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

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF *AMICI CURIAE* STATES OF MICHIGAN, ALASKA, ARKANSAS, COLORADO, DELAWARE, OHIO, TENNESSEE, WASHINGTON, AND WEST VIRGINIA FOR PETITIONERS

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QUESTION PRESENTED

Whether an individual seeking workers' compensation benefits for a personal injury and for losses flowing from the personal-injury claim satisfies the standing requirement of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1964(c), that a plaintiff must show injury to "business or property."

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INTEREST OF *AMICI CURIAE*

The *amici* states each have a comprehensive regulatory scheme of workers' compensation insurance. Like the Michigan regime at issue here—found in Michigan's Worker's Disability Compensation Act, MICH. COMP. LAWS § 418.101 *et seq*.—these systems implement a compromise by which both employees and employers forfeited rights under the tort system in exchange for a level of certainty in payments and costs, and the swift administration of claims. The decision below threatens to undermine the compromise at the heart of the workers' compensation scheme: rather than funneling all claims based on physical injuries in the workplace into the workers' compensation system, it allows employees to bring civil RICO claims arising from those physical injuries and even to seek triple damages. Because of the importance of these issues to the continuing viability of state workers' compensation regimes, *amici curiae* urge the Court to grant certiorari and reverse the decision of the Sixth Circuit.[1]

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[1] Counsel of record for *amicus curiae* State of Michigan Attorney General Bill Schuette notified the parties of its intent to file ten days before the due date in accordance with Sup. Ct. R. 37.2. Consent of the parties is not required for the filing of this *amici curiae* brief. Sup. Ct. R. 37.4.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Sixth Circuit held that injured employees can circumvent the exclusive remedies of a state's workers' compensation system and seek relief under RICO by establishing an injury to "business or property" based on the allegedly fraudulent denial of workers' compensation benefits. App. 13a. The Sixth Circuit's decision is erroneous for the reasons explained in the petition. And this important issue warrants this Court's review for three reasons.

First, litigation of RICO actions founded on workplace injuries would frustrate state workers' compensation insurance systems. Allowing RICO actions based on no more than an asserted denial of workers' compensation benefits would eviscerate the legislative compromise on which states workers' compensation systems rest. That compromise provided injured employees with "a sure recovery" and gave employers "a definite and exclusive liability . . . that could be actuarially measured and accurately predicted." *Hesse* v. *Ashland Oil*, *Inc.*, 642 N.W.2d 330, 334 (Mich. 2002). Allowing RICO claims for treble damages based on a mere denial of workers' compensation benefits would eliminate the certainty that the workers' compensation regime was designed to ensure and would fundamentally alter the balance between employer and employee interests in workers' compensation regimes.[2]

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[2] *Amici curiae* take no position as to whether any fraud has occurred or whether petitioners' alleged conduct would be an intentional tort or discrimination under Michigan law.

Allowing this type of RICO action would also interfere with state agencies by requiring federal courts to address questions arising out of a worker's injury and entitlement to benefits—questions previously resolved by state agencies (in Michigan, the Worker's Compensation Agency and Board of Magistrates). The federal courts would also have to decide whether a self-insured employer committed fraud in the workers' compensation proceedings—again questions previously entrusted to the state courts. Thus, a civil RICO action premised on the allegedly fraudulent denial of workers' compensation benefits would impair state agencies (which, in Michigan, have exclusive jurisdiction to decide those claims), contrary to state policy and leading inevitably to inconsistent or contrary adjudications on the same facts. This would bring a marked uncertainty to both an employee's eligibility and an employer's liability for work-related injuries, the opposite result that states sought to achieve by enacting workers' compensation regimes.

Second, the court of appeals' analysis is fundamentally flawed because it found the Michigan Worker's Disability Compensation Act to be the sole available remedy for the respondents' claims of fraud under Michigan law. But Michigan's regulatory scheme charges courts to exercise equitable power to reverse a workers' compensation award in the presence of fraud, MICH. CT. R. 2.612(C). In other words, the respondents could file a state-court action when they allege conduct that constitutes an intentional tort such as fraud. See MICH. COMP. LAWS § 418.841(1). This remedy is also available in other states.

Third, undermining the workers' compensation regime would impose substantial costs on employers. The 11.6 million employees in the four Sixth Circuit states can now sue their employers under RICO, seeking treble damages and attorney fees if they are denied workers' compensation benefits and assert the denial was fraudulent, even though they cannot sue their employers in court to obtain workers' compensation benefits. This dramatic expansion of liability divests employers in the Sixth Circuit of their side of the workers' compensation bargain by depriving them of the certainty and orderly resolution of workers' compensation issues through an administrative law process and of the avoidance of costly litigation. It also increases dramatically the cost of doing business, stifling job creation and placing American companies at a competitive disadvantage *vis-à-vis* their foreign competitors. Certiorari is warranted.

