IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

WILLIAM ROBERTS WILSON, JR., and ROBERTS WILSON, JR., P.C., successor to WM. ROBERTS WILSON, JR., P.A. — PLAINTIFFS

NO. 3:09-CV-006-NBB-SAA

v. — DEFENDANT

STEVEN A. PATTERSON

DEFENDANT STEVEN A. PATTERSON'S REBUTTAL TO PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS

COMES NOW Defendant Steven A. Patterson, by and through his undersigned counsel of record, Hiram C. Eastland, Jr., and hereby submits this Reply to Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss.

Plaintiff's opposition fails to resolve any of the shortcomings addressed in Mr. Patterson's Motion to Dismiss. From denying the existence of a heightened pleading standard for fraud, to reiterating the same legally insufficient factual allegations, Wilson can point to nothing that would save his complaint from dismissal.

I. PLAINTIFF'S FRAUD CLAIMS ARE DEFICIENT UNDER FEDERAL RULE OF CIVIL PROCEDURE 9(b)

A. Standard of Review

It is elementary law that pleading fraud requires particularity. Federal Rule of Civil Procedure 9(b) itself states in no uncertain terms that "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake." Caselaw cannot be any clearer than the precedent in this area. The Fifth

Circuit in Williams v. WMX Technologies, Inc., concluded that the particularity of Rule 9(b) applies equally to "securities fraud and RICO claims resting on allegations of fraud." 112 F.3d 175, 177 (5th Cir. 1997). Likewise, in Tel-Phonic Services, Inc. v. TBS Intern., Inc., the Court concluded that: "Rule 9(b) requires particularity in pleading the 'circumstances constituting fraud.' This particularity requirement applies to the pleading of fraud as a predicate act in a RICO claim as well." 975 F.2d 1134, 1138 (5th Cir. 1992).

Yet, according to Wilson, the Fifth Circuit case of Abraham v. Singh somehow overturned this rule and now fraud can be plead just as "liberally" as the rest of the Complaint. See Plaintiff's Motion in Opposition pg. 3, citing Abraham v. Singh, 480 F.3d 351, 355-56 (5th Cir. 2007). Unfortunately for the Plaintiff, such is simply not the case. In Abraham, the Court was discussing the continuity aspect of a RICO case, not allegations of fraud. Specifically, the Court stated that: "[i]n light of the liberal pleading standard with which the Plaintiffs' allegations must be viewed, the district court erred in turning the Supreme Court's explanation *of the continuity prong* into a stringent pleading requirement." 480 F.3d 351, 355-56 (emphasis added)(internal citations omitted). Abraham v. Singh does not espouse any law whatsoever on the pleading requirements for fraud.

In a final attempt to abrogate procedural rule 9(b) Wilson wields the case of U.S. ex rel. Thompson v. Columbia/HCA Healthcare Corporation, and suggests that this case replaced the heightened pleading standard for fraud with the more general pleading standard. Plaintiff's Motion in Opposition, pg. 4. Again, Wilson misreads the opinion.

In Thompson, the Fifth Circuit was reviewing a district court's dismissal for failure to plead fraud with particularity. 125 F.3d 899, 901 (5th Cir. 1997). Analyzing its

own standard of review, the Court determined that *de novo* review was proper under 12(b)(6). Id. The Court then went on to say that *de novo* also applies for dismissals based upon Rule (9)(b) because this type of dismissal "is treated as a dismissal for failure to state a claim under Rule 12(b)(6)."[1] Id. Obviously, this declaration does not mean that a heightened pleading for fraud is now "forbidden" as Plaintiff Wilson suggests.

Oddly enough, in the very next paragraph Wilson appears to change gears and admit that fraud requires particularity. Only now, his argument is that the particularity "is not to be as stringently applied as Patterson suggests." To support this assertion, Plaintiff points to an allegation of mail fraud that was found to be sufficient in the case of Tel-Phonic Services, Inc. v. T.B.S. Int'l Inc.[2]. Mr. Patterson wholly agrees that this type of allegation meets the particularity requirements. It states the "time, place, and contents of the false representations, as well as the identity of the person making the representation and what he obtained thereby." Tel-Phonic Services, 975 F.2d at 1139. The problem is, Wilson's claims of fraud do not come close to meeting these essential points. Instead, his own Complaint contains only vague, generalized accusations such as "Wilson relied on the words, verbal and written, of the Hinds County Circuit Court . . . Wilson relied on the robe and the seat behind the bench . . . Wilson relied on every word in filings by Scruggs . . ." These types of allegations do not satisfy the pleading standard of Rule 9(b); therefore, the fraud claims should be dismissed.

