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Nov. 16, 2009

**FILED**  
NOV 16 2009  
MICHAEL GANS  
CLERK OF COURT

RE: *SAMUEL K. LIPARI v. GE, et al*; Docket No. 08-03115 (8th Cir.)

Dear Mr. Gans,

I am writing to bring to the attention of the court a supplemental authority, in *United States v. Yannotti*, 06-5571-cr, 2008 WL 4071691 (2d Cir. September 4, 2008) directly related to the sufficiency of the plaintiff's RICO Conspiracy claims and the issues raised by the appellees in seeking to have the trial court's dismissal upheld. This authority would supplement the appellant's argument on the bottom of page 1 of the Reply Brief of the Appellant filed on January 28<sup>th</sup>, 2009.

**SUPPLEMENTAL AUTHORITY UNDER FRAP RULE 28(i)**

Jane Anne Murray a criminal defense attorney posted the case note from which the following is excerpted in her blog The New York Federal Criminal Practice on September 12, 2008.

The Second Circuit has ruled in *United States v. Yannotti*, 06-5571-cr, 2008 WL 4071691 (2d Cir. September 4, 2008), that an individual may be found guilty of RICO conspiracy based on timely predicate acts committed by co-conspirators.

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FOR THE EIGHTH CIRCUIT

**Facts**

The only RICO predicate act of which Yannotti was found guilty was loansharking that predated the five-year statute of limitations. His co-conspirators, on the other hand, were found guilty of predicate acts of securities fraud and extortion that fell within the statute of limitations. On appeal, Yannotti argued that his conviction for RICO conspiracy could not stand absent proof of his personal involvement in a timely charged predicate act.

**Evidence to Support RICO Conspiracy**

Rejecting Yannotti's sufficiency argument, the Second Circuit pointed out that to sustain a RICO conspiracy conviction, the government need not prove that Yannotti committed or agreed to commit any predicate acts much less a timely one, but requires merely that he [knew] of, and agree[d] to, the general criminal objective of a jointly undertaken scheme. A reasonable juror could conclude that by becoming a soldier in the Gambino Crime Family (which involves pledging to use any means necessary to further the objectives of the Family), Yannotti was by no means limiting [his] participation to his own loansharking.

Further, Yannotti could be held responsible for the timely predicate acts committed by his co-conspirators even if he knew nothing about them as long as they fell within the broad pattern of racketeering activity through which Yannotti agreed that he and others would conduct the affairs of the enterprise.

The fact that the only predicate act proved against Yannotti occurred outside the five-year statute of limitations was therefore irrelevant. [Yannotti] remains liable for RICO conspiracy unless the evidence shows that the conspiracy concluded or he withdrew from that conspiracy more than five years before the indictment.

Respectfully submitted,



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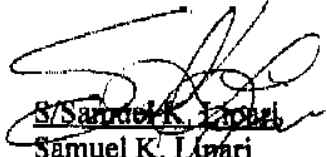
**CERTIFICATE OF SERVICE**

I certify I have sent a copy via email and US Mail to the undersigned and opposing counsel on 16th of November 2009.

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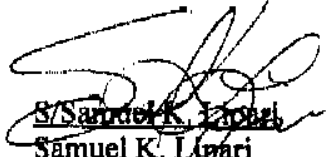
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