ARGUMENT

I. Authorizing a civil RICO claim when a party is denied workers' compensation benefits will undermine the workers' compensation regimes that exist in all 50 states.

Allowing RICO claims based on physical injuries unravels the fundamental compromise underlying the states' workers' compensation system: a strict limitation on employer liability in exchange for guaranteed compensation to employees for workplace injuries. As part of this compromise, the states have determined that employers should not face any further liability when workers' compensation claims are denied. By significantly expanding employers' potential

liability for workplace injuries, RICO claims of this type would frustrate states' legislative compromise of limiting that liability in exchange for facilitating a speedy administrative review without regard to fault.

A. Allowing RICO claims based on a denial of workers' compensation benefits will undo the liability-limiting compromise on which worker's compensation is based.

Michigan, like the other 49 states, established a workers' compensation insurance scheme where any employee may pursue a remedy for a workplace injury and related claims. This Court has recognized that workers' compensation laws were an early 20th century state response to the inadequate state tort law system by which employees sought money from their employers for work-related injuries. *Am. Mfrs. Mut. Ins. Co.* v. *Sullivan*, 526 U.S. 40, 44 (1999). Yet the respondents' RICO action seeks a return to the antiquated and costly system that state workers' compensation acts were enacted to replace.

Before 1910, state common-law rules limited employee attempts to recover from employers for workplace injuries. "Under these laws an injured worker's only recourse was through the courts and his chances of recovery were slight." NAT'L COMM'N ON STATE WORKMEN'S COMPENSATION LAWS, COMPENDIUM ON WORKMEN'S COMPENSATION 11 (1973) (hereinafter "COMPENDIUM"). According to some estimates, "not more than 15 percent of injured employees ever recovered under the common law, even though 70 percent of [workplace] injuries were estimated to have been related to working conditions or employer's

negligence." *Id*. This low rate of recovery for employees stemmed from a number of factors: the standard of care for employers was low, "extend[ing] only to proper diligence"; "fellow workers . . . were reluctant to testify against the employer"; the employer benefited from a number of defenses, including contributory negligence, the fellow-servant rule, and assumption of risk; and "the expense of litigation" was an obstacle to employees. *Id*. at 12. On the other side of the equation, employers faced the risk of "pay[ing] out large sums of money for defense of these claims and for satisfaction of verdicts." *Id*. at 14.

Michigan adopted a worker's compensation act in 1912, as did most other states. See COMPENDIUM at 18 (explaining that by 1948, each state and the territories of Alaska and Hawaii had enacted workers' compensation schemes). Workers gave up the right to sue in civil court. In exchange, the new act created a no-fault system, under which a worker no longer had to prove negligence on the part of the employer, and the employer's primary defenses were eliminated. The laws were designed to require an employer to compensate a worker for *any* injury suffered in the course of his or her employment, regardless of who was at fault. See EDWARD M. WELCH & DARYL C. ROYAL, WORKER'S COMPENSATION IN MICHIGAN: LAW AND PRACTICE, §1.2, (5th ed. 2010 supp.)

In return for this almost automatic liability, workers' compensation programs limit the amount that an employee can recover. For example, under the Michigan Worker's Disability Compensation Act, employees are entitled to only (1) certain wage loss benefits, MICH. COMP. LAWS §§ 418.301–418.391, (2)

the cost of medical treatment, *id.* § 418.315, and, (3) certain rehabilitation services, *id.* § 418.319. By limiting recovery, employers were protected from huge jury awards and costly attorney fees (for both the employer and the employee) that endangered their business.

Workers' compensation regimes thus provide that an injured employee's exclusive remedy against the employer for a workplace injury is the right to recover workers' compensation benefits. E.g., MICH. COMP. LAWS § 418.131(1). The rationale is that employers are virtually immunized from tort liability in light of their obligation to pay workers' compensation benefits regardless of fault. E.g., *Clark* v. *United Technologies Automotive, Inc.*, 594 N.W.2d 447, 449–59 (Mich. 1999).

The Sixth Circuit's decision shatters the careful legislative balance. Allowing employees to litigate their work-related injuries under RICO expands the liability of employers well beyond statutory exclusive remedies. After all, RICO authorizes recovery of treble damages, costs, and reasonable attorney fees. 18 U.S.C. § 1964(c).

