Oral Argument Bank Cyprus Mtn Dismiss
(Responds to B/C Reply)

(Refers to page and paragraph number in B/C reply)

I. Preliminary Statement

(1-2, 2-1) Bank claims plaintiff failed to "establish" links among defendants and to plaintiff and "establish" Bank played a role. Establish means "to prove," Blacks Law Dictionary, 8th ed. P 586. The function of a complaint is to give notice, not prove. NOW, Inc v. Scheidler, 510 U.S. 249, 256, 127 L.Ed.2d 99, 114 S.Ct. 798 (1994). The bank makes allegations in its memo more appropriate for an answer. The bank's attorneys invoke a new rule of law that when the attorneys for the defense say there are no ….. the Court must believe them and "[t]he Court must dismiss" the case purely on their say-so. Such a rule would put an end to litigation as we know it with defendants avoiding the consequences of their misdeeds by merely having their attorneys claim that the allegations against them are false.

The defendants can spare the plaintiff their hypocritical compassion and crystal ball analysis that the plaintiff is experiencing "disruption, turmoil and expense."

The arrogance of the bank's attorneys has so inflated their self image that now they presume to speak for the plaintiff. The plaintiff speaks for himself.

II. Statement of Facts

(2-2) Once again, a motion to dismiss presents a question of law, not of fact. *See* Bell v. Hood, 327 U.S. 678, 682, 90 L.Ed. 939, 66 S.Ct. 773, 776 (1946). But as another example of the Enterprise movants dissembling the information in papers already presented, Shipilina's declaration does not indicate she never did any business with the bank.

Can't the B/C read, the allegations against it are contained in the Complaint 101-103,

456-458, 633-637, 682, 683 and 827-830. The allegations concerning Shipilina's account are allegations against her not the bank, Complaint 450-2, 767. Stephanos is alleged to be either an employee of the bank or some other financial institution in Limassol, Cyprus, Complaint 104. Without the assistance of discovery, pinpointing Stephanos last name and his employer is unlikely; besides, the federal procedure does not require parties to prove their allegations in pleadings. Cater Constr. Co. v. Nischwitz, 111 F.2d 971, 973 (7th Cir. 1940); *see* Scheuer v. Rhodes, 416 U.S. 232, 236, 40 L.Ed.2d 90, 94 S.Ct. 1683, 1686 (1974). That's why the federal courts permit using "John Doe," Lowenstein v. Rooney, 401 F.Supp. 952, 960 (EDNY 1975) and pleading "on information and belief," Gitterman v. Vitoulis, 564 F.Supp. 46, 50 (SDNY). The affidavits the bank provided the Court concerning Shipilina's account are extraneous material, but beyond that, they are limited to the Bank of Cyprus Ltd, which is just part of the Bank of Cyprus Group conglomerate that includes mutual funds.

III. Argument

A. Rule 12(b)(6) Standard

(3-1) What's with these guys, they keep using the same tricks over and over. Once again they omit the same crucial part of the standard for determining a 12(b)(6). The only difference is this time they cite a difference case, Harris v. City of NY, 186 F.3d. 243, 247 (2nd Cir. 1999). "On a motion to dismiss under Rule 12(b)(6), the court must accept as true the factual allegations in the complaint, and draw all reasonable inferences in favor of the plaintiff." They also omit another statement by that Court in the same paragraph, "[a]ny … movant for dismissal faces a difficult (though not insurmountable) hurdle…." (Citation omitted).

(3-2) Refer Plaintiff Opp Bank 17-1,2. B/C uses terms attacking the Complaint but doesn't define them or furnish cites that define them, "even the most tenuous support," "wild

