No.

In the Supreme Court of the United States

CASSENS TRANSPORT COMPANY, CRAWFORD & COMPANY, AND DR. SAUL MARGULES,
Petitioners,

v.

PAUL BROWN, WILLIAM FANALY, CHARLES THOMAS, GARY RIGGS, ROBERT ORLIKOWSKI, AND SCOTT WAY,
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

To establish standing under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), a plaintiff must show injury to "business or property." 18 U.S.C. § 1964(c). It is undisputed that a plaintiff's personal injury does not satisfy this requirement. The question presented is:

Whether an employee who suffered a physical injury in the workplace asserts an injury to "business or property" within the meaning of RICO by alleging that the employee was denied workers' compensation benefits for the physical injury or that the employee's ability to pursue a benefits claim stemming from the physical injury was impaired.

RULE 29.6 STATEMENT

Cassens Transport Company is wholly owned by Cassens Corporation. No publicly held company owns 10% or more of the stock of Cassens Transport Company or Cassens Corporation. Crawford & Company has no parent company and is publicly traded. No publicly held company owns 10% or more of the stock of Crawford & Company.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Cassens Transport Company ("Cassens"), Crawford & Company ("Crawford"), and Dr. Saul Margules respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The decision of the court of appeals (App., *infra*, 1a-50a) is reported at 675 F.3d 946. The decision of the district court (App., *infra*, 51a-105a) is reported at 743 F. Supp. 2d 651.

JURISDICTION

The judgment of the court of appeals was entered on April 6, 2012. A petition for rehearing was denied on June 19, 2012. App., *infra*, 106a. On September 5, 2012, Justice Kagan granted an extension of time within which to file a petition for writ of certiorari to November 16, 2012. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

In relevant part, the civil remedy provision of the Racketeer Influenced and Corrupt Organizations Act provides:

> Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor * * * and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee * * * .

18 U.S.C. § 1964(c).

STATEMENT

This case concerns the meaning of a central limitation on the scope of the Racketeer Influenced and Corrupt Organizations Act ("RICO"). RICO provides a cause of action for a plaintiff who is "injured in his business or property." 18 U.S.C. § 1964(c). The courts of appeals uniformly agree that a personal injury is *not* an injury to "business or property"—a limitation that is necessary to avoid converting RICO into a general federal tort law. In this case, however, a divided panel of the Sixth Circuit held that respondents *may* invoke RICO to claim that they were wrongly denied workers' compensation benefits flowing *from* workplace personal injury; although respondents seek recovery for the economic consequences of their alleged personal injuries in the workplace, the majority below reasoned that, "[w]hen a plaintiff's personal injury is filtered through the [workers' compensation system], it is converted into a property right." App., *infra*, 32a.

This decision is one of great importance. As Judge Gibbons noted while dissenting from the decision below, the Sixth Circuit's holding "departs from precedents of [its] sister circuits," which consistently have held "that pecuniary damages flowing from * * * personal injuries" constitute "personal injuries, not damages to property," and thus are not cognizable under RICO. App., *infra*, 42a-44a. The holding below also cannot be squared with RICO's text and policy, allowing plaintiffs who concededly may not sue under RICO for a personal injury to instead bring a suit challenging a failure to pay compensation *for* that personal injury—an outcome that will greatly expand the scope of RICO, in a manner never contemplated by Congress. And this rule is especially

pernicious because it will allow plaintiffs to circumvent, and therefore is sure to undermine, the efficient administrative process that is the central element of all workers' compensation regimes. Because the Sixth Circuit's decision departs from the holdings of other courts, threatens significant disruption of state workers' compensation arrangements, and involves a recurring matter of great practical importance, this Court's intervention is warranted.

1. Enacted at the turn of the twentieth century, the Michigan Worker's Disability Compensation Act ("WDCA") makes the right to recover workers' compensation benefits an employee's exclusive remedy (with certain narrow exceptions not implicated here) for a non-intentional workplace injury. MICH. COMP. LAWS § 418.131(1). It also makes *all* such injuries compensable by the employer regardless of fault or other traditional common-law defenses. *Id.* § 418.141. The WDCA thus comprehensively governs whether and how much an employee who has allegedly "receive[d] a personal injury arising out of and in the course of employment" by a covered employer is paid compensation. *Id.* § 418.301(1).

2. Respondents are current or former employees of petitioner Cassens Transport Company who allegedly sustained personal injuries in the workplace. App., *infra*, 2a. They submitted claims for workers' compensation benefits under the WDCA, which were processed by petitioner Crawford & Company, a third-party claims adjudicator that contracted with Cassens to provide claims adjustment and administration services. *Id.* at 3a-4a. Petitioner Dr. Saul Margules performed medical evaluations of all but one of the respondents. *Id.* at 3a.

Respondents brought this suit under RICO, alleging that petitioners engaged in a pattern of racketeering activity to undervalue respondents' workers' compensation benefits and to deny valid workers' compensation claims. App., *infra*, 3a.[1] Specifically, respondents claimed that Cassens and Crawford selected doctors, including Margules, to give fraudulent medical opinions that would support the denial or termination of benefits. *Id.* at 2a-3a. Respondents also alleged that Cassens and Crawford ignored other medical evidence that allegedly supported their workers' compensation claims. *Id.* at 3a. Respondents sought "monetary 'damages measured by the amount of benefits improperly withheld . . . , plus interest as provided by law, all tripled in accordance with RICO, together with attorney fees and costs.'" *Ibid.* (quoting respondents' Complaint ¶¶ 21, 29, 46, 65, 74; omission in original).

