

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF LOUISIANA**

**LINDSEY LEE, WAYNE BALLARD, JR.,  
JENNIFER BALLARD, RONALD  
ROBERTS, III, KATHRYN ROBERTS,  
ZACHARY RUSSELL, LACEY RUSSELL,  
LUIS HINOSTROZA, TIM ADDISON, II,  
STACY ADDISON, JONATHAN  
McMORRIS, AND  
GILBERT BANKSTON, III**

**CIVIL ACTION NO.:**  
**3:21-cv-00442-SDD-EWD**

**VERSUS**

**D.R. HORTON, INC. – GULF COAST,  
D.R. HORTON, INC., ACADIAN TRACE  
HOA, INC., LIVINGSTON PARISH  
COUNCIL, GEORGE KURZ, DAVID  
STANTON, AND JAKE LAMBERT**

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**PLAINTIFFS' MOTION FOR RECONSIDERATION**

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**MAY IT PLEASE THE COURT:**

NOW INTO COURT, come Plaintiffs, through the undersigned counsel, moves this Honorable Court to grant Plaintiffs' Motion for Reconsideration for the foregoing reasons contained within the attached memorandum based on the unconsidered jurisprudence by the U.S. Circuit Courts.

WHEREFORE PLAINTIFFS PRAY that this Honorable Court reverse its dismissal and reinstate the litigation and that the Amended Petition be granted.

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Respectfully Submitted by:

**WHITEHEAD LAW FIRM**

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 5th day of March, 2025., a copy of the above and the foregoing has been filed electronically with the Clerk of Court using the CM/ECF system, and notice of this filing was accordingly sent to all counsel of record through the Court's electronic filing system.

/s/ Jack K. Whitehead, Jr.  
**Jack K. Whitehead, Jr.**

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**PLAINTIFFS’ MEMORANDUM IN SUPPORT OF ITS MOTION FOR  
RECONSIDERATION**

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**NOW INTO COURT**, through undersigned counsel, comes Lindsey Lee et al. who avers as follows:

Plaintiffs’ Counsel respectfully suggests to this Honorable Court that in the circumstances of this litigation. Today, a group of homeowners in Livingston Parish challenges the largest homebuilder in the United States. Simply, this litigation is nothing less than a reoccurrence of oppression that everyday Americans take on against large economic actors. Over a century ago, “robber barons” became subject to anti-trust laws. Standard Oil Company’s grip on our nation's

energy wreaked havoc when left unchecked. The Acadiana Trace subdivision homes are no less tragic than Frank McCourt's novel "Angela's Ashes," which discussed where the first floor of a two-story McCourt hovel situated at the bottom of a hill in Limerick, Ireland, flooded whenever it rained. There is a path forward in this litigation to prevent such abuse by economic actors. Plaintiffs' counsel respectfully asks this Honorable Court to reconsider its denial.

On January 23, 2025, the Honorable Magistrate Judge Eric Wilder-Dooms filed into the record his Report and Findings.<sup>1</sup> The Honorable Judge concluded that the Amended Pleadings by the Plaintiffs were futile and recommended the Plaintiffs' Motion to Amend be denied. This Honorable Court accepted the Magistrate Judge's findings and dismissed the suit without prejudice.

The crux of the Magistrate Judge's findings revolves around the central question of whether the mail fraud was the proximate cause of the Plaintiffs' damages. Plaintiffs aver that the Magistrate Judge's findings, while accurate, fail to address how courts in our Republic have sought to apply proximate causation. Plaintiffs respectfully bring to this Honorable Court the following jurisprudence when deciding this Motion for Reconsideration.

### **I. Proximate Cause When the Fraud is Directed at a Third Party**

The Supreme Court gave a thorough analysis of the underlying elements of proximate cause in *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 128 S. Ct. 2131, 170 L. Ed. 2d 1012 (2008).<sup>2</sup> Therein, plaintiffs were bidders at a county tax lien auction. *Id.* at 643. To ensure fair distribution of tax liens during the auctions, the county enacted a "Single, Simultaneous Bidder Rule," requiring each "tax [lien] buying entity" to bid in its own name and not to use agents or employees to submit simultaneous bids on its behalf. *Id.* The plaintiffs claim that the defendants violated this rule by using

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<sup>1</sup> See Doc. Rec. 220

<sup>2</sup> The *Bridge* case involves a civil RICO claim.

agents to submit simultaneous bids on the defendants' behalf and directing those agents to file false attestations that they had complied with the county's rules. *Id.* at 643–44. The plaintiffs alleged that this deceptive practice resulted in the defendants receiving a disproportionately higher share of tax liens at the county auction. *Id.* The plaintiffs further alleged that as a result of this deceptive practice, they were deprived of their ability to obtain their fair share of tax liens at the county auction. *Id.* at 644, 128 S.Ct. 2131.

