them. 591 F. Supp. at 843-45.

34 Id. at 845.

35 Id.

36 564 F. Supp. 1347, 1354 (E.D. Pa. 1983). This court viewed RICO as creating a new legal wrong, which was most analogous to an action in tort. Id. at 1353-54 (citing Blakey, supra note 5, at 290 n.151 (1982)). However, the court appeared to look at the predicate acts of the allegation in determining a limitations period. 564 F. Supp. at 1353-54.

37 70 PA. CONS. STAT. ANN. § 1-504 (Purdon Supp. 1985).

38 564 F. Supp. at 1353.
allegations of wire fraud and mail fraud. 39 Thus, the court applied a six year statute of limitations to the RICO claim. In deciding the issue, the court looked to the policies of RICO and chose the longer limitations period "[i]n light of Congress' intent to have the RICO statute liberally construed to effectuate its remedial purposes." 40

Burns and Eisenberg illustrate the problem that multiple predicate acts present for determining an analogous state statute from which to obtain a limitations period. One court has stated that looking for the dominant predicate act is "arbitrary and capricious." 41 Given the large number of offenses encompassed by RICO, 42 a court will likely have to choose between at least two different limitations periods.

A more troublesome problem with the particularistic approach is that it does not fulfill the purposes of a statute of limitations. A limitations period should protect the reasonable expectations of the litigants, provide convenience for the judicial system, and notify a potential defendant of his exposure to liability. 43 The particularistic approach, however, is not convenient for the judicial system. Because both the state statute most analogous to the underlying predicate offense and the predicate offense which dominates differ with each case, each court will have to determine anew which limitations period to apply. This will result in a lack of uniformity, with courts applying different periods to similar RICO complaints in the same state.

Moreover, a statute of limitations should, with reasonable certainty, inform the defendant of how long he will be exposed to liability and notify the plaintiff of how long he has to bring his claim. Because the court, under the particularistic approach, will determine the limitations period for the RICO claim at trial, neither the plaintiff nor the defendant will know with certainty which state statute is the most analogous, or which predicate offense the court will

39 Id. at 1354.
40 Id. But see Burns v. Ersek, 591 F. Supp. 837 (D. Conn. 1984) (rejecting the argument that it should choose the longer period to effectuate RICO policy). See notes 31-35 supra and accompanying text.
43 One commentator has defined the purposes of statutes of limitations as institutional, remedial, and promotional. Special Project, supra note 6, at 1014-18. The institutional purposes are to protect litigant's reasonable expectations, provide judicial convenience, and preserve the credibility of the judicial system by preventing the litigation of stale claims. The remedial purpose is to notify a potential defendant of how long he will be exposed to liability. Similarly, the promotional purpose is to notify a potential plaintiff of the length of time he has to bring a claim, encouraging him to bring suit quickly, yet allowing sufficient time to do so.
decide dominates the complaint. Furthermore, since one RICO claim can arise from predicate acts committed in numerous states, the potential litigants may not even know which state to look to in determining the limitations period.

In addition to not serving the functions of a statute of limitations, the lack of uniformity among and within states using the particularistic approach does not serve the policies of RICO. Congress designed RICO to address a federal concern: the nationwide infiltration of legitimate businesses by organized crime. In Morley v. Cohen, the United States District Court for the District of Maryland discussed the inconsistency of the policies behind state law offenses and RICO by stating that:

RICO does not provide a remedy for the mere commission of the predicate acts . . . . "Commission of two or more predicate acts is but an element of a § 1962 violation; those acts do not themselves constitute the § 1962 violation." Accordingly, there is no commonality of purpose between RICO and the statutory scheme encompassing the predicate acts. They are not designed to punish the same offenses.

The federal concerns behind RICO do not coincide with the concerns of a state congress in choosing a limitations period for a state offense. The legislature provided the civil remedy of RICO to induce private citizens to help fight organized crime and to re-

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44 See note 6 supra.
45 A statute of limitations chosen from the forum state should "add[ress] the same or similar policy considerations as are addressed by the federal right being asserted." O'Hara v. Kovens, 625 F.2d 15, 18 (4th Cir. 1980), cert. denied, 449 U.S. 1124 (1981). See also note 5 supra and accompanying text.
46 See note 5 supra and accompanying text.
47 610 F. Supp. 798 (D. Md. 1985). In Morley, plaintiffs alleged a RICO claim with underlying predicate offenses of securities fraud, mail fraud, and wire fraud. Both parties urged the court to analogize on the basis of underlying predicate offenses. The plaintiffs argued that this would result in the limitations period for common law fraud. The defendants, however, argued that this would result in the period for securities laws violations—the "paramount underlying predicate act."