3. Before the Court at this juncture is the Sixth Circuit's decision reversing the district court's order dismissing the suit on the ground that respondents

[1] When the lawsuit was first brought, respondents still were awaiting "a final determination of [their] entitlement to benefits" through the State's workers' compensation adjudicative process. App., *infra*, 100a. Citing material not in the record, the majority below noted that the claims of all but one of respondents was resolved by settlement prior to final resolution of the claims by Michigan's Worker's Compensation Appellate Commission ("WCAC"). *Id.* at 13a n.3. As for the final claim, by respondent Brown, "Cassens denied Brown's claim, a magistrate granted Brown full benefits, and Cassens appealed. Brown's claim was decided on its merits by the WCAC. Neither the briefs nor the complaint state how the WCAC resolved his claim." *Id.* at 3a (citations omitted).

failed to state a RICO claim for failure to allege injury to "business or property."[2]

RICO provides a federal cause of action for "[a]ny person injured in his business or property by reason" of a RICO predicate act. 18 U.S.C. § 1964(c). The district court took note of this Court's guidance, in an analogous statutory context, that the phrase "'injury to business or property * * * retains restrictive significance'" in that it "'exclude[s] personal injuries.'" App., *infra*, 95a (quoting *Reiter* v. *Sonotone Corp.*, 442 U.S. 330, 339 (1979)). The district court also canvassed a number of decisions standing for the proposition that "[n]ot only do personal injuries themselves not provide standing in civil RICO cases, but also [] pecuniary losses flowing from those personal injuries are insufficient to confer standing under § 1964(c)." *Id.* at 92a (quotation marks omitted).

Applying these principles to respondents' claims in this case, the district court held, insofar as is relevant here, that respondents' alleged "damages derive from their workplace injuries" and therefore do not "constitute injury to business or property under RICO." App., *infra*, 91a (capitalization omitted). In par-

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[2] Initially, the district court granted petitioners' motion to dismiss on the ground that respondents had not alleged reliance on petitioners' allegedly fraudulent misrepresentation; a divided panel of the Sixth Circuit affirmed, but this Court reversed. See *Brown* v. *Cassens Transp. Co.*, 492 F.3d 640 (6th Cir. 2007), cert. granted, vacated, and remanded, 554 U.S. 901 (2008). On remand, the Sixth Circuit held that respondents had pleaded a "pattern" of unlawful activity and that the McCarran-Ferguson Act, 15 U.S.C. § 1012, did not "reverse-preempt" the RICO claims. See *Brown* v. *Cassens Transp. Co.*, 546 F.3d 347 (6th Cir. 2008), cert. denied, 130 S. Ct. 795 (2009). That issue is not presented in this petition.

ticular, the harm for which respondents sought recovery—"workers' compensation benefits that they allege they were wrongly denied, along with medical expenses and attorneys fees"—were "wholly derivative of their [alleged] personal injuries," and thus were not "injuries to 'business or property' under RICO." *Id.* at 81a, 97a.

4. A divided panel of the Sixth Circuit reversed. App., *infra*, 1a-38a. The majority acknowledged "that '[r]ecovery for physical injury or mental suffering is not allowed under civil RICO because it is not an injury to business or property'" (*id.* at 19a (citation omitted)); "that 'but for' the personal injury, [respondents] here would have had no interest in any benefits" (*id.* at 20a); and that respondents' claim for benefits "accrue[d] as a result of a personal injury" (*id.* at 16a). The court nonetheless held that Michigan's "worker's compensation scheme creates a property interest in the expectancy of statutory benefits following" a workplace injury (*id.* at 17a) and that there is no reason to "ignor[e] damage to [this] intervening legal entitlement because it arose following a personal injury." *Id.* at 20a; see *id.* at 26a ("applicants for worker's compensation benefits have a property interest in those benefits at the time that their employer becomes aware of the injury"). The court accordingly held that, "[w]hen a plaintiff's personal injury is filtered through the WDCA, it is converted into a property right." *Id.* at 32a.

The majority also reasoned that even if "an expectancy of benefits under the WDCA" did not itself constitute "property," respondents could "proceed by alleging injury to property in that their *claim* to benefits under" the WDCA was "damaged" by respondents' alleged conduct. App., *infra*, 30a. The court ac-

cordingly held that respondents adequately pleaded a claim under RICO.

Judge Gibbons dissented. App., *infra*, 39a-50a. In her view, the majority's "approach ignores the determinative fact that the damages sought in worker's compensation cases derive from personal injuries." *Id.* at 42a. Thus, "[t]he injury to plaintiffs is not the loss of an opportunity to assert a claim, in which there might or might not be a property interest, but the personal injury for which success on the claim would compensate." *Id.* at 42a-43a. The majority's contrary conclusion, in Judge Gibbons' view, "results in an interpretation of RICO's standing requirement that departs from both Congressional language and intent." *Id.* at 42a.

In addition, Judge Gibbons explained that the "majority * * * departs from precedents of our sister circuits," under which "pecuniary damages flowing from * * * work-related injuries [would] constitute personal injuries, not damages to property or business." App., *infra*, 43a-44a (citing, *inter alia*, *Evans* v. *City of Chicago*, 434 F.3d 916, 926 (7th Cir. 2006), and *Grogan* v. *Platt*, 835 F.2d 844, 847 (11th Cir. 1988)). Judge Gibbons also noted that a number of "federal district courts have persuasively determined that the sort of damages sought here are for personal injury, not for injury to business or property." *Id.* at 45a (citing decisions). The majority had "[o]verlook[ed] or minimiz[ed]" these decisions. *Id.* at 42a. Judge Gibbons accordingly would have affirmed the decision of the district court and ordered the case dismissed. *Id.* at 50a.

