

Based on Principles of Fairness, Court Dismisses Putative Class Action RICO Claims Asserted Years After Initiation of Suit

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In *Robertson v. SunLife Financial*, a federal district court in Louisiana dismissed with prejudice as time-barred an amended putative class action complaint alleging RICO and state racketeering claims related to alleged wrongful conduct by an agent related to annuities issued by SunLife. The initial complaint was filed in 2008 as an individual action against the agent for allegedly forging a \$999,999 check to fraudulently withdraw funds from the plaintiff's annuity account. While the insurer had already been added as a defendant by then, earlier this year, nearly nine years after the action was initially brought, the complaint was amended to include putative class action RICO and state racketeering claims against Sun Life, based on alleged acts of racketeering purportedly occurring in 2005 through 2007.

After its removal of the action to federal court, SunLife moved to dismiss the RICO and state racketeering claims — subject to four-year and five-year limitations periods, respectively — as untimely. It was undisputed that the claims would fail as time-barred unless they could relate back to the date of the originally filed complaint. The plaintiff, though, failed to make this showing. As the court explained, pointing to both Fifth Circuit and Louisiana Supreme Court authorities, based on principles of fairness, relation back is permitted only if the original complaint gives the defendant fair notice of the claims brought in the amended complaint. However, it found that the plaintiff's original complaint "did not allege, or even suggest, that Sun Life engaged in racketeering activities," where, as contrasted with the original complaint, the newly amended complaint alleged "criminal rather than negligent conduct," and introduced a "new key actor," among other "fundamental changes in plaintiff's factual allegations." Consequently, Plaintiff's racketeering claims were barred by the statute of limitations and dismissed by the district court with prejudice.

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