

LEGAL ANALYSIS

United States District Court, D. Connecticut.

Lisa M **MACOMBER**, on behalf of herself and all others similarly situated,

Plaintiff

v.

TRAVELERS PROPERTY CASUALTY CORP., et al., Defendants

and

Kathryn **HUAMAN**, as Custodian for Joshua Adickes, on behalf of herself and all others similarly situated,

v.

TRAVELERS PROPERTY CASUALTY CORP., et al., Defendants

No. 3:98-CV-01060(WWE), 3:98-CV-01093(WWE).

Jan. 28, 1999.

RULING ON MOTIONS TO DISMISS

[EGINTON](#), Senior District J.

INTRODUCTION

*1 The plaintiffs in these consolidated actions each seek to represent a class of persons who entered into structured settlements with Travelers Property Casualty Company ("TPC") from 1982 to the present. No class has been certified to date.

The complaint sounds in RICO and various state law claims. Plaintiffs allege a conspiracy by TPC, various Travelers affiliates, and two independent brokers, Ringler Associates, Inc. and Wells and Associates, to settle certain claims by structured settlements, funded by annuity contracts. Plaintiffs claim that TPC purchased these annuities through brokers who rebated a percentage of their commissions, in alleged violation of state statutes forbidding sharing of commissions on insurance contracts. Plaintiffs assert that TPC's failure to disclose the receipt of commission rebates led them to enter into structured settlements: (a) that were too low, or (b) that they would not have accepted at all. Ms. Macomber settled her claim with TPS in 1990. Ms. Huaman fails to plead a date when her settlement was consummated.

All defendants have moved to dismiss the complaints.

"The original writer is not one who imitates, but one whom nobody can imitate." Francois Rene de Chateaubriand, *Le Genuie du Christianisme*, [1802]. Due to the exceptional quality of the defendants' memoranda of law submitted in support of their motions to dismiss, the Court finds that to write its own opinion would involve wholesale copying of the defendants' memoranda. Their arguments are well founded and legally sound. The Court cannot analyze the cases and present the arguments in a manner more succinct than or superior to the excellent presentations of defense counsel.

Plaintiffs have offered to replead their complaints, which the Court hereby allows. To assist in such repleading, and the concomitant RICO statement, the amended complaints must:

1) Comply with the pleading mandates of [Fed. R.Civ.P. 9](#), setting forth the alleged fraud with the requisite particularity;

2)(a) Specify the statements that each plaintiff claims were false and misleading, (b) give particulars as to the respect in which the plaintiffs contend the statements were fraudulent, (c) state when and where the statements were made, and (d) identify those responsible for the statements. [McLaughlin v. Anderson](#), 962 F.2d 187, 191 (2d Cir.1992)(mail and wire fraud requirements);

3) Since RICO allows a private cause of action seeking treble damages and attorneys' fees only to a person "injured in his business or property" through a "pattern of racketeering activity", [18 U.S.C. § 1964\(c\)](#), plaintiffs must plead how violations of state insurance laws, the mail and wire fraud statutes and the financial institution fraud statute form the predicate acts required by RICO. *See* [18 U.S.C. § 1961\(1\)](#)(requiring "racketeering activity to be an act "chargeable" or "indictable");

4) Specify how their allegations of mail fraud and wire fraud demonstrate (a) a material misrepresentation or omission, the *sina qua non* of a scheme to defraud, (b) defendants' knowing or intentional participation in such a scheme to defraud, and (c) the use of interstate mails or transmission facilities in furtherance of the scheme. *S.O.K.F.C., Inc., v. Bell Atlantic Tricon Leasing Corp.*, 84 F.3d 629, 633 (2d Cir.1966);

*2 5) As to plaintiffs' allegations of financial

institutional fraud, each must plead what financial institution was defrauded. See [Chase v. Manhattan Bank v. Harris](#), 899 F.Supp. 64, 69 (D.Conn.1995);

6. Set forth with the requisite particularity how each has standing to bring a RICO claim under the three RICO standing sections. See [18 U.S.C. § § 1962\(a\)\(b\)\(c\)](#). Accord [Sedima, S.P.R. L. v. Imrex., 473 U.S. 479, 496-97 \(1985\)](#)(analyzing standing under 18. U.S.C. § 1962(c)). See also [Quanine v. MacFarlane](#), 897 F.2d 75, 83 (2d Cir.1990)(analyzing standing under [18 U.S.C. § 1962\(a\)](#)); [Discon, Inc., v. NYNEX](#), 93 F.3d 1062-63 (analyzing standing under [18 U.S.C. § 1962\(b\)](#));

7. Since the RICO predicate acts are alleged to be grounded in fraud, plaintiffs must sufficiently plead both "transaction causation" and "loss causation." [Hecht v. Commerce Clearing House, Inc.](#), 897 F.2d 21, 23-4 (2d Cir.1990);

8. Plead the existence of a RICO "enterprise" that is separate and distinct from the RICO "persons" who allegedly have conducted the enterprise's affairs through a pattern of racketeering. [Bennet v. U.S. Trust Co.](#), 770 F.2d 308, 315 (2d Cir.1985, cert. denied, 474 U.S. 1058 (1986))(corporate entity may not be both the RICO enterprise and the RICO person under [Section 1962\(c\)](#)).

9. Set forth with particularity how Ringler Associates and Wells and Associates, who began working with Travelers in 1998, are involved in an alleged fraudulent scheme, the culmination of which is alleged to be 1990. The same is true of Saloman Smith Barney, whose working agreement with Travelers did not begin until 1994;

10) The RICO case statements must conform to the amended complaints, and therefore should not include statements contradictory to those set forth in the amended complaints.

CONCLUSION

The Motions to Dismiss [Doc. Nos. 43, 45, 47] are hereby CONDITIONALLY GRANTED, with leave to the plaintiffs to file amended complaints and RICO case statements on or before February 27, 1999.

SO ORDERED

1999 WL 118005 (D.Conn.)

Motions, Pleadings and Filings ([Back to top](#))

• [3:98CV01093](#) (Docket)
(Jun. 10, 1998)

• [3:98CV01060](#) (Docket)
(Jun. 05, 1998)

END OF DOCUMENT