The court had three reasons for declining to analogize on the basis of the underlying predicate offense. First, "RICO does not provide a remedy for the mere commission of the predicate acts . . . . [T]here is no commonality of purpose between RICO and the statutory scheme encompassing the predicate acts." Id. at 808. Second, the expiration of the periods for the predicate acts have no effect on a criminal RICO claim, and the same should be true of civil RICO claims. Id. at 809. Finally, the court thought that using the limitations periods of the predicate offenses would be confusing when different predicate acts, with different state limitations periods, were alleged. Id. Given the large "laundry list" of RICO offenses, this problem could occur frequently. Determining which predicate act was dominant would be "arbitrary and capricious." Id. at 809.
48 Id. at 808 (quoting Bankers Trust Co. v. Rhoades, 741 F.2d 511, 516 (2d Cir. 1984)).
49 "State legislatures do not devise their limitations periods with national interests in mind, and it is the duty of the federal courts to assure that the importation of state law will not frustrate or interfere with the implementation of national policies." Occidental Life Ins. Co. v. EEOC, 432 U.S. 355 (1977).
dress racketeering injury,\textsuperscript{50} whereas states are concerned with specific crimes. Accordingly, states have applied periods as short as two years.\textsuperscript{51} The remedial purpose of RICO, however, suggests a longer time to bring a claim, particularly given the complexity of a RICO offense.\textsuperscript{52} Therefore, the lack of clarity among and within states using the particularistic approach does not serve the functions of a statute of limitations and conflicts with the policies behind RICO.

B. The Separate Act Approach

Some courts have characterized RICO as a claim in itself rather than reducing the claim to its predicate acts. In determining the limitations period for a civil RICO claim under this approach, these courts have analogized to statutes with similar remedies,\textsuperscript{53} state RICO statutes,\textsuperscript{54} and assorted catch-all statutes.\textsuperscript{55}

1. State RICO Statutes

A state racketeering statute appears to be the most analogous state cause of action to a federal civil RICO claim. Twenty-three states have statutes similar to RICO.\textsuperscript{56} For example, the court in \textit{Delta Coal Program v. Libman}\textsuperscript{57} indicated that the five year statute of limitations for Georgia's state RICO statute would apply to a federal civil RICO action brought in Georgia. Another court, how-

\textsuperscript{50} See note 5 \textit{supra} and accompanying text. See also \textit{Morley}, 610 F. Supp. at 652.

\textsuperscript{51} See Clute v. Davenport Co., 584 F. Supp. 1562, 1577 (D. Conn. 1984) (applied two year period for actions under the state's Blue Sky Act).

\textsuperscript{52} See note 4 \textit{supra}. The investigation may require establishing the "pattern" of racketeering activity. "[E]ven when one has a suspicion that one or more predicate acts may exist, an investigation which covers the ten-year statutory period is likely to be very time consuming." \textit{Creamer v. General Teamsters Local Union 326}, 579 F. Supp. 1284, 1289 (D. Del. 1984) (rejecting a six month period; adopting a three year period). But see 610 F. Supp. at 652-53 (two year period is not so short as to conflict with RICO's remedial policies).

\textsuperscript{53} 610 F. Supp. at 648.


\textsuperscript{56} See note 30 \textit{supra}.

\textsuperscript{57} 554 F. Supp. 684 (N.D. Ga. 1982).
ever, refused to apply the limitations period of the state RICO statute to a federal civil RICO claim. The court reasoned that the analogy was inappropriate because the state statute did not provide a private cause of action for money damages, and because a court should not apply a criminal statute of limitations to a civil action.

The state RICO statute would be the ideal analogy if all states had such a statute. Not all states, however, have state RICO statutes, and not all of the existing state RICO statutes have an express statute of limitations. Furthermore, courts may refuse to analogize to the state RICO statute because of differences between the state RICO statute and federal RICO.

