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TIMELY CASE LAW AND ANALYSIS FOR SUCCESSFUL RICO LITIGATION

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GUEST COMMENTARY

COURT FINDS NO PATTERN OF RACKETEERING ACTIVITY

By David Kete of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, PC

A federal court in Boston has dismissed with prejudice a sprawling RICO lawsuit brought against Wynn Resorts, Limited and several other defendants accusing them of defrauding the Massachusetts Gaming Commission in order to secure an exclusive license to build and operate a casino in the greater Boston area. (*Sterling Suffolk Racecourse, LLC v. Wynn Resorts, Ltd, Wynn MA, LLC, Stephen Wynn, Kimmarie Sinatra, Matthew Maddox, and FBT Everett Realty, LLC*, C.A. No. 18-11963-PBS, 2019 U.S. Dist. LEXIS 198896 (D. Mass. 11/15.19).)

On November 15, Judge Patti Saris of the U.S. District Court, District of Massachusetts rejected all three RICO counts brought by Sterling Suffolk Racecourse, finding that its complaint, even as amended, failed to allege a pattern of racketeering activity. She held that the alleged racketeering activity was part of a "single, discrete scheme" to obtain the Boston-area gaming license and therefore possessed neither the requisite open-ended continuity nor closed-ended continuity.

In 2011, the Massachusetts legislature legalized gambling by passing the "Expanded Gaming Act." The Gaming Act created a regulatory regime whose centerpiece is the Massachusetts Gaming Commission, an appointed body charged with overseeing the process of awarding the three gaming licenses and the construction and ultimate operation of the casinos. Each license granted the holder the exclusive right to build and operate a casino in one of three geographic regions. In the fall of 2012, Wynn Resorts began preparing a bid for the Boston-area gaming license. Mohegan Sun Massachusetts, a rival casino operator, prepared its own bid for the same gaming license. Mohegan Sun entered into an agreement with Sterling Suffolk Racecourse LLC to build its casino at the Suffolk Downs racetrack, which was owned by Sterling. The Gaming Commission ultimately awarded the gaming license to Wynn over Mohegan Sun. In the fall of 2018, four years after the Gaming Commission awarded the gaming license to Wynn and when Wynn's

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casino was nearly complete, Sterling, Mohegan Sun's would-be landlord, brought this racketeering suit against Wynn and its alleged conspirators.

Sterling brought three RICO counts. There were two substantive RICO counts alleging overlapping conduct but different racketeering enterprises, and one RICO conspiracy count. All three RICO counts alleged essentially that Wynn and the other defendants had engaged in a racketeering enterprise that committed fraud on the Gaming Commission in order to obtain the gaming license.

Wynn moved to dismiss the RICO claims on a variety of bases, but the court's analysis focused only on the lack of an actionable pattern of racketeering activity.

First, the court held that although many of the alleged predicate acts did not constitute racketeering activity, the complaint sufficiently alleged at least two categories of predicate acts: (1) several "act[s] . . . involving . . . gambling" and (2) violations of the Travel Act. The complaint alleged that the defendants violated the Gaming Act by concealing from the Gaming Commission (i) that two convicted felons allegedly had an interest in the Wynn casino project, (ii) that Steve Wynn allegedly had engaged in sexual misconduct in Nevada, and (iii) that Wynn had allegedly engaged in illegal activities in connection with its casinos in Macau, China. The court held that these alleged violations of the Gaming Act were all "act[s] . . . involving . . . gambling" and thus predicate acts of racketeering pursuant to 18 U.S.C. 1961(1). The complaint also alleged that the defendants traveled in interstate commerce to engage in these violations of the Gaming Act. Therefore, these same violations of the Gaming Act were also violations of the Travel Act, and separate predicate acts of racketeering.

But the court rejected the plaintiff's other alleged predicate acts, including the allegation that the defendants committed mail and wire fraud because the thing obtained as a result of the alleged fraud—the gaming license—was not property. The court also rejected the plaintiff's allegation that the defendants committed honest services fraud because the complaint did not allege that the defendants ever asked a local mayor to do anything in exchange for the stake in the project that they allegedly had promised him.

