

# The Burger Court Opinion Writing Database

*Sedima, S. P. R. L. v. Imrex Co.*

473 U.S. 479 (1985)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

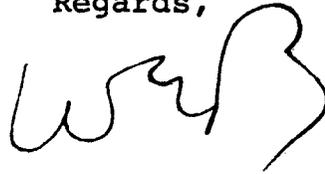
June 12, 1985

Re: No. 84-648 - Sedima v. Imrex Company

Dear Byron:

I join.

Regards,



Justice White

Copies to the Conference

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

April 29, 1985

No. 84-648

Sedima v. Imrex

No. 84-822

American National Bank  
and Trust Co. v. Haroco, Inc.

Dear Thurgood,

Your votes in the above cases were to agree with Jim Oakes' grounds, namely prior conviction and racketeering injury. Harry, Lewis and I agreed with one or the other of those grounds. Would you take on the dissent?

Sincerely,



Justice Marshall

Copies to Justice Blackmun  
Justice Powell

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 29, 1985

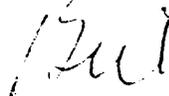
No. 84-648

Sedima v. Imrex Co.

Dear Byron,

I shall await the dissent in the  
above.

Sincerely,



Justice White

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84 648 00 001

201

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

June 24, 1985

No. 84-648) Sedima v. Imrex Co.,  
          ) Inc., et al.  
          )  
          ) American National Bank  
          ) and Trust Company  
          ) of Chicago, et al.  
No. 84-822) v. Haroco, Inc., et al.

Dear Thurgood,

Please join me.

Sincerely,



Justice Marshall

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To: The Chief Justice  
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Justice Marshall  
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Justice O'Connor

From: Justice White

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*BKW*  
"In due course" I expect  
Circulate a direct in this one  
1st DRAFT  
*W*

**SUPREME COURT OF THE UNITED STATES**

No. 84-648

**SEDIMA, S. P. R. L., PETITIONER v. IMREX  
COMPANY, INC., ET AL.**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SECOND CIRCUIT

[May —, 1985]

JUSTICE WHITE delivered the opinion of the Court.

The Racketeer Influenced and Corrupt Organizations Act (RICO), Pub. L. 91-452, Title IX, 84 Stat. 941, as amended, 18 U. S. C. §§ 1961-1968, provides a private civil action to recover treble damages for injury "by reason of a violation of" its substantive provisions. 18 U. S. C. § 1964(c). The initial dormancy of this provision and its recent greatly increased utilization<sup>1</sup> are now familiar history.<sup>2</sup> In response to what it perceived to be misuse of civil RICO by private plaintiffs, the court below construed § 1964(c) to permit private actions only against defendants who had been convicted on criminal charges, and only where there had occurred a "racketeering injury." While we understand the court's concern over the consequences of an unbridled reading of the statute, we reject both of its holdings.

<sup>1</sup> Of 270 district court RICO decisions prior to this year, only 3% (nine cases) were decided throughout the 1970s, 2% were decided in 1980, 7% in 1981, 13% in 1982, 33% in 1983, and 43% in 1984. Report of the Ad Hoc Civil RICO Task Force of the ABA Section of Corporation, Banking and Business Law 55 (1985) (hereinafter ABA Report); see also *id.*, at 53a (table).

<sup>2</sup> For a thorough bibliography of civil RICO decisions and commentary, see Milner, A Civil RICO Bibliography, 21 C. W. L. R. 409 (1985).

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To: The Chief Justice  
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From: Justice White

STYLISTIC CHANGES THROUGHOUT.  
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**SUPREME COURT OF THE UNITED STATES**

No. 84-648

SEDIMA, S. P. R. L., PETITIONER *v.* IMREX  
COMPANY, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SECOND CIRCUIT

[June —, 1985]

JUSTICE WHITE delivered the opinion of the Court.

The Racketeer Influenced and Corrupt Organizations Act (RICO), Pub. L. 91-452, Title IX, 84 Stat. 941, as amended, 18 U. S. C. §§ 1961-1968, provides a private civil action to recover treble damages for injury "by reason of a violation of" its substantive provisions. 18 U. S. C. § 1964(c). The initial dormancy of this provision and its recent greatly increased utilization<sup>1</sup> are now familiar history.<sup>2</sup> In response to what it perceived to be misuse of civil RICO by private plaintiffs, the court below construed § 1964(c) to permit private actions only against defendants who had been convicted on criminal charges, and only where there had occurred a "racketeering injury." While we understand the court's concern over the consequences of an unbridled reading of the statute, we reject both of its holdings.

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*Fisher*

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STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES:

<sup>3</sup>  
~~2~~nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 84-648

SEDIMA, S. P. R. L., PETITIONER *v.* IMREX  
COMPANY, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SECOND CIRCUIT

[June —, 1985]

JUSTICE WHITE delivered the opinion of the Court.