5. The Sixth Circuit has subsequently applied its holding in this case to reverse the decision of another district court in another published decision

that presents the same issues. *Jackson* v. *Segwick Claims Mgmt. Servs., Inc.*, No. 10-1453, 2012 WL 5374256 (6th Cir. Nov. 2, 2012). In that case, Chief Judge Batchelder concurred in the judgment because she was bound by the decision in *this* case, but did not "agree that [the decision] is correct." Chief Judge Batchelder added: "In fact, I do not agree that Congress enacted civil RICO so that adversarial parties to a formal program of mutual and reciprocal sacrifices and benefits could substantially repudiate their sacrifices and exact additional benefits." *Id.*, slip op. 21. In her view, "an employee's workplace injury cannot satisfy the RICO requirement that the injury be to 'business or property.' A workplace injury may warrant compensation under the worker's compensation scheme, but reduction in that compensation is not an independent injury to business or property." *Id.* at 23-24.

REASONS FOR GRANTING THE PETITION

There is no denying the importance of the question presented here. The nature of the RICO "business or property" requirement has been litigated widely and frequently. As Judge Gibbons demonstrated, the courts of appeals have divided on the meaning of the requirement—and the majority below also differed on the specific question here with Judge Gibbons, Chief Judge Batchelder, and numerous district courts in the Sixth Circuit. The court of appeals' rule, moreover, provides a mechanism for circumventing carefully calibrated state limits on workers' compensation remedies, which cannot operate if the denial of workers' compensation benefits may itself give rise to burdensome and expensive collateral RICO litigation.

In addition, the holding below will frustrate the purpose of the business or property limitation, which was designed to focus RICO on the depredations of organized crime and, in that way, to prevent the statute from becoming an all-purpose font of federal tort law. Notwithstanding that purpose, the Sixth Circuit allowed respondents' RICO claims to go forward even though they seek recovery for pecuniary losses stemming from personal injuries; the court posited that, although a workplace accident concededly *does* cause personal injury, the expectancy of receiving workers' compensation benefits following such an injury (or the right to assert a benefits claim arising out of that injury) constitutes property. But that ruling permits use of artful pleading to evade RICO's categorical distinction between personal injuries and injuries to business or property, as the plaintiff's personal injury is "converted into a property right" by "filter[ing it] through" the workers' compensation process. App., *infra*, 32a. This Court's review, to bring uniformity to the law and prevent evasion of RICO's plain terms, is warranted.

I. The Courts Of Appeals Are In Conflict On Whether Claims May Be Asserted Under RICO To Recover For Pecuniary Losses Stemming From Personal Injuries.

At the outset, the lower courts are sharply divided on whether a plaintiff may seek recovery under RICO for potential pecuniary losses—here, the "alleged harm to [respondents'] expectancy" of workers' compensation benefits and the deprivation of a "fair forum" for asserting claims for these benefits (App., *infra*, 30a-31a)—flowing from personal injuries. The court below held RICO available to assert such claims; four other circuits have rejected RICO stand-

ing in comparable circumstances, finding that the "injury to business or property" requirement is *not* satisfied by an allegation that the plaintiff suffered a derivative loss as a result of an underlying personal injury. The district courts have noted this conflict with some frequency, observing that "[t]he Circuit Courts of Appeals are divided on this issue" (*Spadaro* v. *City of Miramar*, 855 F. Supp. 2d 1317, 1353 n.30 (S.D. Fla. 2012)) and that "[a] circuit split has developed as to whether certain pecuniary losses from personal injuries may confer standing under RICO" (*Alexander* v. *Boone Hosp. Ctr.*, 2011 WL 6337703, at *2 n.2 (W.D. Mo. Dec. 19, 2011));[3] the Seventh Circuit has itself recognized that its view on the question is "at odds with" that of the Ninth. *Evans*, 434 F.3d at 930 n.26. Although the majority below sought to dismiss this conflict by suggesting that its holding is factually distinguishable from that of other courts, Judge Gibbons was correct in her observation that "the cases from other circuits support the defendants' arguments that pecuniary damages flowing from plaintiffs' work-related injuries constitute personal injuries, not damages to business or property." App., *infra*, 45a. This Court should resolve the conflict.

1. The Third, Fifth, Seventh, and Eleventh Circuits endorse the interpretation of RICO embraced

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[3] See also, *e.g.*, *Frey* v. *Maloney*, 476 F. Supp. 2d 141, 161-62 (D. Conn. 2007) (recognizing, based on the split in circuit authority, that "there is a substantial question" as to whether monetary injuries that are "entirely incident to [a] personal injury" fall "within the type of injuries that RICO was intended to remedy"); *Cannon* v. *Burge*, 2007 WL 2278265, at *3 (N.D. Ill. Aug. 8, 2007) ("[The plaintiff], however, fails to address the Seventh Circuit's decision in *Evans* which is directly on-point and holds the opposite [of what the Ninth Circuit did in *Diaz*].").

by Judge Gibbons and rejected by the Sixth Circuit majority. Under these courts' holdings, the district court's dismissal here would have been affirmed because respondents were, by their own account, seeking redress for the "deprivation or diminution of worker[s'] compensation benefits" and, thus, "sought compensation for merely another form of pecuniary loss stemming from a physical injury." App., *infra*, 3a, 16a-17a (citing Complaint ¶¶ 17, 21, 29, 46, 65, 74).

