ARBITRAZH COURT OF THE CITY OF MOSCOW

Federal Customs Service of the Russian Federation, Plaintiff, The Bank of New York, Defendant.

EXPERT WITNESS STATEMENT OF DICK THORNBURGH

State of New York :
: SS:
County of New York :

Dick Thornburgh, being duly sworn, deposes and says:

I have been asked by legal counsel for Defendant Bank of New York ("BNY" or the "Bank") to respond to a series of questions posed by the Arbitrazh Court and to render an expert opinion, with respect to the law of the United States, in an effort to assist the Court's evaluation of the subject matters set forth in those questions.

This Witness Statement is divided into three sections. Parts I and II set forth the questions posed by the Court and my summary responses. The third part sets forth in more detail the basis of my opinion with respect to the subject matters of the questions.

THE EXPERT QUALIFICATIONS OF DICK THORNBURGH TO RENDER AN OPINION ON THE LAW OF THE UNITED STATES

1. I am an attorney admitted to the practice of law as a member of the Bar of the Commonwealth of Pennsylvania, the Bar of the District of Columbia, and the Bar of the United States Supreme Court.

2. I graduated from Yale University in 1954 with a Bachelor of Engineering Degree and from the University of Pittsburgh School of Law in 1957. I have been awarded honorary degrees from 31 other colleges and universities.

3. Following graduation from Law School, I joined the law firm of Kirkpatrick, Pomeroy, Lockhart & Johnson, now known as Kirkpatrick & Lockhart Preston Gates Ellis LLP, where I have since been engaged in the practice of law, except for periods of public service.

4. In 1969 President Richard M. Nixon appointed me United States Attorney for the Western District of Pennsylvania. I served in that position until 1975. Pursuant to 28 U.S.C. § 547, the United States Attorney has statutory responsibility for the prosecution of criminal cases brought by the United States and the prosecution and defense of civil cases in which the United States is a party in the federal district of his jurisdiction.

5. In 1975 President Gerald R. Ford appointed me Assistant Attorney General of the United States with responsibility for the Criminal Division of the Department of Justice. In that capacity, I was the federal official responsible for the supervision of the enforcement of federal criminal law, including the investigation and prosecution of violations of federal criminal law, throughout the United States. In addition, I was responsible for the formulation and implementation of criminal enforcement policy, for advising the Attorney General, the U.S. Congress, and the White House and other Executive Branch departments and agencies on matters of criminal law, and for providing leadership with respect to the coordination of federal, state, local, and international enforcement matters.

6. From 1978 to 1986, I served as the elected Governor of the Commonwealth of Pennsylvania, the highest elected official in that state, with executive responsibility, among other duties, for the execution and enforcement of state civil and criminal law.

7. In 1988 President Ronald Reagan appointed me United States Attorney General. I served in this post until 1991, during which time I was a member of the Cabinet of President Reagan and that of President George H.W. Bush. The Office of the Attorney General was created by the Judiciary Act of 1789. The Attorney General is the chief legal officer of the United States. The responsibilities of the Attorney General include enforcing the laws of the United States, rendering advice and opinions to the President and the heads of executive departments of the federal government, as well as exercising leadership in the legislative process in the United States Congress with respect to the enactment of new federal laws and the modification or amendment of existing federal law.

8. In 2002, following the bankruptcy of the global telecommunications company WorldCom, at the time the single largest bankruptcy filing in United States history, I was appointed by the United States Bankruptcy Court as Examiner to investigate allegations of corporate and accounting wrongdoing and malfeasance and to report to the Court on these issues.

9. In addition to the foregoing, my knowledge and experience of legal and other issues affecting international law and, in particular, issues related to Russia, include the following: from 1992-93, I served as Under-Secretary General of the United Nations for Administration and Management; I have been a consultant to the United Nations and the World Bank on issues of fraud and corruption; I was a member of a delegation of observers to Russia's legislative (1993) and presidential (1996) elections; and I am a member of the Board of Advisors of the Russian-American Institute for Law and Economics, the American Law Institute, and the Council on Foreign Relations.

10. My opinion is based on my background and expertise in U.S. law. In preparation for this report, I have reviewed relevant U.S. statutory and regulatory law, and judicial decisions construing and interpreting those laws. I have also reviewed the Statement

of Claim of the Federal Customs Service of the Russian Federation against Bank of New York, filed in the Arbitrazh Court of the City of Moscow, dated May 17, 2007.

I.

SUMMARY ANSWERS TO THE COURT'S QUESTIONS

(1) What is the legal (branch of law) nature of the following norms of U.S. law:

(1) 18 U.S.C. § 1956

Answer: Criminal.

(2) 18 U.S.C. § 1960

Answer: Criminal.

(3) 31 U.S.C. §§ 5318(g)(1), 5318(h), 5322

Answer: Criminal and Administrative.

(4) 12 U.S.C. § 3105

Answer: Criminal and Administrative.

(5) 12 C.F.R. §§ 208.60-64

Answer: Administrative.

(6) 31 C.F.R. § 103.11, 103.18

Answer: Administrative.

(7) 12 C.F.R. § 21.21

Answer: Administrative.

Do the relations regulated by these norms pertain to public law / criminal law or private law?

Answer: These statutes and regulations are criminal and administrative in nature. Therefore, only the United States government has authority to enforce these statutes and regulations. They are not enforceable by other persons or entities. Unlike some other legal systems, the distinction between public and private law is not so customarily used to describe the U.S. legal system. It is my understanding that in legal systems which use this terminology, criminal law and administrative law are regarded as within the classification of public law because they govern relations between individuals and the state. Applying that concept and terminology, each of the statutes and regulations identified

in the FCS Claim and set forth above would come within the category of public law.

(2) What are the reasons for enacting, the legal (branch of law) nature of Racketeer Influenced and Corrupt Organizations Act (*Racketeer Influenced and Corrupt Organizations Act* or *RICO*) (hereinafter, the "RICO Statute"), in particular, its §§ 1961-1964? Do the relations regulated by these norms pertain to public law / criminal law or private law?

Answer: The RICO Statute was enacted in 1970 as part of the Organized Crime Control Act of 1970. In a "Statement of Findings and Purpose," Congress explained why it passed the statute containing RICO, stating that the purpose was "to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing Title IX, § 901(a) enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime." Pub. L. No. 91-452, 941. RICO is a criminal statute and therefore has the characteristics of the criminal law branch of public law, as that term is traditionally understood, although the distinction between public law and private law is not commonly used to describe U.S. law. The damages remedy provision of RICO has what would be regarded as public law nature in that it requires the enforcement of criminal law norms.

