

# Denver Law Review

---

Volume 67  
Issue 4 *Tenth Circuit Surveys*

Article 36

---

February 2021

## RICO

Denver University Law Review

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

---

### Recommended Citation

Denver University Law Review, RICO, 67 Denv. U. L. Rev. 763 (1990).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact [jennifer.cox@du.edu](mailto:jennifer.cox@du.edu), [dig-commons@du.edu](mailto:dig-commons@du.edu).

## RICO

*United States v. Cardall*, 885 F.2d 656

Author: Judge McKay

Defendants appealed their convictions in the district court for mail fraud, wire fraud, the interstate transportation of money taken by fraud, bankruptcy fraud, and violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO").

The Tenth Circuit held that double jeopardy does not apply to successive prosecutions where the statutory provisions for one crime require proof of a fact which the other does not. The court further held that severance is not a matter of right and the district court did not abuse its discretion by refusing to grant it. The court reversed the mail fraud conviction because use of the United States mail was not an integral part of the scheme and thus not within the scope of the statute. Finally, the court held that the reversal of the mail fraud convictions did not warrant dismissal of the RICO convictions as a predicate offense might, since ample independent grounds existed to sustain the RICO convictions.

*Cayman Exploration Corp. v. United Gas Pipeline Corp.*, 873 F.2d 1357

Author: Judge McKay

Plaintiff, Cayman Exploration ("Cayman"), appealed the district court's dismissal of its claim under FED. R. CIV. P. 12(b)(6), against United Gas Pipeline Corporation ("United"), for violation of the Sherman Antitrust Act and Racketeer Influenced and Corrupt Organizations Act ("RICO"). The district court held that Cayman failed to allege facts sufficient that, if proved, would entitle Cayman to relief.

The Tenth Circuit upheld the district court's ruling. The court held that Cayman failed to establish that United practiced unreasonable restraint on trade. Cayman also did not establish that United was guilty of vertical or horizontal price-fixing. The court reasoned that Cayman failed to allege facts showing that the parties agreed to set a price at which the other would resell to third parties. The court also held that there were insufficient facts to show a conspiracy to establish horizontal price-fixing. Cayman did not identify the alleged conspirators. Moreover, Cayman did not establish that any companies had acted in a way contrary to the best interests of their business. In addition, the court found that Cayman's RICO claim failed. The court stated that a RICO claim must allege conduct of an enterprise through a pattern of racketeering activity. Cayman failed to allege racketeering activity with sufficient particularity.

*Edwards v. First National Bank*, 872 F.2d 347

Author: Judge McWilliams

Plaintiffs brought this action pursuant to the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-68. Plaintiffs also asserted a pendent state claim based on intentional tort. Plaintiffs' claims arose in connection with bank loans obtained for purchasing cattle. The district court granted the defendants, First National Bank, Fairview State Bank, and bank officers, summary judgment and dismissed the RICO claim and the state tort claim.

The Tenth Circuit held that the banks' conduct did not constitute a pattern of racketeering activity giving rise to a claim under 18 U.S.C. § 1962(c). Two incidents of threatening statements by the bank officers that the plaintiffs would go to jail if they did not fully pay their loans at once were insufficient to establish a pattern of racketeering activity. The court stated that proof of two acts, without more, does not establish a pattern. Continuity, shown by a threat of ongoing illegal activity, must also be proven.

*Grider v. Texas Oil & Gas Corp.*, 868 F.2d 1147

Author: Judge Seymour

Plaintiff, Grider, who held an interest in a group of oil and gas wells, brought suit against the wells' developers under the RICO Act, 18 U.S.C. §§ 1961-68. Grider claimed damages from two fraudulent schemes and from conspiracies based thereon.

The Tenth Circuit upheld the dismissal of Grider's complaint for failure to state a claim. The court reasoned that Grider's complaint failed to specifically allege that he was injured from the use or investment of racketeering income. Moreover, the court held that the damage claims for conspiracies was based upon insufficient substantive allegations and, therefore, could not survive a motion to dismiss.