The Racketeer Influenced and Corrupt Organizations Act (RICO), Pub. L. 91-452, Title IX, 84 Stat. 941, as amended, 18 U. S. C. §§ 1961-1968, provides a private civil action to recover treble damages for injury "by reason of a violation of" its substantive provisions. 18 U. S. C. § 1964(c). The initial dormancy of this provision and its recent greatly increased utilization<sup>1</sup> are now familiar history.<sup>2</sup> In response to what it perceived to be misuse of civil RICO by private plaintiffs, the court below construed § 1964(c) to permit private actions only against defendants who had been convicted on criminal charges, and only where there had occurred a "racketeering injury." While we understand the court's concern over the consequences of an unbridled reading of the statute, we reject both of its holdings.

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*White*

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 20, 1985

MEMORANDUM TO THE CONFERENCE

Re: Cases held for Sedima, S.P.R.L. v. Imrex Co., No. 84-648,  
and  
American National Bank & Trust Co. v. Haroco, No. 84-822

Four cases were held for Sedima. I recommend that all be remanded for reconsideration in light of that decision.

1. Joel v. Cirrito, No. 84-604. Resps formed the executive committee of a brokerage firm. Petrs were the other general partners. Without discussing the deal with petrs, resps sold the firm, leaving petrs out in the cold. Petrs brought this civil RICO action, alleging that they had been defrauded by the negotiations and that resps had engaged in a pattern of racketeering activity.

The DC dismissed the complaint. A CA2 panel affirmed on the strength of the CA decision in Sedima. The panel's opinion, while accepting Sedima as controlling, is a lengthy attack on that decision. Because the result below is inconsistent with this Court's decision in Sedima, and relies directly on the CA decision that this Court is reversing, I recommend GVR.

2. Bankers Trust Co. v. Rhoades, No. 84-657. Petr alleged that resps engaged in a protracted pattern of bankruptcy fraud in order to prevent petr from collecting a debt. The DC dismissed the civil RICO claim and CA2 affirmed. Though its holding was not identical to that of Sedima, it also required something other than the injury from the predicate acts to support a civil RICO claim. In particular, the court required that the plaintiff be injured by the pattern of racketeering activity, rather than by the predicate acts. This limitation on damages is inconsistent with, and to some extent expressly rejected by, the opinion in Sedima. I recommend GVR.

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Justice Brennan  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

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pp. 17, 18

4th DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 84-648

SEDIMA, S. P. R. L., PETITIONER *v.* IMREX  
COMPANY, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SECOND CIRCUIT

[June —, 1985]

JUSTICE WHITE delivered the opinion of the Court.

The Racketeer Influenced and Corrupt Organizations Act (RICO), Pub. L. 91-452, Title IX, 84 Stat. 941, as amended, 18 U. S. C. §§ 1961-1968, provides a private civil action to recover treble damages for injury "by reason of a violation of" its substantive provisions. 18 U. S. C. § 1964(c). The initial dormancy of this provision and its recent greatly increased utilization<sup>1</sup> are now familiar history.<sup>2</sup> In response to what it perceived to be misuse of civil RICO by private plaintiffs, the court below construed § 1964(c) to permit private actions only against defendants who had been convicted on criminal charges, and only where there had occurred a "racketeering injury." While we understand the court's concern over the consequences of an unbridled reading of the statute, we reject both of its holdings.

<sup>1</sup>Of 270 district court RICO decisions prior to this year, only 3% (nine cases) were decided throughout the 1970s, 2% were decided in 1980, 7% in 1981, 13% in 1982, 33% in 1983, and 43% in 1984. Report of the Ad Hoc Civil RICO Task Force of the ABA Section of Corporation, Banking and Business Law 55 (1985) (hereinafter ABA Report); see also *id.*, at 53a (table).

<sup>2</sup>For a thorough bibliography of civil RICO decisions and commentary, see Milner, A Civil RICO Bibliography, 21 C. W. L. R. 409 (1985).

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 29, 1985

Re: No. 84-648-Sedima v. Imrex Co.

Dear Byron:

"In due course" I hope to circulate a dissent  
in this one.

Sincerely,

*Jm.*

T.M.

Justice White

cc: The Conference

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From: Justice Marshall

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

Nos. 84-648 AND 84-822

84-648 SEDIMA, S. P. R. L., PETITIONER  
*v.*  
IMREX COMPANY, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SECOND CIRCUIT

84-822 AMERICAN NATIONAL BANK AND TRUST COMPANY  
OF CHICAGO, ET AL., PETITIONERS  
*v.*  
HAROCO, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SEVENTH CIRCUIT

[June —, 1985]

JUSTICE MARSHALL, dissenting.

