

Civil Litigation Triggered by Alleged Immigration Violations

June 2007 Mdivani Law Firm Update

Case Name and Description	Cause of Action	Resolution	Link
<p>Birda Trollinger; Robert Martinez; Tabetha Eddings and Doris Jewell (Plaintiffs) v. Tyson Foods, Inc. (Defendant)</p> <p>Tyson Foods, Inc., one of the U.S.'s largest poultry processors, employs over 120,000 workers. Its headquarters are in Springdale, AR, with processing plants throughout the country.</p> <p>The case is an appeal from the United States District Court for the Eastern District of Tennessee at Winchester, No. 02-00023, brought before the 6th Circuit Court of Appeals. At issue in this case is an application of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961 et seq., to a wage-related dispute between Tyson Foods, Inc. and 4 of its employees. On behalf of themselves and a putative class of similarly-situated workers, the 4 employees allege that Tyson violated RICO by engaging in a scheme with several employment agencies to depress the wages of Tyson's hourly employees by hiring illegal immigrants</p>	<p>April 2002: Tyson engaged in a scheme to depress the wages paid to its hourly employees by knowingly hiring undocumented illegal immigrants that were willing to work for wages well below those paid in labor markets composed of only U.S. citizens. Assisting Tyson in this scheme was a network of recruiters and temporary employment agencies that would transport the illegal workers to the U.S., obtain housing for them and provide them with false identification documents. As a result of the scheme, allegedly, over half of the workers at 15 of Tyson's facilities are illegal immigrants, allowing Tyson to pay its legal employees wages substantially below the wage level paid by other employers of unskilled labor in the areas surrounding the 15 facilities. Plaintiffs seek injunctive relief along with treble damages.</p>	<p>05/24/02: Tyson moves to dismiss on 2 grounds:</p> <p>1. Rule 12(b)(6): For failure to state a claim, arguing that the employees could not satisfy RICO's statutory-standing or proximate-cause requirements because the union negotiated and agreed to the wage scale contained in the collective bargaining agreement and because this intervening factor made any damages to the employees speculative. If anyone has a RICO claim, Tyson argued, it would be the union, not the employees.</p> <p>2. Rule 12(b)(1): For lack of subject-matter jurisdiction, arguing that the employees' RICO claims fall within the primary (and exclusive) jurisdiction of the National Labor Relations Board under San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959). Attached were 2 collective bargaining agreements between Tyson and the Retail, Wholesale and Department Store Union, AFL-CIO establishing the terms and conditions of employment for Tyson's hourly workers at the Shelbyville plant.</p> <p>07/16/02: District court granted Tyson's Rule 12(b)(6) motion, denied the Rule 12(b)(1) motion and dismissed the action with prejudice. Plaintiffs failed to state a claim, the district court held, because they could not establish "a 'direct relation between the injury asserted and the injurious conduct alleged. As the wage rates were the product of collective bargaining," the court explained, "plaintiffs cannot demonstrate that those rates were ultimately depressed by the presence of alleged illegal aliens in the work force...the conclusion that Tyson's hiring of alleged illegal aliens depressed the plaintiffs' wages would require sheer speculation." Id.</p> <p>12/11/04: Appeal argued</p> <p>06/03/04 Decision: Reversal of district court's judgment and</p>	<p>http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&case=/data2/circs/6th/026020.html&friend=nytime</p> <p>06/03/04</p>