(3) Must the court interpret and apply U.S. criminal law, conduct criminal law qualification of the respondent's acts in order to recover from the respondent monetary funds according to § 1964(c) of the RICO Statute?

Answer: Yes.

In particular,

(1) Must the claimant prove, and the court establish, a violation of § 1962(a), § 1962(b), § 1962(c) or § 1962(d) of the RICO Statute to recover damages under § 1964(c) of the RICO Statute?

Answer: Yes.

(2) Is a violation of § 1962(a), § 1962(b), § 1962(c) or § 1962(d) of the RICO Statute a crime under U.S. criminal law?

Answer: Yes.

(3) Must the claimant prove, and the court establish, "racketeering line of action" (*pattern of racketeering activity*) or "collection of an unlawful debt" (*collection of an unlawful debt*) to establish a violation of § 1962(a), § 1962(b), § 1962(c) or § 1962(d) of the RICO Statute?

Answer: Yes.

(4) Must the claimant prove, and the court establish, at least two predicate acts of "racketeering activity" (*racketeering activity*) to establish "racketeering line of action"?

Answer: Yes.

(5) Does "racketeering activity" mean an act that is prohibited by U.S. criminal statutes listed in § 1961(1) of the RICO Statute? Is a violation of U.S. criminal statutes listed in § 1961(1) of the RICO Statute a crime under U.S. criminal law?

Answer: Yes.

(6) In order to establish any of the predicate acts listed in § 1961(1) of the RICO Statute, must the claimant prove, and the court establish, that the respondent acted with the "criminal intent" (*criminal intent*)?

Answer: Yes.

(7) In order to establish "racketeering line of action", must the claimant prove, and the court establish that respondent's violation of U.S. criminal statutes listed in § 1961(1) of the RICO Statute poses "a threat of continued criminal activity" (*threat of continued criminal activity*)?

Answer: Yes.

(8) Does "an unlawful debt" mean a debt incurred in connection with criminal gambling (*criminal gambling*) or criminal lending activities (*criminal lending activities*) under § 1961(6) of the RICO Statute?

Answer: Yes.

(4) Did the Congress intend the RICO Statute to be applied by foreign courts or only by the courts of the United States?

Answer: Congress intended that the RICO Statute be applied only by United States courts. There is no basis from which to conclude that Congress intended RICO to be applied by foreign courts.

(5) Is a "civil penalty" (*civil penalty*) provided in 18 U.S.C. § 1956(b) a penalty solely in favor of the USA for the crime (money laundering) committed by the offender? Is there any precedent in the U.S.A., where a claimant proved, and a U.S. court calculated, damages under § 1964(c) of the RICO Statute by reference to monetary sanction provided in 18 U.S.C. § 1956(b)?

Answer: **The civil penalty provision in 18 U.S.C. § 1956(b) is solely in favor of the United States Government. The text of the law specifies that a violator of the statute "is liable to the United States" for the penalty. As such, non-U.S. government entities or private parties may not seek to recover penalties under the statute. There is no precedent in U.S. law for RICO damages under 18 U.S.C. § 1964(c) to be calculated by reference to the penalty provision in 18 U.S.C. § 1956(b).**

(6) In order to recover damages under § 1964(c) of the RICO Statute, must the claimant prove, and the court establish, the amount of actual damages incurred to business or property of the claimant by the violations of § 1962(a), § 1962(b), § 1962(c), or § 1962(d) of the RICO Statute?

Answer: **Yes.**

II.

(1) What is the approach of the U.S. legislation and American law theory to the division of law into public and private, and to the division of norms of law by branches: is such division generally admitted, what are the criteria that form its basis, and is such division analogous to the division accepted under Russian law?

Answer: **I cannot speak to issues of Russian law. The distinction between private law and public law is not customarily used to describe the U.S. legal system. As I understand the meaning of these terms, public law refers to the laws governing the relationship between individuals and the state, such as criminal law. Private law, as I understand the term, refers to legal norms affecting the relationships between citizens but not involving the state or government. My review of the statutes cited by FCS in its claim all involve U.S. criminal and administrative law, and would therefore involve what I would regard as public law norms.**

(2) Is there any prohibition in U.S. legislation or court practice against the RICO Statute being applied by courts other than U.S. courts?

Answer: **Yes. The RICO statute specifically refers to the jurisdiction of U.S. courts as being the judicial forum for enforcement of its provisions. I am not aware of any evidence that Congress contemplated foreign court enforcement of RICO. I am not aware of any other non-U.S. court that has ever enforced the RICO Statute.**

(3) Does the RICO Statute allow making civil law demands (both from a Russian law standpoint and from a U.S. law standpoint) [against a party who violated the provisions of this statute]?

Answer: **I cannot speak to Russian law. As a matter of U.S. law, RICO is a criminal statute which authorizes individuals, acting in a capacity as "private attorneys general," to augment or supplement the enforcement of the criminal provisions of RICO by bringing an action in a U.S. court that seeks so called "civil" remedies to establish that a RICO crime has caused injury to the property or business of the RICO plaintiff.**

(4) May the Russian Federation, represented by the FCS, act as claimant in a case considered under U.S. law (the norms to which the claimant refers in its claim) in a Russian arbitrazh court?

II.

<u>Answer</u>: **No. All of the statutes cited by FCS in its claim are criminal and administrative in nature. Only the U.S. Government can enforce such laws. The FCS and Russian Federation could theoretically bring an action under the damages remedy of RICO, 18 U.S.C. § 1964(c), but only in a U.S. Court, since only U.S. courts have jurisdiction over such claims, and only if the other substantive requirements of the RICO statutes were satisfied, including that the RICO plaintiff had been injured in its business or property by a violation of the criminal provisions of RICO.**

(5) May the RICO Statute be applied when assessing actions, some of which occurred outside the territory of the USA?

<u>Answer</u>: **RICO can be applied, in limited circumstances, by U.S. courts to reach criminal conduct which has occurred partly outside the United States.**

(6) Is it admissible for a Russian arbitrazh court to apply public law norms of a foreign state (the U.S.A), including criminal law norms?

<u>Answer</u>: **I cannot speak to what is permitted under Russian law or whether there is any precedent for a Russian arbitrazh court to be asked to enforce the criminal law of the United States or the public law norms of any other non-Russian country. It is my opinion and belief that courts of one sovereign state do not, as a general matter, enforce the criminal laws of another sovereign state.**

III.

DETAILED ANSWERS TO THE COURT'S QUESTIONS

Having responded briefly to the specific questions posed by the Court in Parts I and II, above, I now set forth in this report the basis of these responses under U.S. statutory and judicial law.

