No. 12-622

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

RESPONDENTS' BRIEF IN OPPOSITION

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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). The question presented is:

Whether a RICO claim that a defendant carried out a scheme to fraudulently deny worker's compensation benefits to employees is a claim based on injury to "property" within the meaning of RICO, where state law recognizes the entitlement to worker's compensation benefits as a property interest.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes:

INTRODUCTION

Respondents Paul Brown, William Fanaly, Charles Thomas, Gary Riggs, Robert Orlikowski, and Scott Way brought this case alleging that their employer, a worker's compensation benefits claims administrator, and an examining physician conspired to deny worker's compensation benefits to which respondents are statutorily entitled. The employees allege that the three defendants, petitioners here, falsely represented the employees' eligibility for benefits and defendants' obligations under Michigan's worker's compensation statute, falsely opined that the employees' injuries were not work-related, and willfully ignored or discounted credible evidence by the employees' treating physicians that attested otherwise.

The question presented in the petition is whether the allegations of a fraudulent scheme to deny worker's 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 Sixth Circuit Court of Appeals held that receipt of worker's compensation benefits payments and a claim to those benefits constitute property interests under Michigan law—a holding that is not challenged in the petition. Thus, the Sixth Circuit held that denial of worker's compensation benefits caused by a fraudulent scheme, if proved, would establish an injury to property under the plain terms of § 1964(c). In so holding, the court below followed the same approach as other courts of appeals that have considered whether an injury constitutes an injury to "property" under § 1964(c), all of which similarly look

to whether state law deems the interest at issue to be a property interest.

Although the decision below breaks no new ground in appellate court case law, it was the Sixth Circuit's first look at the issue. Because of disagreement among members of the panels in two cases, the Sixth Circuit recently voted to rehear en banc a case presenting similar facts and the identical question presented here, *Jackson v. Segwick Claims Mgmt. Servs., Inc.*, 699 F.3d 466 (6th Cir. 2012). Whether the decision below remains good law within the Sixth Circuit is dependent entirely on the en banc decision in *Jackson*, in which briefing is underway. The pending reconsideration of, effectively, the decision below makes the petition in this case particularly ill-timed and this Court's review of the decision below particularly unnecessary.

STATEMENT OF CASE

Factual Background[1]

Respondents are current and former employees of defendant Cassens Transport Company who suffered work-related physical injuries. Pet. App. 2a; Compl. ¶ 4. Following their injuries, each respondent filed a claim for worker's compensation benefits pursuant to Michigan's Worker's Disability Compensation Act (WDCA), Mich. Comp. Laws § 418.301. Pet. App. 1a. Cassens contracted with defendant Crawford &

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[1] The district court dismissed plaintiffs' RICO claims on Rule 12(b)(6) grounds. Pet. App. 5a. Thus, the plaintiffs' factual allegations are accepted as true. *Hemi Group, LLC v. City of New York, N.Y.*, 559 U.S. 1, 130 S. Ct. 983, 986-87 (2010).

Company to administer worker's compensation benefits and adjudicate claims for WDCA benefits on Cassens's behalf. *Id.* 2a. Cassens and Crawford retained defendant Dr. Saul Margules to examine several of the respondents. *Id.* 3a. Dr. Margules failed to conduct an independent medical examination. Compl. ¶ 6B. Following each examination, Dr. Margules reported to Cassens and Crawford that the employee's injury was not caused by his job, Pet. App. 59a, 60a, 62a, although, as a family physician, Dr. Margules was not certified to treat plaintiffs' orthopedic injuries. *Id.* 3a; Compl. ¶¶ 32, 37.

Crawford filed Notices to Dispute each employee's workers' compensation claims, and relied on Dr. Margules's conclusions to reject the claims of those employees he examined. Pet. App. 59a, 61a, 62a, 63a. Mr. Thomas, the lone respondent who was not examined by Dr. Margules, furnished to Crawford a report by his treating physician stating that his torn rotator cuff was job-related, but Crawford nonetheless filed a Notice to Dispute stating that there was "no medical establishing causation." *Id.* 59a-60a.

