

No. **14-702**

Supreme Court, U.S.
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**In the
Supreme Court of the United States**

Andrew U. D. Straw,
Petitioner,

v.

**John F. Kloecker and
Locke Lord LLP law firm,**
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether, as a matter of law under the civil provisions of the RICO Act, a law firm may demand from a disabled person, using threats, the private health information of the disabled person including access to the disabled person's private Medicare claims database information, with the express purpose of giving this health information to a newspaper publisher defamation defendant.

Whether the letter in which the lawyers for the newspaper demanded private health information was a "legitimate inquiry" as a matter of law, or instead fraudulent when Medicare stated that it was highly likely that there was no reason to send the letter and the threat of \$1,000 per day fines from Medicare was "misleading," and Medicare stated that beneficiaries are never at risk of such fines.

Whether civil RICO's enterprise and racketeering requirements were met when defendants and their client worked together to demand the private health information, the threat letter was sent by U.S. Mail and Email, and the letter indicated that the newspaper would keep and use the health information indefinitely, with no Privacy Act notice or other guarantee of privacy of the information.

Whether, under the civil provisions of the RICO Act, the amount sought in the trial court was appropriate, at treble the amount sought against the newspaper in the state case.

PARTIES TO THE PROCEEDINGS BELOW

Petitioner Andrew U. D. Straw, an Indiana attorney and disability rights advocate in Cook County, Illinois, brought suit under the civil provisions of the RICO Act to defend himself against retaliation for his disability rights work which in part took the form of John F. Kloecker's letter, with its threats and demands.

Respondents include John F. Kloecker, an attorney and partner at Locke Lord LLP law firm in Chicago, Illinois. Attorney Kloecker authored the letter at issue, and he has been counsel for Paddock Publications, the newspaper Straw claimed defamed him and violated his human rights as a person with disabilities. Paddock Publications is not and has not been a defendant in this civil RICO Act case.

Respondent Locke Lord LLP is the employer of Attorney Kloecker, and it is a defendant in this case. Locke Lord LLP is a law firm in Chicago.

CORPORATE DISCLOSURE STATEMENT

No corporations are parties, and there are no parent companies or publicly held companies owning any corporation's stock to my knowledge. Locke Lord LLP is, as its name suggests, a limited liability partnership. Attorney John F. Kloecker is a partner of this firm. Petitioner Andrew U. D. Straw is an Indiana attorney and lives in Cook County, Illinois.

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(1) “racketeering activity” means . . . (B) any act which is indictable under any of the following provisions of title 18, United States Code:... section 1341 (relating to <u>mail</u> <u>fraud</u>), section 1343 (relating to <u>wire fraud</u>)	

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FTC page states: “Identity theft happens when someone steals your personal information and uses it without your permission. It’s a serious crime that can wreak havoc with your finances, credit history, and reputation — and can take time, money, and patience to resolve.”

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The Seventh Circuit's opinion is reported as *Straw v. Kloecker, et. al.*, 14-1714, and the ORDER denying petitioner-plaintiff's relief is a *non-precedential decision*; the Seventh Circuit has decided *not to impose sanctions*, after ordering petitioner-plaintiff to show cause why he should not receive sanctions for filing his appeal. Rehearing was denied on September 16, 2014. The U.S. District Court for the Northern District of Illinois' findings of fact and conclusions of law are reported as *Straw v. Kloecker, et. al.*, 14-cv-01420 (N.D. Ill.).

JURISDICTION

The judgment below was entered on August 19, 2014. The Seventh Circuit denied a timely petition for rehearing *en banc* on September 16, 2014. Jurisdiction to this Honorable Court is invoked under 28 U.S.C. §1254(1). The time limit for filing an appeal is 90 days from the date of the decision of the Court of Appeals, which was issued on September 16, 2014. 28 U.S.C. §2101(c). Original jurisdiction in district court was under civil RICO, 18 U.S.C. § 1964(c).

