13-712

In the Supreme Court of the United States

CLIFTON E. JACKSON AND CHRISTOPHER M. SCHARNITZSKE, ON BEHALF OF THEMSELVES AND ALL OTHER PERSONS SIMILARLY SITUATED,

Petitioners,

v.

SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., COCA-COLA ENTERPRISES, INC., FOREIGN CORPORATIONS, DR. PAUL DROUILLARD, JOINTLY AND SEVERALLY,

Respondents.

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

RESPONSE OF RESPONDENT SEDGWICK CLAIMS MANAGEMENT SERVICES, INC. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a plaintiff asserts an injury to his "business or property" under 18 U.S.C. §1964(c) by alleging that a defendant interfered with the plaintiff's claim for personal injury damages?

RULE 29.6 STATEMENT

Sedgwick Claims Management Services, Inc. is a privately owned corporation and no publicly held company owns 10% or more of this Respondent.

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STATEMENT OF THE CASE

Both Clifford Jackson and Christopher Scharnitzke were employed by Coca Cola Enterprises, Inc. ("Coca-Cola") and both claimed to have suffered personal injuries in the course of their employment. Coca-Cola is self-insured for its obligations under Michigan's Workers Disability Compensation Act ("WDCA"), MCL 418.101, *et. seq*. and Sedgwick Claims Management Services, Inc. ("Sedgwick") acts as Coca-Cola's adjuster for workers' compensation claims. Petitioners contend that Coca-Cola, Sedgwick and Paul Drouillard, M.D. formed various RICO enterprises for the purpose of interfering with Petitioners' rights to collect workers' compensation benefits.

Specifically, Petitioners allege that, as part of its review of Mr. Jackson's request for workers compensation benefits, Sedgwick asked Mr. Jackson to see Dr. Drouillard for an independent medical evaluation ("IME"). Petitioners further contend that Sedgwick's request for an IME was fraudulent because Dr. Drouillard was not an "independent" physician. Coca-Cola stopped paying Mr. Jackson workers' compensation benefits based, in part, on Dr. Drouillard's IME report. *See* Appx. at pp. 165a-166e. Mr. Jackson then filed a complaint against Coca-Cola with the Michigan's Workers Compensation Agency ("WCA"). Coca-Cola settled Mr. Jackson's workers' compensation claim while the instant case was pending. *See* Appx. at 10a.

Petitioners also allege that Sedgwick had no medical basis for disputing the period during which Mr. Scharnitzke was disabled because of his alleged

work-related injuries. *See* Appx. at p.101a. Like Mr. Jackson, Mr. Scharnitzke initiated proceedings in the WCA when Coca-Cola refused to voluntarily pay him workers' compensation benefits for the disputed period. The WCA issued an opinion awarding Mr. Scharnitzke benefits for a limited period based on one of the two injuries set forth in his claim. On appeal from that decision, the Workers' Compensation Appellate Commission reduced the benefit period for the injury and the Michigan Court of Appeals upheld that decision. *See* Appx. at p. 11a.

While Petitioners' claims for workers compensation benefits were pending in the WCA, they filed the instant case in the United States District Court for the Eastern District of Michigan. Respondents moved to dismiss, arguing, *inter alia,* that the Petitioners' RICO claim should be dismissed because they were seeking redress for personal injuries and not injuries to "business or property." *See* Appx. at 134a, n. 27. The district court dismissed Petitioners' claims for myriad reasons, but did not reach the issue of whether the damages alleged were compensable under RICO as injuries to "business or property."

Petitioners appealed the district court's decision and a three judge panel of the Sixth Circuit ("Three Judge Panel") held that Petitioners had a "property interest" in their expectancy to workers' compensation benefits that was injured by Respondents' alleged conduct. The Three Judge Panel therefore concluded that the Petitioners suffered an injury to their "property" sufficient to state a claim under RICO. *See* Appx. at p. 70a, n. 6.

In reaching this decision, the Three Judge Panel relied on *Brown v. Cassens Transport Co.,* 675 F.3d 946 (6th Cir. 2012), *cert den.* 133 S.Ct. 1722 (2013).[1]

The Respondents petitioned for *en banc* review of the Three Judge Panel's decision and the petition was granted. A majority of the Sixth Circuit ("En Banc Panel") reversed both the Three Judge Panel's decision and *Brown,* and held that the Petitioners failed to state a claim under RICO because they were not seeking compensation for an injury to "business or property":

> By holding that plaintiffs' asserted damages do not flow from a personal injury, the [Brown] majority ignored the underlying reality than an award of benefits under the workers' compensation system and any dispute over those benefits are inextricably intertwined with a personal injury giving rise to benefits.
>
> In this case, the plaintiffs claim that they were legally entitled to

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[1] The defendants in *Brown* petitioned this Court for a writ of *certiorari* on the issue of:

> 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 personal injury was impaired.