Defendants settled the worker's compensation claims of each respondent except for Mr. Brown. *Id.* 3a. After defendants denied Mr. Brown's claim, he successfully appealed the denial in an administrative proceeding. *Id.* Cassens then appealed the benefits award to the Worker's Compensation Appellate Commission. *Id.* The record does not indicate how Mr. Brown's claim ultimately was resolved. *Id.*

Proceedings Below

On June 22, 2004, respondents filed suit, alleging, as relevant here, that defendants committed mail and wire fraud by falsely representing that the em-

ployees were not eligible for worker's compensation benefits, referring employees for examination to a physician who lacked expertise in treating orthopedic injuries so that he could issue false reports that the employees did not suffer job-related injuries, and wrongfully discounting evidence to the contrary provided by treating physicians, all as part of a concerted scheme to deny plaintiffs benefits to which they were entitled by statute, in violation of RICO. *Id.* 2a-3a, 53a. As damages for injury caused by the RICO scheme, respondents seek the worker's compensation benefits to which they were entitled, plus interest, trebled pursuant to § 1964(c). *Id.* 63a.

After respondents successfully prevailed on petitioners' first motion to dismiss, concluding with this Court's denial of certiorari on a different issue, *Cassens Transport Co. v. Brown*, 130 S. Ct. 795 (2009), defendants moved to dismiss the RICO claims under Federal Rule of Civil Procedure 12(b)(6), arguing that respondents had not pleaded an injury to property and therefore could not sue under § 1964(c). Granting the motion, the district court, characterizing worker's compensation benefits as "damages which are indisputably wholly derivative of their personal injuries," held that the denial of benefits is "not injur[y] to 'business or property' under RICO." Pet. App. 97a.

The Sixth Circuit reversed, holding that "the plaintiffs have alleged an injury to property because they allege the devaluation of either their expectancy of or claim for worker's compensation benefits." *Id.* 13a. The court found no "support for the district court's position in the text of RICO," *id.*, that "damage to an intervening legal entitlement" could not

constitute an injury to property simply "because it arose following a personal injury." *Id.* 20a.

Recognizing that "[w]hether a person has a 'property' interest is traditionally a question of state law," *Id.* 15a (citation omitted), the court inquired "whether Michigan defines the interest at stake as property and whether such a definition is consistent with the concept of 'property' that Congress protected in enacting RICO." *Id.* 16a. Reasoning that both Michigan and federal law would recognize a property interest in receiving statutory benefits, the court held "that injury to such statutory entitlements is an injury to property within the meaning of RICO." *Id.* 17a-18a. Further, the court held that an employee's claim for worker's compensation benefits is itself a property interest under Michigan law, relying on a Michigan Supreme Court decision holding that "a cause of action for worker's compensation [is] a 'species of property'—for both the plaintiff and defendant." *Id.* 31a (citation omitted).

The court explained that defendants incorrectly characterized plaintiffs' injury as "pecuniary losses downstream from a personal injury," *id.* 20a, rather than as injury to a legal entitlement. *Id.* The court held that the plain terms of § 1964(c) did not foreclose injuries to "statutory entitlements to worker's compensation benefits—which are recognized as property under state law," finding no textual support "for excluding certain categories of property interests based on how the interest itself originated." *Id.* Moreover, the court found that denying recovery under RICO for injuries to property that arose from personal injuries would impose on § 1964(c) an extratextual "restriction[] … on the words 'injured in his property.'" *Id.* 21a (citation and internal quotation

marks omitted). Not only would this interpretation effectively rewrite the statutory text, but it would undermine "Congress's intent that the statute have broad and inclusive application." *Id.* Finally, the court found that distinguishing between injuries to property that would not have occurred but for a personal injury, on the one hand, from injuries to property that do not follow a personal injury, on the other, for the purposes of allowing recovery under RICO was "arbitrary," *id.* 22a, and "would yield inconsistent results." *Id.* 21a.

REASONS FOR DENYING THE WRIT

I. The Sixth Circuit Is Currently Reconsidering En Banc The Question Presented Here.

Since the petition in this case was filed, the Sixth Circuit granted rehearing en banc in *Jackson v. Segwick Claims Mgmt. Servs., Inc.*, No. 10-1453 (6th Cir.), which presents the exact same issue on which petitioners seek certiorari in this case. Indeed, the panel decision in *Jackson* relied expressly on the decision below, 699 F.3d at 477 (6th Cir. 2012), with two judges noting in concurrence that they would not have joined the majority opinion if not bound by the decision in this case. *Id.* at 487 (concurrence). Briefing in *Jackson* is underway.

