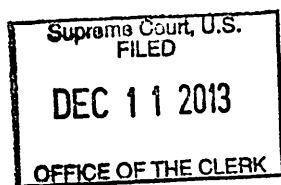


13-712



No.

IN THE
Supreme Court of the United States

CLIFTON E. JACKSON, CHRISTOPHER M. SCHARNITZKE,
on behalf of themselves and all other persons
similarly situated,

Petitioners,

v.

SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.,
COCA-COLA ENTERPRISES, INC., foreign corporations,
DR. PAUL DROUILLARD, jointly and severally,

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

A plaintiff is required to show injury to "business or property," 18 U.S.C. § 1964(c), to state a claim under the Racketeer Influenced and Corrupt Organizations Act (RICO), and it is established that this requirement excludes recovery for personal injuries. The question presented is:

Whether a plaintiff states a RICO claim where the plaintiff pleads an injury to a property interest that has a connection to a personal injury.

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INTRODUCTION

Petitioners Clifton Jackson and Christopher Scharnitzke brought this case alleging that their employer conspired with a workers' compensation benefits claims administrator and an examining physician to revoke or deny workers' compensation benefits to which petitioners are statutorily entitled. Jackson and Scharnitzke allege that the three defendants, respondents here, falsely represented petitioners' eligibility for benefits, falsely represented defendants' obligations under Michigan's workers' compensation statute, falsely opined that injuries were not work-related, and willfully ignored or discounted credible evidence by treating physicians that attested otherwise.

The question here is whether allegations of a fraudulent scheme to terminate or deny workers' compensation benefits establish an injury to "business or property," as required to maintain a RICO claim under 18 U.S.C. § 1964(c). Below, the en banc Sixth Circuit Court of Appeals, over the dissent of five judges, reversed a panel decision and held that plaintiffs had not established an injury to "property" within the meaning of RICO because the award of workers' compensation benefits reflects pecuniary losses associated with an underlying personal injury. The majority reached this conclusion despite assuming that Michigan law recognized workers' compensation benefits as a legal entitlement and, therefore, a property interest. In so holding, the court disagreed with the Ninth Circuit, which looks to state law definitions of property to determine whether an alleged injury is an injury to a property interest under § 1964(c). Unlike the Sixth Circuit, the Ninth Circuit has held that RICO claims

can be based on injuries to property interests derived from personal injuries.

This Court should grant the petition to resolve this conflict and hold that an injury to a property interest satisfies § 1964(c), regardless of whether that property interest has a connection to a personal injury.

OPINIONS BELOW

The en banc decision of the United States Court of Appeals for the Sixth Circuit is reported at 731 F.3d 556 and is reproduced in the appendix at 1a. The panel decision vacated by the en banc court is reported at 699 F.3d 466 and is reproduced in the appendix at 59a. The decision of the United States District Court for the Eastern District of Michigan is unreported and is reproduced in the appendix at 96a.

JURISDICTION

The judgment of the court of appeals was entered on September 24, 2013. Pet. App. 57a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

18 U.S.C. § 1964(c) provides in relevant part:

Any person injured in his business or property by reason of a violation of [18 U.S.C.] section 1962 ... may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee[.]

STATEMENT OF THE CASE

Petitioners are a current and a former employee of Coca-Cola Enterprises, Inc. (Coca-Cola) who suffered work-related physical injuries. Pet. App. 97a. Following their injuries, each petitioner filed a claim for workers' compensation benefits pursuant to Michigan's Workers' Disability Compensation Act (WDCA), Mich. Comp. Laws § 418.101. Pet. App. 3a. Sedgwick Claims Management Services, Inc. (Sedgwick) acted as Coca-Cola's third-party benefit claims administrator and adjuster. *Id.* 9a. Sedgwick retained Dr. Paul Drouillard to provide independent medical examinations for Sedgwick, including a medical examination of Jackson. *Id.* 98a-99a.