This Court denied the petition on April 1, 2013. *Cassens Transport Co. v. Brown,* Docket No. 12-622.

> receive certain benefits mandated by statute as a consequence of their personal injuries, and that they received less than they were entitled to under that system because of the defendants' racketeering conduct. But the losses they allege are simply a shortcoming in the compensation they believe they are entitled to receive for a personal injury. They are not different from the losses plaintiffs would experience if they had to bring a civil action to redress their personal injuries and did not obtain the compensation from that action they expected to receive.

See, Appx. at p. 20a.

SUMMARY OF ARGUMENT

The issue decided by the En Banc Panel was whether a plaintiff states an injury to his "business or property" under RICO based on the Respondents' impairment of a plaintiff's claim for personal injury damages. Every other circuit court of appeals that has considered this issue agreed with the En Banc Panel that RICO does not redress this type of injury. Petitioners' remaining arguments in support of their Petition are a tepid rehash of various theories raised by the dissent in the En Banc Panel decision and do not support further review of that decision by this Court.

REASONS FOR DENYING THE PETITION

I. There is no conflict between the circuit courts of appeals on the issue presented.

The En Banc Panel held that Petitioners failed to state a claim under RICO because the loss alleged in the complaint was based on a personal injury and not on an injury to "business or property" compensable under 18 U.S.C. §1964(c). *See* App. at pp. 4a; 12a – 13a; 20a - 21a. Petitioners wrongly assert that the Ninth and Seventh Circuits have reached the contrary conclusion.[2] *See* Petition at p. 7. Petitioners' argument is premised on inapposite precedent and does not support their request for further review of the En Banc Panel's decision by this Court.

As an initial matter, none of Petitioners' cited authority considered the issue decided by the En Banc Panel, *i.e.* whether a plaintiff's impaired right to recover damages for a personal injury constitutes an injury to "business or property" under RICO. In *Living Designs, Inc. v. E.I. DuPont de Nemours & Co.,* 431 F.3d 353 (9th Cir. 2005), the Ninth Circuit determined that a plaintiff could maintain a suit under RICO based on defendants' fraudulent

[2] The United States District Court for the District of Arizona has found that the plaintiffs stated a claim under RICO in a case alleging that a third-party claims administrator wrongfully delayed the payment of plaintiffs' workers' compensation benefits. *Miller v. York Risk Services Group,* 2013 WL 6442764 (D. Ariz. December 9, 2013) (unreported). The *Miller* case has not reached the Ninth Circuit Court of Appeals.

procurement of a settlement, but the underlying claim in that case involved damages to the plaintiffs' business, not personal injuries. *Living Designs,* 431 F.3d at 356. The plaintiffs in *Living Designs* were commercial farmers who alleged that defendants' defective fertilizer ruined plaintiffs' crops. The underlying injury - damage to commercial crops - was indisputably an injury to the plaintiffs' "business or property." Here, Petitioners seek to recover for interference with their right to collect compensation for personal injuries, injuries Petitioners admit are not compensable under RICO.

The other two cases Petitioners cite as examples of a split in the circuit courts of appeals addressed generally the same issue, albeit one that is not present in the instant case. *Diaz* and *Evans* considered whether a plaintiff suffers an injury to his "business or property" under RICO where he asserts that the defendant's racketeering activity interfered with plaintiff's employment opportunities. *Evans v. City of Chicago,* 434 F.3d 916 (7th Cir. 2006), overruled on other grounds, *Hill v. Tangherlini,* 724 F.3d 965 (7th Cir. 2013); *Diaz v. Gates,* 420 F.3d 897, 900 (9th Cir. 2005). The Petitioners in the instant case do not contend that Respondents interfered with their ability to earn wages and their reliance on *Diaz* and *Evans* therefore is puzzling.