speculations." They apparently have added these to their list of opprobrium descriptors of "insufficient," "conclusory," "bare" after the plaintiff showed what the courts really meant by such terms and that they didn't apply to the Complaint. Re: Plaintiff Opp Bank 13, 14, 15, 22-2 The plaintiff will leave it to the bank to define the meanings of its new terms that it hopes will do what its old terms couldn't. On one hand the bank admits that pleadings are meant to provide notice, but then accuses the plaintiff of trying slip something over on the Court but stating that rule. How can a party slip something over on the Court, if his statement of a legal rule is correct? Sounds Orwellian to me. The Bank makes a blanket objection that the Complaint "must, at least, plead the elements of each cause of action." So which elements doesn't it plead? Why didn't they move for a more definite statement under Rule 12(e)? Further the banks statement is not fully accurate. There has been some ambiguity among SCt and other federal court decisions as to whether pleading must allege the ultimate facts, or elements, of each cause of action. The Rules eliminated "facts" and "cause of action" from the codes and put in "claim showing that the pleader is entitled to relief." W&M Civ 1216, p148. Complaint need not plead law or match facts to every element of legal theory, Kreiger v. Fadely, 211 F.3d 134, 136 (D.C. Cir 2000). Complaints need not spell out every element of a legal theory; that's the big difference between notice and code pleading. Hemenway v. Peabody Coal Co., 159 F.3d 255, 261 (7th Cir 1998)(Easter brook J.)

1. Use of income from racketeering activities 1962(a)

(3-3) Plaintiff does not "back peddle" but argues in the alternative. The bank complains the plaintiff's alternative argument "baldly" states a disjunctive. The defendants seem much enamored with the word "baldly," presumably the archaic definition which means "lacking merit." Websters Third New International Dictionary. But how can a disjunctive phrase be

lacking in merit? Perhaps the bank uses "baldly" to mean lacking amplification. But in order to achieve that definition, the bank reengineers the Plaintiff's Opp Bank p 18-3, p 19-1 by not fully recounting what it states. That way they get to use that favored lawyerly expression "baldly."

a. Must the injury flow from the investment of racketeering income or from the predicate acts.

(4-2) Refer Plaintiff Opp Bank p 18-3. The bank claims the law requires an allegation of injury flowing from the investment of racketeering income by citing Quaknine v. MacFarlane, 897 F.2d 75, 82-83 (2nd Cir 1990). Quaknine dismissed the argument that the Supreme Court in Sedima did not require the injury come from the investment of racketeering income. Quaknine recounted the Supreme "Court stated that '[I]f the defendant engages in a pattern of racketeering activity in a manner forbidden by [§ 1962(a-c)], and the racketeering activities injure the plaintiff in his business of property, the plaintiff had a claim under § 1964(c).'" Sedima at 495, 105 S.Ct. at 3284. "That statement is not controlling here, however, for the Court was dealing only with § 1962(c)…." So the question then is what carries more weight, Supreme Court dicta or a holding by the 2nd Circuit. I'll go with S.Ct. dicta. Dangerfield v. Merill Lynch, 2003 U.S. Dist. Lexis 16908 at *28, n 2 states that Fourth Cir does not require a claim under 1962(a) to allege a distinct investment injury, *see* Busby v. Crown Supply, Inc., 896 F.2d 833, 836-40 (4th Cir. 1990) and the plaintiff might have been able to make a good faith argument for the adoption of the 4th Cir standard. [RCM, 901 F.Supp. 630, 642 (SDNY 1995) rules against injury from using income to invest in oopertaions.]

b. If 1962(a) requires injury from investment then the Complaint alleges so.

(4-3) The bank complains about the plaintiff making reference to predicate acts to reargue what they argued in section (a) above in an effort to muddy the waters of what Plaintiff Opp Bank memorandum says, which is, if the court requires a racketeering investment injury,

then the Complaint alleges such injury. Before there is racketeering income to be invested there has to be predicate acts that generate that income. Can't have racketeering income unless there exists a pattern of racketeering activity; that is, predicate acts. This the bank ignores. Let's try to make it simple for the bank. 1962(a) states, "It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity … to use or invest, directly or indirectly, any part of such income, or proceeds of such income, in acquisition of any interest is, or the establishment or operation of, any enterprise which is engaged in … interstate or foreign commerce." The "income" must come from a "pattern of racketeering activity," which is defined by the 18 USC 1961(5) as at least two acts of "racketeering activity." According to 18 USC 1961(1), "racketeering activity" means any number of a list of predicate acts that included those alleged against the Bank of money laundering under 18 USC 1956 and use of international facilities to distribute the proceeds from unlawful Enterprise activities in aid of a racketeering enterprise under 18 U.S.C. 1952. Once the predicate acts are alleged, then the Complaint alleges the bank engages in those predicate acts in order to generate revenues for its banking operations, which affect interstate and foreign commerce, in violation of 18 U.S.C. 1962(a). Complaint 636.