Jackson alleges that Coca-Cola and Sedgwick terminated benefits he was receiving for a back injury based on Dr. Drouillard's fraudulent medical report concluding that Jackson's injury did not restrict his ability to work, notwithstanding the reports of two physicians concluding otherwise. *Id.* 98a-100a.

Scharnitzke sought workers' compensation benefits for work missed during two separate periods due to two injuries to his left shoulder. *Id.* 100a-101a. He alleges that Coca-Cola and Sedgwick fraudulently denied him workers' compensation benefits by stating that his injuries were not work-related, despite medical documentation to the contrary. *Id.* 101a-102a & n.5. Through the adjudicatory system established by the WDCA, Scharnitzke eventually obtained an award of benefits for a portion of the period during which he missed work due to injury, a decision that was affirmed by the Michigan Court of Appeals. *Id.* 11a-12a. The Michigan Supreme Court reinstated dismissal of Scharnitzke's claim for benefits for an earlier time pe-

riod and declined to review any other aspect of Scharnitzke's claim. *Id.* 12a.

On April 23, 2009, petitioners filed suit on behalf of themselves and other injured Coca-Cola employees, alleging that defendants committed mail and wire fraud by falsely representing that the employees were not eligible for workers' compensation benefits, issuing false medical reports that they did not suffer work-related injuries, and wrongfully discounting evidence to the contrary provided by treating physicians, all as part of a concerted scheme to deny petitioners benefits to which they were entitled by statute, in violation of RICO. *Id.* 106a-108a. As relief for injury caused by the RICO scheme, petitioners seek damages and injunctive relief pursuant to § 1964. *Id.* 110a.

The district court granted defendants' motion to dismiss and denied petitioners' motion for leave to file an amended complaint, finding, as relevant here, that petitioners failed to plead an injury to property because "their entitlement to workers' compensation benefits has not yet been determined, and their RICO claims are therefore premature." *Id.* 150a.

A three-judge panel of the Sixth Circuit reversed. Relying on its earlier decision in *Brown v. Cassens Transport Co.*, 675 F.3d 946, 963 (6th Cir. 2012), *cert. denied*, 133 S. Ct. 1722 (2013), the court held that petitioners had a property interest in their workers' compensation benefits at the time respondents learned of their work-related injuries. Pet. App. 70a. Because respondents' fraudulent scheme to deny benefits injured this property interest, petitioners' RICO claims were ripe at the outset of their lawsuit. *Id.* 71a.

The Sixth Circuit granted defendants' petition for rehearing en banc, vacated the panel decision, and af-

firmed the district court's dismissal, albeit on a different ground, with five judges dissenting. *Id.* 27a. The majority began by stating that, notwithstanding Congress's choice of broad language in enacting RICO, the scope of § 1964(c) has been cabined by cases construing § 4 of the Clayton Act, on which the RICO civil remedies provision was modeled. *Id.* 13a-14a. Noting that this Court's construction of the phrase "business or property" in the antitrust context "applies with equal logical force to § 1964(c)," *id.* 16a, the court observed that the regional circuits, including the Sixth Circuit, "have uniformly recognized that 'the ordinary meaning of the phrase 'injured in his business or property' excludes personal injuries, including the pecuniary losses therefrom.'" *Id.* & n.4 (citation omitted).

Although the majority recognized that the § 1964(c) inquiry begins with an examination of "what law determines whether an injury constitutes a personal injury or an injury to business or property," *id.* 18a, it did not undertake this analysis. Instead, the court stated that, notwithstanding "some role" for state law in this analysis, it was required "to determine whether Congress intended the damages that plaintiffs seek in this case to be recoverable under civil RICO." *Id.* (quotation omitted). Without addressing the dissent's argument that both Michigan and federal law consider the statutory entitlement to workers' compensation benefits to be a property interest, *see id.*, the majority stated that, "[e]ven if one assumes that an employee has a 'legal entitlement' to such benefits, those benefits merely reflect the pecuniary losses associated with the personal injury." *Id.* 20a. Thus, the court held that a scheme to deny workers' compensation benefits could not constitute an injury

to “business or property” within the meaning of § 1964(c). *Id.* 21a. Further, the court relied on “[t]he absence of ... a clear statement” in RICO that Congress intended to “intervene in Michigan’s administrative system for handling workers’ compensation claims” to confirm its interpretation of § 1964(c). *Id.* 25a.