In any event, *Diaz* was an appeal from an order granting a motion to dismiss a RICO claim in which the plaintiff alleged that, by falsely imprisoning him, the defendants intentionally interfered with the plaintiff's "prospective business

relations." The *Diaz* court found that this satisfied the requirement that a RICO plaintiff suffer an injury to his "business or property." *Diaz,* 420 F.3d at 900. The *Diaz* court noted that the conduct alleged caused both "personal injuries in the form of false imprisonment" and an injury to property based on defendant's "interference with current or prospective contractual relations." It treated the two damage claims as separate and allowed the latter, but not the former, to proceed under RICO.[3] *Diaz,* 420 F.3d at 902. Again, here, Petitioners did not allege that Respondents interfered with their ability to earn wages and *Diaz* therefore is neither on point nor relevant to the Petitioners' theory of their case.

The Seventh Circuit in *Evans* considered a claim similar to the one asserted in *Diaz*, albeit in the context of an appeal from an order granting the defendant summary judgment. The plaintiff in *Evans* contended that the defendant's false arrest of plaintiff interfered with plaintiff's ability to earn money through employment. In affirming the lower court's granting of summary judgment to the defendant, the *Evans* court held that the claim for lost wages was "nothing more than an indirect, or secondary effect of the personal injuries that he allegedly suffered" and therefore that lost wages

[3] When faced with the same issue, the Eleventh Circuit did not separate economic damages from non-economic damages in *Grogan v. Platt,* 835 F.2d 844, 847 (11th Cir. 1988). The plaintiff in *Grogan* asserted a claim for lost wages based on injuries caused in a gunfight with defendants. Like the Seventh Circuit in *Evans,* the *Grogan* court held that economic damages derived from personal injuries are not recoverable as damages under RICO to "business or property." *Id.*

were not recoverable under RICO as an injury to "business or property." *Evans,* 434 F.3d at 927. The *Evans* court noted that a plaintiff may be able to sue under RICO if he can "establish that he has been unlawfully deprived of a property right in promised or contracted for wages[.]" *Evans,* 434 F.3d 928. In other words, if the racketeering activities targeted the plaintiff's "lawful business enterprise or activity," then a RICO claim may lie. *Id.* But, when the economic losses are incidental to personal injury damages, there is no cognizable injury under RICO. Thus, *Evans* is consistent with, not in conflict with, the En Banc Panel's decision.

Finally, Petitioners fail to cite the authority from other circuit courts of appeal that addressed the issue decided by the En Banc Panel and reached the same conclusion. For example, in *Magnum v. Archdiocese of Philadelphia,* 253 Fed. App. 224 (3d Cir. 2007), the plaintiff pled a RICO violation based on the defendant's interference with the plaintiff's ability to bring a personal injury lawsuit. The Third Circuit affirmed the dismissal of the RICO claim, finding that the cause of action with which the defendant interfered was a personal injury claim that could not be redressed under RICO. *Magnum*, 253 Fed. App. at 228. The Fifth Circuit reached the same holding in *Bradley v. Phillips Chemical Co.,* 337 Fed. App. 397, 399 (5th Cir. 2009). The *Bradley* court adopted the reasoning of the district court which held that the impairment of the right to seek redress for personal injuries does not "constitute an injury cognizable under RICO." *Bradley v. Phillips Chemical Co.,* 527 F. Supp. 2d 625, 646 (S.D. Tex. 2007).

The federal circuit courts of appeals have uniformly held that the impairment of a claim for personal injury damages does not constitute an injury to "business or property" under RICO. There is no circuit split for this Court to resolve on this legal question. Petitioners' request for further review therefore must be denied.

II. The En Banc Panel's decision is correct.

Petitioners also argue that their Petition should be granted because the En Banc Panel "got it wrong." A petition for writ of *certiorari* is not an appropriate place to argue the merits of the subject decision. *See* Rule 10. Even if it were, Petitioners' arguments fail at the slightest scrutiny.

For example, Petitioners contend that the nature of the underlying injury is irrelevant to the issue of whether a plaintiff can sue under RICO for the impairment of a claim for damages. To support this contention, Petitioners argue that the monetary injury at issue in *Reiter v. Sonotone Corporation,* 442 U.S. 330 (1970) was "derived from a physical impairment." *See* Petition at p. 10. Petitioners contend that the *Reiter* court found that the plaintiff had a claim for injury to her "property" under the Clayton Act,[4] despite the fact that the property at issue was related to a "physical impairment." Petitioners then argue that RICO must provide a

[4] Federal Courts have looked to decisions reached under the Clayton Act, 15 U.S.C. §315(a), for guidance in interpreting RICO's "business or property" restriction because the Clayton Act has an identical limitation on the type of injury addressed by that statute. *See* Appx. at 15a-17a.

remedy for a defendant's interference with any suit for damages, even a suit for personal injury damages. *Id.*

Petitioners construction of *Reiter* is absurd.

