No. 13-712

In The
Supreme Court of the United States

CLIFTON E. JACKSON, *ET AL.*
Petitioners,

v.

SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., *ET AL.*

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

BRIEF IN OPPOSITION OF RESPONDENT COCA-COLA ENTERPRISES, INC.

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QUESTION PRESENTED

Whether the Sixth Circuit correctly dismissed Petitioners' claim under the Racketeer Influenced and Corrupt Organizations Act for failure to allege an injury to "business or property," 18 U.S.C. § 1964(c), where the alleged injury is measured by, and is legally indistinguishable from, compensatory damages for a personal injury.

PARTIES TO THE PROCEEDING

Respondent Coca-Cola Enterprises, Inc., along with Sedgwick Claims Management Services, Inc. and Paul Drouillard, was a defendant in the district court and appellee in the court of appeals. Coca-Cola Enterprises, Inc. was renamed Coca-Cola Refreshments USA, Inc. in 2010.

Petitioners Clifton E. Jackson and Christopher M. Scharnitzke were plaintiffs in the district court and appellants in the court of appeals.

RULE 29.6 DISCLOSURE

Coca-Cola Enterprises, Inc. (now Coca-Cola Refreshments USA, Inc.) is wholly owned by The Coca-Cola Company, a publicly traded company.

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STATEMENT

The Racketeer Influenced and Corrupt Organizations Act (RICO) provides a cause of action, for treble damages, to certain persons "injured in [their] business or property." 18 U.S.C. § 1964(c). This case concerns whether Petitioners, who concede that the phrase "business or property" excludes "recovery for personal injuries," Pet i., may nevertheless recover treble workers' compensation benefits for their personal injury in the guise of RICO damages.

A. Statutory Framework

1. RICO's cause of action extends to "[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter." 18 U.S.C. § 1964(c). Section 1962 makes it unlawful to conduct an enterprise's affairs through a "pattern of racketeering activity." *Id.* § 1962(c). The phrase "racketeering activity" reaches "a number of so-called predicate acts, including *** mail and wire fraud." *Hemi Grp., LLC v. City of New York, N.Y.*, 559 U.S. 1, 6 (2010) (citing 18 U.S.C. § 1961(1)). Those predicate acts may give rise to civil liability only if they proximately cause a plaintiff's alleged injury. *Holmes v. Securities Investor Prot. Corp.*, 503 U.S. 258, 268 (1992).

Congress enacted RICO in an effort to "'eradicat[e] *** organized crime in the United States.'" *Russello v. United States*, 464 U.S. 16, 27 (1983) (citation omitted). It modeled § 1964(c)'s cause of action on "the civil-action provision of the federal antitrust laws," namely the Clayton Act. *Holmes*, 503 U.S. at 167; *see also* 15 U.S.C. § 15(a) (Clayton Act cause of action reaching certain persons "who shall be injured in [their] business or property"). After RICO's enactment, this Court held that "[t]he phrase 'business or property'" in the Clayton Act has "restrictive significance": At a minimum, the phrase excludes "personal injuries suffered" from the set of actionable injuries. *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979).

2. Michigan's Worker's Disability Compensation Act (WDCA) aims "to prescribe certain benefits for persons suffering a personal injury." 1969 Mich. Pub.

Acts 317. "An employee, who receives a personal injury arising out of and in the course of employment by [certain] employer[s,] *** shall be paid compensation as provided in this act." MICH. COMP. LAWS § 418.301(1). That "right to the recovery of benefits" is "the employee's exclusive remedy against the employer for *** personal injury or occupational disease," unless an intentional tort is involved. *Id.* § 418.131(1); *see Hesse v. Ashland Oil, Inc.*, 642 N.W.2d 330, 334 (Mich. 2002).