The dissent, on behalf of five judges, bluntly observed that “there is nothing in the text of RICO or the cases [the majority] point[s] to that provides for ignoring damage to an intervening legal entitlement because it arose following a personal injury.” *Id.* 48a. The dissent faulted the majority for failing to classify the nature of the injury that petitioners suffered, stating that, “[i]t seems impossible to assert that RICO does not include an interest if one has not even attempted to define or categorize the interest at issue.” *Id.* 45a. After carefully analyzing the WDCA’s provisions regarding the mandatory and non-discretionary award of benefits upon notice to an employer of a claimant’s injury, the dissent concluded that Michigan law would classify petitioners’ entitlement to benefits as property. *Id.* 44a.

According to the dissent, the majority’s failure to consider whether the harm to a statutory entitlement injured petitioners’ property interests resulted in adoption of a narrow definition of property that is at odds with RICO’s plain meaning and this Court’s instructions to construe RICO broadly, and that produces inconsistent results. *Id.* 48a-50a. Specifically, the dissent noted that the majority’s definition of property would preclude petitioners’ claims but would permit claims alleging a fraudulent scheme to deny a

recipient of welfare benefits, a distinction it deemed both arbitrary and untenable. *Id.* 49a-50a.

REASONS FOR GRANTING THE WRIT

I. The Decision Below Creates A Conflict Among the Circuits.

The holding that petitioners' loss or devaluation in benefits does not constitute an injury to property under RICO because the loss is "inextricably intertwined with a personal injury," *id.* 20a, conflicts with decisions of the Ninth Circuit and with the understanding of the Seventh Circuit regarding the scope of "property" interests under RICO.

In *Living Designs, Inc. v. E.I. DuPont de Nemours & Co.*, 431 F.3d 353 (9th Cir. 2005), the plaintiffs alleged that the defendants violated RICO by fraudulently concealing damaging discovery during an earlier state products liability litigation. 431 F.3d at 357. Because of defendants' fraudulent conduct, the suit alleged, the plaintiffs had "settled [their] product liability claims, accepted deflated settlements, and dismissed [their] causes of action." *Id.* at 364 (citation omitted). Although the court recognized that "[f]inancial losses, in and of themselves, are insufficient" to satisfy the property injury requirement of § 1964(c), *id.*, because fraudulent inducement that interfered with a claim for damages constituted harm to a property interest under Hawaii law, the court held that plaintiffs could recover under RICO for the injury they suffered by "settl[ing] their claims for a smaller percentage of their alleged damages than they could have received absent DuPont's fraudulent inducement." *Id.*

Similarly, in *Diaz v. Gates*, 420 F.3d 897 (9th Cir. 2005) (en banc), the plaintiff alleged that defendants' conduct caused both personal and property injuries. 420 F.3d at 902. The en banc court held that the plaintiff could not recover under RICO for "the personal injury of false imprisonment." *Id.* On the other hand, the plaintiff's allegations that the false imprisonment caused him to lose his job and deprived him of other employment opportunities, both of which formed the basis of "established [property] torts under California law," *id.* at 900-01, established an injury to property for purposes of RICO. *Id.* at 902. Thus, the fact that his property injuries had their origin in a personal injury did not disqualify the plaintiff from pursuing a RICO claim.