2. Statutes With Similar Remedies

In fashioning a statute of limitations, courts have analogized civil RICO to other statutes with treble damage provisions. In *Electronic Relays (India) Pvt., Ltd. v. Pascente*, the plaintiff alleged predicate acts of mail fraud and wire fraud. In determining the statute of limitations for the civil RICO claim, the court borrowed a four-step analysis from a recent Supreme Court case which determined the limitations period for the Civil Rights Act. In the analysis, the court must first determine whether one limitations period should apply to all RICO cases or whether the period should vary with the particular facts of the case. Second, the court must analogize the RICO case before it to a state cause of action. Third, the court needs to determine what limitations period applies to that state cause of action. Finally, the court should determine whether the period coincides with the policies of RICO, and if not, what limitations period better serves those policies. This multi-step analysis is effective because it addresses the issue of whether RICO should be characterized as a separate statute in itself or as a group of predicate acts. The analysis also contemplates the policies of RICO and

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58 D'Iorio v. Adonizio, 554 F. Supp. 222, 232 (M.D. Pa. 1982). The court chose the six year period for common law fraud instead. The alleged predicate acts were mail fraud and wire fraud. *Id.*

59 *Id.*


63 *Id.* at 649.

64 *Id.* at 649-50 (citing Wilson v. Garcia, 105 S. Ct. 1938 (1985)). See also notes 91-95 infra and accompanying text.

65 610 F. Supp. at 649.

66 *Id.*

67 *Id.*

68 *Id.* at 649-50.
searches for a limitations period that will be consistent with these policies. Ideally, however, the fourth step should also stress that the chosen limitations period should fulfill the policy functions of a statute of limitations.

In applying the four-step analysis, the court in *Electronic Relays* decided that one limitations period should apply to all RICO actions brought in Illinois to reduce "uncertainty, and unproductive and ever increasing litigation." Addressing the second and third questions, the court characterized RICO as an action for treble damages, "civil RICO's most distinctive feature." Accordingly, the court chose the two year statute of limitations for personal injury actions, which had been applied to other actions for treble damages within the state. The court decided that two years was

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69 *Id.* at 650 (quoting *Wilson*, 105 S. Ct. at 1947).

70 610 F. Supp. at 651-52. The court reasoned that states already provide remedies for most predicate acts which can form the basis of a RICO claim. Only the remedy is different from that provided by the state. *Id.* at 651. See also notes 28-29 supra and accompanying text. However, although treble damages are a distinctive feature, RICO is not merely a new remedy for old wrongs. *See* Durante Bros. & Sons v. Flushing Nat'l Bank, 755 F.2d 239, 248 (2d Cir.), *cert. denied*, 105 S. Ct. 3530 (1985); Morley v. Cohen, 610 F. Supp. 798, 808 (D. Md. 1985) ("RICO does not provide a remedy for the mere commission of the predicate acts.").

The court rejected the five year period that applies to criminal RICO. *Id.* at 651. The court stated that the policies behind criminal RICO and civil RICO are different. Furthermore, a court should adopt a federal statute only when the analogous state statute would conflict with the policy behind the federal statute. *Id.* at 651-52. See also D'Iorio v. Adonizio, 554 F. Supp. 222, 232 (M.D. Pa. 1982) (criminal statute of limitations for state RICO statute inappropriate for private action). *But see* Note, *Civil RICO: Searching for the Appropriate Statute of Limitations in Actions Under Section 1964(c)*, 14 Loy. U. Chi. L.J. 765, 793-94 (1985) (urging a uniform approach and suggesting the five year limitation period for criminal RICO).

The court in *Electronic Relays* also rejected limitations periods for tortious interference with economic relations and for actions to recover damages for an injury to property. 610 F. Supp. at 652. The court was so enamored with the treble damages remedy that it rejected any other characterization: "[Any] characterization [that] ignores the treble damages feature of RICO ... fails to capture the essence of a RICO claim." *Id.* The court continued, "RICO is much more than a remedy for injured persons—it provides considerable incentive for private citizens to act as private attorneys general and a very large and very tangible deterrent for those who might be thinking of violating its provisions." *Id.*