---

[1] Wilson's contextual misinterpretation can be wholly resolved by looking at Lovelace v. Software Spectrum, Inc. 78 F.3d 1015, 1017 (5th Cir. 1996). Cited by the Thompson court for this point of law, the exact quote from Lovelace was: "[w]e treat a dismissal for failure to plead fraud with particularity under Rule 9(b) as a dismissal for failure to state a claim upon which relief can be granted. Therefore, we review the district court's dismissal *de novo*. . ."

[2] 975 F.2d 1134 (5th Cir. 1992).

II. WILSON STILL DOES NOT PLEAD THE COMMISSION OF PREDICATE ACTS BY PATTERSON

RICO predicate offenses are a specific group of violations listed in 18 U.S.C. § 1961; actions that do not fall within this list cannot be considered predicates for the purpose of establishing a RICO claim. Tipton v. Northrop Grumman Corp., 2009 WL 2914365, *7 (E.D. La. 2009)(acknowledging that § 1961 is "exhaustive" and "exclusive" list of racketeering acts). Once again, Wilson attempts to ground his RICO claim in accusations such as Mr. Patterson contacting and retaining Ed Peters in the case of Wilson v. Scruggs, keeping in contact with Peters about the case, and allegedly relaying ex parte communications to Judge DeLaughter. Plaintiff's Motion in Opposition, pg. 6. As Mr. Patterson has previously explained in his Motion to Dismiss, these acts are not predicates under § 1961.

Next, Wilson defends his Amended Complaint by saying that, if these predicates are not enough (which they are not) he has listed more predicates in paragraphs 23-26, 42(a), 44, 65 and 66. The insufficiencies of these acts have also previously been explained in detail in Mr. Patterson's Motion to Dismiss. Paragraphs 23-26, 44 and 65-66 consist of nothing more than boilerplate allegations that Mr. Patterson "engaged in a conspiracy." Plaintiff's Amended Complaint, pg. 5-6. A RICO conspiracy claim that is alleged in such wholly conclusory terms cannot withstand a motion to dismiss. Tel-Phonic Services, Inc. v. TBS Intern., Inc., 975 F.2d at 1140 (citing Miranda v. Ponce Federal Bank, 948 F.2d 41, 48 (1st Cir. 1991)). Paragraph 42(a) of Plaintiff's Amended Complaint describes Mr. Patterson's plea in the case of Jones v. Scruggs where he pled guilty to one count of conspiracy under § 371. Conspiracy under § 371 is not included in § 1961 and therefore is not a predicate act. Williams v. Hollingsworth Group, Inc., 238

F.3d 426, *2 (6th Cir. 2000)(rejecting use of § 371 as RICO predicate due to omission from § 1961(1)); see also U.S. v. Boylan, 898 F.2d 230, 238 (1st Cir. 1990)(same).

It is telling that Wilson does not point to any particular predicate allegations in his Amended Complaint and instead makes general assertions that the Complaint "thoroughly describes the predicates of bribery, misprision of a felony, [and] mail and wire fraud." He does not because he cannot. Nowhere in the Amended Complaint's 24 pages does Wilson allege anything that amounts to Mr. Patterson bribing any public official or knowing that a co-defendant was doing so.

Like § 371, misprision[3] is not a predicate act for purposes of RICO. See 18 U.S.C. § 1961 (misprision not listed as a RICO predicate offense). As noted in the Motion to Dismiss, the majority of Wilson's allegations of mail and wire fraud fail due to a lack of particularity under Rule 9(b); as for the others, Plaintiff does not plead any knowledge or agreement on behalf of Mr. Patterson to commit any of these predicate acts as required under § 1962(d). Transfirst Holdings, Inc. v. Phillips, 2007 WL 1468553, *6 (N.D. Tex. 2007)(holding that "a RICO complaint that merely implies with the conclusory allegation of a conspiracy that a defendant is responsible for someone else's fraudulent conduct is insufficient.").