Under the Act, employees are entitled to benefits regardless of whether their employer was at fault. *Hesse*, 642 N.W.2d at 334. Employers, in exchange, are subject only to limited, defined liability. *Id.*; *see e.g.*, MICH. COMP. LAWS §§ 418.301, 418.315, 418.319. Both groups "'realize[] a saving in the form of reduced *** costs of litigation.'" *Hesse*, 642 N.W.2d at 334 (citation omitted).

The Act generally instructs that compensation must be paid promptly and is due fourteen days after the employer has notice of the disability or death. MICH. COMP. LAWS § 418.801(1). But when there is an "ongoing dispute" between an employer and employee about whether benefits are due, an employer may withhold payment. Pet. App. 6a; *see Warner v. Collavino Bros.*, 347 N.W.2d 787, 790 (Mich. Ct. App. 1984) ("On its face [the Act] merely requires an 'ongoing dispute' and does not distinguish good faith disputes from bad faith or unreasonable disputes."). An employer later found to have wrongly withheld payment must pay interest to the employee. *See* MICH. COMP. LAWS § 418.801(6).

An employer's refusal to pay benefits is subject to four tiers of review. First, an employee is entitled to a hearing before a workers' compensation magistrate, *see* MICH. COMP. LAWS § 418.847(1), (3), before whom the employee may present evidence, *see, e.g.*, *id.* § 418.301(6).[1] The magistrate, among other things, may "administer oaths, subpoena witnesses," and hold recalcitrant parties or witnesses in contempt. *Id.* § 418.853. A "duly qualified impartial physician" may be appointed "to examine the injured employee and to report." *Id.* § 418.865. At the conclusion of the hearing, the magistrate must file "a concise written opinion stating his or her reasoning for the order[,] including any findings of fact and conclusions of law." *Id.* § 418.847(2).

Second, the magistrate's decision is subject to review by the compensation appellate commission. MICH. COMP. LAWS § 418.859a(1). After receiving briefing from the parties, *see* § 418.861a(5)-(7), that commission reviews whether a magistrate's fact-finding is "supported by competent, material, and substantial evidence on the whole record," *id.* § 418.861a(3), including "both a qualitative and quantitative analysis of [the] evidence in order to ensure a full, thorough, and fair review," *id.* § 418.861a(13). If a "record is insufficient for purposes of review," the commission "may remand a matter to a *** magistrate for purposes of supplying a complete record." *Id.* § 418.861a(12). The

[1] A case may first be referred to mediation, MICH. COMP. LAWS § 418.847(1), but "[i]f the matter is not resolved by the mediation, the case shall be set for [a] hearing," *id.* § 418.847(3).

commission's ultimate opinion, like the magistrate's opinion, "shall be in writing." *Id.* § 418.274(4).

Third, the commission's final decision may be reviewed by the Michigan Court of Appeals. MICH. COMP. LAWS § 418.861. That court is expressly empowered "to review questions of law involved with any final order of the commission." *Id.* § 418.861a(14). And while the Act deems conclusive the commission's findings of fact, it does so only when those findings are made "in the absence of fraud." *Id.*

Fourth, if an employee is dissatisfied with the decision of the Court of Appeals, she may seek review in the Michigan Supreme Court. MICH. COMP. LAWS § 418.861.

In addition to these four tiers of review, "[i]f any employer who is subject to [the] act as an approved self-insurer repeatedly or unreasonably fails to pay promptly claims for compensation for which it shall become liable[,] *** the director may revoke the privilege granted to the employer to carry its own risk and require it to insure its liability." MICH. COMP. LAWS § 418.631(2).

B. Factual And Procedural History

1. Petitioners Clifton Jackson and Christopher Scharnitzke worked for Coca-Cola. Each claimed that he was injured on the job and sought compensation from Sedgwick Claims Management Services, Coca-Cola's third-party benefits administrator. (Coca-Cola self-insures.) Sedgwick began paying benefits to Jackson, scheduling him for examination by Dr. Paul Drouillard. After Dr.

