



For Immediate Release

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## Paper Criticizes Judicial Expansion of Federal Racketeering Law

For many years, the federal Racketeer Influenced and Corrupt Organizations Act (RICO) has been an irresistible temptation to both plaintiffs' lawyers and judges. Lawyers find RICO's triple damages attractive, providing judges with numerous opportunities to expand the law far beyond its original intent of countering organized crime. As a new Washington Legal Foundation (WLF) WORKING PAPER relates, thanks to a recent federal appeals court ruling, insurance companies are now the latest legitimate industry to be labeled "racketeers" and face RICO's wrath.

This WLF WORKING PAPER, ***Weiss v. First Unum Life: Treating Insurers Like Racketeers*** was authored *pro bono* by **Elizabeth A. Venditta**, a partner with the law firm White and Williams LLP in its Philadelphia, Pennsylvania office.

The lawsuit, filed initially in New Jersey state court, alleged that First Unum violated state and federal laws when it terminated the plaintiff's disability benefits. Ms. Venditta chronicles how this unremarkable coverage dispute ended up as a precedent-setting U.S. Court of Appeals for the Third Circuit decision. After First Unum removed the suit to federal district court, plaintiff Weiss added a RICO claim, setting off a complicated trial court assessment of how RICO interplays with two other federal laws, the Employee Retirement Income Security Act (ERISA) and the McCarran-Ferguson Act. The trial court dismissed Weiss's claims twice, and on the second appeal the Third Circuit, as Ms. Venditta writes, went to "quite some lengths in crafting its analysis to reach its result," which was that Weiss had a valid RICO claim.

The WORKING PAPER offers an extensive analysis of the legal gymnastics in which the Third Circuit engaged to expand federal RICO to ERISA benefits termination. Ms. Venditta guides readers through the federal and New Jersey legal precedents the appellate panel had to ignore, sidestep, or unconvincingly distinguish to support its reasoning.

The paper's conclusion sounds a warning for insurers doing business in New Jersey, Pennsylvania, and Delaware – anticipate that RICO claims will now be "thrown in" to insurance coverage disputes. The availability of RICO, Ms. Venditta argues, will significantly alter the litigation playing field for insurance plaintiffs and defendants, leading inevitably to defensive decision-making on insurance coverage matters and displacing ERISA as a "method to resolve disputes over benefits inexpensively and expeditiously."

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Copies of this educational paper, WLF WORKING PAPER, Number 152 (November 2007), can be obtained by forwarding a request to: Publications Department, Washington Legal Foundation, 2009 Massachusetts Avenue, NW, Washington, D.C. 20036, or calling (202) 588-0302.

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