Grasping for straws, the Plaintiff cites a seemingly irrelevant contract case from the eastern district of Pennsylvania and warns that: "whether Patterson had a duty under the professional rules remains to be seen." Like the allegations of § 371 and misprision, violations of professional ethical rules do not amount to RICO predicate acts, and therefore, whether Mr. Patterson could be held to the Professional standards of an

[3] Misprision was mentioned only in the context of Zach Scruggs in the Amended Complaint.

attorney (which is doubtful) is of no consequence to the RICO claim. Additionally and perhaps more importantly, as an adverse party in litigation, the Scruggs Firm owed Wilson no duty, and as such, no duty existed to impute to Mr. Patterson. See James v. Chase Manhattan Bank, 173 F.Supp.2d 544, 550 (N.D. Miss. 2001)(finding no duty exists between attorney and adverse party in litigation).

The rationale behind the inclusion of new misprision allegations against Mr. Patterson is also unclear. Misprision is a criminal statute that does not provide any kind of civil remedy. See Massad v. Greaves, 554 F.Supp.2d 163, 167 (D. Conn. 2008)(opining that language of 18 U.S.C. § 4 "contains no express provision permitting a civil litigant to initiate a lawsuit in the courts of the United States on the basis of conduct that is prohibited by § 4.")(citing Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A., 511 U.S. 164, 190-91, 114 S.Ct. 1439 (1994)). Nor does misprision form the basis of a "duty" between Mr. Patterson and Wilson. As a criminal statute, if 18 U.S.C. § 4 creates a duty to anyone, it would be to the government.

III. WILSON'S FRAUD CLAIMS ARE STILL DEFICIENT

A. Rule 9(b) is not met

Wilson relies on State Industries, Inc. v. Hodges[4] in an effort to demonstrate that his Amended Complaint meets the 9(b) particularity requirements. Hodges, however, did not address an actual fraud claim but instead concerned "fraudulent concealment." This equitable remedy, created by Miss. Code Ann. § 15-1-67, was utilized to toll the statute of limitations. Hodges, 919 So.2d at 945. Mr. Patterson did not present a statute of limitations challenge, and Miss. Code § 15-1-67 encompasses entirely different elements

[4] 919 So.2d 943, 945 (Miss. 2006).

from those required in common law fraud. Wilson is thus comparing apples to oranges.

Instead of pointing to a single portion of the pleading that meets 9(b)'s "time, place and contents" mandate, Wilson once again basically denies that the rule applies to him, stating that: "there is no pleading requirement that Wilson quote from the 400-plus docket entries that were made over the course of the conspiracy . . . . Patterson should have no problem understanding which bribe and fraudulent scheme Wilson is alleging." Plaintiff's Motion in Opposition, pg. 9. With all due respect, there is nothing particular about "400-plus docket entries." Based upon plaintiff's own concession, Mr. Patterson requests that the fraud claims be dismissed for failing to comply with Rule 9(b).

B. Mr. Patterson did not owe Wilson a duty

Although 9(b) provides more than enough reason for this Court to dismiss the fraud claims; however, plaintiff additionally fails to establish any type of duty between Mr. Patterson and himself to prove fraud by omission. Wilson's first attempt to overcome this deficiency is to argue that Scruggs was deemed his "trustee," citing the 2005 district court opinion Wilson v. Scruggs. Plaintiff's Motion in Opposition, pg. 12. This is not true for many reasons.

First, the federal court made clear that, in deciding a motion for summary judgment, it was determining only whether a relationship *could* exist as a matter of law. 371 F.Supp.2d 837, 840 (S.D. Miss. 2005). It certainly never "held" that Scruggs was Wilson's trustee, as Wilson erroneously alleges, nor did it make any other determination on this issue, as the Amended Complaint incorrectly suggests. See Plaintiff's Amended Complaint, pg. 4 paragraph 20. Second, and most importantly, even if there had been a constructive trust relationship between Scruggs and Wilson, that relationship had clearly

ended well before Wilson filed his 2005 lawsuits. According to Wilson's own Sur-rebuttal in Opposition from the 2005 litigation, the constructive trust had "a specific time period, i.e., August 7, 1992 thru June 30, 1999." See Exhibit A. Wilson's entire 2005 case was premised upon a *breach* of fiduciary duty; he cannot seriously argue now that this alleged relationship of trust remained intact throughout the subsequent litigation[5].