71 *Id.* Although Illinois courts have determined that treble damages are penal in nature, the plaintiff in *Electronic Relays* objected, arguing that civil RICO was remedial, not penal, in nature. *Id.* The court resolved the conflict by reasoning that RICO had remedial and punitive aspects, but in any case the court was restricted by Illinois case law which regarded treble damages as punitive. *Id.* at 652-53. The court avoided the objection by stating that "the question here is not whether the state's reasons for choosing two years are consistent with Congress' intent; it is whether the two year period itself is consistent with that intent." *Id.* at 653 (emphasis in original). The court found that two years was not so short a period as to conflict with the remedial purpose of RICO. *Id.* *But see* D'Iorio v. Adonizio, 554 F. Supp. 222, 232 (M.D. Pa. 1982) ("Despite the treble damage feature, we do not believe that [RICO] can properly be classified as an action for a civil penalty or forfeiture."); *State Farm Fire & Casualty Co. v. Estate of Caton*, 540 F. Supp. 673, 685 (N.D. Ind. 1982) (RICO is not penal in nature; therefore, the two year statute of limitations for statutory penalties was inappropriate).
sufficiently long to be consistent with the policies of RICO.\footnote{610 F. Supp. at 653. "A violation of RICO involves a very serious injury, a kind of injury that cannot go unnoticed by the victim . . . . Two years is certainly long enough . . . . to bring suit." Id.}

Characterization of a federal statute is a matter of federal, not state, law.\footnote{Id. at 650. \textit{See also} Wilson v. Garcia, 105 S. Ct. 1938, 1944 (1985).} A federal characterization means that, in all states, courts will consider RICO a certain type of crime for limitations period purposes. According to \textit{Electronic Relays}, states should consider RICO as an action for treble damages and apply whatever state limitations period applies to actions for treble damages. A federal characterization of RICO helps eliminate some confusion. Unlike a particularistic approach, a federal characterization provides uniformity, as the same limitations period will govern all civil RICO actions brought within each state. A uniform period within the state notifies the potential litigants of the basis of the analogy each state will use in determining a limitations period.\footnote{This approach works well for claims brought under 18 U.S.C. § 1983. \textit{See} Wilson v. Garcia, 105 S. Ct. 1938 (1985). The Supreme Court uniformly characterized all § 1983 claims as claims for personal injuries for statute of limitations purposes. \textit{Id.} at 1947. \textit{See also} notes 91-95 infra and accompanying text.} The problem with this approach, however, is that one RICO claim can be potentially litigated in more than one state.\footnote{\textit{See} note 6 supra.} This can leave the litigants uncertain as to which state's law will determine the statute of limitations, and which state statute the court will determine governs the federal characterization of the claim. Such problems conflict with RICO's status as a nationwide weapon against organized crime.\footnote{\textit{See} Durante Bros. & Sons, Inc. v. Flushing Nat'l Bank, 755 F.2d 239, 249 (2d Cir.), \textit{cert. denied}, 105 S. Ct. 3530 (1985) (accepted three year statute of limitations governing actions to enforce a liability created by statute); Compton v. Ide, 732 F.2d 1429, 1433 (9th Cir. 1984) (accepted three year statute of limitations governing actions based on statute); Morley v. Cohen, 610 F. Supp. 789, 809 (D. Md. 1985) (accepted three year statute of limitations governing civil actions at law); Creamer v. General Teamsters Local Union 326, 579 F. Supp. 1284, 1290 (D. Del. 1984) (accepted three year statute of limitations governing actions based upon a statute); Victoria Oil Co. v. Lancaster Corp., 587 F. Supp. 429, 432 (D. Colo. 1984) (accepted three year statute of limitations governing residuary claims); Teltronics Services, Inc. v. Anaconda-Ericsson, Inc., 587 F. Supp. 724, 733 (E.D.N.Y. 1984) (accepted three year statute of limitations governing actions to recover upon a liability, penalty, or forfeiture created or imposed by statute); Seawell v. Miller Brewing Co., 576 F. Supp. 424, 427 (M.D.N.C. 1983) (accepted three year statute of limitations governing liabilities created by statute).}

3. Catch-All Statutes

Several courts have arrived at state catch-all limitations periods for civil RICO claims either through analogy or by process of elimination.\footnote{\textit{See} note 5 supra.} Some courts have arrived at the catch-all statute by re-
jecting the approach of analogizing to the underlying predicate offense. For example, in *Morley v. Cohen*, the court adopted the state's catch-all period which provided that "[a] civil action at law shall be filed within three years from the date it first accrues." The court gave three reasons for choosing this statute: (1) it directly applies to civil actions at law, clearly encompassing civil RICO claims; (2) three years seemed not too long and not too short; and (3) the appeal of having one limitations period apply to all civil RICO claims brought in the state.