Part I, Question No. 1

1. What is the legal (branch of law) nature of the following norms of U.S. law:

   (1) 18 U.S.C. § 1956;

   (2) 18 U.S.C. § 1960;

   (3) 31 U.S.C. §§ 5318(g)(1), 5318(h), 5322;

   (4) 12 U.S.C. § 3105;

   (5) 12 C.F.R. §§208.60-64;

   (6) 31 C.F.R. §103.11, 103.18;

   (7) 12 C.F.R. §21.21

2. The statutes and regulations set forth above and cited in the FCS Claim are all criminal and regulatory in nature. They neither create nor confer rights in relation to any non-U.S. governmental authority. They are public law norms, even though the distinction between private law and public law is not commonly used in describing the U.S. legal system. As such, they may be enforced solely by the Government of the United States, which alone may bring proceedings alleging violations of any of these statutes and regulations.

3. **18 U.S.C. § 1956.** Title 18 is the place in the United States Code of federal legislation where criminal statutes enacted by Congress are codified. Like all statutes in Title 18 of the United States Code, section 1956 is a criminal statute. Section 1956 defines the crime of money-laundering. Federal prosecutors in the United States may

charge violators with the criminal offense defined by this statute, and those convicted are subject to criminal penalties, including imprisonment of up to twenty years and a fine of up to $500,000 or twice the value of the property involved in the transaction. *See, e.g., Whitfield v. United States,* 543 U.S. 209, 212, 217 (2005) (Congress enacted 18 U.S.C. § 1956 "as part of the Money Laundering Control Act of 1986, Pub. L 99-570, 100 Stat 3207-18. Section 1956 penalizes the knowing and intentional transportation or transfer of monetary proceeds from specified unlawful activities.... All [of the substantive provisions of § 1956] are *substantive* money-laundering crimes.") (emphasis in original). When parties other than the U.S. Government have sought to initiate actions pursuant to this statute, U.S. courts have reaffirmed that only the U.S. Government has authority to enforce the criminal money-laundering statute. *See, e.g., Thompson v. Kramer*, No. 93-2290, 1994 U.S. Dist. LEXIS 18560, at *49 (E.D. Pa. Dec. 28, 1994) ("Money laundering is a violation of federal criminal law under 18 U.S.C. §§ 1956-1957.... These statutes provide by their plain language for criminal penalties but not for private causes of action,"; *Phillpott v. Anco Indus.*, No. 94-4193, 1996 U.S. Dist. LEXIS 8785, at *13 (E.D. La. June 21, 1996) (18 U.S.C. § 1956 is a "criminal statute[] covering money laundering and prohibited money transactions. The plaintiff is a private citizen and has no standing to institute a proceeding under a federal criminal statute that does not specifically allow for such private enforcement."); *Dubai Islamic Bank v. Citibank, N.A.*, 126 F.Supp. 2d 659, 668 (S.D.N.Y. 2000) ("...18 US.C. § 1956 does *not* give rise to a private right of action") (emphasis in original).

4. **18 U.S.C. § 1960.** This criminal statute makes the operation of an unlicensed money transmitting business a crime. It specifies that violators of this statute may be

imprisoned for up to five years, fined by the United States Government, or both. *See, e.g., United States v. Velastegui*, 199 F.3d 590, 593 (2d Cir. 1999) ("[t]he statute makes it a federal crime to knowingly operate a money transmitting business in violation of state law"). Like all federal criminal laws, only the U.S. Government has authority to enforce them.

5. **31 U.S.C. §§ 5318(g)(1), 5318(h) and 5322.** All three of these statutes, which are part of the Bank Secrecy Act, are criminal and regulatory in nature. The purpose of the Bank Secrecy Act, is "to strengthen law enforcement generally…". *United States v. Lowry*, 409 F.Supp. 2d 732, 741 (W.D. Va. 2006). Congress passed the Bank Secrecy Act "in response to increasing use of banks and other institutions as financial intermediaries by persons engaged in criminal activity." *Ratzlaf v. United States*, 510 U.S. 135, 138 (1994). These provisions were amended when the USA Patriot Act was enacted in 2001. The purpose of the USA Patriot Act's is to "strengthen[] the criminal laws against terrorism by making it easier to prosecute those responsible for funneling money to terrorists." *See United States v. Rahman*, 417 F.Supp. 2d 725, 728 (E.D.N.C. 2006). Section 5322 imposes penalties, including terms of imprisonment and fines, for violations of the Patriot Act, including violations of section 5318. Like all federal criminal and regulatory statutes, only the U.S. Government has authority to enforce the Bank Secrecy Act and the Patriot Act. *See James v. Heritage Valley Fed. Credit Union*, 197 F. App'x 102, 106 (3d Cir. 2006) ("the Bank Secrecy Act, 31 U.S.C. § 5318, does not authorize a private cause of action against a financial institution or its employees"); *AmSouth Bank v. Dale*, 386 F.3d 763, 777 (6th Cir. 2004) ("the Bank Secrecy Act does not create a private right of action"); *Aiken v. Interglobal Mergers & Acquisitions*, No. 05 Civ. 5503 (LAP); 2006

U.S. Dist. LEXIS 45730, at *4 (S.D.N.Y. July 5, 2006) (no private right of action under § 5318; "neither the Bank Secrecy Act nor the Patriot Act affords a private right of action"); *Medical Supply Chain, Inc. v. U.S. Bancorp, N.A.*, No. 02-2539-CM, 2003 U.S. Dist. LEXIS 10787, at *20-22 (D. Kan. June 16, 2003), *aff'd*, 112 F. App'x 730 (10th Cir. 2004) (no private right of action under § 5318(h); "no private right of action exists to enforce the Patriot Act").

6. **12 U.S.C. § 3105.** This section is a provision of the International Banking Act, a statute enacted by Congress to authorize the Federal Reserve Board of the United States to regulate foreign banks in the United States. Violations of this statute are punishable by criminal penalties, including imprisonment and criminal fines up to $1,000,000 per day for each day. *See* 12 U.S.C. § 3111 (the criminal penalty provision for violations of the International Banking Act). Consistent with the fact that bank regulation is a core governmental function, only the United States Government has authority to enforce the International Banking Act. *Logan & Kanawha Coal Co. v. Banque Francaise du Commerce Exterieur*, 868 F.Supp. 63, 69 (S.D.N.Y. 1994) ("we find no indication of an intended private right of action" for the International Banking Act).