Wilson offers misprision as his final attempt to establish a duty. This last-ditch effort fails for many reasons, the most basic being that misprision requires knowledge of "the actual commission of a felony". 18 U.S.C. § 4. Taking all of his allegations as true, the most Wilson's Amended Complaint alleges is Mr. Patterson was aware of ethical violations committed by Langston, Balducci, and Peters[6]. While engaging in ex parte communications is certainly reprehensible conduct, it does not amount to a felony. Nor does the statute impose a duty between Wilson and Mr. Patterson. One has only to read the criminal statute itself to see that it creates a duty between a person with knowledge of a felony and the United States. There is nothing in 18 U.S.C. § 4 that creates a duty between private parties.

Finally, caselaw in this state has made clear that *no duty* exists between opposing parties in litigation. See James v. Chase Manhattan Bank, 173 F.Supp.2d 544, 550 (N.D. Miss. 2001)(holding that attorneys owe no duty, fiduciary or otherwise, to an adverse party in a case he is litigating); see also Roussel v. Robbins, 688 So.2d 714, 725 n. 4

---

[5] The present lawsuit is entirely premised upon the Defendants alleged actions during the 2005 trial proceeding. Wilson makes no allegations against Mr. Patterson prior to that time.

[6] The allegations of bribery include only Scruggs, Langston & DeLaughter. See Plaintiff's Amended Complaint, pg. 7 paragraph 27. Additionally and as argued in Mr. Patterson's previous Motion to Dismiss, Wilson makes only conclusory, boilerplate conspiracy allegations that are not supported by facts—circumstantial or otherwise.

(Miss. 1996). As adverse parties, Scruggs had no duty to delegate to Mr. Patterson. For all the reasons above, Wilson's fraud claims should be dismissed.

IV. WILSON'S 1964(C) CLAIMS ARE STILL DEFICIENT

Up to this point, Wilson's Motion in Opposition has consisted of the same insufficient conclusory accusations that Mr. Patterson questioned in his Motion to Dismiss. His continuity arguments are no different.

A. Wilson fails to plead a valid enterprise

For purposes of Wilson's RICO claims, he alleges that SMBD is the enterprise[7]. Plaintiff's Amended Complaint, pg. 15 paragraph 48. In his Motion in Opposition, Wilson again affirms that "[i]n the instant case, SMBD, Inc. is a defendant and the RICO enterprise[8]." Based upon this concession, Wilson's RICO counts fail as a matter of law. See St. Paul Mercury Ins. Co. v. Williamson, 224 F.3d 425, 447 (5th Cir. 2000). A corporate defendant cannot be both a defendant and the enterprise. Id.

B. Wilson fails to plead a pattern of predicate acts

There is no question that, when pleading a RICO complaint, a plaintiff *must* plead *at least* two viable predicate acts. H.J. Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229, 237-38, 109 S.Ct. 2893, 106 L.Ed. 2d 195 (1989). Indeed, according to the U.S. Supreme Court, more than two may be required. See Id. (stating that "the statement that a pattern 'requires at least' two predicates implies 'that while two acts are necessary, they may not be sufficient.'")(quoting Sedima, S.P.R.L. v. Imrex Co., 437 U.S. 479, 496 n. 14 (1985)(Powell, J., dissenting)). Wilson's block quotes concerning continuity from Abraham v. Singh do nothing to exempt him from this condition.

---

[7] Wilson does not allege an association in fact enterprise.
[8] Plaintiff's Motion in Opposition, pg. 14.

At the risk of sounding like a broken record, mail and wire fraud allegations must be pled with particularity under Rule 9(b). The first "predicates" Wilson points to is a paragraph in the Amended Complaint which reads as follows: "[a]fter hiring Peters, Langston and Timothy R. Balducci and Steven A. Patterson were in regular contact either by phone or by facsimile concerning the case; and the three traveled regularly from the Northern District of Mississippi, to meet with Peters . . ." Plaintiff's Amended Complaint, pg. 7, paragraph 27. This vague statement does not meet the pleading requirement for fraud and therefore does not supply adequate predicate acts for pleading RICO. Tel-Phonic Services, Inc. v. TBS Intern., Inc., 975 F.2d 1134, 1138-39 (5th Cir. 1992).