Second, the court turned to the "pattern" element of the purported RICO claims. The court noted that the "pattern" requirement demands that the plaintiff allege at least two predicate acts of racketeering activity, that the acts be related, and that the acts possess either open-ended continuity or closed-ended continuity. Here, the alleged acts of racketeering—the failure to disclose certain material facts to the Gaming Commission—were all done over a twenty-

one-month period, all in an effort to obtain the gaming license. The court held that the complaint sufficiently alleged two predicate acts of racketeering—the alleged failure to disclose the ownership interests of the felons, Steve Wynn's alleged sexual misconduct, or the allegedly illegal dealings in Macau—and sufficiently alleged that the two acts were related because all of the misrepresentations were made to the Gaming Commission in an effort to obtain the gaming license. But the complaint failed to allege that the racketeering acts possessed either open-ended or closed-ended continuity. The court held that because the racketeering acts were in the service of a "single, discrete scheme"—to obtain the gaming license—they did not possess the requisite continuity to constitute a pattern. The court stated that there was no open-ended continuity because there was no threat that the acts would continue into the future once the defendants had achieved the goal of their alleged enterprise by obtaining the license. The court further held that there was no closed-ended continuity because the alleged racketeering activity was of a relatively short duration and done in service of this single goal.

Finally, the court noted that its dismissal was with prejudice because the facts underlying the compliant had been known for years and because the plaintiff had already amended its complaint once, in the face of the defendants' first motion to dismiss.

Peter Biagetti and David Kete of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, and Mark Holscher of Kirkland & Ellis represented the defendants Wynn Resorts, Limited, Wynn Massachusetts, LLC, and Matthew Maddox.

PETITION FOR WRIT OF CERTIORARI PRESENTS COMPLEX ISSUES UNDER PINKERTON DOCTRINE, MEDIATE CAUSATION

By Dean Browning Webb

The author is counsel of record for Petitioners Cervantes Orchards & Vineyards, LLC, Jose G. Cervantes, and the Cervantes' affiliated corporate entities. Counsel is the author of Judicially Fusing the Pinkerton Doctrine to RICO Conspiracy Litigation through the Concept of Mediate Causation, 97 Kentucky Law Journal 665 (2008-2009). Counsel is co-counsel with James Gross, of Philadelphia, Pa., representing racial minorities and ethnic minorities in Smith v. Berg, 247 F.3d 532 (3rd Cir. 2001), homeowners victimized through reverse racial steering and racially motivated predatory mortgage lending practices. The author recognizes the significant contributions of paralegal Mary Jacqueline Feldman regarding this article. The author dedicates this article in perpetual memory and eternal recognition of the celebrated life of Juretta Elizabeth Oliver.

Introduction

A petition for writ of certiorari was recently filed with the U.S. Supreme Court addressing complex issues under the Pinkerton Doctrine and mediate causation in the context of RICO Section 1962(d) conspiracy litigation. *Cervantes Orchards & Vineyards, LLC, et.al., v. Deere & Company, et. al.*, No.: 19-695, *petition filed* (U.S.S.C. 11/25/19).)

Petitioners, racial and ethnic minorities, who owned, operated, and managed multi-national agricultural commercial businesses, had filed multiple relief claims under the federal Racketeer Influenced and Corrupt Organizations Act, including a Section 1962(d) conspiracy claim against various corporate affiliated entities of Deere & Co., among others, alleging concrete property losses. The 9th U.S. Court of Appeals affirmed the dismissal of the action without leave to amend, notwithstanding having found at least one form of racketeering activity sufficiently alleged. Federal anti-discrimination claims were similarly advanced under Section 1981 of the Ku Klux Klan Act of 1871. Significantly, the affirmance of dismissal adopted the ruling of the U.S. District Court, Eastern District of Washington that the Deere affiliated corporate entities could not be held conspiratorially liable for the criminally animated conduct of non-affiliated RICO 1962(d) co-conspirators who in fact were acting upon the express authorization, direction, and instruction of Deere.

Cervantes Orchards & Vineyards, LLC, et.al., v. Deere & Co., et. al., challenges the decision of the 9th Circuit as judicially inapposite and patently inconsistent with the reasoning of *Pinkerton v. U.S.*, 328 U.S. 640 (1946), *Salinas v. U.S.*, 522 U.S. 52 (1997), and *Beck v. Prupis*, 529 U.S. 495 (2000).

Substantiating this significant challenge similarly invokes application of the concept of mediate causation as further corroborating the liberal construction and expansive interpretation of the Pinkerton Doctrine.