7. **12 C.F.R. § 208.60-64; 31 C.F.R. §§ 103.11, 103.18; 12 C.F.R. § 21.21.** Each of these regulations was enacted by the United States Government to implement statutes of the United States that are regulatory in nature, and involve the core governmental function of the supervision and regulation of banking institutions. They are collected in the Code of Federal Regulations ("C.F.R."), which is "the codification of the general and permanent rules published in the Federal Register by the executive

departments and agencies of the Federal Government."[1] As such, only the Government of the United States has authority to enforce these regulations.

8. 12 C.F.R § 208.60-64 sets forth regulations, the purpose of which are to describe procedures that banks within the Federal Reserve System are to implement "to discourage certain crimes." The regulations specify, among other things, bank recordkeeping and reporting procedures. None of these regulations creates rights of recovery for any third party or entity. They are rules and regulations promulgated by the U.S. Government to implement statutes authorizing the regulation of banks. Only the U.S. Government can enforce such regulations.

9. The same is true with respect to the other provisions in the Code of Federal Regulations, 31 C.F.R. § 103.11, 103.18, and 12 C.F.R. § 21.21, each of which was promulgated to implement provisions of Congressional statutes related to U.S. Government regulation and supervision of banking institutions, such as the Bank Secrecy Act and USA Patriot Act. Only the U.S. Government -- which through the U.S. Congress, enacted the banking regulatory statutes, and which through its executive branch, promulgated the specific regulations to implement the statutory provisions -- has authority to enforce these rules. *See, e.g., Alexander v. Sandoval*, 532 U.S. 275 (2001) (regulation cannot be enforced by non-Governmental party without authorization by Congress); *Logan & Kanawha Coal Co. v. Banque Francaise du Commerce Exterieur*, 868 F.Supp. 63 (S.D.N.Y. 1994).

10. For the foregoing reasons, all of the statutes and regulations (18 U.S.C. § 1956; 18 U.S.C. § 1960; 31 U.S.C. §§ 5318(g)(1), 5322, 5318(h); 12 U.S.C. § 3105(d); 12

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[1] *See* Code of Federal Regulations: Main Page, http://www.gpoaccess.gov/CFR/INDEX.HTML (last updated Aug. 29, 2007).

C.F.R. § 208.60-64; 31 C.F.R. §§ 103.11, 103.18; 12 C.F.R. § 21.21) are criminal and regulatory in nature. They may be enforced only by the United States Government. They neither create nor confer rights on any non-U.S. Government person or entity. They all have the characteristics of public law norms, as I understand that term, because they all involve the rights, responsibilities, and relations between individuals, institutions, and the U.S. Government in the context of U.S. criminal and regulatory laws.

Part I, Question 2

11. *What are the reasons for enacting, the legal (branch of law) nature of Racketeer Influenced and Corrupt Organizations Act (Racketeer Influenced and Corrupt Organizations Act or RICO) (hereinafter, "RICO" or the "RICO Statute"), in particular, its §§1961-1964? Do the relations regulated by these norms pertain to public law / criminal law or private law?*

12. RICO is a criminal statute. The purpose of the RICO Statute is "the elimination of the infiltration of organized crime and racketeering into legitimate organizations operating in interstate commerce." U.S. Senate Report No. 617, 91st Congress, 1st Session 76 (1969). The U.S. House of Representatives Report and the statements of Members of Congress at the time of RICO's enactment describe RICO's purpose in like terms. *See, e.g.,* U.S. House of Representatives Report No. 1549, 91st Congress, 2d Session 57 (1970) (The legislation is "aimed at stopping the infiltration of racketeers into legitimate organizations"); 116 Congressional Record 18939 ("Title IX is aimed at removing organized crime from our legitimate organizations") (remarks of Sen. McClellan); 116 Congressional Record 35295 ("[P]erhaps the single most alarming aspect of the organized crime problem ... has been the growing infestation of

racketeers into legitimate business enterprises. This evil corruption of our commerce and trade must be stopped. Title IX ... provides the machinery whereby the infiltration of racketeers into legitimate businesses can be stopped and the process can be reversed when such infiltration does occur.") (remarks of Rep. Poff, floor manager of the bill). As the United States Court of Appeals has stated, the "core purpose" of RICO is: "preventing and reversing the infiltration of legitimate businesses by organized crime elements...". *United States v. Ivkosic*, 700 F.2d 51, 63 (2d Cir. 1983).

13. The RICO statute creates four crimes:

- Section 1962(a) makes it a crime for any person to "use or invest" any income derived "from a pattern of racketeering activity or through the collection of an unlawful debt" to establish, operate, or acquire an interest in "any enterprise" engaged in or affecting interstate commerce.
- Section 1962(b) prohibits acquiring or maintaining an interest in, or control of, any such enterprise "through a pattern of racketeering activity or through the collection of an unlawful debt."
- Section 1962(c) makes it a crime for any person "employed by or associated with any enterprise" in or affecting commerce "to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt."
- Section 1962(d) prohibits conspiracies to violate one or more of the crimes defined in section 1962.

14. Under 1964(c), a RICO plaintiff must establish an injury to business or property proximately caused "by reason of a violation of Section 1962," i.e., one of the four crimes described above. Because of its fundamental criminal purpose, text, and

structure, RICO is properly regarded as within the classification of public law, as I understand the meaning of the term, because it is comprised in all of its provisions of criminal law norms.

Part I, Question 3

15. *Must the court interpret and apply U.S. criminal law, conduct criminal law qualification of the respondent's acts in order to recover from the respondent monetary funds according to § 1964(c) of the RICO Statute*?

In particular,

(1) *Must the claimant prove, and the court establish, a violation of § 1962(a) § 1962(b), § 1962(c) or § 1962(d) of the RICO Statute to recover damages under § 1964(c) of the RICO Statute?*

(2) *Is a violation of § 1962(a), § 1962(b), § 1962(c) or § 1962(d) of the RI Statute a crime under U.S. criminal law?*

(3) *Must the claimant prove, and the court establish, "racketeering line of action" (pattern of racketeering activity) or "collection of an unlawful debt "(collection of an unlawful debt) to establish a violation of § 1962(a), § 1962(b), § 1962(c) or § 1962(d) of the RICO Statute?*

(4) *Must the claimant prove, and the court establish, at least two predicate acts of "racketeering activity" (racketeering activity) to establish "racketeering line of action"?*

(5) *Does "racketeering activity" mean an act that is prohibited by U.S. criminal statutes listed in §1961(1) of the RICO Statute? Is a violation of U.S. criminal statutes listed in §1961(1) of the RICO Statute a crime under U.S. criminal law?*

(6) *In order to establish any of the predicate acts listed in §1961(1) of the RICO Statute, must the claimant prove, and the court establish, that the respondent acted with the "criminal intent" (criminal intent)?*