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<p>Birda Trollinger, Virginia Bravo, Kelly Kessinger, Idoynia McCoy, Regina Lee, Patrick Mims, Lori Windham, and Alexander Howlet, individually and on behalf of all others similarly situated (Plaintiffs) v. Tyson Foods, Inc., John Tyson, Archibald Schaffer III, Richard Bond, Kenneth Kimbro, Greg Lee, Karen Percival, Ahrazue Wilt and Tim McCoy (Defendants)</p> <p>The case is filed in the Eastern District Court of Tennessee</p>	<p>06/24/05: Illegal Immigrant Hiring Scheme violated the RICO Act, 18 U.S.C. § 1961 et. seq.; Long-time pattern and practice of violating IRCA and § 274 of the Immigration and Nationality Act, 8 U.S.C. § 1324(a)(3)(A); Violated 8 U.S.C. § 1324(a)(1)(A)(iii) by "harboring" unauthorized aliens, both violations are predicate offenses of § 1961 (1)(F) of RICO; Tyson, LULAC, and NCLR formed an RICO enterprise pursuant to § 1961(4) in 2001; Individuals violated § 1962(d) by conspiring to violate § 1962(d); Tyson, Inc. also violated § 1962(c) by committing a pattern of racketeering activity</p>	<p>remand the case for further proceedings.</p> <p>Trial set for March, 2008</p>	<p>http://www.johnsonandbell.com/practice/plain_tiff/2007-02-09%20Management%20Order.pdf 02/09/07</p> <p>http://www.johnsonandbell.com/practice/plain_tiff/Tyson/SAC.pdf 06/24/05</p>
<p>Robin Brewer v. SK Foods (Kings County, CA)</p> <p>SK Foods is Lemoore, CA based tomato grower and processor with facilities near Sacramento, in New Zealand, and Australia. The defendants are SK Foods and CEO Scott Salyer.</p>	<p>Alleges the RICO Act violation committed by the Balakians</p>	<p>10/14/06: Filed at the U.S. District Court in Fresno, CA. Pending</p>	<p>http://www.johnsonandbell.com/attorney/biographies/foster.html 2006</p> <p>http://www.hanfordseninel.com/articles/2006/10/14/news/daily01.txt 10/14/06</p>
<p>Jose Hernandez v. Fruit Patch, Inc., Leo Balakian, Anthony Balakian, and Vince Balakian</p> <p>Fruit Patch is a Dinuba-based fruit grower and packer. It employs over 5,000 workers in its 17,000 acres.</p>		<p>October 2006: Case filed</p>	<p>http://www.hanfordseninel.com/articles/2006/10/14/news/daily01.txt 10/14/06</p>
<p>Evans Fruit Co. (Cowice, WA)</p> <p>Evans Fruit Co. has been the # 1 apple / pear grower in the country for the past 2 years. They own 11 ranches and 3 production facilities, farming over 700 acres. Howard Foster represents Plaintiffs, two former employees, against Evans Fruit owner Bill Evans and orchard supervisor Juan Marin, alleging that it hired 5,000 illegal migrants over a four-year period in an effort to depress wages.</p>		<p>10/12/06: Suit filed in U.S. District court of Eastern Washington. Pending</p>	<p>http://www.johnsonandbell.com/attorney/biographies/foster.html 2006</p> <p>http://nl.newsbank.com/nl-search/we/Archives?p_product=YHRB&p_the_me=yhrb&p_action=search&p_maxdocs=200&s_dispstring=evans%20and%20fruit%20AND%20date(9/1/2006%20to%204/28/2007)&p_file</p>

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<p>Shirley Williams, et. al., Individual and on Behalf of a Class (Plaintiffs) v. Mohawk Industries, Inc. (Defendant)</p> <p>The case was initially filed in the U.S. District Court for the Northern District of Georgia at Rome on 01/06/04. Mohawk is the nation's 2nd-largest manufacturer of rugs and carpeting, known to consumers through the carpet companies it owns, including Alexander Smith, Bigelow, and Karastan. It is a fixture in northwest Georgia, where it has been for 120 years. It employs over 30,000 people. Allegedly, Mohawk employees had traveled to the United States Border, including areas near Brownsville, Texas, to recruit undocumented aliens. These employees and other persons have transported undocumented aliens from these border towns to North Georgia so that those aliens may procure employment at Mohawk. Mohawk has made various incentive payments to employees and other recruiters for locating workers that Mohawk eventually employs and harbors. Mohawk is "able to save substantial sums of money," by paying its workers reduced wages.</p>	<p>2004: Open and ongoing pattern of violations of Sect. 274 of the Immigration and Nationality Act. In particular, Mohawk violated and continues to violate: (1) 8 U.S.C. § 1324(a)(3)(A), which makes it a federal crime to "knowingly hire for employment at least 10 individuals with actual knowledge that the individuals are aliens" during a twelve-month period; (2) 8 U.S.C. § 1324(a)(1)(A)(iii) that makes it a federal crime to "conceal, harbor, or shield from detection, or attempt to conceal, harbor or shield from detection" aliens that have illegally entered the United States; and (3) 8 U.S.C. § 1324(a)(1)(A)(iv), which makes it a federal crime to "encourage or induce an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law."</p>	<p><u>06/09/05</u>: 11th Circuit Court of Appeals sided with the workers and affirmed on the RICO claims of " a pattern of racketeering activity," but sided with Mohawk and affirmed on the unjust-enrichment claim as it related to worker's compensation. The critical aspect of the unanimous decision was in its finding that Mohawk's tampering and collusion with Brownsville employment organizations had constituted the creation of a de facto "enterprise." <u>12/12/05</u>: U.S. Supreme Court accepted the Mohawk case for review, limited to the 1st question in Mohawk's petition <u>06/05/06</u>: The writ of certiorari limited to Question 1 presented by the petition, granted at 546 U. S. ____ (2005), is dismissed as improvidently granted. The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the 11th Circuit for further consideration in light of Anza v. Ideal Steel Supply Corp., re. Requirement of proximate cause: The central question when a court evaluates a RICO claim for proximate cause being it must ask is whether the alleged violation led directly to the plaintiffs' injuries. In Anza v. Ideal Steel, the answer is no. <u>09/27/06</u>: 11th Circuit Court of Appeals Affirmed: Denial of Mohawk's Rule 12(b)(6) motion as it related to the plaintiffs' RICO claims; Dismissed: Plaintiffs' unjust-enrichment claim as it related to worker's compensation (reversal of district court's decision); Court agreed that plaintiffs have shown proximate cause. <u>02/26/07</u>: Supreme Court denies to hear Mohawk's appeal</p>	http://docket.medill.northwestern.edu/archives/003283.php 12/12/05 http://www.ca11.uscourts.gov/opinions/ops/200413740.rem.pdf 09/27/06 http://www.coxwashington.com/hp/content/reporters/stories/2007/02/27/BC_COURT_MOHAWK27_COX.html 02/27/07
Olivia Mendoza and Juana Mendiola, individually and	June 2006: A predicate RICO act, knowingly	06/07/02 : Argued & Decided: The Eastern district court of	http://www.ca9.uscourts