The other allegation Wilson flags as a predicate is his accusation that DeLaughter sent Peters an advance copy of a proposed order. Plaintiff's Amended Complaint, pg. 7, paragraph 27. The Fifth Circuit has rejected the contention that such ethical violations constitute mail fraud. See St. Germain v. Howard, 556 F.3d 261, 263 (5th Cir. 2009)(determining that "[i]n their Complaint, Appellants alleged that the predicate acts committed by Appellees were mail and wire fraud. However, the district court found, and Appellants acknowledged, that the 'patterns of racketeering activity' they allege are at worst violations of the rules of professional responsibility. Because Appellants have not alleged the requisite predicate *criminal* acts under RICO, they have not met the pleading standard of Rule 12(b)(6).").

Additionally, the Complaint alleges a wire communication between two residents of the same state; such is presumed to be a purely intrastate wire transmission and therefore cannot violate the federal wire fraud statute. See Smith v. Ayres, 845 F.2d 1360, 1366 (5th Cir. 1988)(rejecting the use of 18 U.S.C. § 1343 where communications

were intrastate in nature).

Not content with the conclusive caselaw cited in Mr. Patterson's Motion to Dismiss, Plaintiff repeats the same irrelevant accusations concerning the cases of Kirk v. Pope and Eaton v. Frisby. These cases, Wilson proclaims, establish continuity in the current RICO case because Peters and DeLaughter[9] were somehow involved in them. As Mr. Patterson clearly posited in his Motion to Dismiss, without a connection to Plaintiff's alleged enterprise (the Scruggs Law Firm) these cases have no relevance to the present claim. See 77 C.J.S. RICO § 25.

C. Wilson fails to plead adequate continuity

Contrary to Wilson's "question for the jury" defense, a determination of whether Wilson's alleged predicate acts meet the continuity requirement is indeed an issue properly determined at the Motion to Dismiss stage. See Tel-Phonic Services, 975 F.2d at 1140 (reviewing and confirming a district court's dismissal under 12(b)(6) for this issue). The focus here is the temporal span *between adequately pled predicate acts*. Id. (stating that "[p]redicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy this [continuity] requirement . . . .").

As stated in the Motion to Dismiss, the only three predicates that are even arguably valid occurred over a period of 6 months during a single litigation proceeding. This is not enough to establish closed-ended continuity. See In re Burzynski, 989 F.2d at 742-43 (5th Cir. 1993)(holding that predicates relating to a single transaction do not satisfy RICO continuity); Delta Truck & Tractor, Inc. v. J.I. Case Co., 855 F.2d 241, 244 (5th Cir. 1988)(same); see also Fowler v. Burns Intern. Sec. Services, Inc., 763 F.Supp.

[9] Wilson concedes in his Motion in Opposition that neither Scruggs nor his law firm was in any way involved in these cases. Plaintiff's Motion in Opposition, pg. 17.

862, 865 (N.D.Miss. 1991)(refusing to find continuity for predicate acts occurring during 9 month period); Johnston v. Wilbourn, 760 F.Supp. 578, 588 (S.D.Miss. 1991)(finding acts occurring over period of 9 months insufficient for RICO continuity).

Abraham v. Singh, the primary case upon which Wilson relies for his continuity argument, involved a scheme that spanned at least two-years and predicate acts committed against at least 200 victims. 480 F.3d 351, 356 (5th Cir. 2007). Finding the continuity requirement to be met in that case, the Court reiterated that "[t]he Plaintiffs did not allege predicate acts 'extending over a few weeks or months and threatening no future criminal conduct.'" Id. (quoting H.J. Inc., 492 U.S. at 242, 109 S.Ct. at 2902). Abraham confirms that, in cases like this one where the predicates relate to a single transaction, continuity is simply not met. 480 F.3d at 355.

V. WILSON HAS NOT PROPERLY PLED CAUSATION

It is unclear what Wilson considers "bizarre" about Mr. Patterson's causation challenge. It is well-settled law that, to have standing to bring a RICO claim, a Plaintiff must *show* through his pleadings that he was proximately injured as a result of the predicate acts. Cullom v. Hibernia Nat. Bank, 859 F.2d 1211, 1215 (5th Cir. 1988); Regions Bank v. J.R. Oil Co., LLC, 387 F.3d 721, 728-29 (8th Cir. 2004).

