

Yegiazaryan v. Smagin, Civil RICO, and the Enforcement of Foreign Awards in the United States

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Two cases slated for Supreme Court's 2024 term could boost the enforcement of foreign arbitral awards in the United States. On Friday January 13, 2023, the U.S. Supreme Court granted certiorari and consolidated the cases of *Yegiazaryan v. Smagin* and *CMB Monaco v. Smagin*. Both present the question of when an injury is foreign or domestic for purposes of RICO civil applicability. Beyond this statutory issue, however, the Supreme Court's decision will have consequences for the enforcement of foreign arbitral awards too.

The Racketeer Influenced and Corrupt Organizations Act ("RICO") enables private individuals injured by a racketeering violation to bring a civil suit and recover treble damages if he was "injured in his business or property." In *RJR Nabisco, Inc. v. European Cmty.*, the U.S. Supreme Court upheld the federal presumption against extraterritoriality to limit RICO's private right of action to only those injuries that are "domestic" in their nature. However, no definition or test was provided to draw a bright line between domestic and foreign injuries.

In *Yegiazaryan v. Smagin*, the defendant (Yegiazaryan) is a Russian businessman living in California. The plaintiff (Smagin) commenced arbitration proceedings against him in London and was awarded \$84 million. In 2014, Smagin successfully filed to recognize and enforce the award against Yegiazaryan in the U.S. district court where Yegiazaryan now resides. In 2020, Smagin filed a RICO action against Yegiazaryan alleging that he and various associates attempted to conceal \$198 million from Smagin, which inevitably "injured in his business or property." Specifically, Smagin alleged that his U.S. judgment confirming this prior foreign arbitral award against Yegiazaryan is intangible property located in the United States, thus making any injury thereto eligible for a RICO civil claim even though he lives abroad.

As to the location of intangible property for purposes of RICO injuries, circuits

have split. The Seventh Circuit adopted the residency test, according to which an injury to intangible property must occur in the place where the plaintiff has its residence. Accordingly, a foreign-resident plaintiff like Smagin always suffers foreign injuries to intangible property and cannot recover under RICO. The Third Circuit rejected the residency test in favor of a holistic, six-factor test, with particular emphasis on where the plaintiff suffers the effect of the injurious activity. The Ninth Circuit in the Smagin cases adopted a totality-of-the-circumstances test similar to the Third Circuit's one, yet with a particular emphasis on the defendant's conduct. Indeed, the court concluded that Smagin had pleaded a domestic injury because much of the defendant's alleged misconduct took place in California and the U.S. judgment confirming the foreign award could be executed against the defendant only in California.

The case also has implications for the enforcement of foreign judgments and arbitral awards in the United States. If a U.S. judgment recognizing a foreign judgment or confirming a foreign arbitral award are considered property in the United States, then RICO violations committed in the process of trying to avoid enforcement of the U.S. judgment may give rise to civil liability.