The leading decision is the Eleventh Circuit's "oft-cited case" (*Evans*, 434 F.3d at 927) of *Grogan* v. *Platt*, 835 F.2d 844 (11th Cir. 1988), in which the court held that the plaintiffs (law enforcement officials and their estates) failed to establish an "injury to business or property" under RICO when they pleaded that they had suffered a loss of employment income (and other economic losses) as a consequence of injuries suffered in a gun battle with defendants. The *Grogan* court rejected the plaintiffs' argument that "a common-sense interpretation of the words 'business or property' includes the economic damages that result from injury to the person." 835 F.3d at 847. Instead, the court held that the "ordinary meaning of the phrase 'injured in his business or property' excludes personal injuries, *including the pecuniary losses therefrom*." *Ibid.* (emphasis added). This interpretation of Section 1964(c) was, the Eleventh Circuit noted, consistent with this Court's interpretation of "similar language" in the Clayton Act that likewise permits recovery only for injuries to "business or property." *Ibid.* As a matter of "statutory construction[,] * * * personal injuries lay outside the scope of injury to 'business or property'" as that phrase is used in RICO. *Id.* at 847 & n.7 (citing *Reiter*, 442 U.S. at 339).

The Eleventh Circuit acknowledged that the "pecuniary and non-pecuniary aspects of personal injury claims" often are intertwined and "that recovery for personal injury has pecuniary aspects." *Grogan*, 835 F.2d at 847. But far from showing that all "pecuniary losses that are part of personal injuries constitute injury to 'business and property,'" these routine, incidental consequences of any personal injury actually point to the opposite reading of the statutory text. *Ibid.* Many RICO predicate acts—for example, arson and murder—foreseeably will "'involve[e] bodily injury, injury to reputation, mental or emotional anguish, or the like, *all of which will cause some financial loss.*'" *Ibid.* (quoting *Morrison* v. *Syntex Labs.*, 101 F.R.D. 743, 744 (D.D.C. 1984) (emphasis added by the court)). If Congress meant to allow RICO recovery for such harms, "it could have enacted a statute referring to injury generally, without any restrictive language." *Ibid.* (quotation marks omitted).

That it did not, the Eleventh Circuit concluded, demonstrated that "pecuniary losses are so fundamentally a part of personal injuries that they should be considered something *other* than injury to 'business or property.'" *Grogan*, 835 F.2d at 847 (emphasis added); see also *Keller* v. *Strauss*, 2012 WL 2685193, at *1 (11th Cir. July 9, 2012) (per curiam) (reaffirming *Grogan*); *Pilkington* v. *United Airlines*, 112 F.3d 1532, 1536 (11th Cir. 1997) ("To the extent that * * * [the] plaintiff[] seeks to recover under RICO for personal injury, or pecuniary losses resulting from personal injury, this claim is not cognizable under RICO.").

2. The Seventh Circuit agrees with the Eleventh that "pecuniary losses incurred as a result of what can only properly be classified as a personal in-

jury" are "most decidedly not the type of injury that the RICO laws were designed to address." *Evans*, 434 F.3d at 928-29 (citing *Grogan*). The plaintiff in *Evans* witnessed an altercation between police officers and a woman they were attempting to arrest. *Id.* at 919-20. After publicizing allegations of police misconduct, the plaintiff became the subject of official harassment, which included being arrested without probable cause. *Id.* at 920-21. He attempted to establish an "injury to business or property" under RICO by pointing to his "loss of income" and loss of "ability to pursue gainful employment" while he was he was "maliciously prosecuted and falsely imprisoned." *Id.* at 926.

The Seventh Circuit was not persuaded. It held that "pecuniary losses flowing from * * * personal injuries are insufficient to confer standing under" Section 1964(c). *Evans*, 434 F.3d at 926. As a consequence, the court added, "pecuniary losses derivative of a underlying, non-compensable personal injury * * * cannot constitute an independent grounds for RICO standing." *Id.* at 930 n.26. Because the plaintiff's claimed "loss of employment income" in *Evans* was "nothing more than an indirect, or secondary effect, of [his] personal injuries that he allegedly suffered," that "claim [did] not constitute a cognizable injury to 'business or property'" under RICO. *Id.* at 927.

Evans reaffirmed the Seventh Circuit's prior decision in *Doe* v. *Roe*, 958 F.2d 763 (7th Cir. 1992), which similarly held that the economic consequences of personal injuries are not cognizable under RICO. *Id.* at 770. The plaintiff in *Doe*, whose "divorce attorney defrauded her into having sexual relations with him in lieu of payment," lost earnings and had to

purchase a new security system and retain a new attorney as a consequence of the defendant's misconduct. *Id.* at 765, 770. But the Seventh Circuit rejected her argument that "these losses represent injuries to traditionally accepted property interests" that fall within RICO's scope. Its holding was unambiguous and categorical: Such financial losses were "derivatives of her emotional distress—and therefore reflect personal injuries which are not compensable under RICO." *Id.* at 770; see also *id.* at 767; *Rylewicz* v. *Beaton Servs., Ltd.*, 888 F.2d 1175, 1180 (7th Cir. 1989) ("[N]o recovery [is] permitted under RICO for [the] economic aspects of personal injuries[.]").

3. The Third and Fifth Circuits have explicitly applied this principle—that pecuniary losses that are derivative of personal injuries fall outside RICO's scope—to the deprivation or impairment of a *legal claim or legal entitlement* to recover for losses stemming from such injuries.