Drouillard reported that Jackson could "'return to work unrestricted,'" Sedgwick discontinued Jackson's benefit payments. First Am. Compl. 18 ¶ 31A(7). After concluding that Scharnitzke did not suffer from a work-related disability, Sedgwick also declined to pay benefits to Scharnitzke. Dr. Drouillard was not involved in that determination.

2. Petitioners sued in federal court, filing the last of their operative pleadings in May 2009. Those pleadings claimed that Coca-Cola, Sedgwick, and Dr. Drouillard engaged in a "pattern of racketeering activity" to Petitioners' detriment. 18 U.S.C. § 1962(c). Petitioners alleged that Coca-Cola and Sedgwick schemed to avoid paying compensation to injured employees, sometimes using so-called "cut-off" doctors to obtain false reports so that they could discontinue benefit payment. Jackson alleged that Dr. Drouillard was such a doctor. Scharnitzke alleged that Coca-Cola and Sedgwick wrongly disputed that his supposed disability was work-related. The scheme involved mail and wire fraud, Petitioners contended, because, *e.g.*, certain Respondents mailed or faxed reports in furtherance of the scheme. First Am. Compl. 15 ¶ 31.

In their operative complaint, Petitioners alleged suffering "depriv[ation] of workers compensation benefits" and payment of "expenses and attorney fees." First Am. Compl. at 18, 21. In their RICO case statement, they described their injury as "the loss of benefits and *** expense and time of recovering those benefits." Am. RICO Case Statement at 5. But when expressly instructed to "[d]escribe the *** injury to business or property," they cited only "attorney fee

and expenses to recover their *** wage loss benefits and medical coverage," as well as "the time value of the money which they received years after they should have received it." *Id.* at 13. Petitioners had not completed even the first tier of Michigan's review process at the time of their suit.

3. All three Respondents moved to dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). First, they argued that Petitioners failed to establish an injury to "business or property" because Petitioners' claim was for personal injury damages not compensable under RICO.

Second, Respondents contended that Petitioners had not sufficiently alleged mail fraud; that anyone had been defrauded or deceived by their alleged mail fraud; or that they had "conduct[ed] or participate[d]" in the conduct of an "enterprise[]" "through a pattern of racketeering activity." 18 U.S.C. § 1962(c).

Third, Respondents argued Petitioners' claims were not cognizable because no adjudicator had at that time determined whether Petitioners were entitled to compensation—let alone how much compensation. They further contended that RICO could not be used as an "end run" around Michigan's specialized and exclusive administrative regime, and that the McCarran-Ferguson Act forbade the use of RICO to interfere with Michigan's workers' compensation program. 15 U.S.C. § 1011 *et seq.*

4. The district court granted the motions to dismiss on three grounds. Pet. App. 124a-180a. First, the court reasoned that a violation of the

WDCA could not constitute mail fraud. *Id.* at 133a-148a. Second, it concluded that Petitioners' claims were not ripe because Michigan had yet to determine whether Petitioners were eligible for workers' compensation benefits, *id.* at 149a-153a—and furthermore that any injury arising from those benefits was too "conjectural [or] hypothetical" to confer Article III standing, *id.* at 151a n.33. Third, it held that Petitioners' allegations of mail fraud were sufficiently discontinuous that they were not part of a "pattern," *id.* at 172a-178a, and, in any event, that Coca-Cola and Dr. Drouillard could not be held liable because they were not connected to the operation or management of any enterprise, *id.* at 159a-162a. The court declined to reach several of Respondents' other arguments, including that Petitioners failed to allege an injury to business or property. *Id.* at 134a n.27.

Jackson settled his workers' compensation claim after that dismissal, but before a Michigan magistrate had ruled on that claim in the first tier of review. Pet. App. 10a. Also after the dismissal, Scharnitzke was awarded some of the benefits that he sought before the magistrate, and his claim proceeded to further tiers of review. *Id.* at 11a.