Michigan law offers adequate remedies by which the respondents could have sought to enforce their rights, and a RICO action would undercut state law. Now, federal courts will be called on to resolve the same questions workers' compensation proceedings decide: whether the claimant actually suffered an injury; whether that injury led to disability; whether the injury was work-related; whether the employer is liable for workers' compensation benefits under Michigan's law; and whether the employer's administrator properly decided whether benefits

should be awarded. The federal court would then consider whether such facts prove fraud under RICO. Essentially, the federal courts will be forced to become arbiters of standard workers' compensation claims. Further, federal court findings in RICO matters will produce results inconsistent with the state agency adjudications on similar facts. And such conflicting results will undermine the legal certainty that the states sought to provide by enacting workers' compensation systems.

If this decision is allowed to stand, it will create a radical transformation of state workers' compensation schemes, disregard principles of federalism and comity by undermining workers' compensation schemes that exist in every state, and potentially open the floodgates of claims on the federal courts.

B. Allowing RICO claims also undermines the goal of rapid resolution of workers' compensation claims.

One of the additional benefits that workers' compensation regimes provide is that they resolve claims—and therefore award benefits—much faster than litigation. Allowing RICO claims where the states' administrative system denied workers' compensation benefits also frustrates that important state interest.

Two provisions of the Worker's Disability Compensation Act demonstrate that the Michigan Legislature intended to create a regulatory framework that would promptly decide workers' compensation controversies in a manner far less burdensome than civil litigation. The Act says that the procedure "shall be as summary as reasonably may be." MICH. COMP.

LAWS § 418.853. The Michigan Supreme Court has long recognized this legislative intent, see *Reck* v. *Whittlesberger*, 148 N.W. 247, 248 (Mich. 1914), later explaining that the Act seeks "to abolish the technical procedure of complicated lawsuits, the expense of contentious litigation which the workman was frequently unable to bear." *Hayward* v. *Kalamazoo Stove Co.*, 288 N.W. 483, 485 (Mich. 1939). Indeed, the Michigan Court of Appeals has expressed alarm concerning "the long delays occasioned in contested compensation cases." *Morris* v. *Baker Auto Parts*, 225 N.W.2d 179, 183 (Mich. App. 1974), *rev'd on other grounds Solakis* v. *Roberts*, 233 N.W.2d 2, n.1 (Mich. 1975).

Additionally, Michigan's scheme expedites judicial review by skipping appeals to the lower circuit court and sending them directly from the Michigan Compensation Appellate Commission to the Michigan Court of Appeals. MICH. COMP. LAWS § 418.861a(14).

This timing, designed to help injured employees recover benefits quickly, is important: the Michigan Worker's Disability Compensation Act requires that a hearing be held within 60 days when an employee seeks the resumption of benefits that had been voluntarily paid and later terminated, or when an employer seeks to terminate or reduce benefits that are being paid under a previously entered order to pay benefits. MICH. COMP. LAWS § 418.205. Any delays in the state's system caused by RICO litigation would render these protections meaningless.

A RICO action could delay the resolution of the respondents', and any claimants', benefit entitlement for years. Such a delay would be diametrically opposed

to the envisioned system for benefit claims resolution, which is supposed to avoid "the technical procedure of complicated lawsuits, [and] the expense of contentious litigation." *Hayward*, 288 N.W. at 485. And as to those claimants who seek or have sought resumption of worker's compensation benefits that were voluntarily paid and later terminated, RICO litigation would render it virtually impossible for a hearing to be held within the statutorily mandated 60-day time frame. In short, RICO litigation would undermine Michigan's administrative and judicial scheme that requires resolution of workers' compensation benefit claims and insurance coverage via a summary procedure inexpensively conducted and rapidly concluded.

II. Workers' compensation regimes like Michigan's are well equipped to address claims of fraudulent denial of benefits.

Civil RICO claims are not necessary to protect workers, for workers' compensation schemes already contain protections against fraudulent benefit denials. Michigan, for example, enacted a workers' compensation statute that requires "*any* dispute or controversy concerning compensation or other benefits . . . and *any* questions arising under this act shall be determined by the bureau or a workers' compensation magistrate, as applicable." MICH. COMP. LAWS § 418.841(1) (emphasis added). This section vests the Worker's Compensation Agency with broad authority not only to decide workers' compensation benefit claims, but also to decide issues beyond eligibility claims, including issues of fraud.

The Michigan Worker's Disability Compensation Act appoints certain administrative bodies, such as the Michigan Compensation Appellate Commission to address appeals from workers' compensation determinations. Opinions issued by this Commission recognized that an administrative proceeding addressing a claimant's benefit eligibility may be stopped where the claimant demonstrates fraud. *Polk* v. *Fort & Griswold, Ltd*, 1999 ACP #551; *Bailey* v. *Curtis Lee Bailey*, 1998 ACO#716.