In *Magnum* v. *Archdiocese of Philadelphia*, 253 F. App'x 224 (3d Cir. 2007), the Third Circuit made "clear that * * * [an] allegation of a lost opportunity to bring state law personal injury claims * * * is not cognizable as an injury to 'business or property.'" *Id.* at 226. The court explained that even assuming a "cause of action indeed may be a form of property" under some circumstances, harm to that property is redressable under RICO only "if the plaintiff can allege that the wrong to be vindicated is *itself* an injury to 'business or property.'" *Id.* at 228 (emphasis added). When the "wrong underlying * * * [the] lost opportunity to sue" is a "personal injury" and "does not implicate injury to 'business or property'"—as distinguished, for example, from the loss of a "cause[] of action affecting business interests grounded in con-

tract"—there is no basis for RICO standing. *Id.* at 227-28; accord *Vavro* v. *Albers*, 2006 WL 2547350, at *22 (W.D. Pa. Aug. 31, 2006) (claims for, *inter alia*, "lost income * * * all derive from * * * the denial of his workers' 'compensation claim [and the underlying injury] * * * [and] are not the type of 'injury' that creates RICO standing"), aff'd, 254 F. App'x 134 (3d Cir. 2007).

The Fifth Circuit endorsed a similar rule in *Bradley* v. *Phillips Chemical Co.*, when that court affirmed the dismissal of a RICO claim "[e]ssentially for the reasons stated in the district court's thorough and well-reasoned opinions." 337 F. App'x 397, 399 (5th Cir. 2009). In a factual context analogous to this one—involving a claim to compensation for alleged personal injuries in the workplace—the *Bradley* district court had held that deprivation of a "common law right to file intentional tort claims" was not a cognizable injury under RICO. 527 F. Supp. 2d 625, 645 (S.D. Tex. 2007). Relying on *Grogan*, *Evans*, *Magnum*, and other decisions, the court concluded that impairment of the ability to pursue causes of action that "seek[] redress for personal injuries" does "not constitute an injury cognizable under RICO." *Id.* at 647. As we have noted, the Fifth Circuit endorsed this "thorough and well-reasoned" analysis. 337 F. App'x. at 399; see also *Patterson* v. *Mobil Oil Corp.*, 335 F.3d 476, 492 n.16 (5th Cir. 2003) (expressing doubt about similar claims in dicta); *Fisher* v. *Halliburton*, 2009 WL 5170280, at *4 (S.D. Tex. Dec. 17, 2009); *Gaines* v. *Tex. Tech Univ.*, 965 F. Supp. 886, 890 & n.5 (N.D. Tex. 1997).

4. Federal district courts across the Nation are in accord that a RICO claim may not be premised upon personal injuries or the economic and pecu-

niary consequences flowing from them, sometimes applying the rule in factual circumstances indistinguishable from those here. See, *e.g.*, *Zimmerman* v. *Poly Prep Country Day Sch.*, 2012 WL 3683393, at *8 (E.D.N.Y. Aug. 28, 2012) ("The overwhelming weight of authority interprets [the 'injury to business or property' language] to exclude the economic consequences of personal injuries."); *Alexander*, *supra*, 2011 WL 6337703, at *2 n.2 ("[M]ost courts thus far [have] rul[ed] that pecuniary losses stemming from personal injury claims are non-compensable under RICO."); *Circiello* v. *Alfano*, 612 F. Supp. 2d 111, 113, 115 (D. Mass. 2009) (loss of a "claim for medical malpractice" not cognizable since "damages from an unliquidated personal injury lawsuit are not 'property' within the meaning of the RICO statute");[4] *Frey* v. *Maloney*, 476 F. Supp. 2d 141, 161 (D. Conn. 2007) (holding that "damages arising from" physical harm "'or any economic aspect of such harm' * * * are not recoverable under RICO"); *Burnett* v. *Al Baraka Inv. & Dev. Corp.*, 274 F. Supp. 2d 86, 101-02 (D.D.C. 2003) (predicting that the D.C. Circuit would hold that "even pecuniary losses that are derivative of personal injuries are not 'business or property' injuries under RICO"); *Le Paw* v. *BAT Indus. P.L.C.*, 1997 WL 242132, at *2 (E.D.N.Y. Mar. 6, 1997) ("incidental financial consequences" to a "non-compensable physical injury" do not support a RICO claim).

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[4] Notably, the *Circiello* court reached this result while assuming that "the prospect of a wrongful death damages award, even if contingent, is a 'property interest' cognizable under *Massachusetts* law." 612 F. Supp. 2d at 114 (emphasis added).

5. On the other side of the conflict are the Sixth and Ninth Circuits. In *Diaz* v. *Gates*, 420 F.3d 897 (9th Cir. 2005) (en banc), the Ninth Circuit held (as the Sixth Circuit did here, App., *infra*, 19a n.5) that a RICO plaintiff may seek recovery for pecuniary losses that flow from an underlying personal injury so long as the plaintiff also alleges harm to a "property interest valid under state law." 420 F.3d at 900. The plaintiff in *Diaz* claimed that he had "lost employment, employment opportunities, and * * * wages and other compensation" because he was unable to work while being "unjustly incarcerated." *Id.* at 898 (quotation marks omitted). The Ninth Circuit held that the plaintiff's "right to earn wages" constituted a "state-protected property interest" as matter of California law, harm to which constituted an "injury to business or property" under RICO. *Id.* at 900 & n.1, 902 n.2.

There is no question that the Ninth Circuit's interpretation of RICO's "injury to business or property" requirement departs from that of the other courts of appeals. The *Diaz* court expressly parted ways with the Eleventh Circuit's decision in *Grogan*. It criticized *Grogan* as "flawed" and declined to follow *Grogan*'s holding that "'pecuniary losses that are most properly understood as part of a personal injury claim'" are not cognizable under RICO. *Diaz*, 420 F.3d at 902 (quoting *Grogan*, 835 F.2d at 848).