(7) *In order to establish "racketeering line of action", must the claimant prove, and the court establish that respondent's violation of U.S. criminal statutes listed in §1961(1) of the RICO Statute poses "a threat of continued criminal activity" (threat of continued criminal activity)?*

(8) *Does "an unlawful debt" mean a debt incurred in connection with criminal gambling (criminal gambling) or criminal lending activities (criminal lending activities) under §1961(6) of the RICO Statute?*

16. The adjudication of a RICO damages claim under 8 U.S.C. § 1964(c) requires two different determinations of U.S. criminal law. First, a RICO plaintiff must allege and prove that he is a person or entity "injured in his business or property by reason of a violation of 1962(c)." As outlined above, at ¶ 13, section 1962(c) defines the four RICO crimes. Consequently, adjudication of a 1964(c) claim requires a court first to determine whether one or more of the crimes set forth in 1962(c) has been committed. Specifically, the Court would have to determine whether the RICO defendant used a "pattern of racketeering activity" or proceeds thereof, to infiltrate an interstate "enterprise" by (a) investing in the income derived from the pattern of racketeering activity in the enterprise; (b) acquiring or maintaining an interest in the enterprise through the pattern of racketeering activity; (c) conducting the affairs of the enterprise through the pattern of racketeering activity; or (d) conspiring to commit one or more of the crimes set forth in (a) through (c) above.

17. Second, because each of the four crimes set forth in 1962(c) requires that the RICO plaintiff establish a "pattern of racketeering activity," a court hearing such a claim must also determine whether a "pattern of racketeering activity" has occurred. RICO defines this term as "at least two acts of racketeering activity." These are often referred to as the necessary RICO predicate acts or crimes. The term "racketeering activity," in turn, is defined by the statute as "any act or threat" involving the following crimes: "murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical ... chargeable under state

law and punishable by imprisonment for more than one year" or any act indictable under an enumerated list of federal crimes.

18. For these reasons, a RICO claim for damages under section 1964(c) requires a court to engage in two levels of adjudication of U.S. criminal law: (1) it must determine whether a section 1962(c) crime has been committed and (2) it must determine whether at least two of the racketeering activities, or RICO predicate crimes, listed in section 1961 have been committed.

19. It is a general principle of Anglo-American law that crimes consist of two fundamental elements: *actus reas* and *mens rea*. *See* Hall, General Principles of Criminal Law (2d ed. 1960). *Actus reas* refers to the criminal conduct or guilty act. *Mens rea* refers to criminal intent or guilty mind. As a general rule, criminal liability in the United States is based on the concurrence of the prohibited conduct (*actus reas*) with the accompanying criminal state of mind (*mens rea*). In the context of RICO, the criminal state of mind necessary for RICO liability is derived from the requirement of the proof of a pattern of racketeering. In other words, the *mens rea* or criminal state of mind for the specific RICO predicate crimes alleged to form the pattern of racketeering is required to be proved. *Genty v. Resolution Trust Corp.*, 937 F.2d 899, 908 (3d Cir. 1991) (the intent associated with the underlying predicate offenses is necessary). RICO plaintiffs bringing 1964(c) actions must prove specific criminal intent to violate RICO. *United States v. Local 560, International Brotherhood of Teamsters*, 581 F.Supp. 279, 332 (D.N.J. 1984) *aff'd*, 780 F.2d 267 (3d Cir. 1985), *United States v. Sutherland*, 656 F.2d 1181 (5th Cir. 1981).

20. Not only must a RICO claim be based on criminal activity, the crimes must constitute a "pattern of racketeering activity." A single crime, isolated or sporadic crimes, or

crimes that are unrelated to each other, are not patterns of criminal activity. This is clear from the statement of the principal sponsor of the bill to enact RICO in the U.S. Senate, Senator McClellan, who stated: "proof of two acts of racketeering, without more, does not establish a pattern." 116 Congressional Record 18940 (1970). The U.S. Supreme Court has held that in order to form a pattern, there must be a "showing of a relationship between the predicates and the threat of continuing activity. It is this factor of continuity plus relationship which combines to produce a pattern." *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239 (1988) (internal quotations omitted).

21. The Supreme Court did not give specific guidance on the application of its "continuity and relationship" test for determining the existence of a RICO pattern in the *H.J. Inc.* decision. It stated: "precise methods by which relatedness and continuity or its threat may be proved cannot be fixed in advance." *Id.* at 243. A review of decisions by U.S. courts in RICO cases shows that there is no uniformity with respect to the type of conduct, or the period of time, necessary to establish continuity. *See Western Assocs. Limited Partnership v. Market Square Assocs.*, 235 F.3d 629 (D.C. Civ. 2001) (alleged RICO conduct spanning eight years not sufficient to satisfy pattern requirement).

22. With respect to the concept of a continuing threat, U.S. courts have held that alleged RICO predicate crimes must indicate a specific threat of repetition, regularity with respect to an ongoing legitimate business, or a long-term continuing association existing for criminal purposes in order to satisfy the continuity requirement. *System Mgmt., Inc. v. Loiselle*, 138 F.Supp. 2d 78 (D. Mass. 2001) (open-ended continuity

satisfied where "a clear pattern of racketeering activity . . that posed a real threat of continuing indefinitely" was alleged).

23. The term "unlawful debt" is defined by the RICO statute, 1961(c):

> "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate. [Emphasis added.]

24. This provision of RICO is closely related to the overall purpose of the Organized Crime Control Act of 1970, of which RICO is a part, in that it addresses traditional sources of revenue of those involved in organized crime -- illegal gambling and loansharking, i.e., efforts to collect debts arising from loans made on illegal terms in violation of usury laws. An effort to collect an unlawful debt is criminal because, as the United States Court of Appeals in *Cannarozzi v. Fiumara*, 371 F.3d 1, 4 (1st Cir. 2004) stated: "an unlawful debt within the meaning of RICO ... [is] unenforceable in whole or in part because of state or federal laws relating to usury, the debt was incurred in connection with the 'business of lending money ... at a [usurious] rate' and the usurious rate was at least twice the enforceable rate." (*quoting Durante Bros. & Sons, Inc. v. Flushing Nat'l Bank*, 755 F.2d 239, 248 (2d Cir. 1985) (internal quotation omitted)

Part I, Question 4

25. *Did the Congress intend the RICO Statute to be applied by foreign courts or only by the U.S. courts?*

