

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
NEW YORK

United States v. Biaggi

705 F. Supp. 830 (S.D.N.Y. 1988) · Decided June 27, 1988

SUMMARY

The opinion makes preliminary findings under United States v. Geaney regarding defendants’ participation in an alleged RICO conspiracy involving the Wedtech Corporation. It evaluates evidence concerning association with the enterprise and agreements to commit racketeering acts by Congressman Mario Biaggi, Stanley Simon, and Peter Neglia, including bribery, fraud, obstruction of justice, and false statements.

CASE DETAILS

COURT	United States District Court for the Southern District of New York
WRITING FOR THE COURT	Motley, District Judge
JURISDICTION	New York
DECIDED	June 27, 1988
DISPOSITION	other
PROCEDURAL POSTURE	In a federal criminal prosecution involving a RICO conspiracy count, the district court made preliminary findings under United States v. Geaney concerning whether independent evidence sufficiently connected each defendant to the alleged conspiracy so that coconspirator statements could be considered by the jury under Federal Rule of Evidence 801(d)(2)(E).
STANDARD OF REVIEW	The court applied the Geaney preliminary-evidence standard, requiring the Government to establish by a fair preponderance of independent evidence, excluding statements admissible only under Rule 801(d)(2)(E), the existence of the conspiracy and each defendant's participation before coconspirator hearsay could be considered against that defendant.
PRECEDENTIAL VALUE	Published federal district court memorandum opinion; persuasive authority within the district and circuit, subject to controlling Second Circuit and Supreme Court precedent.

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QUESTIONS PRESENTED

1. Whether the Government established by a fair preponderance of independent evidence the existence of the RICO enterprise and its effect on interstate or foreign commerce.
2. Whether independent evidence established each defendant's association with Wedtech and agreement to participate in the conduct of its affairs through a pattern of racketeering activity.
3. Whether the independent evidence was sufficient under *United States v. Geaney* to allow the jury to consider otherwise admissible coconspirator statements against each defendant under Federal Rule of Evidence 801(d)(2)(E).

HOLDINGS

1. The Government proved by a fair preponderance of independent evidence that the RICO enterprise existed, affected interstate and foreign commerce, and that each defendant discussed in the opinion knowingly agreed to participate in the enterprise's affairs through at least two racketeering acts. Accordingly, qualifying coconspirator declarations were admissible for consideration by the jury against each defendant.

KEY QUOTATIONS

"The court hereby makes its finding pursuant to United States v. Geaney, 417 F.2d 1116 (2d Cir.1969), as to each defendant in the above-captioned case." (830)

"Therefore, coconspirator declarations may be considered by the jury against each of the defendants." (848)

FACTUAL BACKGROUND

The prosecution concerned an alleged RICO conspiracy centered on Wedtech Corporation, a Section 8(a) company whose dealings with the Small Business Administration and Department of Defense affected interstate and foreign commerce. The court relied on testimony and documents concerning sham stock purchase agreements, false financial and ownership statements, payments and benefits to public officials, stock transfers and options, employment arrangements, and alleged false statements to government investigators. The opinion separately assessed the evidence connecting Congressman Mario Biaggi, Stanley Simon, Peter Neglia, John Mariotta, Bernard Ehrlich, Richard Biaggi, and Ronald Betso to the enterprise and to at least two racketeering acts.

PROCEDURAL HISTORY

The Government charged the defendants with participating in a RICO conspiracy involving Wedtech Corporation. Before the jury could consider coconspirator hearsay statements against individual defendants, the

court evaluated the admissible independent evidence as to each defendant and made Geaney findings. The court concluded that the independent evidence established the required connection for every defendant discussed and permitted the jury to consider qualifying coconspirator declarations against each.

DISPOSITION

other

CASES CITED

- United States v. Geaney, 417 F.2d 1116 (2d Cir. 1969)
- United States v. DeJesus, 806 F.2d 31, 35 (2d Cir. 1986), cert. denied, 479 U.S. 1090, 107 S. Ct. 1299, 94 L. Ed. 2d 155 (1987)

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