The Seventh Circuit has likewise recognized that deprivation of a property interest that arises after a personal injury may satisfy the "business or property" clause of § 1964(c). In *Evans v. City of Chicago*, 434 F.3d 916 (7th Cir. 2006), *overruled on other grounds*, *Hill v. Tangherlini*, 724 F.3d 965 (7th Cir. 2013), the court rejected the plaintiff's argument that lost income constituted an injury to property under § 1964(c), because Illinois law defined false imprisonment as a "traditional tort claim[]" that results in "a personal injury." 434 F.3d at 927. The court acknowledged, however, that pecuniary losses that would not have been incurred but for personal injuries may be recoverable under RICO if those losses stem from cognizable property interests. The court explained: "Where an employee is able to establish that he has been unlawfully deprived of a property right in promised or contracted for wages, the courts have been amenable to classifying the loss of those wages as in-

jury to ‘business or property.’” *Id.* at 928 (citation omitted).

The decision below is inconsistent with *Living Designs*, *Diaz*, and *Evans*. The Court should grant the petition to resolve this conflict among the Circuits.

II. The Sixth Circuit’s Decision Is Wrong.

Section 1964(c) provides that any individual who is “injured in his business or property by reason of a violation of [18 U.S.C.] section 1962” may bring a civil claim under RICO. As this Court has held, “[t]he phrase ‘business or property’ ... retains restrictive significance” that excludes recovery for personal injuries. *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979) (interpreting identical language in § 4 of the Clayton Act). This restriction “helps to assure that RICO is not expanded to provide a federal cause of action and treble damages to every tort plaintiff.” *Maio v. Aetna, Inc.*, 221 F.3d 472, 483 (3d Cir. 2000) (citations and internal quotation marks omitted).

The plain language of § 1964(c) does not preclude recovery for injuries to property interests because they have a connection to a prior physical injury. See Pet. App. 48a (Moore, J., dissenting) (“[A] plain reading of the text of RICO provides no support for excluding certain categories of property interests based on how the interest itself originated.”). Indeed, this Court has rejected efforts to graft “an additional, amorphous ‘racketeering injury’ requirement” onto claims under § 1964(c), holding that “[t]here is no room in the statutory language” to impose such a restriction. *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 495 (1985) (“[W]e perceive no distinct ‘racketeering injury’ requirement [in the statute].”). Likewise, denying recovery for an injury to a cognizable proper-

ty interest under state law because that property interest has its origin in a personal injury would effectively rewrite § 1964(c) by imposing an extra-textual qualifier on “property.”

When this Court has chosen a narrower construction of RICO than provided for by the plain language of the text, it has relied on established interpretations of identical language in the federal antitrust statutes, which served as models for RICO. In *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 266, 268 (1992), for example, the Court imported the proximate cause requirement from § 4 of the Clayton Act, which was patterned on § 7 of the Sherman Act, to interpret “by reason of” in § 1964(c), rather than construe the clause to allow for a broader “but for” standard. And in *Reiter*, which interpreted the “business or property” clause of § 4 of the Clayton Act, the Court held that the plaintiff had a viable antitrust claim based on her allegation that anticompetitive conduct resulted in her payment of an inflated price for hearing aids, although her monetary injury derived from a physical impairment. 442 U.S. at 339 (“[I]t taxes the ordinary meaning of common terms to argue, as respondents do, that a consumer’s monetary injury arising directly out of a retail purchase is not comprehended by the natural and usual meaning of the phrase ‘business or property.’”). Thus, reliance on the antitrust laws as a guide to interpreting the “business or property” clause of § 1964(c) supports the conclusion that RICO encompasses claims based on injury to property interests, regardless of the connection between the property interest and a prior personal injury.

Michigan recognizes a claim for workers' compensation benefits as a property interest. See *Williams v. Hofley Mfg. Co.*, 424 N.W.2d 278, 288 (Mich. 1988); see also *Stein v. Fed. Dep't Stores*, 498 N.W.2d 252, 255 (Mich. Ct. App. 1993). Likewise, a statutory entitlement to benefits is property under federal law. See *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 60 (1999) (citing cases) (holding that recipients of federal welfare and disability benefits have statutorily created property interests in those benefits). Further, recipients of statutory benefits have a property interest in the "continued receipt of those benefits." *Id.* (citing *Goldberg v. Kelly*, 397 U.S. 254, 262 & n.8 (1970)); see also *Westland Convalescent Ctr. v. Blue Cross & Blue Shield of Mich.*, 324 N.W.2d 851, 855 (Mich. 1982) (holding plaintiffs' interest in the continuation of certain rates of payment by insurer to be property interest). Thus, both Scharnitzke, whose claim for workers' compensation benefits was fraudulently denied, and Jackson, whose benefits were fraudulently revoked, suffered injuries to cognizable property interests.