26. Congress clearly intended RICO claims to be heard exclusively in U.S. courts. There is no basis to believe that Congress intended RICO to be applied by a foreign court. This is clear from the text of the statute itself, which makes reference, with respect to claims under section 1964(c), being brought "in any appropriate United States district court." In addition, section 1964(a) states that the "district courts of the United States shall have jurisdiction to prevent or restrain violations of section 1962…". Twenty years after the passage of the RICO statute, the U.S. Supreme Court held that both federal and state courts have jurisdiction to hear 1964(c) claims. It did so partly on the basis of the doctrine of concurrent federal and state court jurisdiction. *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473 (1981). The decision was also based on the fact that state courts of the United States "have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States," and because "state court judgments misinterpreting federal criminal law would be subject to client review by this Court." *Tafflin v. Levitt*, 493 U.S. 455, 458, 465 (1990). Under the Supremacy Clause of the U.S. Constitution, Article VI, par. 2, federal law is binding on state courts. *Martin v. Hunter's Lessee*, 14 U.S. 304 (1816); *Claflin v. Houseman*, 93 U.S. 130 (1876); *Cooper v. Aaron*, 358 U.S. 1 (1958). None of these factors is consistent with a RICO claim being adjudicated by a non-U.S. court.

27. Other foreign government entities have brought RICO actions, including actions alleging, as FCS does in its claim, unlawful conduct allegedly causing losses with respect to customs duties and taxes. But in those cases, the foreign government plaintiffs complied with RICO's specification of U.S. court jurisdiction by filing their

claims "in any appropriate United States District Court." *See, e.g., Attorney General of Canada v. RJ Reynolds Tobacco Holdings, Inc.*, 103 F.Supp. 2d 134 (N.D.N.Y. 2000); *Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1358 (9th Cir. 1988); *The European Econ. Cmty. v. RJR Nabisco, Inc.*, 150 F.Supp. 2d 456 (E.D.N.Y. 2001); cf. *Pfizer v. Government of India*, 434 U.S. 308, 318 (1978).

Part I, Question 5

28. *Is a "civil penalty" (civil penalty) provided in 18 U.S.C. § 1956(b) a penalty solely in favor of the USA for the crime (money laundering) committed by the offender? Is there any precedent in the U.S.A., where a claimant proved, and a U.S. court calculated, damages under §1964(c) of the RICO Statute by reference to monetary sanction provided in 18 U.S.C. § 1956(b)?*

29. Section 1956 prohibits a number of crimes known generally as money laundering. The penalty provisions of the statute call for terms of imprisonment up to twenty years, criminal fines, or both, with respect to all violations of the statute except section 1956(b), which provides a monetary penalty for certain violations of the statute. The statute specifies that whoever commits such a violation "is liable to the United States." This statutory language could not be clearer that no entity or person other than the United States Government is entitled to receive any penalty imposed for a violation of the criminal statute.

30. I am not aware of any precedent, and my research has disclosed none, where any RICO claimant has proceeded on a theory that its damages should be calculated according to 1956(b) or any other non-RICO provision of the law.

31. The English translation of the questions I have been provided asks whether there is any U.S. legal precedent where a "U.S. court calculated damages under 1964(c) ... by

reference to ... 1956(b)?" U.S. courts do not calculate damages. Parties who believe they have suffered monetary damages bring claims against parties whom they believe, as a matter of U.S. law, are liable, or legally responsible, to pay the monetary value of those damages to the plaintiff. But it is the plaintiff's obligation to plead and prove that he has suffered damage and in what amount.

Part I, Question 6

32. *In order to recover damages under §1964(c) of the RICO Statute, must the claimant prove, and the court establish, the amount of actual damages incurred to business or property of the claimant by the violations of §1962(a), §1962(b), §1962(c), or §1962(d) of the RICO Statute?*

33. Under United States law, a plaintiff cannot proceed with a RICO claim without providing proof of damages suffered. Only a party that can prove damages has standing to bring a RICO claim under 18 U.S.C. § 1964(c), which provides: "Any person *injured in his business or property* by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court [for] damages...". (emphasis added.)

34. Similarly, judicial opinions of U.S. courts require the plaintiff in a RICO case to provide proof of its actual damages. "A plaintiff may not sue under RICO unless he can show concrete financial loss." *Patterson v. Mobil Oil Corp.*, 335 F.3d 476, 492, n.16 (5th Cir. 2003). This proof of a "concrete financial loss" also requires that any alleged RICO damages be based on more than mere speculation or conjecture. United States courts hold that "a RICO plaintiff may not recover for speculative losses or where the amount of damages is unprovable." *World Wrestling Entm't, Inc. v. Jakks Pacific, Inc.*, 530 F.Supp.2d 486, 519 (S.D.N.Y. 2007) (internal citations omitted).

35. United States law requires that a plaintiff not only provide concrete evidence of its actual RICO damages, but also show that the defendant's conduct was the proximate cause of its damages. This is an explicit statutory requirement, based on the definition of a § 1964(c) cause of action, whereby the injury complained of must be "by reason of" a RICO violation. 18 U.S.C. § 1964(c). The United States Supreme Court confirmed the requirement of proximate cause in *Holmes v. Sec. Investor Prot. Corp.*, where it held that a "direct relation between the injury asserted and the injurious conduct alleged" is a necessary element of causation. 503 U.S. 258, 268 (1992). Applying *Holmes*, the Supreme Court held in *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451 (2006), that RICO requires a "direct causal connection" between the alleged RICO violation and the claimed damages. *Id.* at 460.

36. A RICO plaintiff must also prove the amount of the damages. *See, e.g., DeFalco v. Dirie*, 978 F.Supp. 491, 500 (S.D.N.Y. 1997) (court granted defendants new trial where plaintiff failed to prove amount of alleged RICO damages); *Rosendale v. Citibank, N.A.*, No. 94 Civ. 8591 (DC), 1996 WL 175089, *4 (S.D.N.Y. 1996) (RICO claim dismissed where plaintiffs failed "to allege a definite amount of damages resulting from the purported RICO violation."); *World Wrestling Entm't, Inc.*, 530 F. Supp. 2d at 519 (no recovery under RICO "where the amount of damages is unprovable").

37. There is no basis in U.S. law for a RICO plaintiff to avoid its obligation to prove that it actually suffered damages as a result of a RICO violation.

38. Under U.S. law, a party bringing a RICO claim bears the burden of proving that it incurred actual damages, that those damages were directly caused by the defendant's violation of 18 U.S.C. § 1962, and the amount of such damages. United States law requires dismissal of a RICO case if the plaintiff cannot prove damages. *See, e.g.,*

World Wrestling Entm't, Inc., 530 F.Supp.2d at 521 (dismissing RICO claim due to lack of proof of any "concrete" injury); *Laborers Local 17 Health and Benefit Fund v. Philip Morris, Inc.*, 191 F.3d 229, 244 (2d Cir. 1999) (ordering dismissal of the plaintiffs' RICO claim due to speculative nature of alleged damages).