This approach, like the uniform federal characterization adopted by *Electronics Relays*, has an advantage over the particularistic approach. Providing uniformity within a state serves the notice functions of a statute of limitations. The same problems exist, however, when a RICO claim arises from actions occurring in several different states. When different states adopt different limitations periods for RICO offenses, neither the defendant nor the plaintiff will know exactly the length of time in which the plaintiff can bring the claim. In addition, deciding which state law applies requires time, expense, and litigation. Finally, this approach, like the uniform federal characterization approach, encourages forum shopping as litigants might search for the state with the statute of limitations that best serves their interests.

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82 Within any given state, potential civil RICO litigants will know what limitations period courts will apply to an action brought in that state, regardless of the predicate acts involved.

83 *See note 6 supra and accompanying text.

II. Suggested Solution: A Uniform Federal Approach

RICO needs a limitations period that serves the purposes of a statute of limitations and is consistent with the remedial, federal policies of RICO. Given the structure of RICO, its purpose of being a nationwide weapon against organized crime, and the many possible forums for a RICO complaint, RICO should have a uniform, federal limitations period.

To achieve a uniform, federal limitations period for RICO, two choices exist. Congress could amend RICO and specify a limitations period. Both the Senate and the House of Representatives, however, had opportunities to provide civil RICO with an express limitations period, but none passed. Until Congress decides to amend RICO to include an express limitations period, the judicial system needs to fashion a uniform approach that is consistent with the federal nature of RICO and fulfills the functions of a limitations period. Courts can achieve clarity and uniformity by adopting the limitations period of the most analogous federal statute.

The Supreme Court recently recognized the need for uniform characterization of section 1983 claims in Wilson v. Garcia. The Court found that choosing a statute of limitations based on the particular facts of a section 1983 claim bred uncertainty and time-consuming litigation, and too many analogies existed. Their reasoning, when applied to civil RICO actions, argues for a uniform federal limitations period. Wilson stated that the characterization of a section 1983 claim for the purpose of determining the statute of limitations is a matter of federal law. The Court stated that section 1983 claims should be characterized as a personal injury cause of action and that states are to use that characterization for statute of limitations purposes. With this approach, the limitations period

85 See note 5 supra.
86 See note 4 supra.
87 See note 5 supra.
88 See note 6 supra and accompanying text.
89 See 118 Cong. Rec. 37,264 (1972) (Sen. McClellan’s and Hruska’s proposed amendment contained a statute of limitations, but the amendment never reached the House.).
92 105 S. Ct. at 1945-47. The Court thought these difficulties interfered with § 1983’s remedial purpose. Id.
93 105 S. Ct. at 1942-47. Although the Court recognized the general rule of adoption of the state statute, it reiterated the principle that a state statute should not be used when borrowing the state statute would frustrate the federal policies behind the federal statute. A number of Supreme Court cases borrow a federal limitations period in preference to the
for each section 1983 claim will be clear.94

To obtain equal clarity for RICO actions, courts should apply a uniform, federal limitations period. Most section 1983 claims are based on single confrontations.95 RICO, on the other hand, requires at least two acts,96 acts which could occur in different states applying different limitations periods. Because the same reasoning behind creating one clear limitations period for each section 1983 claim applies equally to RICO claims, courts should establish one clear limitations period for each RICO claim.

By adopting the most analogous federal statute, a single uniform period will apply to all civil RICO actions. This would alleviate confusion, minimize litigation over the appropriate limitations period, and provide notice of a definite length of time to potential litigants. The clearest federal analogy to RICO is the federal antitrust laws.97 The same goal, to remedy competitive injuries to business, underlies both RICO and the antitrust laws. In addition, the antitrust laws provided a model for RICO and predecessors to RICO closely followed the Sherman Act.98 One predecessor even

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94 The Court recognized that when the basis for analogy is the facts of a particular action, two or more state causes of action would likely be analogous, each with a different limitations period. Thus, different periods might apply to the same claim and different claims in the same state could end up with different periods. 105 S. Ct. at 1946. The Court reasoned that Congress never intended such confusion and would prefer the uniform characterization. Id. at 1946-47.