To demonstrate RICO causation, Wilson must allege a "tangible financial loss." Price v. Pinnacle Brands Inc., 138 F.3d 602, 606 (5th Cir. 1998). The only tangible loss complained of in the Amended Complaint is the asbestos proceeds; however Wilson had already been denied the proceeds (which were the subject of his initial lawsuit against Scruggs) long before the current alleged actions occurred[10]. Thus, the deprivation of this

[10] In his Sur-rebuttal from the prior lawsuit, Wilson acknowledges that: "Defendants in

money cannot be said to have been "caused" by any action described in this RICO complaint. Regions Bank, 387 F.3d at 729.

Although there are no Fifth Circuit cases involving this precise issue, the Eighth Circuit case of Regions Bank v. J.R. Oil Co., LLC, is directly on point. There, the Plaintiff brought suit, alleging fraud in the procurement of a loan. 387 F.3d at 723. The Court affirmed the district court's dismissal, determining that the bank had no RICO standing as it had failed to demonstrate a RICO injury. Id. at 729. The Plaintiff's first alleged injury was the loss of the loan money. The Court agreed that this was an adequate, tangible injury but noted that the alleged "RICO violations" occurred after the monetary loss occurred. Due to the fact that "[n]othing that [the defendants] did in the course of the alleged RICO scheme of bankruptcy irregularities and corporate shell games worsened Region's Bank's condition," the Court found that no RICO injury had occurred. Id. The present case is no different. Here, Wilson complains of the loss of asbestos proceeds, something that occurred prior to any of the current alleged actions by the Defendants. As none of the alleged predicate acts "worsened" Wilson's condition as to the loss of these proceeds, it cannot be a RICO injury for purposes of showing standing.

The other injury claimed in Wilson's Amended Complaint, the loss of a trial ruling in his favor, can only be classified as an intangible, hypothetical property interest. This type of injury, being purely speculative, is not recognized under RICO law. See Price, 138 F.3d at 607. The Plaintiff in Regions had a similar argument: that the

---

the instant case began refusing to disburse Wilson's money to him as early as September 1992 and stopped shortly after Luckey sued the Defendants and Wilson in 1994. See Exhibit B.

defendant's fraudulent acts had affected a subsequent bankruptcy proceeding. Id. at 730-31. The Court rejected this argument as well, pointing to the vast body of RICO precedent denying recovery in situations where the alleged damages were "mere expectancy" or intangible property interests." Id. Like the Plaintiff in Regions, Wilson's alleged damages are intangible and hypothetical. This Court would be required to engage in pure speculation to determine that DeLaughter would have ruled in Wilson's favor. Such a finding would, at any rate, be unlikely since the federal court in the prior, parallel Wilson v. Scruggs case seemed to at least suggest that it would have found for Scruggs on the constructive trust issue[11]. See Wilson, 371 F.Supp.2d 837, 841 (S.D. Miss. 2005). As there is no knowing what another judge would have done in DeLaughter's place, the damages are completely speculative and do not give rise to a RICO injury.

VI. WILSON'S § 1962(d) CLAIM IS STILL DEFICIENT

Wilson's desperate use of dictionary definitions and name-calling does nothing to revive his RICO conspiracy claim. Insisting that his Amended Complaint is "replete" with allegations of an agreement, Wilson again points to nothing more than conclusory, boilerplate assertions that are legally insufficient. See Tel-Phonic Services, 975 F.2d at 1140-41. (rejecting conclusory allegations of a RICO conspiracy).

[11] Specifically, the Court stated that: "The Court would agree with Scruggs, however, that to the extent of any money that Scruggs reasonably and legitimately believed was rightfully his under the terms of the August 1992 dissolution agreement, his use of such money, even if such money is ultimately proven to have belonged to Wilson, would not have been wrongful . . . . While constructive trust is potentially an appropriate remedy to prevent *unjust* enrichment by Scruggs on account of his alleged use of Wilson's funds in the tobacco litigation, the Court would not necessarily consider Scruggs' enrichment "unjust" to the extent that the overwhelming factor in the tremendous (indeed unprecedented) financial success of the tobacco litigation in terms of fees generated was the efforts of Scruggs and others involved in pursuing the litigation." Wilson, 371 F.Supp.2d at 841 fn. 7, 843.

The only specific allegation Wilson can summon from the Amended Complaint is that Mr. Patterson "contacted and retained the services of Ed Peters" . . . was "in regular contact either by phone or by facsimile [with Peters] concerning the case" . . . and "me[t] with Peters in person to discuss issues concerning the Wilson litigation." Plaintiff's Amended Complaint, pg. 7, paragraph 27. These allegations do not sufficiently plead Mr. Patterson's involvement in a conspiracy to violate the RICO statute.