Part II, Question 1

39. *What is the approach of the U.S. legislation and American law theory to the division of law into public and private, and to the division of norms of law by branches: is such division generally admitted, what are the criteria that form its basis, and is such division analogous to the division accepted under Russian law?*

40. I cannot speak to Russian law. From the perspective of U.S. law, the distinction between public and private law is not customarily used to describe the U.S. legal system. The U.S. Supreme Court has acknowledged that this is not a framework used to describe the U.S. legal system, which is characterized primarily by courts of general jurisdiction. In *Garner v. Teamsters, Chauffeurs and Helpers Local Union No. 776 (A.F.L.)*, 346 U.S. 485, 495-96 (1953), the Supreme Court stated:

> [The] distinction between public and private law is less sharp and significant in this country, where one system of law courts applies both, than in the Continental practice which administers public law through a system of courts separate from that which deals with private law questions. Perhaps in this country the most usual differentiation is between the legal rights or duties enforced through the administrative process and those left to enforcement on private initiative in the law courts.
>
> Federal law has largely developed and expanded as public law in this latter sense. It consists of substituting federal statute law applied by administrative procedures in the public interest in the place of individual suits in courts to enforce common-law doctrines of private right.

Id. at 495-96 (footnotes omitted).

41. If I were to apply what I understand to be the concepts of public law and private law to the statutes cited by FCS in its claim, which are all criminal and administrative laws, I would regard them to be characterized by public law norms because they all involve relations between the individual and the state, or government. This is true of RICO because it is a criminal statute, codified in the United States Criminal Code, and which requires, as discussed above at ¶¶ 12-24, the adjudication of U.S. criminal law in two respects -- a determination of a violation of 18 U.S.C. § 1962, which sets forth the substantive RICO crimes, and a determination of the § 1961 crimes comprising the predicate offenses necessary to establish a pattern of racketeering activity.

Part II, Question 2

42. *Is there any prohibition in U.S. legislation or court practice against the RICO Statute being applied by courts other than U.S. courts?*

43. The U.S. Congress established in the RICO statute itself jurisdiction in the courts of the United States. Section 1964(c) specifies that RICO claims may be brought "in any appropriate United States district court." No provision of the statute authorizes RICO claims to be adjudicated by foreign courts. I am not aware of any evidence that the U.S. Congress contemplated RICO claims, which necessarily involve the interpretation and application of U.S. criminal law, would be subject to adjudication by non-U.S. courts.

44. In other words, I believe that the FCS claim may be unique in that I am not aware of any precedent of a non-U.S. court being asked to enforce U.S. criminal law or regulatory law. When agencies or departments of foreign governments have sought to litigate RICO claims, they have, in compliance with RICO's statutory conferral of

jurisdiction solely on U.S. courts, brought their RICO claims in U.S. courts rather than in the courts of their own country. *See* ¶ 27, above.

Part II, Question 3

45. *Does the RICO Statute allow making civil law demands (both from a Russian law standpoint and from a U.S. law standpoint) [against a party who violated the provisions of this statute]?*

46. I cannot speak to Russian law. From a U.S. law perspective, the 1964(c) RICO damages remedy can be regarded as asserting a claim for a so-called "civil" remedy, by virtue of the fact that it authorizes a person or entity damaged by reason of one of the section 1962 RICO crimes to bring an action to recover monetary damages. However, to the extent 1964(c) allows a so-called "civil" remedy, it is a remedy arising under a criminal statute and created to further the enforcement of the criminal law. As explained at ¶¶ 12-24, above, a 1964(c) claimant must establish multiple violations of U.S. criminal law in order to proceed under the RICO statute.

Part II, Question 4

47. *May the Russian Federation, represented by the FCS, act as claimant in a case considered under U.S. law (the norms to which the claimant refers in its claim) in a Russian arbitrazh court?*

48. I cannot speak to the powers of the Russian arbitrazh court under Russian law to adjudicate the U.S. law issues on which the FCS claim is based. As set forth above, at ¶¶ 1-10, the FCS claim cites to U.S. criminal and regulatory laws and to RICO, which requires the adjudication of U.S. criminal law. *See* ¶¶ 12-24. It is my opinion that U.S. criminal and regulatory law is subject to enforcement solely by the U.S. Government,

in the same way I do not believe a U.S. court should seek to interpret, apply, and enforce the penal laws of Russia. U.S. courts which have addressed this issue have held that U.S. criminal laws should not be enforced by the courts of non-U.S. sovereign states on the basis of the principle that the "penal laws of a country do not reach beyond its own territory." *Wisconsin v Pelican Ins. Co.,* 127 U.S. 265, 289-290 (1888) ("The penal laws of a country ... must be administered in its own courts only, and cannot be enforced by the courts of another country").

Part II, Question 5

49. *May the RICO Statute be applied when assessing actions, some of which occurred outside the territory of the USA?*

50. In certain limited circumstances, U.S. courts apply the RICO statute to actions or conduct which has occurred partly outside the territory of the United States. There is, however, a presumption in U.S. law that statutes should not apply outside the United States if Congress has not specifically authorized their extra-territorial application. *Small v. United States*, 544 U.S. 385, 388-89 (2005) (the Supreme Court has "adopt[ed] the legal presumption that Congress ordinarily intends its statutes to have domestic, not extraterritorial, application"); *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991) ("Congress legislates against the backdrop of the presumption against extraterritoriality").

51. The RICO statute contains no specific authorization by the U.S. Congress that its reach should extend beyond U.S. borders.

52. Some U.S. courts have approved the extraterritorial application of RICO, in certain limited circumstances, pursuant to the legal doctrines known as the "conduct" test and the "effects" test.

53. Under the "conduct" test, acts or conduct material to the completion of the alleged RICO predicate acts must have occurred within the United States. *Nat'l Group for Commc'ns & Computers Ltd. v. Lucent Techs. Inc.*, 420 F. Supp. 2d 253, 262 (S.D.N.Y. 2006) (court must determine that "conduct that was material to the completion of predicate acts occurred in the United States"); *North South Fin. Corp. v. Al-Turki*, 100 F.3d 1046, 1052 (2d Cir. 1996) (extraterritoriality depends on whether "conduct material to the completion of the fraud occurred in the United States.") (internal quotations omitted); *Roquette America, Inc. v. Amylum France SAS*, No. 03 Civ. 0434 (DC), 2004 U.S. Dist. LEXIS 12297, at *22 (S.D.N.Y. July 1, 2004) (same).