Specifically, advancing compelling arguments, contending the 9th Circuit's position is diametrically contrary not only with the expressed judicial tenets of *Pinkerton*, *Salinas*, and *Beck*, the petition also identifies each of the sister federal circuits by citing RICO opinions supporting the argument. Moreover, the petition duly notes a 9th Circuit intra-circuit split involving construction, interpretation, and application of RICO 1962(d) conspiracy law and application of the Pinkerton Doctrine that is scheduled for an en banc hearing of 12 appeals the week of Jan. 13, 2020.

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Cervantes Orchards & Vineyards, LLC v. Deere & Co. presents significantly complex issues here that seriously warrant attention and close assessment by RICO practitioners addressing the evaluation, assessment, formulation, and prosecution of RICO 1962(d) conspiracy relief claims.

Pinkerton Doctrine Application In Context of Mediate Causation Warrants Review

The District Court erred by refusing to recognize RICO 1962(d) conspiracy law and application of *Pinkerton v. U.S.*, 328 U.S. 640 (1946), to the Deere corporate affiliated entities for the alleged predicate racketeering activity committed by non-affiliated RICO co-conspirators.

For purposes of complying with Fed. R. Civ. P. 11 prerequisites, this issue is especially significant. Under Pinkerton, an agreement to commit a crime or crimes is a prerequisite for liability. If such an agreement existed, anyone who joined it is liable for offenses other conspirators commit to advance the objectives of their agreement.

The act of agreeing to the commission of certain crimes suffices; it is not necessary that one commit any affirmative act to advance the realization of the goals of the conspiracy. Complicity differs in two respects. First, one can "aid and abet" the commission of a crime without entering into an agreement to this effect. Second, to incur aiding and abetting liability, it is not sufficient to associate oneself with a criminal venture; it is also necessary to commit an affirmative act that is intended to further the commission of a substantive offense. Still, Pinkerton recognizes affiliative liability where an individual is deemed to have committed a substantive offense even though that person was not present at its commission and did not physically consummate it. Both Pinkerton and rules of complicity accomplish this through a singular vehicle: they attribute causation for crimes that are physically perpetrated by another based on a unique "bad act' – that of entering into a criminal affiliation. The premise of these doctrines is that the act of aligning oneself with others to pursue a criminal purpose has causal significance. The causal import of this act is an instance of "mediate causation."

9th Circuit judicial authorities broadly construe the RICO conspiracy law. See *U.S. v. Fernandez*, 388 F.3d 1199 (9th Cir. 2004)(adopting and following *Smith v. Berg*, 247 F.3d 532 (3rd Cir. 2001), expanding application of RICO conspiracy law). RICO conspiratorial liability could properly be ascribed and established under both Pinkerton and the concept of mediate causation:

> Rather, they rely upon the concept of "mediate causation." "Mediate causation" refers to situations in which one's acts are deemed to have exerted a causal effect on another's conduct. Application of this conception of causation avoids the difficult task of specifying the actual effect such acts had on another's conduct by making it possible to assume a causal effect sufficient to support liability. The result is the imposition of criminal liability that comports with traditional requirements by including the element of demonstrable personal fault: "Mediate causation" denotes instances in which an individual's actions can be deemed to have exerted some causal effect upon another's conduct. It resolves the problem of attempting to identify the extent to which one person's acts affected another's conduct by making it possible, under certain circumstances, to assume a causal effect that is enough to support imposition of criminal liability. *See Susan W. Brenner, Of Complicity and Enterprise Criminality: Applying Pinkerton Liability to RICO Actions*, 56 MO. L. Rev. 931, 963-64 (1991).

"Mediate causation" or "mediate causality" significantly illuminates the underpinnings supporting the application of the Pinkerton Doctrine to RICO 1962(d) conspiracy. The diverse corporate and individual defendants affiliated themselves for purposes of destroying plaintiffs' interests in business and/or property. The commonality of achieving that objective is self-evident. As Brenner compellingly states:

> Human beings, however, unite to commit crimes far more often than they become another's instrumentality for doing so." It is this circumstance which the Pinkerton doctrine and rules of complicity address. Here, "causation by motivation" operates in a more refined form. The Pinkerton Doctrine and rules of complicity both target the act of affiliating with another or others to achieve a criminal purpose on the premise that this act reinforces and/or exacerbates motivation that already exists on some level. Because it operates on a predisposition to engage in criminal conduct, the affiliative act at issue in these doctrines cannot be a "but for" cause of any criminal results. It can, however, be a "contributing cause" of crimes that result from such an affiliation. *Id.*