Wilson's own quote from Abraham v. Singh illustrates why his conspiracy claim cannot stand[12]. To state a claim under § 1964(d), the Plaintiff must "allege facts implying [an] agreement involving each of the Defendants to commit at least two predicate acts." Trugreen Landcare, L.L.C. v. Scott, 512 F.Supp.2d 613, 625-26 (N.D. Tex. 2008)(quoting Tel-Phonic Services, 975 F.2d at 1140). Hiring a barred, practicing attorney, calling him about the case and meeting with him on a regular basis are completely legitimate and legal actions. Allegations of an agreement to engage in ex-parte communications with a judge is a violation of the attorney and judicial ethical rules, but it is not a predicate under § 1961. See St. Germaine, 556 F.3d at 263 (confirming that violations of ethical rules are not predicates under RICO). Mr. Patterson is not alleged to have personally committed, or even to have known about, a single predicate act; therefore, the RICO conspiracy claim against him is deficient and should be dismissed.

VII. WILSON'S DUE PROCESS CLAIM IS STILL DEFICIENT

The Fifth Circuit addressed an identical § 1983 claim in the case of Holloway v.

[12] Quoting from Wilson's Motion in Opposition: "it is not so much the magic word 'agreement' but it is the agreement to commit the predicate acts." This is precisely Mr. Patterson's argument. Simply inserting the word "agreement" does not establish a conspiracy for purposes of a 12(b)(6) motion. A Plaintiff must plead facts that suggest that each Defendant committed, or agreed for someone to commit, at least two predicate acts. Wilson failed to do so.

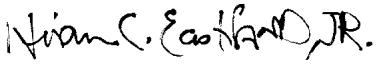
Walker, and dismissal was soundly affirmed. 790 F.2d 1170 (5th Cir. 1986). As stated in the 12(b)(6) motion, Wilson is alleging an unauthorized property deprivation by a state employee. Devoid of any allegations that the State of Mississippi condones such behavior, Wilson's Amended Complaint fails to state a claim under § 1983 for all the reasons asserted in Holloway. The additional allegations concerning Kirk v. Pope and Eaton v. Frisby do not alter this outcome. Both of these cases involved only one judge, Judge DeLaughter. See Holloway, 790 F.2d at 1174 (stating that "[b]y no stretch of the imagination can Judge Walker's alleged conspiracy with the opposing litigants be considered a 'policy' of any kind . . . . [w]here a state system as a whole provides due process of law, federal constitutional guarantees are not breached merely because some state employee, even a highly-placed one, might engage in tortuous conduct . . . ."). Accordingly, Plaintiff's Due Process claim should be dismissed.

CONCLUSION

Plaintiff has failed to shed any new light on his Amended Complaint that would allow it to endure against Mr. Patterson. All of the fatal flaws that are reiterated in this reply exist for a reason: this is simply not a RICO case.

For all of the foregoing reasons, Mr. Patterson respectfully requests that this Court dismiss all claims against him.

Respectfully Submitted,



HIRAM C. EASTLAND, JR. (MSB 5294)
VICKI BOBO (MSB 102194)
JACOB EASTLAND (MSB 102184)
Attorneys For Defendant Patterson

OF COUNSEL:

MICHAEL D. GREER
P.O. Box 907
Tupelo, MS 38802
Telephone: (662) 842-5345

EASTLAND LAW OFFICES, PLLC
307 Cotton Street
Greenwood, MS 38930
Telephone: (662) 453-1227

CERTIFICATE OF SERVICE

I, HIRAM C. EASTLAND, JR, attorney for Defendant Patterson, do certify that I have electronically filed the foregoing document with the Clerk of the Court using the ECF system, who forwarded a copy of same to the following:

Charles M. Merkel, Jr.
Merkel & Cocke
P. O. Box 1388
Clarksdale , MS 38614

Cynthia I. Mitchell
Merkel & Cocke
P. O. Box 1388
Clarksdale , MS 38614

Vicki R. Slater
P.O. Box 23981
Jackson , MS 39225

Judson M. Lee
P.O. Box 2629
Madison, MS 39130

and I certify that I have mailed the document by United States Mail, postage fully prepaid, to the following non-ECF participants:

William B. Kirksey
Kirksey & Associates
P. O. Box 33
Jackson , MS 39205
Attorney for Plaintiff

Timothy Balducci
#12739-042
Satellite Camp – Unit F
P.O. Box 699
Estill, SC 29918

THIS, the 4th day of December, 2009.