If the Sixth Circuit rules for the defendants in *Jackson*, the decision in this case will no longer be the law in the Sixth Circuit. Petitioners are thus in the odd position of requesting that the Court review a decision of the Sixth Circuit, when the Sixth Circuit is actively reconsidering its position. The Court should not grant review of a case in this posture.

II. The Decision Below Poses No Conflict with the Decisions of Other Courts of Appeals.

Defendants assert that a conflict exists between the decision below and a decision of the Ninth Circuit, *Diaz v. Gates*, 420 F.3d 897 (9th Cir. 2005) (en banc), on the one hand, and decisions of the Third, Fifth, Seventh, and Eleventh Circuits, on the other. *See Bradley v. Phillips Chem. Co.*, 337 F. App'x 397 (5th Cir. 2009); *Magnum v. Archdiocese of Phila.*, 253 F. App'x 224 (3d Cir. 2007); *Evans v. City of Chicago*, 434 F.3d 916 (7th Cir. 2006); *Grogan v. Platt*, 835 F.2d 844 (11th Cir. 1988). However, the decision below poses no conflict with these cases, all of which agree that deprivation of a property interest cognizable under state law may form the basis for a civil RICO claim even where that property interest arose from an underlying physical injury.

For example, the Seventh and Eleventh Circuit cases cited by petitioners held that the plaintiffs could not pursue RICO claims where the injuries alleged to have been caused by the defendants' conduct were *personal* in nature. In *Evans*, the plaintiff, a witness to police brutality, alleged that Chicago police officers harassed and intimidated him, including imprisoning him on allegedly false charges, in an effort to silence him and in violation of RICO, and that, as a result of his imprisonment, he lost income. 434 F.3d at 919, 921, 925. The Seventh Circuit rejected his argument that the lost income constituted an injury to property under § 1964(c), because Illinois law defined false imprisonment as a "traditional tort claim[] which result[s] in a personal injury." *Id.* at 927. In *Grogan*, the plaintiffs alleged a RICO scheme by the defendants that culminated in a gun battle that caused both physical injury and death. 835 F.2d

at 845. The court rejected plaintiffs' attempt to use RICO to recover "the economic damages that result from injury to the person," *id.* at 847, holding that "property" under § 1964(c) did not include "pecuniary losses that are most properly understood as part of a personal injury claim." *Id.* at 848.

Notably, both *Grogan* and *Evans* acknowledge that even pecuniary losses that would not have been incurred but for personal injuries nonetheless may be recoverable under RICO if those losses stem from cognizable property interests. *See Evans*, 434 F.3d at 928 ("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 injury to 'business or property.'" (citation omitted)); *Grogan*, 835 F.2d at 848 ("Without ruling on hypothetical cases, we can conceive of [property] injuries resulting from murder for which recovery would be possible" (citing *Von Bulow v. Von Bulow*, 634 F. Supp. 1284, 1309 (S.D.N.Y. 1986) (finding plaintiff's inability to alter her will because she was comatose following defendant's murder attempt to be injury to property interest under RICO))). Thus, the Seventh and Eleventh Circuits, like the decision below, recognize that deprivation of a property interest, even one that arises after a personal injury, may satisfy the "business or property" clause of § 1964(c).

The Ninth Circuit takes the same approach. In *Diaz,* the plaintiff alleged that defendants' conduct caused both personal and property injuries. 420 F.3d at 902. The Ninth Circuit held that the plaintiff could not recover under RICO for "the personal injury of false imprisonment." *Id.* On the other hand, *Diaz* held that the plaintiff's allegations that the de-

fendants' actions 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," established an injury to property for purposes of RICO. *Id.* at 900-01. Thus, the Ninth Circuit, like the Seventh and Eleventh Circuits and the Sixth Circuit below, evaluates the RICO question by looking to whether state law characterizes the injury alleged as an injury to property.

Defendants assert that *Magnum* and *Bradley*, two unpublished, non-precedential opinions, reject the view that diminishment or deprivation of a cause of action can constitute a property interest for purposes of § 1964(c). Pet. 14. To the contrary, neither *Magnum* nor *Bradley* suggests that, where a plaintiff's RICO claim is based on an injury to a property interest recognized under state law, the claim should be dismissed even if a physical injury began the chain of events that led to the injury to property.

Thus, the Third Circuit in *Magnum* held that, because personal injury claims—the existence of which were concealed from plaintiffs by defendants—were not recognized as property interests under state law, plaintiffs' loss of an opportunity to sue on those tort claims could not establish an injury to property under § 1964(c). *See Magnum*, 253 F. App'x at 228 (holding that the lost opportunity to bring personal injury claims was not considered property under Pennsylvania law).