Applying the Supreme Court's direct relation requirement, the Court held that the plaintiffs' "alleged injury—the loss of valuable liens—is the direct result of [the defendants'] fraud. **It was a foreseeable and natural consequence of [the defendants'] scheme to obtain more liens for themselves** that other bidders would obtain fewer liens." *Id.* at 658, 128 S.Ct. 2131. And unlike the cases cited by Magistrate Judge Eric Wilder-Dooms, *Anza* and *Hemi Group*,<sup>3</sup> where other parties suffered more direct injuries than the plaintiffs, in *Bridge*, the county—which sold the tax liens at prices not dependent on who was the buyer—was not injured. *Id.* Rather, the plaintiffs were the immediate victims of the defendants' fraud and were best situated to sue the defendants. *Id.* Thus, the Supreme Court held that the plaintiffs had sufficiently alleged proximate cause under RICO. *Id.* at 661.

*Bridge* is particularly instructive in this litigation. Like *Bridges*, the fraud was perpetrated directly against the Livingston Parish, not the Plaintiffs. Nevertheless, the Supreme Court found that plaintiffs can recover in a variety of circumstances where, as here, **their injuries result directly from the defendant's fraudulent misrepresentations to a third party.** *Id.* at 653. In other words, the fraudulent activity does not need to be directed toward the injured party to make a claim under RICO statutes. It must merely be a direct result of the fraud.

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<sup>3</sup> Doc. Rec. 220, Pg. 14, see also, Fn. 68, Pg. 17.

## II. The Proximate Cause Element of RICO is a Flexible Standard

The *Bridges* Court further explained that proximate cause is a flexible concept that does not lend itself to “a black-letter rule that will dictate the result in every case.” *Id.*, at 272, 112 S.Ct. 1311 (quoting *Associated Gen. Contractors of Cal., Inc. v. Carpenters*, 459 U.S. 519, 536, 103 S.Ct. 897, 74 L.Ed.2d 723 (1983)). Instead, we “use[d] ‘proximate cause’ to label generically the judicial tools used **to limit a person's responsibility for the consequences of that person's own acts**” *Holmes*, 503 U.S., at 268, 112 S.Ct. 1311.

Therefore, the Supreme Court gives this Court the authority to modify the elements of a “proximate cause” analysis to fit the facts and circumstances of the case. That is appropriate here, as the actions that rendered the permit fraudulent occurred after the permit fraud had been committed. After thorough research, counsel has found no other RICO cases that involved such a temporal issue with the proximate cause element. Ergo, a modification of the application of the RICO elements is justified.

## III. Other Judicial Circuits Have Modified Their Proximate Cause Analysis

The U.S. First Circuit Court identified directness as the prime directive of proximate cause and laid out three functional factors to help analyze whether an injury was sufficiently direct in *In re Neurontin Mktg. & Sales Practices Litig.*, 712 F.3d 21, 35–40 (1st Cir. 2013).

- (1) whether there are concerns about proof resulting from the level of attenuation;
- (2) avoiding multiple recoveries and the difficult apportionment calculations courts would have to make; and
- (3) whether the societal interest in policing the injurious behavior justifies finding proximate causation.

Here, there are no evidentiary issues that would indicate a problem with element 1. Second, avoiding multiple recoveries is no issue because the Plaintiffs are identifiable, and the damage is real

and not speculative. Finally, D.R. Horton's actions across the United States show a systemic violation of permits and building codes that lead to the irrefutable conclusion that D.R. Horton will engage in any criminal behavior if it means that D.R. Horton makes a buck.<sup>4</sup> A refusal to recognize the Defendants' systemic fraudulent activity does not further society's interest in policing injurious behavior. Instead, it facilitates D.R. Horton's criminal behavior by providing a cover for its fraud.

The U.S. Sixth Circuit looks to whether "the defendants' fraudulent acts were a substantial and foreseeable cause of the injuries alleged." *Brown v. Cassens Transp. Co.*, 546 F.3d 347, 357 (6th Cir. 2008). The Seventh Circuit similarly states that RICO's proximate cause is designed for those situations "when too many unexpected things had to happen between the defendant's wrongdoing and the plaintiff's injury in order for the injury to occur." *BCS Servs., Inc. v. Heartwood 88, LLC*, 637 F.3d 750, 754 (7th Cir. 2011).

Following the U.S. Six Circuits and Seventh Circuit precedent, it becomes clear that there is a valid RICO cause of action. Obtaining false permits for the purpose of violating Parish ordinances and the recorded plat map, that are in place to prevent flooding is a substantial and foreseeable cause of the injuries alleged, specifically the flooding of the Plaintiffs' homes. Further, the Parish has no incentive to bring suit against the Defendants because the Parish has not been harmed by its fraudulent activity; it was directed at the Plaintiffs.