(4-3) The bank repeats in it's reply the same objection as in its first memo that the predicate act allegations and use of racketeering income are "mere conclusory." As stated in Plaintiff Opp Bank pp 13-14: But "[w]hether these charges [in the complaint] be called 'allegations of fact' or 'mere conclusions of the pleader,' we hold that they must be taken into account in deciding whether the [plaintiff] is entitled to have its case tried." U.S. v. Employing Plasterer's Ass'n, 347 U.S. 186, 188, 98 L.Ed. 618, 74 S.Ct. 452, 454 (1954). For "the ancient distinction between "facts" and "conclusions" is no longer significant." Oil, Chem. & Atomic

_____, 277 F.2d 694, 697 (6th Cir. 1960)(citing U.S. v. Employing Plasterer's Ass'n, 347 U.S. 186, 188). The plaintiff need only give the defendants notice of the claims. *See* Leatherman v. Tarrrant County Narcotics Intel. & Coordination Unit, 507 U.S. 163, 168, 122 L.Ed.2d 517, 113 S.Ct. 1160, 1163 (1993). "A complaint that complies with the federal rules of civil procedure cannot be dismissed on the ground that it is conclusory or fails to allege facts. The federal rules require (with irrelevant exceptions) only that the complaint state a claim not that it plead the facts if true would establish … that the claim was valid." Higgs v. Carver, 286 F.3d 437, 439 (7th Cir. 2002)(Posner, J.)(citation omitted). And "what may be insufficient in New York courts need not necessarily be insufficient" in Federal court. Mueller v. Rayon Consultants, 170 F.Supp 555, 558 (S.D.N.Y. 1959). The pleader need only "disclose adequate information as the basis of his claim for relief as distinguished from a bare averment that he wants relief and is entitled to it." Wright & Miller, Fed. Prac. & Proc.: Civ 2d 1216, p 165 (citing October 1955 Report of the Judicial Conference of the United States).

(5-1) The Bank deletes one of the Complaint's paragraphs (881) cited in the Plaintiff Opp Bank p 19 and mischaracterized another (875). The Bank claims 875 deals with the Enterprise's effect on interstate and foreign traffic. They are wrong, it addresses, as does 881, the pattern of racketeering activity. I just don't see how attorneys so full of themselves could miss the boldfaced underlined heading in the Complaint that include these two paragraphs: **XIII. Pattern of Racketeering Activity**. And, once again, under the law, a pattern requires at least two predicate acts. So why does the bank keep complaining about the Complaint referring to predicate acts? Because they will twist the law, the allegations and the plaintiff's memoranda any which way in order to win.

(5-2) The Bank once again deletes a pertinent paragraph in the Complaint when it claims none of the paragraphs 900-907 allege that the Bank's use of racketeering income caused the plaintiff injury. The deleted ¶ 683 states, "[e]ach predicate act was committed on behalf of every Member of the Enterprise, since each act was committed with the knowledge of, or was reasonably foreseeable to, each of the Members." And the Complaint alleges the Bank as a member of the Enterprise at ¶¶ 101-03. Besides ¶¶ 900-907 do not, as the Bank falsely states, allege injury by "Enterprise activities," they allege injury from, among other acts, the use of funds from racketeering activites.

(5-2) The Bank also claims the allegations of injury from investment income are "baldly conclusory"—all this legal lingo must come from too many Perry Mason shows. More seriously, the U.S. Supreme Court held that on a motion to dismiss general factual allegations of injury resulting from defendant's conduct embrace those specific facts necessary to support the claim. NOW v. Scheidler, 510 U.S. 249, 256, 127 L.Ed.2d 99, 114 S.Ct. 798, 803 (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 561, 119 L.Ed.2d 351, 112 S.Ct. 2130, 2137 (1992)).

c. Investment in an enterprise and what is an enterprise anyway?

