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DRI members [Robert M. Cavalier](#) and [Daniel S. Strick](#) of **Lucas and Cavalier, LLC** in Philadelphia, successfully obtained summary judgment on behalf of their insurance broker clients in a civil RICO case in the U.S. District Court for the Middle District of Pennsylvania. *Flood v. Makowski, et. al.*, 2007 WL 4211445 (Nov. 27, 2007 M.D.Pa.) An article about the case appeared on the front page of the *New York Times* business section shortly after the complaint seeking recovery of \$75 million was filed and received substantial press in the local Luzerne County, Pennsylvania newspapers throughout the litigation. The allegations in the complaint arose from an alleged "pay to play" scheme involving the Luzerne County Retirement Pension Plan administered by the three County Commissions, Treasurer and Controller, who comprised the Retirement Board.

Beginning in 1988, the Retirement Board retained an investment consultant (represented by DRI member [Luigi Spadafora](#) of **Winget, Spadafora & Schwartzberg, LLP** in New York City) to assist in diversifying its investments. The defendants represented by Lucas and Cavalier, LLC ("the Joyce defendants") introduced the consultant to the Retirement Board and shared in the commissions received by the consultant from group annuity investment contracts comprising a portion of the Retirement Plan's portfolio until the consultant was fired in 2002, when a new majority took control over the Retirement Board. From 1988 through 2001, the Retirement Fund grew from \$55 million to \$165 million at the end of 2001, peaking at \$203 million in 1999.

In October of 2003, the Board filed an eight count complaint against 26 defendants. The defendants were former Retirement Board members, the investment consultant, insurance brokers, insurance companies who sold group annuity investment products to the Retirement Plan and various other vendors of investment products. The thrust of the plaintiff's claims was that the defendants including, and especially the Joyce defendants, made political campaign contributions and, in return, received excessively high commissions from the Retirement Plan's investments. The plaintiff's complaint alleged breach of fiduciary duty, aiding and abetting breach of fiduciary duty, various civil RICO allegations and unjust enrichment against all of the defendants.

Following court ordered dismissals (12(b)(6) motions), voluntary stipulations of dismissals and settlements, 13 defendants remained. On behalf of three Joyce defendants, Lucas and

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Cavalier, LLC filed a motion for summary judgment in response to the remaining four counts against them— arising out of RICO and unjust enrichment. Motions for summary judgment were also filed on behalf of all of the remaining defendants.

There were several grounds for the Joyces' motion for summary judgment (and several of the co-defendants). First, the Private Securities Litigation Reform Act ("PSLRA"); 18 U.S.C. §1964(c) barred plaintiff's RICO claims. The PSLRA eliminated any conduct actionable as fraud in the sale or purchase of securities as a predicate act for a private cause of action under RICO. Second, there was no evidence of wrongdoing by the defendants. All commissions earned, campaign contributions given, the investments and costs of the various investments were publicly disclosed and available for public inspection. Independent auditors, accountants and actuaries annually reviewed the Retirement Plan's investments and issued publicly available reports. Finally, the motion contended that the contracts were valid, thereby precluding the quasi-contractual claim of unjust enrichment.

The court issued a 122 page opinion granting the 11 motions for summary judgment filed by the various defendants. The court found that the investments were securities (a fact disputed by the plaintiff); there was no evidence of wrongdoing, all material information was publicly disclosed, and there was no concealment of any information by the defendants. The court declined to exercise jurisdiction over the state law unjust enrichment claim and dismissed the case in its entirety.

After the court granted the defendants motions' for summary judgment, the parties entered into an agreement not to sue. Therein the defendants agreed not to seek reimbursements of counsel fees and costs pursuant to the Dragonetti Act, 42 Pa.C.S.A. §8351 or any action alleging wrongful use of civil proceedings, Rule 11, malicious use of process or abuse of process and the plaintiff agreed not to appeal the order granting summary judgment or refile the unjust enrichment count in state court.

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