INTRODUCTION

I, petitioner Andrew U. D. Straw, am petitioning for writ of certiorari from this Honorable Court because the Court of Appeals and District Court made decisions in my case that have created a dramatic and nationwide danger to disability and health privacy rights.

The respondents, lawyers for a large newspaper publisher in Cook County, Illinois, have attempted, using *Medicare reporting requirements as its pretext*, to obtain my private information (Social Security Number, Medicare Number, Date of Birth, and Gender) and private Medicare claims information without justification.

Respondents provided no guarantee of privacy, no Privacy Act notices, and no statement that the information would only be used for Medicare reporting. I filed a Civil RICO action because I believed the law firm's several threats in respondent-defendant's letter were real and because fraud through the U.S. Mail and Email to obtain and use private health ID information indefinitely into the future was sufficient ongoing and prospective racketeering activity to sustain the action. With the law firm and the newspaper publisher and lawyer defendant Kloecker together as potential enterprises under civil RICO, I felt this met the enterprise element of 18 U.S.C. §1962(c).

Given the fact that neither Kloecker nor Locke Lord LLP have withdrawn their letter and demand for my information, I feel there is no remorse for what they did whatsoever. This means it is highly likely that they will do it again, and may have been sending such letters as a

common practice. Discovery would reveal this, but my case was dismissed in the district court with a poetic flourish by the federal trial judge, Hon. Milton I. Shadur, in less than a week, not enough time for any discovery to occur.

This case would not exist but for my disability rights advocacy in Streamwood, Illinois, where in 2013 I demanded that local businesses create handicap parking when their parking lots were devoid of handicap spots. The Streamwood Chamber of Commerce had no handicap parking, and I photographed this, then wrote a demand letter asking for damages and compliance with state and federal disability rights laws. I demanded that the Chamber must put handicap parking in their parking lot within 60 days. I have a handicap placard.

The Streamwood Chamber immediately reported me to the Streamwood Police, accused me of being a scammer, and reported my actions as fraudulent activity, apparent from the police report. The Police, upon learning that I am admitted to practice law in Indiana and practice disability civil rights law, investigated and closed their case the same day after speaking with me at my home.

The Chamber continued to retaliate, accusing me of "scamming" and "extortion," and on October 4, 2013, both accused me of these things and apologized for it the same day. The Chamber's words and actions led the charge for a large number of other people's attacks, including demands that I be arrested and jailed for blackmail and extortion.

These statements appeared on the Paddock Publications Daily Herald newspaper website beneath articles that the Daily Herald ran on the front page of the

newspaper, above the fold in the paper version, regarding the handicap parking and demand letters issue.

Another person posted on the newspaper site and invited members of the community to gang up and file lawsuits against me at \$100 each in Cook County Circuit Court until I "*limp away*." Paddock Publications' Terms of Service gives it what it calls a "world-wide, perpetual right and license to display, copy, archive, and make derivative works from" these comments. It did so.

I alleged that Paddock Publications is responsible for that world-wide perpetual right and license when they displayed the comments for a year, even when I protested the abusive comments on the Daily Herald website to the newspaper.

The Daily Herald (Paddock Publications) printed a letter by a local church minister accusing me of "extortion." This minister has since settled with me and congratulated me on the success of my effort to obtain handicap parking. The success to which he referred was the Village of Streamwood performing an audit of all parking lots in the village. The Village informed me in response to my FOIA request that roughly 150 handicap spots were missing and that the lack was being addressed. The Chamber now has handicap parking. There are new sidewalk curb cuts for wheelchairs in places around Streamwood that had none before.