Further, Michigan courts recognize that workers' compensation settlements can be reopened after they become final, if the agreement to settle was procured through fraud. *Solo* v. *Chrysler Corp*., 277 N.W. 2d 629–630 (Mich. 1979); see EDWARD M. WELCH & DARYL C. ROYAL, WORKER'S COMPENSATION IN MICHIGAN: LAW AND PRACTICE §19.19 (5th ed. 2010 supp.).

And appellate review under the Act provides further protection against fraud. Under the Act, "[t]he findings of fact made by the commission acting within its powers, in the absence of fraud, shall be conclusive." MICH. COMP. LAWS § 418.861a(14).

Moreover, the Michigan courts are invested with equitable powers to overturn any workers' compensation decision that was based on fraud. The Michigan Court Rules provide that the State circuit court has the jurisdiction to grant relief from any orders for "[f]raud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party." MICH. CT. R. 2.612(C)(1)(c).

As early as 1922, the Michigan courts have relieved a party subject to fraud from workers' compensation

decisions. *Luyk* v. *Hertel*, 219 N.W. 721, 722 (Mich. 1922). The Michigan Supreme Court held that "a court of equity may relieve against a settlement, [a] petition to the board for its approval, [an] award based thereon, and a final settlement receipt procured by fraud." *Panozzo* v. *Ford Motor Co*, 237 N.W. 369, 370 (Mich. 1931).

Alternatively, employees situated like the respondents may seek damages in state court based on an allegation that an employer's alleged conduct constitutes an intentional tort or discrimination. MICH. COMP. LAWS § 418.131(1); Elliot Larson Civil Rights Act, MICH. COMP. LAWS § 37.2101, *et seq*.

Michigan law thus grants the Agency the authority to decide the merits of workers' compensation benefit claims, including questions of fraud, and other issues arising under the Worker's Disability Compensation Act. Where fraud is alleged, Michigan law provides a variety of alternatives whereby its courts may step in to remedy such illegal activity.

While Michigan thus has mechanisms for handling claims of fraudulent benefits denials, "punitive damages are available in Michigan only when expressly authorized by the Legislature." *Gilbert* v. *DaimlerChrysler Corp*., 685 N.W.2d 391, 400 (Mich. 2004). Because Michigan's legislature has not authorized an award of punitive damages in the circumstances presented here, and because such damages would rarely, if ever rise to the level of treble damages under Michigan law, allowing RICO claims will undermine the liability-limiting compromise in Michigan's workers' compensation administrative and judicial regime.

III. Trebling workers' compensation claims increases employers' exposure by billions of dollars and undermines the foundation of workers' compensation.

The decision of the Sixth Circuit, if left undisturbed, will inflict economic hardship on Sixth Circuit employers, and by extension, on Sixth Circuit employees. Increasing the potential liability to employers and insurance providers for denying workers' compensation benefits by 300% will impose significant additional costs on employers (and employees), will undermine the "quid pro quo" of workers' compensation, *Howard Delivery Serv., Inc.* v. *Zurich Am. Ins. Co.*, 547 U.S. 651, 662–63 (2006), and will greatly increase the litigation costs associated with workers' compensation.

Nearly all employers and employees in Michigan, Ohio, Tennessee, and Kentucky are covered by workers' compensation regimes. See, e.g., Mich. Worker's Compensation Agency, 2011 ANNUAL REPORT, at 1 ("[I]t is easier to discuss the exceptions."). In Michigan, for example, more than 241,000 employers are subject to the Worker's Disability Compensation Act. *Id.* at 5. As for employees, in 2010 a total of roughly 11.6 million employees in the Sixth Circuit were covered by workers' compensation—3.6 million in Michigan, 4.8 million in Ohio, 2.4 million in Tennessee, and 1.6 million in Kentucky. Nat'l Acad. of Soc. Ins., WORKERS' COMPENSATION: BENEFITS, COVERAGE, AND COSTS, 2010 at 10–11, available at http://www.nasi.org/sites/default/files/research/NASI_Workers_Comp_2010.pdf. This coverage resulted, for the year of 2010 alone, in the payment of $4.97 billion in workers'

compensation benefits. *Id*. at 20–21 (calculated from state totals in table).

The potential additional risk to employers in the Sixth Circuit as a result of this decision is significant. Not only are employers and workers' compensation insurance providers faced with possible treble damages and attorney fees under RICO for denying claims, but they can now be forced to incur the expense of litigating a RICO claim while the employee also pursues recovery of workers' compensation benefits through normal administrative channels. This is a dramatic departure from the bargain of workers' compensation that state legislatures have adopted to spread the risks associated with workplace injuries.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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