(5-3) Income from racketeering activity that is invested in a RICO enterprise or a legitimate enterprise violates 1962(a). *See* U.S. v. Godoy, 678 F.2d 84, 86-87 (9th Cir. 1982), cert. denied, 464 U.S. 959 (1983); U.S. v. McNary, 620 F.2d 621, 628 (7th Cir. 1980).

2. 1962(b)

(5-4, 6-1) Despite the cite by the Bank that the purpose of 1962(b) is to prohibit the takeover of legitimate businesses, Professor Lynch found that only a handful of cases under 1962(b) involved defendants infiltrating legitimate businesses. 87 Colum. L. Rev. 661, 726-28 (1987). Also, the Bank failed to state entire requirement of 1962(b) by deleting the phrase

"directly or indirectly." 1962(b) states, "unlawful for any person through a pattern of racketeering activity … to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in … interstate or foreign commerce."

(6-2) Once again the Bank tries to put words in the plaintiff's mouth by falsely claiming, "The Bank's purpose, according to Plaintiff's own words, is not to maintain an interest in an enterprise, but to maintain an interest in itself; not to generate revenues for the Russian mafia … but to generate revenues for itself. Complaint ¶ 636." The Bank is deceptively trying to confuse the allegations concerning 1962(a) with 1962(b) in order to claim the defendant Bank is not distinct from the enterprise in which it seeks to maintain an interest under 1962(b). As the plaintiff explained in Plaintiff Opp Bank p 19-2,3, the term "enterprise" can mean the criminal RICO association or another organization. The Bank had mistakenly believed "enterprise" only applied to the RICO association. Contrary to the Bank's deception, the Complaint actually states at ¶ 636: "Member Bank of Cyprus engages in the predicate acts [of money laundering and using foreign facilities to aid the Russian mafia] in order to generate revenues for its banking operations, which affect interstate and foreign commerce, in violation of 18 U.S.C. 1962(a) …." Here the money comes from the money laundering and aiding the Russian mafia and flows back into its operstions. In addition, "Member Bank of Cyprus engages in the predicate acts [of money laundering and using foreign facilities to aid the Russian mafia] … to maintain its money laundering business with the Enterprise [the Russian mafia] in violation of 18 U.S.C. 1962(b) …." Here the Bank engages in money laundering and aiding the Russian mob because if it did not it would lose its interest in the Russian mafia or RICO Enterprise. The Bank's interest in the RICO Enterprise is the money laundering operations they as part of it. The U.S. Supreme Court adopted a broad definition of the word "interest" as "[t]he most general term that can be

employed to denote a right, claim, title or legal share in something." Russello v. U.S., 464 U.S. 16, 21, 104 S.Ct. 296, 78 L.Ed.2d 17 (1983)(quoting Black's Law Dictionary).

3. 1962(c)

(6-3, 4) The Bank's statement that to violate 1962(c) requires "that the defendant conducts or directs the enterprise," is wrong under the U.S. Supreme Court, wrong in the 2d Circuit and wrong in the 1st Circuit. "[T]he phrase 'directly or indirectly' [in 1962(c)] makes clear that RICO liability is not limited to those with a formal position in the enterprise…," Reves at 179, or that only primary responsibility for the enterprise's affairs is required, but "one must have some part in directing those affairs." Id. What is needed is that a person participates in the operation or management of the enterprise. Reves at 185. But an enterprise is "operated" not just by upper management but also by lower rung participants who are under the direction of upper management or by others associated with the enterprise. Reves at 184. But the Court did not decide how far down the ladder of operation 1962(c) reaches. Reves at 184, n. 9. An enterprise is also operated or managed by others associated with it who exert control over it. Reves at 184. "One is liable under RICO if he … has 'discretionary authority in carrying out the instructions of the principals.'" Baisch v. Gallina, 346 F.3d at 376 (2d Cir. 2003)(citing US v. Diaz, 176 F.3d 52, 93 (2d Cir. 1999)). In addition, a defendant may also take part in the conduct of an enterprise by knowingly implementing decisions as well as making them. US v. Oreto, 37 F.3d 739, 750 (1st Cir. 1994).