Because I was attacked by both the Chamber and the newspaper, I decided to file suit for defamation and Illinois Human Rights Act of 1978 violations. I did this because I wanted to demonstrate that the law protects those who

actively promote and advocate for disability rights and access. Despite the starkness of the facts, the trial court granted the state case defendants' motions to dismiss, and I have appealed this result to the Illinois Court of Appeals. As a matter of law, the Cook County Circuit Court, Hon. Martin S. Agran, found that I had not exhausted administrative remedies and had not demonstrated sufficient malice and said one of my defamation counts was susceptible to "innocent construction rule" attack. I disagree with all of these holdings as a matter of law, and that is why I am appealing the state court's ruling.

The state court defendants originally included the Streamwood Chamber of Commerce, its Executive Director, Donna M. Lenhardt, the local church minister, and Paddock Publications, Inc., publisher of the Daily Herald newspaper. I filed my suit on December 4, 2013 in Cook County Circuit Court. *Straw v. Chamber, et. al.*, 2013L063066 (Cook Cty. Cir. Ct.)

Locke Lord LLP, a large Chicago law firm, has represented the newspaper, Paddock Publications. Locke Lord LLP's partner attorney, John F. Kloecker, wrote a threatening letter to me on February 13, 2014. Mr. Kloecker demanded medical ID information and access to my Medicare claims information online. He wanted the consent to allow Paddock Publications (his client, newspaper publisher, on trial for defaming me) to access my Medicare claims information. Mr. Kloecker's letter is the reason for the instant case.

STATEMENT OF THE CASE

Defendant Kloecker's letter, Exhibit J in the Appendix, commenced with an explanation that Medicare has a program under 42 U.S.C. § 1395y so that Medicare is a secondary payer and those who have another primary insurance need to pay before Medicare will. This is the Section 111 obligation.

Kloecker's letter is replete with half-explanations and half-truths. He does not mention that the lack of any Medicare claims related to the case makes his letter absolutely moot and unnecessary. He does not mention that neither he nor the newspaper he represents is an *insurer*. He does not mention that the \$1,000 per day penalty for not reporting is a penalty for an *insurer* that does not report, not a Medicare *beneficiary* like myself.

Medicare's Section 111 reporting office wrote to me on October 2, 2014, Exhibit H, after reading Kloecker's letter and said that Kloecker's mention of \$1,000 per day fines was **"a bit misleading"** and proceeded to explain to me that there was no way I as a Medicare beneficiary would ever receive such fines. The 7th Circuit Court of Appeals refused to consider this Medicare letter for a rehearing.

Attorney Kloecker mentions in his letter that it is very important that I give him my private health and ID information, stating in the same paragraph that there is this *\$1,000 per day fine*, and this is his reason for *me* to provide *my* information. He asks for consent for his newspaper publisher client to have access to "all conditional

payment information” from Medicare. Later in Kloecker’s letter, on page 5, there is a notice that, “I understand that if I am a Medicare beneficiary and I do not provide the requested information, I may be violating obligations as a beneficiary to assist Medicare in coordinating benefits to pay my claims correctly and promptly.”

Medicare’s Section 111 reporting office stated that: **“in a nutshell, you won’t be fined and it’s highly unlikely that there would be any real reason why the law firm in question should need for you to provide them with this personal information.”** There was no reason for Kloecker’s law firm to be asking for my private health ID information or my claims information, since no settlement was even contemplated.

My civil RICO case exists because I am a public figure on disability rights access law and policy and I received these threats from a newspaper publisher’s lawyer to get my health information. I ran for Congress on the disability rights issue in 2011-2012, and have advocated for disability access in the Indiana Democratic Party, the Green Party of the United States, and at the American Bar Association. *Straw v. American Bar Association*, 1:14-cv-05194 (N.D. Ill). I opposed the total lack of handicap access by the Streamwood Chamber and experienced retaliation as a result, including from the newspaper and its lawyers.