5. Petitioners appealed the district court's dismissal, and a panel of the Sixth Circuit reversed and remanded. Pet. App. 59a. The panel followed circuit precedent in holding that Petitioners had adequately alleged an injury to business or property, *id.* at 70a-71a, and rejected Coca-Cola's argument that Congress must speak clearly before federal legislation is construed to disrupt state policy choices, *id.* at 69a-70a. The panel also held that Petitioners

had adequately pleaded the other elements of a RICO violation. *Id.* at 76a-85a.

Chief Judge Batchelder, joined by Judge Guy, concurred in the judgment because the panel was bound by circuit precedent, Pet. App. 87a, but doubted that Congress intended for "both sides to the worker's compensation dispute [to] sue each other under RICO, with the winner prevailing on the worker's compensation dispute and obtaining RICO damages as well," *id.* at 90a.

Throughout the panel proceedings, Scharnitzke pursued his workers' compensation claim in Michigan. Prior to oral argument, the compensation appellate commission (Michigan's second tier of review) had reduced Scharnitzke's award. Pet. App. 11a, 64a-65a. After argument but before the panel's decision, the Michigan Court of Appeals, *inter alia*, affirmed that reduction. *Id.* at 11a; *contra id.* at 65a.

6. The en banc Sixth Circuit vacated the panel decision and affirmed the district court's dismissal of Petitioners' complaint.

a. The en banc court concluded that Petitioners had "not plead[ed] an injury to their 'business or property'" within the meaning of RICO. Pet. App. 4a.[2] The court acknowledged that although "'some role *** exist[s] for state law'" in determining whether a specific injury is one to "'business or

[2] Judge Gibbons's opinion was joined by Chief Judge Batchelder and Judges Guy, Boggs, Rogers, Sutton, Cook, McKeague, Griffin, and Kethledge.

property,'" the phrase's threshold legal scope depends on "'federal statutory purpose.'" *Id.* at 18a (quoting *DeMauro v. DeMauro*, 115 F.3d 94, 96 (1st Cir. 1997) (Boudin, J.)). Under RICO, the court observed, "'business or property'" "exclude[s] [recovery for] personal injuries suffered." *Id.* at 15a. It determined that whether or not Petitioners had a state-law "'legal entitlement'" to workers' compensation benefits, "the losses they allege[d] [we]re simply a shortcoming in the compensation they believed they were entitled to receive for a personal injury." *Id.* at 20a. The court thus held that "racketeering activity leading to a loss or diminution of benefits the plaintiff expects to receive under a workers' compensation scheme does not constitute an injury to 'business or property' under RICO." *Id.* at 21a.

The en banc court further drew on "the principle that Congress typically does not upset the established distribution of power between federal and state governments without a clear statement of its intent to do so." Pet. App. 21a. "Workers' compensation schemes," it explained, "are designed to supplant a body of law that has always been within the domain of the states' police powers." *Id.* at 23a-24a. The court reasoned that reading "'business or property'" to include Petitioners' claims would "create[] a form of federal collateral review of the benefits process, backed up by the threat of treble damages." *Id.* at 24a. Although RICO is to be read broadly, the court noted, RICO contains no "clear statement of [Congress's] intent to intervene in Michigan's administrative system for handling workers' compensation claims." *Id.* at 25a.

b. Judge Clay concurred. Although unwilling to hold that a claim is not one for injury to "business or property" when "personal injury was a necessary precursor" to that claim, Pet. App. 29a, he concluded that the clear statement rule bars application of RICO to "state workers' compensation regimes, a traditional area of state purview," *id.* at 33a.

c. Judge Moore dissented.[3] Echoing her panel opinion, she believed that "the devaluation or loss of a statutory entitlement"—here, the receipt of workers' compensation benefits—"is an injury to property within the meaning of RICO." Pet. App. 51a. She rejected respondents' reliance on the clear statement rule "because [mail fraud] has been recognized time and again as within the scope of RICO" and because "Congress has spoken clearly on the broad scope of civil RICO claims." *Id.* at 56a.