(6-3, 4) U.S. v. Viola, 35 F.3d 37, 41 (2d Cir. 1994) to which the Bank gives the wrong cite, perhaps to hide the Bank's misstatement of the case's holding, does not hold that "discretionary activity on behalf of the enterprise is insufficient" for a defendant to violate 1962(c). It does hold that where the defendant played no part in the management or control of

the enterprise as defined by Reves but only took directions and performed acts, functions or duties that were necessary or helpful to the operation of the enterprise, that is still not enough for liability under 1962(c). Id. at 40-41. In fact, in the Second Circuit case Napoli v. U.S., 45 F.3d 680, 683 (2d Cir. 1995), defendants were liable under 1962(c) for exercising discretion. The defendants—investigators working pursuant to directions form attorneys in their firm to bribe witnesses and falsify evidence—though not acting in a managerial role exercised **broad discretion in carrying out instructions** from the law firm principals. Not only does the Complaint satisfy Otero, but Reves, Baisch, Viola and Napoli.

(7-2) Once again the Bank misleads the Court about what the plaintiff has said. The Bank claims the plaintiff argues, "that the Bank exerts control over mob activities." That's not accurate, Plaintiff Opp Bank states, "the Bank exerts control over **that aspect** of the mob's activities by making and knowingly implementing decisions in which it exercises broad discretion in carrying out the laundering and hiding of illegal funds." "That aspect" refers to money laundering operations. The Bank's intentional dissemblance tries to mislead the Court into believing the plaintiffs claims the bank controls all mob activities. In addition, as to what Plaintiff Opp Bank really states, the Bank further lies by claiming the Complaint makes no such allegation and refers the Court to ¶ 637 but fails to alert the Court to the cites given by the plaintiff, which are ¶¶ 15, 101-03, 456-58, 633-636, 874(b), (d), (j), (k), 881, but not 637. Why must these lawyers lie, prevaricate and dissemble repeatedly?

(7-2) The Bank is not an outside money manager but the conductor of the segment of the Enterprise's business that launders money. As alleged, the Bank directs those affairs of the Enterprise, but even if that were not alleged, and the Bank considered a lower rung participant of the Enterprise, the Bank's commission of crimes that advance the Russian mafia's objectives

must be assessed by a fact-finder to determine whether or not its criminal activity, assessed in the context of all the relevant circumstances, constitutes participation in the operation or management of the Enterprise's affairs. U.S. V Allen, 155 F.3d 35, 42 (2d Cir. 1998)

(7-2) If that's not good enough then and still considering the Bank a lower rung participant them:

"Reves makes it clear that a defendant can act under the direction of superiors in a RICO enterprise and still participate in the operation of the enterprise within the meaning of 1962(c)," Wong, 40 F.3d at 1373;

"[W]e agree with the First Circuit that one may be liable under the operation or management test by 'knowingly implementing decisions, as well as by making them,'" U.S. v. Starret, 55 F.3d 1525, 1548 (11th Cir. 1995).

The Bank cites three SDNY cases for the proposition that a RICO defendant who exercises "broad discretion" does not meet the "requisite participation in management and control." None of the cited district court cases deal with "broad discretion."

Industrial Bank Latvia the Bank still doesn't provide the full lexis cite and even deletes the WL cite. The Bank relies on dicta and the only alleged misconduct of Asia Bank was allowing a defendant to maintain an account and receive transfers into that account.

Lasalle Nat'l Bank, 951 F.Supp. 1071, 1090-91, dealt with an outsider to the RICO enterprise.

Redtail Leasing, reiterates that a rung participant must do more than just assist a RICO enterprise.

4. Conspiracy 1962(d)

(8-1) To repeat Plaintiff Opp Bank at p 21:). "[T]he Second Circuit established that the core requirement of a RICO conspiracy claim is an agreement to commit the predicate act…. [T]he Second Circuit held that a complaint must, at a minimum, specifically plead such an agreement… 'to commit at least two predicate acts.'" Colony at 1238. So in the Second Circuit, a complaint must allege the defendants concurred, consented, settled upon, assented or agreed to the committing of two predicate acts. It is the agreement to commit predicate acts in furtherance of the common purpose of the RICO enterprise that infers a RICO conspiracy. *See* Colony at 1238. And furthering a RICO's purpose can be met by merely adopting the goal of advancing or facilitating violations of RICO 1962(a-c). *See* Salinas v. U.S., 522 U.S. 52, 65, 139 L.Ed.2d 352, 118 S.Ct. 469, 477 (1997). By agreeing to launder and hide money from Russian mafia activities, the Bank, at the very least, advanced and facilitated the Enterprise's criminal endeavors that include violations of 18 U.S.C. 1962(a-c).