"Mediate" is used here as an antonym of "immediate." See, e.g., *Websters's*, supra note 132, at 1526 (mediate denotes "an intervening cause . . . not direct or immediate"). Outside this context, criminal law, like torts, insists that causal relationships be "immediate." Treatment of Pinkerton in the context of examin-

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ing affiliative liability is noteworthy for consideration by this court in examining the doctrine's impact upon Beck: This act [affiliating with another for a criminal purpose] satisfies the criteria for imposing accountability under the traditional criminal law standard of personal liability: affiliating with another for criminal purposes is a voluntary act committed with a culpable mental state, or mens rea, that causes a prohibited social harm. (footnote omitted). In either of its guises, as Pinkerton liability or as complicitous liability, this act is clearly more culpable than the act that suffices for imposition of vicarious liability in civil law. . . . The only element of criminal liability that is attenuated under Pinkerton is causation, which receives the same treatment accorded it under the kindred doctrine of accomplice liability. Liability can attach under either form of affiliative liability without showing that the affiliative act caused commission of certain crimes. (footnote omitted). And because the affiliative act is wrong in itself, liability can attach even though the target crime was not accomplished.

Affiliative liability, therefore, is judicially recognized and appropriately applicable to ascribe Pinkerton liability to RICO co-conspirators whose offense is consummating the illegal agreement to contravene RICO substantive provisions.

Brenner's expose on the application of Pinkerton aptly reveals that "guilt by association" is in fact a viable legal instrument for RICO Section 1962(d) conspiratorial liability. Instead of abrogating "the need for a personal actus reus" as an element of liability, (footnote omitted) the Pinkerton doctrine holds a party liable for the consequences of a specific personal act – affiliating with another for criminal purposes. This act permits imposition of liability for crimes committed by those with whom one shares such a relationship. The non-acting party is liable for these offenses because her criminal act of allying herself with the acting party "caused" them to be committed.

See Susan W. Brenner, *Of Complicity and Enterprise Criminality: Applying Pinkerton Liability to RICO Actions*, 56 MO. L. Rev. 931, 953-957, 961-962, 963-64 (1991). *See also* Susan W. Brenner, *Civil Complicity: Using The Pinkerton Doctrine to Impose Vicarious Liability in Civil RICO Actio*ns, 81 Kentucky Law Journal 369 (1993) and Dean Browning Webb, *Judicially Fusing the Pinkerton Doctrine to RICO Conspiracy Litigation through the Concept of Mediate Causation*, 97 Kentucky. Law Journal 665 (2008-2009).

Petitioner's RICO1962(d) legal arguments are further substantiated and soundly corroborated by the reasoning of the 3d U.S. Circuit Court of Appeals in *Smith v. Berg*, 247 F.3d 532 (3rd Cir. 2001)(Petitioner appeared as co-counsel of record in Smith in formulating and advancing the legal arguments before the 3d Circuit and co-authored the brief upon behalf of racial and ethnic minority homeowners asserting RICO conspiracy claims). *Smith* is especially important here. *Smith* liberally construed *Salinas v. U.S.*, 522 U.S. 52 (1997) and rules that *Reves v. Ernst & Young*, 507 U.S. 170 (1993) is inapplicable to RICO 1962(d) claims. More importantly is the appellate court's affirmative expression that a RICO conspiracy claim can be maintained against a non-acting RICO co-conspirator where plaintiffs allege that any one RICO co-conspirator engaged in conduct that constitutes "racketeering activity" resulting in injury. The court found that the Supreme Court in *Beck v. Prupis*, 529 U.S. 494, 120 S. Ct. 1608, 146 L.Ed.2d 561 (2000), did not prohibit this particular pleading approach under RICO 1962(d):