ARGUMENT

The en banc court's decision, rejecting Petitioners' attempt to transform a then-pending dispute over state workers' compensation benefits into a federal civil RICO action, does not warrant further review. That decision reflects a straightforward application of the established rule—embraced by every circuit to have considered the issue—that a person who suffers personal-injury damages is not injured in her "business or property." Petitioners' effort to manufacture a conflict rests on an overbroad reading of the en banc decision, which, unlike the other opinions they cite, involves an

[3] Judges Cole, White, Stranch, and Donald joined.

asserted interest in state-administered benefits inextricably intertwined with compensation for a personal injury.

Tellingly, Petitioners do not contend that other circuits have considered (let alone disagreed about) how the clear statement rule applies to a RICO claim of injury to workers' compensation benefits. That rule independently both supports and distinguishes the Sixth Circuit's conclusion. Workers' compensation is an area of traditional state concern, and RICO does not clearly express Congress's desire to interfere with Michigan's otherwise-exclusive administrative regime. Yet by bypassing Michigan's multi-tiered review process, Petitioners' RICO suit risks significant disruption of that regime.

Finally, this case presents a poor vehicle for resolution of the question presented. Among several alternative grounds for affirmance, Petitioners ignore the district court's finding that any injury related to their compensation benefits was too conjectural and hypothetical to confer Article III standing, and overlook the fact that the property interest they assert as a predicate to their civil RICO claim depends on an interpretation of state law that the Sixth Circuit rejected.

I. THERE IS NO CONFLICT OVER THE MEANING OF "BUSINESS OR PROPERTY" IN THIS CONTEXT

To prevail on their RICO claims, Petitioners must (among other requirements) demonstrate an injury to "business or property." 18 U.S.C. § 1964(c). The en banc Sixth Circuit correctly concluded that

"racketeering activity leading to a loss or diminution of benefits the plaintiff expects to receive under a workers' compensation scheme" is not a statutorily cognizable injury to "'business or property.'" Pet App. 21a. Contrary to Petitioners' contention (Pet. 7-9), that conclusion is consistent with the holding of every other court of appeals that RICO injury excludes personal-injury damages.

A. Every Court Of Appeals Agrees That Personal Injuries Are Excluded From RICO

In *Reiter v. Sonotone Corp.*, 442 U.S. 330 (1979), this Court held that "consumers who pay a higher price for goods purchased for personal use as a result of antitrust violations sustain an injury in their 'business or property' within the meaning of § 4 of the Clayton Act." *Id.* at 334. In doing so, however, the Court cautioned that "Congress must have intended to exclude some class of injuries by the phrase 'business or property.'" *Id.* at 339. At least one "restrictive significance" of this language, it explained, was the exclusion of "personal injuries suffered." *Id.*

Relying on *Reiter*, every circuit to have addressed the meaning of "business or property," as that phrase appears in Section 1964(c), has concluded that it excludes "personal injuries" and "the pecuniary losses therefrom." *Grogan v. Platt*, 835 F.2d 844, 847 (11th Cir. 1988); *see, e.g., Evans v. City of Chicago*, 434 F.3d 916, 924-926 (7th Cir. 2006); *Diaz v. Gates*, 420 F.3d 897, 900 (9th Cir. 2005) (en banc); *Hughes v. Tobacco Inst., Inc.*, 278 F.3d 417, 422 (5th Cir. 2001); *Hamm v. Rhone-Poulenc Rorer Pharm., Inc.*, 187 F.3d 941, 954 (8th Cir. 1999); *Bast*

v. Cohen, Dunn & Sinclair, PC, 59 F.3d 492, 495 (4th Cir. 1995); *Fleischhauer v. Feltner*, 879 F.2d 1290, 1300 (6th Cir. 1989). "For example, a person physically injured in a fire whose origin was arson is not given a right to recover for his personal injuries; damage to his business or his building is the type of injury for which § 1964(c) permits suit." *Bankers Trust Co. v. Rhoades*, 741 F.2d 511, 515 (2d Cir. 1984), *vacated on other grounds*, 473 U.S. 922 (1985). Loss of ability to work is precisely the type of pecuniary loss associated with personal injury held to be non-cognizable under Section 1964(c). *E.g.*, *Grogan*, 835 F.2d at 847 ("loss of earnings"); *Evans*, 434 F.3d at 927 ("pecuniary losses *** stemming from what is essentially a personal injury" include "the inability to work or seek employment" and the concomitant loss of income).