(8-2) The Bank concurs with the above law when it states, "Plaintiff's allegations that 'the Bank agreed to commit the predicate acts … with the requisite mens rea … and such acts furthered the Enterprise's purpose' (Plaintiff Opp Bank at 21-22), at best, merely parrot the applicable standard." Parrot means to repeat, Webster's Third New International Dictionary, so the Bank agrees that the standard for 1962(d) conspiracy is agreement to commit predicate acts that further the Enterprise's purpose.

(8-2) In Connolly v Havens, 763 F.Supp. 6, 14 (SDNY 1991) the Court gave three reasons for rejecting a complaint:

(1) It just repeated the language from the statute's conspiracy section, which this Complaint does not do, ¶¶ 637, 682, 683, regardless of the Bank's parroting the Connolly court.

(2) Connolly also stated the complaint before it failed to indicate which two activities constituted the alleged mail fraud predicate acts. Mail fraud pleading requires Rule 9(b) particularity, the predicate acts alleged against the Bank do not because they are financial transactions involving money from illegal Enterprise activities in order to hide the origin and ownership of the funds and avoid U.S. reporting requirements in violation of 18 U.S.C. 1956(a)(1)(B)(i) & (ii); transfers of funds from illegal Enterprise activities in order to hide the origin and ownership of the money and avoid U.S. reporting requirements in violation of 18 U.S.C. 1956(a)(2)(B)(i) & (ii); and use of international facilities to distribute the proceeds from unlawful Enterprise activities constitutes actions in aid of a racketeering enterprise under 18 U.S.C. 1952. (Complaint ¶¶ 15, 101-03, 456-58, 633-35, 874(b), (d), 881)

(3) The Connolly complaint failed to even state that the defendants agreed to commit at least two predicate acts or further the Enterprise's affairs through the commission of various offenses. Not so with the Complaint, which states the Bank agreed to commit the predicates specified in ¶¶ 633-635 in order to further the purpose of the Enterprise. (Complaint ¶ 637)

(8-2) The Bank complains, "There must be an informed agreement and there is none." What the Bank really means, unless it is again foolishly demanding the Complaint provide evidence, that the Complaint allege an agreement, which it does in ¶¶ 637, 682, 683.

(8-2) Co-conspirators who might not themselves have violated one of the substantive provisions of 1962 can still be sued providing others in the Enterprise were alleged to have done so. Beck v. Prupis, 529 U.S. 494, 506-07, 120 S.Ct. 1608, 1617 (2000). Conspiracy is a mechanism for subjecting co-conspirators to liability for the tortious acts of one of their members, and a tortious act is a 1962(a), (b), or (c) violation or may even be the commission of one predicate act. Beck at 506 n. 10. The Complaint alleges numerous violations of 18 USC

1962 and predicate acts committed by the movants in furtherance of the Enterprise's Scheme. (Complaint 466-547, 556-559)

5. Proximate Cause

(8-3) The Bank's mendacity is showing again. Contrary to its claim, the Complaint does **not** "primarily rely of ¶ 683"for alleging direct injuries but on it along with ¶¶ 900-907, as Plaintiff Opp Bank states at p 23. In addition, its misguided belief that the Complaint must provided evidence is showing again when it states, "unsupported by any fact whatever." The plaintiff must not be put to the test to prove his allegations at the pleading stage. NOW, Inc v. Scheidler, 510 U.S. 249, 256, 127 L.Ed.2d 99, 114 S.Ct. 798 (1994). "The purpose of a motion to dismiss is not to test the weight of the evidence which might be offered in support of it but to assess the legal feasibility of the complaint." (Citing Geisler v. Petrocelli**,** 616 F.2d 636, 639 (2d Cir. 1980)). If the allegations of injury are "simply wild speculation," then it will come out in discovery. "[P]leading standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims." Swierkiewicz v. Sorema NA, 534 U.S. 506, 512, 152 L.Ed.2d 1, 122 S.Ct. 992 (2002).