> This case presents two questions: First, in light of the Supreme Court's decision in *Salinas v. U.S.*, 522 U.S. 52, 118 S. Ct. 469 (1997), may liability under the federal Racketeer Influenced and Corrupt Organizations Act ("RICO") conspiracy statute codified at 18 U.S.C. 1962(d) be limited to those who would, on successful completion of the scheme, have participated in the operation or management of a corrupt enterprise? Second, did the Supreme Court's more recent decision in *Beck v. Prupis*, 529 U.S. 494, 120 S. Ct. 1608, 146 L.Ed.2d 561 (2000), limit application of its holding in Salinas to criminal cases? Ruling against the Appellants on both issues, we will affirm the Orders of the District Court for the Eastern District of Pennsylvania. In doing so, we hold that any reading of *United States v. Antar*, 53 F.3d 568 (3d Cir. 1995), to the effect that conspiracy liability under section 1962(d) extends only to those who have conspired personally to operate or manage the corrupt enterprise, or otherwise suggesting that conspiracy liability is limited to those also liable, on successful completion of the scheme, for a substantive violation under section 1962(c), is inconsistent with the broad application of general conspiracy law to section 1962(d) as set forth in *Salinas*. 247 F.3d at 534.

The 9th Circuit recognized and applied *Smith v. Berg*, 247 F.3d 532 (3rd Cir. 2001)135 and affirmatively followed and with approval in *U.S. v. Fernandez*, 388 F.3d 1199 (9th Cir. 2004).

Fernandez, one of six consolidated appeals involving federal RICO conspiracy and related RICO issues, affirmatively overruled the 9th Circuit's earlier ruling in *Neibel v. Trans World Assurance Co*., 108 F.3d 1123 (9th Cir. 1997), addressing RICO 1962(d), as inapposite and inconsistent with subsequent United States Supreme Court authorities construing that provision as expressed in *Salinas v. U.S.*, 522 U.S. 52

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(1997) and *Beck v. Prupis*, 529 U.S. 494 (2000). More importantly, the 9th Circuit recognized *Neibel's* legal reasoning rested upon an earlier 3d Circuit decision, *U.S. v. Antar*, 53 F.3d 568, 581 (3rd Cir. 1995), and that *Antar* was overruled by a latter 3d Circuit decision, *Smith v. Berg*, 247 F.3d 532 (3rd Cir. 2001), which squarely addressed RICO conspiracy law in light of *Salinas* and *Beck*.

Affirming the RICO conspiracy convictions, the 9th Circuit expressly repudiated *Neibel* and announced recognition of *Smith v. Berg*, 247 F.3d 532 (3rd Cir. 2001):

> We now agree with the Third Circuit that the rationale underlying its distinction in *Antar*, and our holding in *Neibel*, is no longer valid after the Supreme Court's opinion in Salinas. Accordingly, this case presents a situation similar to *Miller v. Gammie*, in which we held that "where the reasoning or theory of our prior circuit authority is clearly irreconcilable with the reasoning or theory of intervening higher authority, a three-judge panel should consider itself bound by the later and controlling authority, and should reject the prior circuit opinion as having been effectively overruled." 335 F.3d 889, 893 (9th Cir. 2003) (en banc). We adopt the Third Circuit's *Smith* test, which retains Reves' operation or management test in its definition of the underlying substantive § 1962(c) violation, but removes any requirement that the defendant have actually conspired to operate or manage the enterprise herself. Under this test, a defendant is guilty of conspiracy to violate § 1962(c) if the evidence showed that she "knowingly agree[d] to facilitate a scheme which includes the operation or management of a RICO enterprise." *Smith*, 247 F.3d at 538. 388 F.3d at 1229. 388 F.3d at 1229.

Accordingly, predicated upon the above analysis and argument, the District Court erred, and the panel did not consider, these significant legal arguments expressly addressing the RICO conspiracy law, Pinkerton, and the concept of mediate causation to serve as viable legal instrumentalities and effective vehicles to sustain the good faith based RICO conspiracy damage relief claim, the petition should be granted therein and entry of an appropriate order thereon.

Conclusion

Zealously representing racial and ethnic minorities, aggressively advancing controversial and contentious damage relief claims under federal RICO statutory regimens engenders both especial sensitivities and raw emotionalism. Exemplary among the judicially historic nomenclature of such intensely vitriolic, controversial litigation prosecuted upon behalf of racial minorities involving commercial, business, and property interests advocated by committed and dedicated counsel warranting recognition is *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857), *Plessy v. Ferguson*, 163 U.S. 537 (1896), *Hirabayashi v. U.S.*, 320 U.S. 81 (1943), *Yasui v. U.S.*, 320 U.S. 115 (1943), and *Korematsu v. U.S.*, 323 U.S. 214 (1944). *See* Gordon Andrews, *Undoing Plessy*; Charles Hamilton Houston, *Race, Labor, and the Law*, 1895-1950 (2014).