The U.S. Fifth Circuit has developed the "first step" test, whereby the court will not go beyond the "first step" in determining liability. However, developing case law from the Fifth Circuit has adopted similar analysis to the Sixth and Seventh Circuit. For example, in *Allstate Ins. Co. v.*

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*Plambeck*, 802 F.3d 665, 676 (5th Cir.2015), the Court found that proximate cause is present where the injuries asserted were the “objective of the [RICO] enterprise.”

Therein, an Insurer, Allstate, filed an action against telemarketing companies, chiropractic clinics, and affiliated law offices, asserting common law fraud, conspiracy to defraud, unjust enrichment, and violations of the federal and Ohio Racketeer Influenced and Corrupt Organizations Act (RICO). The scheme to defraud insurance companies such as Allstate aimed to identify persons who had been in vehicle accidents but were not at fault. The defendants would convince them to receive unnecessary chiropractic services and then file third-party claims against the at-fault party's insurer.

The Fifth Circuit states that regardless of how proximate cause is sliced (addressing the tests used by other Circuits), Allstate proved it. “There is no plausible argument that the insurers were unforeseeable victims or otherwise wronged by the caprice of chance.” *Id.* at 676. Further clarifying: **“The objective of the enterprise was to collect from the insurance companies; the entire structure of the system, from the screening for not-at-fault victims to the factory-efficient issuance of demand letters, shows that Allstate's paying up was not just incidental but was the object of the collaboration.”** *Id.* at 677.

Thus, despite the “first step” being the defrauding of the insured, Allstate was the foreseeable victim and the objective of the enterprise, not the patients. This same principle should apply in this litigation. While the “first step” was defrauding Livingston Parish, the intended victims were the adjacent homeowners whose homes and property were flooding because of the improper changes to the grading and elevation of the D.R. Horton homes.

#### **IV. The Defendant Contractors Contributed to D.R. Horton's Fraud, Which is Also a Prohibited Act Under the RICO Statutes.**

The Honorable Magistrate Judge properly points to *Molina-Aranda v. Black Magic Enterprises, L.L.C.*, 983 F.3d 779 (5th Cir. 2020) for the proposition that proximate cause is not an issue of foreseeability under a RICO analysis.<sup>5</sup> Instead, the Court states that the Plaintiff must “demonstrate that the alleged violation ‘led directly’ to the injuries.” *Id.* at 784.

The Magistrate Judge states in his findings that there are several intervening causes between the mail fraud and the Plaintiffs’ injuries (paraphrased).<sup>6</sup> Specifically, Setton Earthworks, LLC cleared and graded the lots, and Carter and Carter provided the false plat maps.<sup>7</sup> However, under the RICO statutes, it is clear that Carter & Carter and Setton Earthworks’ facilitation of that fraud by raising the lots that drained into the Plaintiffs’ homes is itself a violation of the RICO statutes.

18 U.S.C.A. § 1962(West) states: **(c)** “It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign 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.”

Thus, while the Magistrate Judge was correct in her initial analysis, she failed to perform a complete analysis that would justify sustaining the RICO action. The overwhelming amount of evidence presented by the Plaintiffs shows that the D.R. Horton co-defendants participated directly in the conduct of the enterprise’s affairs.

The purpose of the enterprise is straightforward. D.R. Horton advertises its homes as being “flood resistant” by raising the foundation 12 inches above the flood level.<sup>8</sup> This coordinated effort could only be achieved by the facilitation of Setton Earthworks, LLC, and Carter & Carter. The

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<sup>5</sup> Doc. Rec. 220, Pg. 11

<sup>6</sup> Doc. Rec. 220, Pg. 12

<sup>7</sup> At the Direction of D.R. Horton

<sup>8</sup> Keaty Real Estate, *D.R. Horton Ensures Homes are Above the Base Flood Elevation | Keaty Real Estate Buyer Bonus Program*, YouTube (July 11, 2023), <https://youtu.be/eKw2G0ozaFY?si=mwEpdRE6ZKwa0sfP>.

defendants are licensed contractors who work in the home and building construction industry and, thus, knew that their actions did not conform with the permits they requested and obtained. Setton and Carter & Carter allowed the base elevation within the Acadian Trace subdivision (in violation of the established plat maps) to be raised in exchange for continued work and proceeds from D.R. Horton.

## V. Conclusion

Precedent shows that a proximate cause exists despite the fact that the fraud was committed against Livingston Parish because the fraudulent permits did not damage the Parish, which would have no incentive to bring suit. The only interested party that can bring suit is the Plaintiff homeowners, which is supported by this Circuit's analysis and other Circuits' formulations of proximate cause. Finally, it is immaterial whether the actions of the co-defendants were separate and apart from the mail fraud because their actions facilitated the fraud, which is its own predicate act under 18 U.S.C. 1962(c).

**WHEREFORE**, the Plaintiffs respectfully request that this Honorable Court reverse its dismissal and allow for this suit to move forward in the interest of justice.

Respectfully Submitted by:

**WHITEHEAD LAW FIRM**

By:     /s/ Jack K. Whitehead, Jr.      
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