When I received Kloecker’s letter, I was not an expert on the complicated laws and rules surrounding Medicare payments. I saw a letter demanding my health privacy information and consent to access my Medicare health claims information to a newspaper that had

attacked me. A letter backed up by several threats, including the \$1,000 per day Medicare penalties, if I did not cooperate. A threat is “a communicated intent to inflict harm or loss on another or on another’s property, especially one that might diminish a person’s freedom to act voluntarily or with lawful consent.” Black’s Law Dictionary, 9th Ed., 2011, p. 1618.

Kloecker sent me a letter by U.S. Mail and by Email (proven on the letter itself) that mentioned \$1,000 per day per claim fines and stated that it was very important that I give him my Social Security Number, Medicare Number, Date of Birth, and Gender. He also wanted my Medicare claims information online for his newspaper client.

This was a threat to get extremely valuable ID information regarding a political figure and former congressional candidate. A candidate with mental and physical disabilities. There is a reason why ID thieves want precisely this information, and the Illinois Attorney General’s ID Theft office told me *not* to provide this information, whether Locke Lord LLP was a big law firm or not. This office told me to set up an ID theft alert with the credit reporting agencies, and I did so on that advice.

The District Court and the Seventh Circuit Court of Appeals made errors of law in evaluating Kloecker’s letter. Hon. Shadur at the District Court for the Northern District of Illinois called it a “legitimate inquiry,” dismissing my civil RICO case immediately, calling my claims frivolous. The Court of Appeals agreed with the trial court, citing a “beginner’s guide” to Section 111 reporting. I went to the Medicare Section 111 reporting office itself to ask the same

questions, and the experts on the matter came to the opposite conclusion from the 7th Circuit panel. This is, I submit, because the Court's treatment of the issue was at a "beginner's guide" level by its own admission, while I wanted the actual law and policy of Medicare, and received it on October 2, 16 days after rehearing was denied.

The facts and law have been tagging along behind this case because from the very beginning, Hon. Milton I. Shadur refused to treat it as a legitimate controversy, and denied my ability to do the needed discovery. He slammed it into the waste bin so fast, I submit, because he did not want to know that Locke Lord LLP had violated Civil RICO.

Others have not been so willing to bend over backwards for this big law firm and its demands for my ID and private health claims information. The Illinois Attorney General's ID Theft office told me not to provide the information to Locke Lord LLP. I contacted a Medicare officer online and Medicare told me not to provide the information.

Medicare's Section 111 reporting office has the best understanding of what information is needed and under what circumstances because that office collects this data for Medicare. This office made clear that Kloecker's letter was "misleading" and that there was no legitimate reason for Kloecker to send the threats and information request given the total lack of settlement.

The Medicare Section 111 reporting office's view is the conclusion of law I was expecting from the district court and the 7th Circuit Court of Appeals, but did not get. The

district court insulted me and called Kloecker's letter a "legitimate inquiry," when in fact it was misleading and fraudulently sought my private health information in order to **give it directly to a newspaper publisher** that was a defendant in court for defaming me. Successful use of that ID and medical information to harm me and win their defamation case was worth at least \$5 million in the state case. ID information and medical claims information have significant value for a newspaper snooping around.

It is absurd that a federal court would support and defend such despicable behavior and threaten to sanction me for defending my private health information. **I have done nothing wrong.** My success in defending my Medicare and Social Security numbers and my private health claims information from invasion is a privacy matter and a fraud matter. The policy of privacy I stand for here will protect every American with a Social Security Number and Medicare account. There is nothing frivolous about it.

The Appendix contains references to a variety of laws, regulations, reports, and other materials that show how important Social Security Number privacy is. In 2010, Congress passed the Social Security Number Protection Act. The federal Privacy Act protects this information, as does the HIPAA. Federal Rules of Civil Procedure, Rule 5.2(a) protects this information, as does Federal Rules of Appellate Procedure, Rule 25(a). The Federal Trade Commission made the connection between Social Security Numbers and ID theft quite clear: "Security in Numbers ***.**-****: SSNs and ID Theft," Federal Trade Commission Report, 2008. The Government Accounting Office and the U.S. Treasury also have reports on this topic,

and the President of the United States established a Task Force: "The President's Identity Theft Task Force," Executive Office of the President Report, 2008. The President's office has issued several reports, including: "Safeguarding Against and Responding to the Breach of Personally Identifiable Information," Executive Office of the President Memorandum, M-07-16, 2007.