96 See note 4 supra.

97 The antitrust laws were a strong influence on RICO. Senator McClellan, one of the Senators to introduce S. 1861, said “[b]ecause the [antitrust] remedies have been effective in removing and preventing harmful behavior in the business segment of our economy, they show great promise as tools for attacking organized crime. . . . The many references to antitrust cases are necessary because the particular equitable remedies desired have been brought to their greatest development in this field.” 115 CONG. REC. 9567 (1969). See also Blakey, supra note 5, at 262-90 (discussion of the legislative history of S. 1861 and references to the antitrust laws); Blakey & Gettings, Racketeer Influenced & Corrupt Organizations (RICO): Basic Concepts—Criminal and Civil Remedies, 53 TEMPLE L.Q. 1009, 1014-21 (1980).

98 One predecessor to RICO, S. 2048, 90th Cong., 1st Sess. (1967), proposed an amendment to the Sherman Antitrust Act which would prohibit the investment or use in
provided a four year limitations period, the same period provided by the Clayton Act. The reasoning of Electronic Relays which characterizes RICO as an action for treble damages, supports this analogy. Borrowing the limitations period from the Clayton Act would give civil RICO a uniform limitations period of four years.

III. Conclusion

Civil RICO does not contain an express statute of limitations. In fashioning a statute of limitations for a federal statute which does not contain a limitations period, courts have generally applied the limitations period of the most analogous state statute. No consensus exists as to how courts should characterize RICO to draw the analogy. Courts have characterized a RICO claim in terms of its underlying predicate acts, in terms of its remedy, and in terms of its statutory origin. This results in a wide variety of possible limitations periods among and within states. This confusion serves

business of unreported income. As the bill's sponsor, Senator Hruska, stated, "The antitrust laws now provide a well-established vehicle for attacking anticompetitive behavior of all kinds. They contain broad discovery provisions as well as civil and criminal sanctions. These extraordinarily broad and flexible remedies ought to be used more extensively against the "legitimate" business activities of organized crime." 113 Cong. Rec. 1799 (1967).


The Antitrust Section of the American Bar Association analyzed both of these bills and agreed that "organized crime must be stopped ... [and] antitrust machinery possesses certain advantages worthy of utilization in this fight." Organized Crime Control: Hearings on S. 30 Before the Subcomm. No. 5, House Comm. on the Judiciary, 91st Cong., 2d Sess. 149 (1970). The Antitrust Section, however, recommended enacting separate legislation to prevent unfavorable impact on the antitrust laws and burdening the new legislation with a body of precedent. Id. Now "RICO provides criminal law the prosecutorial and civil tools of antitrust without limiting case law." Mann, Legislative History of RICO, supra, at 70.

102 Prior to 1955, no federal statute of limitations existed for private antitrust actions and federal courts borrowed state rules. In 1955, the Clayton Act was amended to provide for a four year statute of limitations for both private and government damage actions. 15 U.S.C. § 15b (1982). Section 5(i) of the Clayton Act provides that where there is a pending civil or criminal proceeding instituted by the government to enforce the "antitrust laws," any private action based in whole or in part on any matter complained of in the proceeding will not be barred until a year after the conclusion of the government's case. 15 U.S.C. § 16(b) (1982). If courts borrow the four year limitations period of the antitrust laws, they should also borrow this provision. A government action may notify potential plaintiffs of injuries they had not yet known of, and this provision would give them time to bring a civil action, even if four years had passed from the time of the offense. The government must bring criminal RICO proceedings within five years. United States v. Bethea, 672 F.2d 407, 419 (5th Cir. 1982).
neither the purposes of a statute of limitations nor the policies of RICO.

The same considerations which prompted the Supreme Court to establish a uniform characterization for section 1983 claims mandate a uniform limitations period for civil RICO. Ideally, Congress should amend RICO and provide an express limitations period. Until then, Courts should adopt the limitations period of the nearest analogous federal statute, the four year period for the federal antitrust laws.

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