

Can You Be Subject to a RICO Claim?

by : Gil Van Over

A recent class action lawsuit filed against a dealer group in the Eastern Time Zone alleges many of the same issues that car dealers have seen before: deceptive trade practices, falsifying income, falsifying down payments and straw purchases.

But this lawsuit added a new wrinkle: a RICO claim. This is the first time I've seen this claim in litigation against car dealers.

What is RICO and why is this emerging legal trend important to dealers?

RICO is...

In 1970, Congress passed the Racketeer Influenced and Corrupt Organizations (RICO) Act aimed at destroying the Mafia by prosecuting the families for criminal activities.

It was successful. In the 1980's the plaintiff's bar started using RICO to successfully prosecute companies for civil claims, primarily because a successful civil RICO claim entitles the plaintiff to treble damages, costs and attorneys fees (the plaintiff trifecta).

There are six critical elements the law requires to prove a RICO claim against an organization:

A) Defendant Person; B) Enterprise; C) Interstate commerce; D) Defendant's management of the enterprise; E) Pattern; and F) Racketeering activity.

Taking a page from *The Godfather*, this example may help you understand how RICO works:

The Mafia is the organization (Enterprise). The head of this organization is the Godfather (Defendant Person). The organization engages in criminal activities, such as murder or bribery (Racketeering activity). The organization has been engaged in these criminal activities for generations (Pattern). The Godfather directs the minions in his organization to partake in illegal activities (Defendant's management of the enterprise). Sometimes his minions cross state lines to kill or bribe (Interstate commerce).

Since the Godfather's business model and activities satisfy RICO's seven required elements, RICO can be used to prosecute the Godfather for these illegal acts. It does not matter that the Godfather may never have actually killed a potential witness or bribed an official.

So how does this translate to your business?

Nowadays, RICO claims are not just used to bring down mob bosses. Civil RICO claims can also be asserted against corporate crooks, with the plaintiff making allegations as follows:

The dealership is an organization. The head of this organization is the Dealer Principal. The organization engages in fraudulent activities, such as bank fraud or payment packing. The organization has engaged in these fraudulent activities for years. The Dealer Principal permits his managers to partake in bank fraud and payment packing. These managers use the Internet, fax and mail to transfer information and documentation across state lines, resulting in mail or wire fraud.

RICO can...

The consequences of a civil RICO claim are severe. A successful civil RICO litigant will obtain attorney's fees, as well as treble damages for injuries flowing from the predicate acts of the defendant.

RICO stopper...

There are federal sentencing guidelines that judges use in determining fines and penalties. These guidelines permit judges to reduce those fines or penalties by up to 95 percent if certain conditions are present. The sentencing commission that established these guidelines outlined the elements it considers necessary for an effective compliance and ethics program:

- Standards and procedures to prevent and detect criminal conduct
- Personnel screening related to program goals
- Training
- Auditing, monitoring, and evaluating program effectiveness
- Non-retaliatory internal reporting systems
- Incentives and discipline to promote compliance
- Reasonable steps to prevent further offenses upon detection of a violation

Back to the recently filed lawsuit. Part of the complaint against dealer alleges that the dealer “failed to take appropriate steps to audit and supervise deals and train, educate, instruct and oversee its employees.”

If this dealer can prove that he took the appropriate steps to audit, supervise, train, educate, instruct and oversee employees, he will have a much stronger defense against the RICO claim. He also will have effectively met many of the requirements set forth by the sentencing commission and hopefully can have any potential penalties substantially reduced.

If he didn't...

Gil Van Over is the president of gvo3 & Associates, a nationally recognized dealer compliance consulting firm. He assists dealers with F&I and sales compliance.