SUMMARY JUDGMENT

DUMP DISPUTE RIPE FOR SCOTUS REVIEW, RICO DEFENDANT SAYS

A landfill operator accused of bribing former New Orleans mayor C. Ray Nagin to close a dump he fast-tracked after Hurricane Katrina is asking the U.S. Supreme Court to use the suit to clarify the federal summary judgment standard. (*River Birch Inc. et al. v. Waste Management of Louisiana LLC*, No. 19-533, *petition for cert. filed*, 2019 WL 5448581 (U.S. 10/22/19).)

The justices should resolve a circuit split over the evidentiary standard plaintiffs must satisfy at the summary judgment stage when circumstantial evidence equally supports inferences of innocent or unlawful conduct, River Birch LLC says in an Oct. 22 petition for certiorari.

In *Matsushita Electrical Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986), the Supreme Court held that when the evidence is ambiguous, a plaintiff must present evidence that "tends to exclude" an innocent explanation of the challenged behavior to survive summary judgment.

Through a divided opinion vacating a Louisiana district court's order granting partial summary judgment to River Birch, the 5th U.S. Circuit Court of Appeals in April joined the 2nd and 7th Circuits in limiting the application of *Matsushita* to antitrust cases, the company says.

That approach conflicts with decisions in the 4th and 6th circuits treating the *Matsushita* holding as a general principle of summary judgment and the 11th Circuit's application of the holding in civil suits under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1964, according to River Birch's petition.

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Backlash against emergency landfill

In the wake of Hurricane Katrina, Nagin responded to the pressing need for landfill capacity by issuing an executive order suspending zoning provisions for six months to enable Waste Management of Louisiana LLC to build a new construction and demolition landfill in the city. The site of Waste Management's new dump was Chef Menteur, an open pit across a canal from the Bayou Sauvage National Wildlife Refuge, the country's largest urban wildlife refuge, Grist reported in August 2006.

According to the report, the Vietnamese-American residents of the nearby Versailles neighborhood joined environmentalists in fighting the dump. Opposition to the Chef Menteur landfill grew as Nagin faced a runoff election in May 2006, the petition says.

Roughly two weeks before the election, Jim Ward, a principal of River Birch, which owns and operates other New Orleans landfills, received a call from someone named "Ray" asking for a campaign donation, according to the petition.

Ward and Fred Heebe, also a River Birch principal, donated $20,000 to Nagin through various entities.

Nagin won reelection and let his executive order expire.

Lacking the required conditional use permit and realizing city leadership was unlikely to grant it, Waste Management had to close the Chef Menteur site, the petition says.

Pay to play or political pressure?

In September 2011 Waste Management filed a civil RICO suit against River Birch, a subsidiary, Ward and Heebe in the U.S. District Court for the Eastern District of Louisiana.

Finding the evidence too speculative to support Waste Management's claim that River Birch bribed Nagin to let the executive order expire, thereby causing Chef Menteur's closure, U.S. District Judge Kurt D. Engelhardt granted partial summary judgment to the defendants.

Although it admitted the evidence could demonstrate Nagin changed his mind due either to ordinary political pressure or bribery, the 5th Circuit majority vacated the District Court's order.

Protecting against speculation

According to the River Birch's petition, *Matsushita* reflects the general summary judgment principle that evidence presented to a jury must provide grounds for members to choose among inferences without resorting to speculation.

By reviving Waste Management's claim without applying *Matsushita's* protective evidentiary standard, the 5th Circuit majority's decision threatens to turn any campaign donation followed by a change in an official's position into a potential conspiracy claim to be decided by a jury, River Birch says.

In addition to the circuit inconsistencies and political ramifications, the frequency with which courts face ambiguous evidence outside the antitrust context weighs in favor of the justices granting certiorari, according to River Birch.

Petitioners (River Birch Inc. and Highway 90 LLC): Thomas Flanagan and Camille Gauthier, Flanagan Partners LLP, New Orleans, LA

Related Filings:

Petition for certiorari: 2019 WL 5448581

5th Circuit opinion: 920 F.3d 958

District Court opinion: 2017 WL 5068339

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