(9-2) The Bank's prevarication as to the law is showing again. The Bank cites an appeal from a summary judgment case Standardbred Owners Ass'n. v. Roosevlet Raceway, 985 F.2d 102, 104 (2d Cir. 1990) for the proposition that proximate cause requires "a substantial factor in the sequence of responsible causation' and the injury must be 'reasonably foreseeable or anticipated as a natural consequence." The Bank on its own adds the introductory phrase: "a Plaintiff must allege acts which are" such, which hides the fact that the Second Circuit had the benefit of evidence from discovery in reaching its decision. The Bank also fails to point out that "This rule is intended to preclude recovery by plaintiffs who 'complain of harm flowing merely

from the misfortunes visited upon a third person.'" Standardbred at 104. Derivative injuries are not claimed in the Complaint. The Bank continues its ploy of making its self-serving rule applicable to Rule 12(b)(6) motions by citing a magistrate's report and recommendation discussion of proximate cause in Casio Computer v. Sayo, 2000 WL 1877516 at *19 (SDNY Oct 13, 2000) without even mentioning that the magistrate recommended dismissal of the third amended complaint for the plaintiff's "failure to plead the predicate act of wire fraud with particularity" as required by Rule Rule 9(b). Id. at *31. There are no fraud allegations against the Bank. Further, in Casio the judge actually dismissed the third amended complaint on the grounds of *forum non conveniens*, id. at *1, another salient fact not mentioned by the Bank. The U.S. Supreme Court's position on pleading injury is more appropriate than lawyers making their own self-serving rules based on concealing the facts of a cited case. The Supreme Court said on a **motion to dismiss** general factual allegations of injury resulting from defendant's conduct embrace those specific facts necessary to support the claim. NOW v. Scheidler, 510 U.S. 249, 256, 127 L.Ed.2d 99, 114 S.Ct. 798, 803 (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 561, 119 L.Ed.2d 351, 112 S.Ct. 2130, 2137 (1992)).

Finally, the Bank completely ignores Plaintiff Opp Bank section at p 24 on joint liability of RICO members

B. The Complaint should not be dismissed.

(9-2) The Bank fails to offer a legitimate **legal** argument as to why the Complaint with respect to it should be dismissed with prejudice. Especially, since leave to amend is ordinarily granted unless presiding court gives reasons why leave should be denied. Verdon v. Consolidated Rail Corp., 828 F.Supp. 1129 (SDNY 1993).

(9-2) Again for the third time, Shipilina's Global Equity Fund account is not an allegation against the Bank, yet. The use of fictitious names are permitted by the Rules to prevent wrong doers whose identities are subsequently revealed by discovery from going free. Does the Bank state that it has no employees in Cyprus with the name Stephanos? No. The Bank has a global Internet network for dealing with customers. A Wall Street hotel refers its guest to the Bank's Broad Street office. The plaintiff never alleged he had dealings with the Bank, and the Bank's statement of no connection with movant Shipilina is an allegation for its answer. The Bank cites to Cortrec Industries v. Sun Holding, 949 F.2d 42, 28 (2d Cir. 1991) for grounds that the Complaint should be dismissed with prejudice. But the Cortec court dismissed the complaint with prejudice because the plaintiff was a third party in the transaction and liability under § 12(2) of the 1933 Securities Act did not flow to third parties, so the plaintiff could not make any allegations that brought it within the Act. Cortec at 49. The allegations against the Bank bring it within the RICO act.

(9-2) The only way to lessen the harm caused by members of the Russian mafia furthering that mob's effort to infiltrate and expand it's illegal activities into hard currency markets is through civil RICO, the weapon that America's elected officials gave to this country's citizens knowing that in a democracy based on laws there can be no successful appeal from the ballot to the bullet. The Bank's lawyers state, "It is entirely blameless." Given the source of that statement, it means nothing. Defense lawyers don't admit their clients are to blame, so why should their affirmation that their clients are blamelessness mean anything.