It is irresponsible and bad law for the Court of Appeals and District Court to wave aside the consensus on this information. These courts have been in such a rush to protect one of the largest law firms in Chicago that they forgot about the letter itself. They forgot about the law.

The legally incorrect result at the 7th Circuit will damage Medicare and Social Security privacy rights for all of the over 40 million people who use Medicare. Every American has a Social Security Number. The 7th Circuit understood this and attempted to limit the damage from its decision to hurt only me by making the decision *non-precedential*. But national legal news organizations have already written about the case. *Locke Lord Escapes Attorney's 'Frivolous' \$15M RICO Suit*, Law360.com, 08/20/2014, Appendix, Exhibit II. Large law firms will see the message the 7th Circuit's sends: demands and threats to get extremely sensitive ID information and health claims information will not be punished, but protected in these federal courts. This result must be reversed.

Civil RICO is a law meant to prevent fraud and other crimes, but it is not a criminal statute. I have to prove what I am saying "more likely than not." The damages are treble by statute. When every official but the trial and

appellate court judges were telling me the letter is illegitimate, I did not understand why these Courts are defending the letter and the lawyers who wrote it.

But then I discovered through research that Locke Lord LLP on appeal hired the law firm that employed Hon. Shadur before he became a federal judge in 1980. I asked the Court of Appeals to remove Miller, Shakman and Beem law firm because there was a real risk of unethical results and it was unseemly on its face. The 7th Circuit refused.

The Court then dismissed my appeal as frivolous and proceeded to ask me why I should not get sanctions. My response to this revealed precisely why it was inappropriate to allow Locke Lord LLP to hire Miller, Shakman & Beem for its appeal. If Locke Lord LLP won, as it did, then there was the risk that the court would make me pay sanctions. Paying sanctions to the trial judge's old employer is *wrong*. If Locke Lord LLP lost, then whatever work Miller Shakman & Beem did on appeal would be back before the trial judge again. Also *wrong* and unethical. When I explained this to the Court of Appeals panel in my response, they dropped their desire to impose sanctions.

But they did not give me a rehearing *en banc*. My case is just as correct as when I filed it before Hon. Shadur. The Kloecker letter was *illegitimate as a matter of law*. It attempted to get, through large fine threats, very valuable health ID and claims information. The letter on its face states that it was sent through *U.S. Mail* and *Email*. My information would forever be in the hands of this hostile newspaper publisher, and this is the threat to all of the over 40 million Medicare beneficiaries that I am asking the

Supreme Court of the United States to address. The Court of Appeals may try to hide or limit the impact of its wrong to my case by making the decision *non-precedential*, but Locke Lord LLP and other big firms and entities are watching to see if they get away with breaking the law.

Civil RICO is the remedy I chose to address this wrong. I respectfully ask relief and that the matter be reviewed *de novo* and as a matter of law, since the letter itself is in the record and its content is not contested.

REASONS FOR GRANTING THE WRIT

- I. Supreme Court Rule 10(a): “a Court of Appeals...has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.”
- II. Disabled individuals like petitioner need protection against the abuses of legal entities like this law firm defendant-respondent and its partner lawyer. This civil RICO case based in part on mail and wire fraud raises questions of national importance regarding the privacy of health information and health claims information under Medicare and Social Security.
- III. Disabled individuals need protection when a court of appeals and trial court refuse to rationally examine the facts and apply the law in an important health information privacy case such