The Court today recognizes that "in its private civil version, RICO is evolving into something quite different from the original conception of its enactors." *Ante*, at 19. The Court, however, expressly validates this result, imputing it to the manner in which the statute was drafted. I fundamentally disagree both with the Court's reading of the statute and with its conclusion. I believe that the statutory language and history disclose a narrower interpretation of the statute that fully effectuates Congress' purposes, and that does not make compensable under civil RICO a host of claims that Congress never intended to bring within RICO's purview.

I

The Court's interpretation of the civil RICO statute quite simply revolutionizes private litigation; it validates the fed-

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Justice O'Connor

From: Justice Marshall

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## SUPREME COURT OF THE UNITED STATES

Nos. 84-648 AND 84-822

84-648 SEDIMA, S. P. R. L., PETITIONER  
v.  
IMREX COMPANY, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SECOND CIRCUIT

84-822 AMERICAN NATIONAL BANK AND TRUST COMPANY  
OF CHICAGO, ET AL., PETITIONERS  
v.  
HAROCO, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SEVENTH CIRCUIT

[July 1, 1985]

JUSTICE MARSHALL, with whom JUSTICE BRENNAN, JUSTICE BLACKMUN, and JUSTICE POWELL join, dissenting.

The Court today recognizes that "in its private civil version, RICO is evolving into something quite different from the original conception of its enactors." *Ante*, at 19. The Court, however, expressly validates this result, imputing it to the manner in which the statute was drafted. I fundamentally disagree both with the Court's reading of the statute and with its conclusion. I believe that the statutory language and history disclose a narrower interpretation of the statute that fully effectuates Congress' purposes, and that does not make compensable under civil RICO a host of claims that Congress never intended to bring within RICO's purview.

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 26, 1985

Re: No. 84-648, Sedima v. Imrex Company  
No. 84-822, American National Bank and  
Trust Co. of Chicago v. Haroco, Inc.

Dear Thurgood:

Please join me in your dissenting opinion for these cases.

Sincerely,

*H.A.B.*

Justice Marshall

cc: The Conference

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 28, 1985

84-648 Sedima v. Imrex Company, Inc.

Dear Byron:

I will await the dissent.

Sincerely,



Justice White

lfp/ss

cc: The Conference

91 10 25 11:32

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 25, 1985

84-648 Sedima v. Imprex Company, Inc.  
84-822 American National Bank v. Haroco

Dear Thurgood:

This is to say that I think your opinion in these cases is excellent.

It was not an easy dissent to write and it seems to me that you have written a very strong opinion.

Sincerely,

*Lewis*

Justice Marshall

lfp/ss

.82 10 32 5:10

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 25, 1985

84-648 Sedima v. Imprex Company, Inc.  
84-822 American National Bank v. Haroco

Dear Thurgood:

Please join me in your dissent.

I also will circulate a dissent in Sedima to express some different views.

Sincerely,



Justice Marshall

lfp/ss

cc: The Conference

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06/24

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Powell

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-648

SEDIMA, S. P. R. L., PETITIONER *v.* IMREX  
COMPANY, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SECOND CIRCUIT

[June —, 1985]

JUSTICE POWELL, dissenting:

I agree with JUSTICE MARSHALL that the Court today reads the civil RICO statute in a way that validates uses of the statute that were never intended by Congress, and I join his dissent. I write separately to emphasize my disagreement with the Court's conclusion that the statute must be applied to authorize the types of private civil actions now being brought frequently against respected businesses to redress ordinary fraud and breach of contract cases.<sup>1</sup>

I

In *United States v. Turkette*, 452 U. S. 576 (1981), the Court noted that in construing the scope of a statute, its language, if unambiguous, must be regarded as conclusive "in the absence of 'a clearly expressed legislative intent to the contrary.'" *Id.*, at 580 (emphasis added) (quoting *Consumer Product Safety Comm'n v. GTE Sylvania, Inc.*, 447 U. S. 102, 108 (1980)). Accord, *Russello v. United States*, — U. S. —, — (1983), 104 S. Ct. 296, 299. In both *Turkette* and *Russello*, we found that the "declared purpose"

<sup>1</sup>The Court says these suits are not being brought against the "archetypal, intimidating mobster" because of a "defect" that is "inherent in the statute." *Ante*, at 19. If RICO must be construed as the Court holds, this is indeed a defect that Congress never intended. I do not believe that the statute *must* be construed in what in effect is an irrational manner.

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CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

Supreme Court of the United States  
Washington, D. C. 20543

June 3, 1985

Re: No. 84-648 Sedima v. Imrex Company

Dear Byron,

Please join me.

Sincerely,

Justice White

cc: The Conference

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 28, 1985.

Re: Sedima, S.P.R.L. v. Imrex Co., 84-648

Dear Byron:

Please join me.

Respectfully,



Justice White

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

May 28, 1985

No. 84-648 Sedima v. Imrex Company

Dear Byron,

Please join me.

Sincerely,

*Sandra*

Justice White

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BY WKS SD VAKI

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