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<p>on behalf of all others similarly situated (Plaintiffs-Appellants) v. Zirkle Fruit Co., A Washington corporation; Matson Fruit Co; Selective Employment Agency, Inc. (Defendants), all Washington state companies.</p> <p>The purported class ("employees") are agricultural laborers for Zirkle Fruit Company and Matson Fruit Company ("growers"), which operate fruit orchards and packing houses in Eastern Washington, the heart of the state's fruit industry. They allegedly worked for the growers "at wages that are substantially depressed because of the Illegal Immigrant Hiring Scheme."</p>	<p>hiring undocumented workers in violation of Immigration and Naturalization Act § 274, 8 U.S.C. § 1324. Note: Selective Employment Agency, Inc. sued solely under state law.</p>	<p>Washington dismissed the complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), on grounds that damages were too speculative and difficult to ascertain. 09/03/02: Reversed and remanded by U.S. Court of Appeals for the 9th Circuit 01/13/06: Official notice of proposed settlement: \$1.3 million 01/20/06: Preliminary order to pay \$1.3 million settlement</p>	<p>s.gov/coa/newopinions.nsf/AC0ED2D1B39D56A688256C29005653E1/\$file/0135276.pdf?openelement 09/03/02 http://64.233.167.104/search?q=cache:9BS5rH4GHYJ:www.sidley.com/db30/cgi-bin/pubs/Employment_Labor_013006.pdf+%22mendoza+v.+zirkle+fruit+co.%22&hl=en&ct=clnk&cd=7&gl=us 01/30/06</p>
<p>Commercial Cleaning Services, L.L.C. (Plaintiff) v. Colin Service Systems, Inc. (Defendant)</p> <p>Commercial Cleaning Services sued Colin Service Systems, Inc., both janitorial firms in Hartford, CT, for operating an "illegal-immigrant hiring scheme" that allowed Colin to underbid Commercial to win the right to clean commercial buildings. The suit was prompted by Commercial's loss to Colin a contract to clean Pratt & Whitney facilities in Connecticut in the mid-1990s. Colin has about 4,000 employees, compared with 80 for Commercial, and paid a \$1 million fine to the INS in March 1996 to settle charges that it unlawfully hired illegal workers. Allegedly, Colin's illegal hiring practices enabled it to lower its variable costs and thereby underbid competing firms, which consequently lost contracts and customers to Colin. AMB Industries, Inc. acquired Colin Service Systems in December of 2004.</p>	<p>Pattern of racketeering activity by hiring undocumented aliens for profit in violation of Section 274 of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324(a), a RICO predicate offense, in violation of 18 U.S.C. § 1962(c), 1 referred to as "the illegal immigrant hiring scheme."</p>	<p>2000: 1st immigration-based RICO case (Howard Foster); Dismissed by the U.S. District Court for Connecticut; The court granted Colin's motion pursuant to Rule 12(b)(6) to dismiss the complaint for failure to state a claim. The complaint was dismissed without leave to amend, on the grounds that (i) Commercial had no standing to sue because it did not allege a direct injury proximately caused by Colin's illegal hiring, and (ii) Commercial failed to provide a sufficiently detailed RICO case statement as required by the district. 11/15/01 Decision: The Court of Appeals of the 2nd District vacates the judgment and remands for further proceedings on the grounds that plaintiff did not lack standing to bring an action based on the alleged RICO violations</p>	<p>http://www.ilw.com/immigdaily/cases/2001,12-18-Commercial.shtm 2001</p>

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