In *Bradley*, the Fifth Circuit relied on the opinion of the district court, which had found that the plaintiffs never had a viable personal injury claim and therefore did not decide whether the concealment of such claims was a property interest under Texas law.

337 F. App'x at 399 (affirming judgment "[e]ssentially for the reasons stated in the district court's … opinion[]"); *Bradley v. Phillips Petroleum Co.*, 527 F. Supp. 2d 625, 646 (S.D. Tex. 2007) ("Because … [plaintiffs] actually had no viable intentional tort claims, [they] cannot plead or prove any injury arising from the putative RICO violations, and their RICO claim fails."). The district court's statement, then, that fraudulent concealment of "the existence of viable personal injury causes of action … does not constitute an injury cognizable under RICO," *id.* at 647, is dicta that reflects, as in *Magnum*, the court's view that the plaintiffs sought damages for personal injury, and had invoked RICO to avoid the expired statute of limitations on their personal injury claims. *Id.* at 640-41; *Magnum*, 253 F. App'x at 226.

Because the decision below does not conflict with decisions of any other court of appeals, this Court should deny review.

III. The Sixth Circuit's Holding is Correct.

Section 1964(c) of RICO confers standing to sue on any individual "injured in his business or property by reason of a violation of [18 U.S.C.] section 1962." 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) (discussing 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).

Here, plaintiffs do not allege that defendants' violations of § 1962 caused personal injury. Instead, plaintiffs claim that defendants established an enterprise, using the mails and telephone, through which they deprived plaintiffs of benefits to which they were entitled by statute. Michigan recognizes a claim for worker's compensation benefits as a property interest. *See Williams v. Hofley Mfg. Co.*, 424 N.W.2d 278, 288 (Mich. 1988); s*ee also Stein v. Fed. Dep't Stores*, 498 N.W.2d 252, 255 (Mich. Ct. App. 1993) (finding that statutory procedure to challenge amount of worker's compensation benefits adequately protected plaintiff's property interest in correct calculation of benefits).[2] 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). Because defendants' unlawful conduct deprived plaintiffs of worker's compensation benefits to which they were entitled by statute, the Sixth Circuit correctly held that the plaintiffs pleaded an injury to property within the meaning of § 1964(c).

Petitioners' assertion that plaintiffs are using RICO to "claim damages for personal injury," Pet. 25, is belied by the allegations in plaintiffs' complaint,

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[2] *Cf. Franks v. White Pine Copper Div., Copper Range Co.*, 375 N.W.2d 715, 722-23 (Mich. 1985) ("Workers' compensation benefits are social-welfare income-maintenance benefits … [and] are not property protected by the [federal Constitution] … from substantive change by subsequent legislation"), *superseded by statute on other grounds*, 1987 Mich. Pub. Acts 28.

which show that they do not seek damages for personal injuries, but for the allegedly wrongful denial of the entitlement subsequently incurred. Thus, the injuries to plaintiffs are not "pecuniary losses … flowing from personal injuries," Pet. 9, but an independent injuries to a property interest caused by defendants' scheme to evade payment owed under the WDCA.

The plain terms of § 1964(c) do not preclude recovery for injuries to property interests that have a connection to a prior physical injury. Although the statutory entitlement to worker's compensation benefits would not exist had plaintiffs not first experienced a physical injury, denying recovery for an injury to a cognizable property interest under state law simply because that interest derived from personal injuries (which defendants did not cause and for which plaintiffs do not seek relief) would effectively rewrite § 1964(c) by imposing an extra-textual qualifier on "property."

By scheming to deny injured employees the worker's compensation benefits to which they are entitled through the use of fraudulent medical reports and other communications, defendants' conduct 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 facing expensive and lengthy 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."). There-

fore, and contrary to petitioners' suggestion, permitting plaintiffs' RICO claim to move forward will not amount to an end-run around the WDCA's administrative regime, but instead will ensure that the property interest at stake is preserved. And petitioners' policy arguments "cannot govern [this Court's] reading of the plain language" in § 1964(c). *See Reiter*, 442 U.S. at 345.

Thus, although this case is not an appropriate one in which to consider the question presented, the Sixth Circuit's holding was correct. For this reason, even if the Sixth Circuit were not in the midst of reconsidering the issue presented, the petition should be denied.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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