Petitioners do not and cannot dispute that the en banc court of appeals applied the correct and uniform legal rule here. *See* Pet. 5. Applying that rule, the court of appeals concluded that Petitioners essentially were seeking compensation for their personal injuries and related pecuniary losses. *See* Pet. App. 18a-21a. Petitioners alleged that they suffered personal injuries in the course of their employment and sought redress by filing claims under the Michigan Worker's Disability Compensation Act. That statute makes "the recovery of benefits"—such as compensation for lost wages, rehabilitation services, and medical expenses—"the employee's exclusive remedy against the employer *for a personal injury*," except in the case of intentional torts. MICH. COMP. LAWS § 418.131(1) (emphasis added); *see also id.* §§ 418.301-418.391 (specifying

types of compensation). Both Petitioners ultimately received some payment for their workers' compensation claims; the damages sought in their RICO suit are based on the remaining benefits they expected to receive under the state statutory scheme, *i.e.*, the balance of claimed compensation for their personal injuries.

B. The Sixth Circuit's Decision Creates No Circuit Conflict

Petitioners read the court of appeals' decision sweepingly to preclude a Section 1964(c) claim whenever injury to a property interest has a "connection to a personal injury." Pet. i. Based on that view, Petitioners assert that the decision below conflicts with decisions of the Seventh and Ninth Circuits, *id.* at 7-9, and urge this Court to "resolve this conflict and hold that an injury to a property interest satisfies § 1964(c), regardless of whether that property interest has a connection to a personal injury," *id.* at 2. Because Petitioners overstate the holding below and because the cited authorities are otherwise distinguishable, however, any purported conflict is illusory.

The court of appeals determined that the claimed workers' compensation benefits were coextensive with, and thus functionally indistinguishable from, recovery of money damages in a personal injury action. That created more than a mere "connection" between the harm alleged (benefits denial) and the personal injury, Pet. 2; the benefits instead were "inextricably intertwined with a personal injury giving rise to the benefits," Pet. App. 20a. *See also id.* ("Even if one assumes that an

employee has a 'legal entitlement' to such benefits, those benefits merely reflect the pecuniary losses associated with the personal injury."). In fact, the overlap between personal injury and Petitioners' claims was so complete that the losses alleged were "simply [the] shortcoming in *** compensation they believed they were entitled to receive for a personal injury." *Id.* Accordingly, they were "no[] different from the losses th[at] [Petitioners] 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." *Id.*

The three circuit cases on which Petitioners rely are not to the contrary. None of them speaks to an asserted property interest that is materially indistinguishable and inseparable from the compensation for a personal injury.

First, in *Living Designs, Inc. v. E.I. Dupont de Nemours & Co.*, 431 F.3d 353 (9th Cir. 2005), plaintiff corporations brought a RICO suit alleging that DuPont had unlawfully withheld probative evidence in a separate products liability case brought by those same plaintiffs, leading to a fraudulently induced settlement. Although the Ninth Circuit held that the corporate plaintiffs had alleged harm to "business or property" because they had pleaded "both a harm to specific property interest and a financial loss," *id.* at 364, neither the harm nor the loss bore any connection—much less an inextricable or indistinguishable one—to a personal injury. The underlying litigation concerned allegations that DuPont's fungicide product contained contaminants

that wiped out plaintiffs' commercial plant nurseries—a business harm to its property interest giving rise to business tort claims. *Id.* at 356. And plaintiffs described the harm from DuPont's racketeering activities as "further damag[ing] those business and property interests when they were duped into accepting low settlements." *Id.* at 364. Not surprisingly, the Ninth Circuit itself never characterizes the relevant harm as relating to a personal injury in any way, as opposed to the district court decision it reviewed. *See id.* That makes *Living Designs* wholly inapposite.