There was no "personal injury" claim or related damages at issue in *Reiter*. Rather, the plaintiff in *Reiter* asserted that the price of the hearing aid she purchased was artificially high because of defendants' anti-competitive activities. *Reiter,* 442 U.S. at 334. The plaintiff did not allege that she lost her hearing because of a personal injury or even that she had diminished hearing. All we know is that she purchased a hearing aid. Any suggestion that the injury incurred by paying an inflated price for a hearing aid was "inextricably intertwined" with a personal injury or even "derived from a physical impairment" is beyond disingenuous. At the very least, the facts of *Reiter* are so far removed from those of the instant case that *Reiter* does not suggest that the En Banc Panel's decision was contrary to this Court's precedent interpreting the term "business or property".

Petitioners also misstate the law when they claim that "Michigan recognizes a claim for workers' compensation benefits as a property interest." *See* Petition at p. 11. At most, Michigan recognizes that the WDCA grants both employers and employees a "property interest" in a fair adjudication of a disputed workers' compensation claim. *Williams v. Hofley Manufacturing Co.,* 424 N.W.2d 278, 281 (Mich. 1988). No Michigan court has found a property interest in an injured worker's expectation of workers' compensation benefits, *i.e.* the interest

argued by Petitioners and erroneously found by the Three Judge Panel. *C.f. Franks v. Pine Copper Div., Copper Range Co.*, 375 N.W.2d 715, 723 (Mich. 1985) (workers compensation benefits are "not property protected by the Due Process Clause" from subsequent change by legislation).

At issue in *Williams* was an employer's due process challenge to a provision of the WDCA that required the Workers Compensation Appeals Board to be comprised of three types of judges: one designated to represent the interests of the general public, one to represent employee interests and one to represent the interest of employers. *Williams,* 424 N.W.2d at 281. In order to determine whether the Fourteenth Amendment was implicated, the *Williams* court considered whether the employer had a property interest in the workers' compensation claims-adjudication process. *Williams,* 424 N.W.2d at 281-282. The Michigan Supreme Court found that, because the adjudicative process resulted in a judgment against the employer, the employer had a sufficient property interest in the proceedings to support its right to bring a due process challenge to the composition of the appellate review board. The *Williams* court observed in a footnote, "[I]t is our conviction that both parties have a property right in *the litigation*." *Williams,* 430 Mich at 282-283, n. 16, (emphasis added). *See also Stein v. Federal Dept. Stores*, 498 N.W.2d 252, 255 (Mich App 1993) ("Whatever property interest "injured worker had to workers' compensation benefits" is adequately protected by his right to petition" for a WDA hearing). In other words, the *Williams* court found that both employers and employees had a property

interest in the workers' compensation process sufficient to require a fair adjudication of a disputed claim for workers' compensation benefits.

Despite Petitioners' efforts, the limited holding in *Williams* cannot be stretched to create a property interest in an expectancy to benefits. Indeed, under Michigan's workers' compensation regime, an employer has an absolute right to dispute a claim and is not obligated to pay on the claim while the dispute is pending, "regardless of the merits of the claim." *See* Appx. at 6a. In other words, the WDCA expressly allows Sedgwick to do what it did with regard to Petitioners' claims for workers' compensation benefits; there can be no basis for finding that an injured worker has a "property right" in an expectation that a claim will not be disputed when the WDCA expressly grants the employer a right to dispute a claim. Certainly, *Williams* did not find any such right and Petitioners cite no other Michigan authority to support their extraordinary claim.

Petitioners do not allege that their right to a fair hearing under the WDCA was damaged by Respondents' conduct. In other words, Petitioners do not allege an injury to the limited property interest found in *Williams*. Instead, Petitioners contend that the Respondents "fraudulently" disputed Petitioners claims and stopped paying benefits, thereby requiring Petitioners to demand a hearing in the first place. No property right was either implicated or injured under the facts alleged.

Petitioners cannot create a serious issue of federal law that warrants further review by the

Court by misstating the facts and holdings of this Courts' precedent on Michigan law. The En Banc Panel's decision was consistent with both this Court's precedent, the decision of other circuit courts of appeals, and Michigan law.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

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