as this. Instead, these courts dismissed the petitioner-plaintiff with “beginner’s guides” and 18th Century poetry, allowing the respondent-defendant to hire the trial judge’s former employer for the appeal. The 7th Circuit threatened to impose sanctions so the petitioner should pay the trial judge’s old law firm in the same case. This was error of both law and ethics, and part of the pattern of covering up Kloecker’s fraudulent letter and its threats, which were clearly not legitimate but instead a means to obtain my very private and important health and ID information. The lower courts are not applying the law and are representing the facts incorrectly as a matter of law. The lower courts need the Supreme Court’s guidance; explaining what the law is on ID and health information privacy and its value will protect my rights and those of hundreds of millions of people who use Medicare and have Social Security numbers.

CONCLUSION

From top to bottom, this case is steeped in disability rights and the violation of them. When I decided to challenge the widespread lack of handicap parking in Streamwood in Cook County, Illinois, I thought there would be a measure of support in the community. This was a reasonable expectation, since Cook County is the birthplace of Special Olympics.

Instead, I was attacked when I asked for handicap parking. The Chamber first *refused* to provide handicap parking, then provided it. The Chamber first reported me to the Streamwood Police, then apologized for its “vengeful” behavior on the Daily Herald newspaper website. The newspaper allowed threats and defamatory comments to pile up on its newspaper webpage, including threats to abuse the courts and make me “limp away.” The use of that “limp away” comment was suffused with hostility to my human rights as a disabled person. Due to my 6-car accident on the way to work at the Indiana Supreme Court, I do in fact limp and trip from time to time.

With that kind of response, my only choice was to file suit to defend my human rights and my reputation. If I did not do so, as an attorney, these attackers and abusers would feel even more emboldened. Others who fight for civil and human rights needed the demonstration that the system works properly.

It was in this context that Kloecker’s February 13, 2014, demand letter, hoping to pressure me into giving up my health ID and claims information, was sent. Kloecker and Locke Lord LLP wanted to give my vitally important

Medicare health ID and claims information to a hostile newspaper publisher that is his client. He did not do so to satisfy a Medicare requirement. This was such a transparent pretext, factually and legally false, the federal courts should have shredded it for the untruth it is. No other agency of government believed it, including the agency to which the information they sought was supposed to go.

The district court and the appellate court in calling my case “frivolous” are saying that I should not have brought my case, that there was no merit to it at all. This is wrong as a matter of law, and I was instead ***right and morally obligated*** to bring this case. Threats to get the Social Security Number and Medicare Number and Medicare claims information of a disabled person are not idle and frivolous matters. They are very serious matters that affect the rights of all Americans, since ***every American*** has such ID information. The violation of health privacy rights is very much worthy of the attention of the federal courts, and of much more value than the \$15,000,000 sought as ad damnum in this case. The damages are treble damages of the state case pertaining to Kloecker and Locke Lord LLP’s client, a case also about disability rights. Since the Kloecker letter was sent as part of his representation of Paddock Publications, it was sent to influence the outcome of that case. The only proper number for treble damages was the \$5,000,000 in damages sought against Paddock at that time. The trial court disagreed, mentioning oxes being gored, but did not offer any better alternative. What else was Kloecker doing in writing his letter except representing Paddock Publications in the state

case? Kloecker explicitly stated that he wanted to give my information to Paddock Publications, whom I was suing for \$5,000,000. The appropriate damages amount is a matter of law and I seek *de novo* review on this issue.

The principal wrong ethical action is that the 7th Circuit U.S. Court of Appeals allowed the former law firm of the trial judge, Hon. Milton I. Shadur, to represent the Civil RICO defendant before it when I revealed this fact and asked for that firm to be removed. In preposterous fashion, the 7th Circuit asked me why I should not pay Hon. Milton I. Shadur's old law firm *sanctions* for my so-called "frivolous" appeal.

The 7th Circuit was wrong on the ethical issue, and it was wrong on the merits. I seek relief from this Honorable Court as a matter of law and *de novo* review.