Second, in *Diaz v. Gates, supra,* the plaintiff brought a RICO suit based on a false imprisonment leading to loss of employment, employment opportunities, and associated wages and compensation. 420 F.3d at 900. The court separated the injuries into the *personal* injury of false imprisonment and the *property* injury of interference with current or prospective contractual relations, allowing the suit to proceed only as to the latter set of property rights recognized by California law. *See id.* In this case, by contrast, it is impossible to separate the personal injury allegedly sustained by Petitioners from either the workers' compensation remedy addressing their injuries or the additional amount they seek under RICO based on unrecovered sums. The Michigan workers' compensation system provides redress not only for pecuniary losses flowing from a personal injury, but for the personal injury itself. *See, e.g., Cain v. Waste Mgmt., Inc.*, 697 N.W.2d 130, 135 (Mich. 2005) ("[I]f a worker, for example, loses an arm, thumb, finger, leg, or so on in a workplace injury, specific loss benefits, as set forth

in the schedule, will be awarded even if no time is missed from work."). That is a far cry from any pecuniary or property loss that simply has its "origin" in false imprisonment. Pet. 8.

Third, in *Evans v. City of Chicago, supra,* the plaintiff alleged that he was falsely imprisoned and wrongfully targeted for prosecution, leading to a loss of potential income, an inability to seek work, and the expenditure of attorney's fees in defending himself. *See* 434 F.3d at 925. Consistent with the decision below, the Seventh Circuit *rejected* the plaintiff's attempt to shoehorn those injuries into RICO. *Id.* at 928-929. To be sure, the court noted that "Illinois law *** does not recognize the right to seek out employment opportunities as a cognizable property right." *Id.* at 929. But in the absence of any such right, the Seventh Circuit had no occasion to consider whether a property right "inextricably intertwined" with a personal injury giving rise to that right, Pet. App. 20a, suffices under Section 1964(c). Consequently, *Evans* does not conflict with the decision below.[4]

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[4] As Petitioners note (Pet. 8), the Seventh Circuit observed in dicta that some courts have allowed a plaintiff to recover under RICO for loss of an employment opportunity, such as where the employee has a property right in promised or contracted for wages. *See* 434 F.3d at 928. But those decisions recognized no connection with personal injury and ultimately found the "'business or property'" requirement satisfied only because the plaintiffs had alleged cognizable injury to a business interest. *See Williams v. Mohawk Indus., Inc.*, 411 F.3d 1252, 1260 (11th Cir. 2005), *vacated on other grounds*, 547 U.S. 516 (2006).

If anything, *Evans* supports the result reached below. As the Seventh Circuit explained, "[t]he real question is whether Congress intended RICO laws to compensate plaintiffs for pecuniary losses, such as loss of income, stemming from what is essentially a personal injury *** We are of the opinion that Congress did not intend to do so." 434 F.3d at 927. The workers' compensation benefits provided under the Michigan statutory scheme—lost wages, lifetime medical care, and vocational rehabilitation, *see* MICH. COMP. LAWS §§ 418.301-418.391 (defining compensation)—are what the Seventh Circuit deemed "pecuniary losses incurred as a result of what can only properly be classified as personal injury," *Evans*, 434 F.3d at 929. And as noted above, workers' compensation in Michigan is designed to remedy the personal injury itself as well, *see Cain*, 697 N.W.2d at 134-135, making the case against RICO injury stronger than that in *Evans*.