The en banc majority in *Diaz* did purport to factually distinguish the Seventh Circuit's decision in *Doe*—which found no injury to property within the meaning of RICO when the plaintiff's alleged loss of earnings resulted from a personal injury—as "not speak[ing] to whether a loss of earnings could be an injury to a property interest" if alleged in those

terms. *Diaz*, 420 F.3d at 900 n.1 (emphasis omitted); but see *id.* at 909 (Gould, J., dissenting) (stating that the "the majority creates a split with the Eleventh Circuit decision in *Grogan* * * * and the Seventh Circuit decision in *Doe*"). But the Seventh Circuit's subsequent decision in *Evans* confirms that *Doe* meant what it said, and therefore cannot be reconciled with *Diaz*: Pecuniary or economic losses flowing from personal injuries may not support RICO standing, whether or not the plaintiff repackages the loss as injury to a "property right" under state law. The Seventh Circuit made that clear in no uncertain terms:

> We are cognizant of the fact that our decision today is at odds with that of the * * * Ninth Circuit in *Diaz* * * * . The *Diaz* majority, however, blurs the distinction between whether an alleged injury satisfies the statutory definition of "business or property" and whether a "business or property" injury was proximately caused by a predicate RICO act. * * * [S]imply because a personal injury * * * *entails some pecuniary consequence[] does not mean that RICO standing has been established*, for it is part and parcel of the underlying personal injury, *i.e.*, it flows from it. * * * [T]he *Diaz* decision is neither controlling law nor persuasive in its rationale * * * .

Evans, 434 F.3d at 930 n.26 (emphasis added).

6. Although other courts have acknowledged the conflict, the majority below rejected Judge Gibbons' observation that its holding conflicted with the decisions in *Grogan* and *Evans*. It declared that "[n]either of these cases involved an injury to an intervening legal entitlement," that "[b]oth addressed whether various damages that were the proximate

result of a personal injury caused by a RICO violation * * * could be deemed property interests *on their own*," and that "[w]e take no issue with th[ose courts'] holdings that they could not." App., *infra*, 23a. But this is a distinction without a difference; the decision below "confus[ed] the factual contours of [a case] for its unmistakable holding." See *Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd.*, 460 U.S. 533, 534-35 (1983) (per curiam). Whether or not there has been an "intervening legal entitlement, separating the physical injury from the downstream pecuniary losses" (App., *infra*, 23a), the legal rule announced in *Grogan* and *Evans* would have dictated the opposite result from that reached by the Sixth Circuit because any purported "intervening legal entitlement" *itself* flows from and is designed to compensate for the underlying personal injury. See *id.* at 42a-43a (Gibbons, J., dissenting).[5]

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[5] The decision below also sought to brush aside *Evans*' unqualified and categorical holding that pecuniary losses flowing from personal injuries are insufficient to establish a RICO "injury to property" because the *Evans* court also opined that the state law at issue in that case (there, that of Illinois) would not have characterized "lost wages from wrongful incarceration" or "prospective employment" as property interests. App., *infra*, 19a n.5, 23a n.7. But the *Evans* court made clear that its analysis of RICO's "injury to business or property" requirement and its discussion of state law were independent bases for dismissal of the RICO claim in that case. See *Evans*, 434 F.3d at 929 ("Our conclusion is *bolstered* * * *.") (emphasis added); *id.* at 930 n.26 ("In *addition* * * * .") (emphasis added). Cf. *Woods* v. *Interstate Realty Co.*, 337 U.S. 535, 537 (1949) ("[W]here a decision rests on two or more grounds, none can be relegated to the category of obiter dictum."). Further, the Seventh Circuit pointedly noted that it would *not* be bound by "a state law definition of 'business or property' which is so broad that it contravenes Congress' intent in enacting" RICO. 434 F.3d at 930 n.25.

In any event, the Sixth Circuit's improbable suggestion that other courts would distinguish between personal injuries and legal claims flowing from those injuries in this context is belied by the holdings of the Third Circuit in *Magnum* and of the Fifth Circuit in *Bradley* (as well as that of several of the district courts discussed above) that an "allegation of a lost opportunity to bring state law personal injury claims * * * is not cognizable as an injury to 'business or property.'" *Magnum*, 253 F. App'x at 226. These courts have recognized expressly that impairment of the ability to pursue causes of action that "seek[] redress for personal injuries" does "not constitute an injury cognizable under RICO." *Bradley*, 527 F. Supp. 2d at 647. There can be no denying that those decisions are flatly inconsistent with the decision below.[6]

Accordingly, the conflict in the circuits on whether RICO permits recovery for the pecuniary consequences of an underlying personal injury is clear, expressly acknowledged by the lower courts themselves, and described by Judge Gibbons below. These conflicting rules will often lead to divergent outcomes in similar cases: As Judge Gibbons' dissent observed, "cases from other circuits" would have characterized

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[6] As in *Evans*, the *Magnum* court's determination that "unliquidated tort claims are not recognized as 'property'" in the forum state (there, Pennsylvania) was independent of its holding that harm to state-law causes of action seeking redress for personal injuries is not cognizable under RICO. See *Magnum*, 253 F. App'x at 228 ("*Even if* Pennsylvania law recognized some property right in unliquidated personal injury tort claims, * * * .") (emphasis added). The Sixth Circuit's suggestion to the contrary below (see App., *infra*, 22a n.6) simply disregards the Third Circuit's express reasoning.

respondents' alleged "pecuniary damages flowing from [their] work-related injuries [as] personal injuries, not damages to property or business." App., *infra*, 44a. This Court should resolve the conflict.