Although Michigan recognizes petitioners' loss as an injury to a property interest, the court below recast petitioners' injuries as "the losses [they] would experience if they had to bring a civil action to redress their personal injuries and did not obtain the compensation from that action they expected to receive." Pet. App. 20a. This formulation ignores both that petitioners do not allege that defendants caused them personal injury and that they do allege that defendants' violations of RICO's substantive provisions caused a deprivation of statutory benefits. As the majority recognized, Michigan's workers' compensation scheme provides "lost wages, rehabilitation services, and medical

expenses.” *Id.* In contrast, Michigan common law provides damages for, among other things, pain and suffering and loss of consortium—none of which are available to claimants under the WDCA. *Estate of Ed-dington v. Eppert Oil Co.*, 490 N.W.2d 872, 874 n.5, (Mich. 1992); *McCullough v. Ward Trucking Co.*, 117 N.W.2d 167, 173 (Mich. 1962); *see also* Pet. App. 55a (Moore, J., dissenting) (noting that the WDCA does not provide for injunctive relief). Indeed, as Judge Moore noted in her dissent, “by focusing on the personal-injury aspect of this case, ... the majority skip[s] over the first and most fundamental question at issue—has any legal entitlement been harmed.” Pet. App. 47a-48a. The loss of benefits is an injury to an independent property interest caused by defendants’ scheme to avoid payment under the WDCA.

Finally, contrary to the majority’s reasoning, the clear statement rule presents no barrier to petitioners’ claims. The clear statement rule provides that “[i]n the face of [an] ambiguity,” the Court “will not attribute to Congress an intent to intrude on state governmental functions.” *Gregory v. Ashcroft*, 501 U.S. 452, 470 (1991). But § 1964(c) contains no ambiguity, and permitting petitioners’ claims to proceed works little intrusion by federal law into the state administrative scheme.

As the dissent explains, because a state-law property interest is at stake, RICO’s plain language applies. Pet. App. 48a (Moore, J., dissenting). Moreover, Michigan’s workers’ compensation scheme “is not equipped to adjudicate claims similar to those that sound in RICO, as it has limited authority with respect to the availability of certain types of relief and limited expertise concerning allegations based in

fraud.” *Id.* at 55a; *see also Brown v. Cassens Transport Co.*, 546 F.3d 347, 362 (6th Cir. 2008), *cert. denied*, 130 S. Ct. 795 (2009) (“[T]he federal interest in protecting individuals against a pattern of racketeering activity based on fraud is perfectly compatible with the state interest in providing a certain remedy for employees who have suffered workplace injuries.” (citation and internal quotation marks omitted)). Even the majority recognized that federal remedies could exist alongside Michigan’s workers’ compensation system without impairing that system. *See* Pet. App. 23a.

Defendants’ conduct in scheming to deny workers’ compensation claims threatens the functioning of the WDCA, which reflects a careful balance by Michigan’s legislature between protecting the welfare of its workers and preventing the state’s businesses from expensive tort litigation. *See Williams*, 424 N.W.2d at 284 (describing the statutory scheme as “the product of an historic compromise in which employers relinquished their common-law defense, employees sacrificed their right to full common-law damages, and both gained a system in which claims could be resolved in a more simplified, orderly, and assured manner.”). Permitting plaintiffs’ RICO claim to move forward will not authorize an end run around the WDCA’s administrative regime, but instead will ensure that the property interest at stake is preserved.

Because the decision below incorrectly interpreted “business or property” to exclude RICO claims based on property injuries that have a connection to a physical injury, as well as because of the circuit-court conflict the decision creates, the Court should grant the petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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