Hiram C. Eastland, JR.

Hiram C. Eastland, Jr.

EXHIBIT A

suitable property interest (*res*), the commingling and/or use of which will give rise to a constructive trust. See, e.g., *Bird v Stein*, 258 F.2d 168 (5th Cir. 1958) and authorities cited *infra.*

Although in the instant case there is a dispute of material fact concerning the value of Wilson's *res* and whether it was commingled, that dispute of material fact weighs in favor of a trial on the merits of Wilson's claims, not in favor of a summary judgment. *Allred v. Fairchild*, 785 So. 2d 1064 (Miss. 2001) (no specific value was placed on the work of a plaintiff that lead to the imposition of a constructive trust in plaintiffs' favor); *Gulfside Casino, Inc. v. Carter*,1998 Miss. LEXIS 514 (Miss. Oct. 1, 1998) (percentage based tracing from plaintiff's ownership interest in one business was sufficient to impose a constructive trust in plaintiff's favor for a percentage interest in the income stream from another business) and *Robinson v. Strauther*, 64 So. 724 (Miss. 1914) (constructive trust imposed even though plaintiff freely alleged that she could not identify the exact *res* or the exact proceeds because no accounting of the *res* nor the commingled funds was ever had).

There is no question that Defendants collected fees for and on behalf of Wilson and that they did so according to their duty as set forth in the August 7, 1992 Agreement, Exhibit "D," p. 8 ¶III(13). No further accounting is necessary – it has been done. This case does not involve a constructive trust arising from Defendants' commingling and use of Wilson's asbestos fees and overhead for all time but only those amounts commingled, converted and used during a specific time period, i.e., August 7, 1992 through June 30, 1999. All of the accounting for the asbestos fees during that time period has been done, that was the point of the state court audit of Defendants' books granted in Wilson's favor years ago.

Defendants do not deny Wilson's fee interest in the specified clients' cases. Defendants

EXHIBIT B

the instant case were to distribute Wilson's property to him and in doing so promised to "act for and on behalf of Wm. Roberts Wilson, Jr. and Wm. Roberts Wilson, Jr., P.A. on all matters herein to speedily, efficiently and diligently collect and disburse any funds and further agree to do all acts required of them and enumerated herein for and on behalf of Wm. Roberts Wilson, Jr. and Wm. Roberts Wilson, Jr., P.A." August 7, 1992 Agreement, Exhibit "D", p. 8 ¶III(13). Over the years, the *Bird* defendant commingled the property with his own in the management of businesses. *Id.* at 170-77. Over the years, the Defendants in this case commingled Wilson's property with their own in management of their professional ventures, including the tobacco litigation venture. See Reports and Affidavits of Anthony Huffman and Saul Solomon attached hereto as composite Exhibit "M." When the defendant in *Bird* refused to give one of the plaintiffs their money, a dispute erupted. *Id.* at 171. Defendants in the instant case began refusing to disburse Wilson's money to him as early as September 1992 and stopped shortly after Luckey sued the Defendants and Wilson in 1994. A dispute eventually erupted. The plaintiffs in *Bird* accused the defendant of depriving them of their rightful property. *Id.* Wilson accuses the Defendants in this case of depriving him of his rightful property. The defendant in *Bird* pointed to all his efforts in the various businesses portraying himself as "able, industrious, thrifty." *Id.* at 172. And the *Bird* defendant said he "had shown more industry and initiative" than the plaintiffs. Defendants in the instant case seeks to portray their ill gotten gains as a result of Richard F. Scruggs qualities and not of Wilson's money. (D.E. 541). Arguments erupted in *Bird* regarding the identity of the *res*. *Id.* at 181. There is a dispute of material fact in this case regarding the value to be placed on the *res*. VI.F, *infra*. The defendant in *Bird* did commingle his property with the plaintiffs' property. *Id.* at 180. The Defendants in the instant case did commingled Wilson's property with their own. VI.C, VI.D., VI.E and VI.F, infra. and evidence