54. Pursuant to the "conduct" test, the RICO plaintiff must also show that the U.S-based conduct directly caused the alleged injury. *North South Fin. Corp. v. Al-Turki*, 100 F.3d 1046, 1053 (2d Cir. 1996) ("conduct that is both material to the completion of the fraud and the direct cause of the alleged injury"); *Norex Petroleum Ltd. v. Access Indus.*, 540 F. Supp. 2d 438, 444 (S.D.N.Y. Sept. 24, 2007) (quoting *North South*, 100 F.3d at 1053); *OSRecovery, Inc. v. One Groupe Int'l, Inc.*, 354 F. Supp. 2d 357, 367 (S.D.N.Y. 2005) (conduct test not satisfied where "the Complaint does not allege that these particular acts ... directly caused the losses of the foreign plaintiffs."); *Nat'l Group for Commc'ns. & Computers Ltd. v. Lucent Techs. Inc.*, 420 F. Supp. 2d 253, 263 (S.D.N.Y. 2006) ("plaintiff must also show that the acts of bribery in the United States were a 'direct cause' of the injuries it suffered in Saudi Arabia"); *Bowoto v. Chevron Corp.*, 481 F. Supp. 2d 1010, 1015 (N.D. Cal. 2007) (conduct test not satisfied where plaintiffs failed to present evidence that activity "directly cause[d] the losses.").

55. The "effects" test requires that the RICO violation have caused a substantial effect on the United States, *North South Fin. Corp.*, 100 F.3d at 1052, either with respect to a U.S RICO plaintiff or to U.S. commerce. The effect must be a "direct and foreseeable result" of the conduct alleged. *Nuevo Mundo, Holdings v. Prince Waterhouse Cooper,* 03 Civ. 0613 (GBD), 2004 U.S. Dist. LEXIS 24900, at *8 (quoting *Consol. Gold Fields PLC v. Minorco, S.A.*, 871 F.2d 252, 261-62 (2d Cir. 1989)).

56. U.S. courts have also held that the alleged conduct must have both a direct and intended effect on United States commerce. "[J]urisdiction exists when extraterritorial conduct is intended to and actually does have a detrimental effect on United States imports or exports." *Norex,* 2007 U.S. Dist. LEXIS 70083, at *15, quoting *North-South Fin. Corp.*, 100 F.3d at 1052.

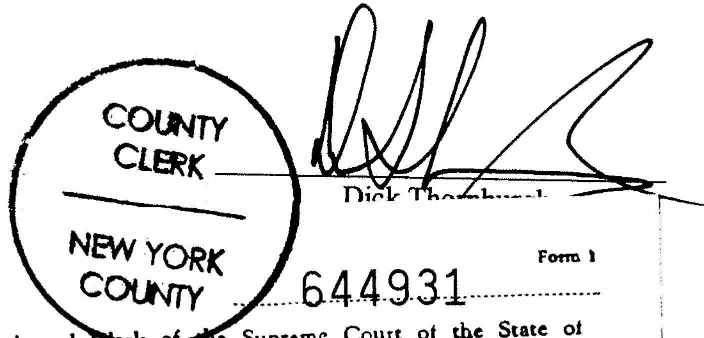
57. The purpose of the "effects" test is "to protect domestic [*i.e.*, United States] investors and markets from corrupt foreign influences." *Wiwa v. Royal Dutch Petroleum Co.*, No. 96 Civ. 8386 (KMW), 2002 U.S. Dist. LEXIS 3293, *21 (S.D.N.Y Feb. 22, 2002) (emphasis added), quoting *Madanes v. Madanes*, 981 F. Supp. 241, 250 n.6 (S.D.N.Y. 1997).

58. While these doctrines indicate that, under circumstances where they apply, RICO can reach conduct occurring partly outside the United States, I am not aware of any application of RICO to the circumstances of the FCS claim. On the contrary, "There is no indication that Congress ever contemplated … an extraterritorial application of RICO to solely personal harms suffered overseas that only marginally -- and tangentially -- impact American commerce." *Doe v. State of Israel*, 400 F. Supp. 2d 86, 116 (D.D.C. 2005).

Part II, Question 6

59. *Is it admissible for a Russian arbitrazh court to apply public law norms of a foreign state (the U.S.A), including criminal law norms?*

60. This question appears to be addressed to the powers of the Arbitrazh Court under Russian law. I can only speak to issues of U.S. law. As I have indicated in response to several of the questions set forth in this Statement, U.S. criminal and regulatory laws are "public law," as I understand that term. Only the U.S. Government can enforce the U.S. criminal and regulatory laws cited by FCS in its claim.



Form 1

644931

State of New York } ss.:
County of New York, }

I, NORMAN GOODMAN, County Clerk and Clerk of the Supreme Court of the State of New York, in and for the County of New York, a Court of Record, having by law a seal,

DO HEREBY CERTIFY pursuant to the Executive Law of the State of New York, that

whose name is subscribed to the annexed affidavit, deposition, certificate of acknowledgment or proof, was at the time of taking the same a NOTARY PUBLIC in and for the State of New York duly commissioned, sworn and qualified to act as such; that pursuant to law, a commission or a certificate of his official character, with his autograph signature has been filed in my office; that at the time of taking such proof, acknowledgment or oath, he was duly authorized to take the same; that I am well acquainted with the handwriting of such NOTARY PUBLIC or have compared the signature on the annexed instrument with his autograph signature deposited in my office, and I believe that such signature is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand affixed my official seal this

JUN 17 2008

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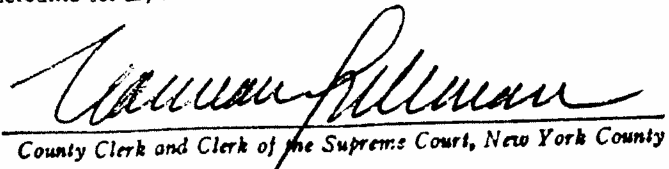

County Clerk and Clerk of the Supreme Court, New York County

Apostille

(Convention de La Haye du 5 Octobre 1961)

1. Country: **United States of America**

   This public document

2. has been signed by **Norman Goodman**
3. acting in the capacity of **County Clerk**
4. bears the seal/stamp of the county of **New York**

Certified

5. At New York, New York 6. the 17th day of June 2008
7. by Special Deputy Secretary of State, State of New York
8. No. NYC-10323722B
9. Seal/Stamp 10. Signature

James Bizzarri
Special Deputy Secretary of State

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