II. The Question Presented Is An Important And Recurring One.

The need for further review is especially compelling because the issue presented here is a recurring one of enormous practical importance. That the question presented arises frequently is demonstrated by the sheer number of cases discussed above. And the Sixth Circuit's rule encourages plaintiffs to transform run-of-the-mill tort actions into federal RICO suits by pleading impairment of supposed "property interests" that are all but indistinguishable from traditional, personal-injury forms of damages—that is, lost wages, medical expenses, and the like. This distortion of RICO is particularly destructive when applied in the circumstances of this case to a workers' compensation regime, the very purpose of which is to substitute a quick, efficient, and low-cost administrative process for litigation. Superimposing RICO remedies onto this system threatens to destroy the efficacy of the workers' compensation system.

A. The decision below will disrupt and undermine workers' compensation schemes.

Under the Sixth Circuit's approach, plaintiffs will find it easy to substitute RICO claims for the streamlined administrative process that until now has been the central element of all state workers' compensation programs.

Before the enactment of "workers' compensation laws, employees who suffered a work-related injury

* * * could recover compensation from their employers only by resort to traditional tort remedies available at common law." *Am. Mfrs. Mut. Ins. Co.* v. *Sullivan*, 526 U.S. 40, 44 (1999). Workers' compensation laws, however, "displace[d] the common-law liability for negligence" and substituted in its stead a strict-liability scheme placing the risk of personal injuries in the workplace on employers. *Lauder* v. *Paul M. Wiener Foundry*, 72 N.W.2d 159, 172 (Mich. 1955); accord *Howard Delivery Serv., Inc.* v. *Zurich Am. Ins. Co.*, 547 U.S. 651, 662 (2006) ("[W]orkers' compensation prescriptions * * * modify, or substitute for, the common-law tort liability to which employers were exposed for work-related accidents."); National Academy of Social Insurance, *Workers' Compensation: Benefits, Coverage, and Costs: 2006*, at 1-2 (Aug. 2008).

Thus, an employer now is required to "compensate a worker for any injury suffered in the course of the worker's employment, regardless of who was at fault." Edward M. Welch, *Worker's Compensation in Michigan: Law and Practice* § 1.2 (4th ed. 2001). And in exchange for abrogation of the traditional common-law defenses (*e.g.*, assumption of risk, contributory negligence, and the fellow-servant doctrine) and the elimination of fault as a prerequisite for liability, all employee claims are channeled into a quick, efficient, and low-cost administrative process that provides broad but limited remedies. *New York Cent. R.R. Co.* v. *White*, 243 U.S. 188, 198-200 (1917); Richard A. Epstein, *The Historical Origins and Economic Structure of Workers' Compensation Law*, 16 GA. L. REV. 775, 776 (1982).

The essential bargain of the workers' compensation system is that it "provide[s] something for em-

ployees" (*i.e.*, "limited fixed payments for on-the-job injuries") and "something for employers" (*i.e.*, "remov[ing] the risk of large judgments and heavy costs generated by tort litigation"). *Howard Delivery*, 547 U.S. at 663. The system thus "substitut[es] * * * a simple and inexpensive scheme for securing a prompt settlement of claims" for costly and protracted judicial proceedings. 9A COUCH ON INSURANCE § 133:13 (2008 ed.).

The decision below, however, would upset this balance. The broad availability of RICO claims permitted by the court of appeals' ruling would allow plaintiffs to circumvent the policy choices made by States, permitting virtually any disgruntled workers' compensation claimant who alleges improper motives by his or her employer to bring suit in federal court. The attractiveness of the generous RICO remedial scheme will encourage such litigation, which in turn will require federal courts to resolve highly technical factual or medical disputes and substitute their judgments for that of the expert State decisionmakers ordinarily entrusted with resolution of workers' compensation disputes. Cf. 28 U.S.C. § 1445(c) (forbidding removal of workers' compensation proceedings). All this will add to the expense and detract from the efficacy of the workers' compensation process.

The significance of such an approach is manifest. Looking just to the States of the Sixth Circuit, the number of workers, employers, and annual workers' compensation claims affected by the court of appeals' rule is enormous. See 1 Lex K. Larson, LARSON'S WORKERS' COMPENSATION LAW § 2.08 (2009) (noting that approximately ninety percent of all workers are covered by workers' compensation). And many suits

like this one unquestionably are coming in the wake of the Sixth Circuit's ruling. This is not a theoretical prospect; indeed, the decision below will revive at least four similar actions that had been dismissed on reasoning similar to that adopted by the district court here or stayed pending the resolution of this case. App., *infra*, 4a-5a; *Lewis* v. *Drouillard*, 788 F. Supp. 2d 567, 571 (E.D. Mich. 2011); *Brown* v. *Ajax Paving Indus., Inc.*, 773 F. Supp. 2d 727, 734-36 (E.D. Mich. 2011); *Jackson* v. *Sedgwick Claims Mgmt. Servs., Inc.*, *supra*; see also *Pierson* v. *Cambridge Integrated Servs. Group, Inc.*, No. 5:12-cv-10176-JCO-RSW (E.D. Mich. filed Jan. 13, 2012).

Thus, as Chief Judge Batchelder observed, "we may be entering an era when both sides to the worker's compensation dispute sue each other under RICO, with the winner prevailing on the worker's compensation dispute and obtaining RICO damages as well." *Jackson*, slip op. 23 (Batchelder, C.J, concurring in the result). The result inevitably would be to undermine the central goals of the workers' compensation regime.

B. The decision below cannot be squared with RICO's text and purpose.

This outcome is especially troubling because the Sixth Circuit's decision is premised on a misunderstanding of RICO's "injury to business or property" limitation. 18 U.S.C. § 1964(c). It is common ground that a personal injury does *not* fall within the statute's reach. The error in the majority's reasoning is that it dwells on whether an expectancy of workers' compensation benefits constitutes a "property interest" under state law without taking account of the nature of the plaintiff's injury that triggers the claim

for such benefits—and for which these benefits are intended to compensate.

Respondents allegedly were hurt in the workplace; their injuries indisputably are personal ones. To be sure, respondents *also* contend that their workers' compensation benefits (or their right to assert a claim such for benefits) have been impaired by petitioners' conduct. But these allegedly withheld benefits are themselves simply compensation for respondents' underlying personal injuries; that plaintiffs in terms contest denial of their benefits rather than directly claim damages for personal injury does not transform the essential nature of respondents' injuries from those to the person into harm to "business or property." Congress knew that personal injuries often cause compensable pecuniary losses, yet it did not elect to allow recovery under RICO for *all* injuries, whatever form they might take.

As Judge Gibbons' dissent explained, RICO's "statutory language delineates the inquiry, which requires an examination of the *origins* of an injury." App., *infra*, 43a n.16 (emphasis added); see also *Evans*, 434 F.3d at 928, 930 n.26 ("economic aspects" and "pecuniary consequence[s]" of personal injury insufficient to support RICO standing because they do not change the nature of the underlying injury). The Sixth Circuit erred because it failed to recognize that the "injury to [respondents] is not the loss of an opportunity to assert a claim, * * * but the personal injury for which success on the claim would compensate." App., *infra*, 42a-43a (Gibbons, J., dissenting). It thus "read[] the 'restrictive significance[]' of the 'business or property' standing requirement out" of the statute. *Evans*, 434 F.3d at 930 n.26 (quoting *Reiter*, 442 U.S. at 339).

The Sixth Circuit justified that result by citing this "Court's instruction that 'RICO is to be read broadly.'" App., *infra*, 14a (quoting *Sedima, S.P.R.L.* v. *Imrex Co.*, 473 U.S. 479, 497 (1985)). But nothing about RICO's broad remedial purposes "eliminate[s] the requirement to plead an injury to business or property" that appears in the statutory text. *Id.* at 40a (Gibbons, J., dissenting). Giving teeth to the "injury to business or property" requirement vindicates the "restrictive significance" that the Court has afforded the phrase. *Reiter*, 442 U.S. at 339.[7]

Moreover, because our interpretation of the statute assures 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) (quoting *Steele* v. *Hosp. Corp. of Am.*, 36 F.3d 69, 70 (9th Cir. 1994)), it also accords with RICO's central purpose. RICO provides for extraordinarily powerful remedies, including treble damages and attorney's fees. See 18 U.S.C. § 1964(c). It does so because Congress enacted RICO as part of an "aggressive initiative to supplement old remedies and develop new methods for fighting crime'" (*Sedima*, 473 U.S. at 498), giving prosecutors "new tool[s] in extirpating the baneful influence of organized crime

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[7] The majority also opined that its approach was necessary to avoid "inconsistent results" because "[t]he defendants do not argue that statutory entitlements or claims to benefits generally are not property under RICO." App, *infra*, 21a. But as Judge Gibbons noted, "the statutory language delineates the inquiry, which requires an examination of the origins of an injury. Thus, I would characterize the inconsistency the majority describes as the natural result of the Congressional definition of injuries within the statute's reach." *Id.* at 43a n.16 (Gibbons, J., dissenting).

in our economic life." *Id.* at 488 (internal quotation marks omitted); see also *United States* v. *Turkette*, 452 U.S. 576, 588, 591 (1981) ("[T]he major purpose * * * is to address the infiltration of legitimate business by organized crime."); 116 Cong. Rec. 35216 (1970) (RICO aimed at the "eradication of organized crime in the United States").

The rule announced by the decision below, however, would vastly expand RICO's reach by permitting the "restrictive" (*Reiter*, 442 U.S. at 339) statutory phrase "business or property" to be circumvented by artful pleading. It is easy, after all, to dress up a personal injury suit as one challenging denial of compensation for personal injury. Thus, in allowing respondents' claim for medical expenses and related losses due to the allegedly wrongful denial of workers' compensation benefits to go forward, the decision below authorizes suits that are very different from those contemplated by the Congress that enacted the statute.

As Judge Gibbons explained below,

> Congress's clear desire to limit standing to those who suffer business- or property-related losses makes sense, given that 'Congress enacted civil RICO primarily to prevent organized crime from obtaining a foothold in legitimate business.' * * * What does not make sense, however, is to believe that Congress intended to thwart criminal activity by recognizing a civil action to recover medical expenses and related losses due to a denial of worker's compensation benefits.

App., *infra*, 45a. Or, as Chief Judge Batchelder put it in *Jackson*: "I do not agree that Congress enacted

RICO for this purpose and I think that the limitations on RICO claims—limitations that the lead opinion [in *Jackson*] and the *Brown* precedent [*i.e.*, the Sixth Circuit's decision in this case] have painstakingly removed—were included to prevent this." Slip op. 23 (Batchelder, C.J., concurring in the judgment). Because the decision below distorts RICO's meaning, interferes with the effective operation of workers' compensation regimes, and does so in a manner that departs from the approach taken by other courts of appeals, this Court's intervention is warranted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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