C. The Sixth Circuit's Decision Is Supported By Section 1964(c)'s Text And The Nature Of The Benefits At Issue

Not only is the Sixth Circuit's decision consistent with the decisions of other courts of appeals, it is consistent with the plain text of Section 1964(c) itself. "Congress must have intended to exclude some class of injuries by the phrase 'business or property,'" *Reiter*, 442 U.S. at 339, and "Michigan's decision to create a workers' compensation system does not transform a disappointing outcome in personal injury litigation into damages that can support a RICO civil action, even if Michigan law characterizes the benefits awarded under this system

as a legal entitlement," Pet App. 20a-21a. Accordingly, far from imposing extra-textual limitations on Section 1964(c), Pet. 9-11, the court of appeals correctly rejected an overbroad reading of the word "property" that would rob the text of its "restrictive significance." *Reiter*, 442 U.S. at 339.

In response, Petitioners attempt to deprive the personal injury underlying their workers' compensation and RICO claims of any legal significance. *See* Pet. 11-12 (asserting that "loss of benefits is an injury to an independent property interest"). But Petitioners cannot change the fact that their claimed property interest in workers' compensation benefits is predicated on a compensable personal injury. No matter how much Petitioners narrow their focus, their RICO claims continue to be defined by personal injury.

It also makes no difference that the Michigan workers' compensation system offers less than the full panoply of remedies available in a common law personal injury action. *See* Pet. 12. At bottom, both avenues redress personal injuries. The fact that workers' compensation benefits are the substitute for damages in a tort suit hardly uncouples the benefits from the underlying injury; if anything, it reinforces their connection.

II. THERE IS NO CONFLICT OVER APPLICATION OF THE CLEAR STATEMENT RULE

Having concluded that Petitioners failed to allege an actionable injury under RICO, the court of appeals correctly explained that its "interpretation of

the statute is confirmed by the principle that Congress typically does not upset the established distribution of power between federal and state governments without a clear statement of its intent to do so." Pet. App. 21a; *see also id.* at 28a-33a (concurring in judgment solely on this ground). The Petition makes no claim that the courts of appeals are divided on this point either generally or specifically regarding interpretation of Section 1964(c) in the context of state workers' compensation systems.

A. The Clear Statement Rule Applies In This Context

This Court consistently has applied the clear statement rule to federal statutes that touch on an area of traditional state concern. *See, e.g.*, *CSX Transp., Inc. v. Georgia State Bd. of Equalization*, 552 U.S. 9, 20 (2007) (taxation and collection power); *Nixon v. Missouri Mun. League*, 541 U.S. 125, 140-141 (2004) (provision of telecommunications services); *Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng'rs*, 531 U.S. 159, 174 (2001) (land and water use); *Cleveland v. United States*, 531 U.S. 12, 24-25 (2000) (criminal law); *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 544-546 (1994) (foreclosure law and real estate transfers); *see also* Pet. App. 21a-23a & n.5. And in related cases concerning preemption of state tort law and accident compensation schemes, the Court has taken its cue from the presence or absence of a plain statement in federal law. *See, e.g., Wyeth v. Levine*, 555 U.S. 555, 575 (2009); *Sprietsma v. Mercury Marine*, 537 U.S. 51, 64 (2002).

"[T]here is no question that States possess the 'traditional authority to provide tort remedies to their citizens' as they see fit." *Wos v. E.M.A. ex rel. Johnson*, 133 S. Ct. 1391, 1400 (2013) (quoting *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 248 (1984)). State workers' compensation systems are a regulatory outgrowth of that same state authority. *See American Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 44 (1999) ("In the early 20th century, States began to replace the common-law [tort] system, which often saddled employees with the difficulty and expense of establishing negligence or proving damages, with a compulsory insurance system requiring employers to compensate employees for work-related injuries without regard to fault."); *Saylor v. Parker Seal Co.*, 975 F.2d 252, 256 (6th Cir. 1992) ("[W]orkers' compensation is clearly one of the state's traditional areas of authority.").

Given that traditional state-law background, the clear statement rule properly guides the interpretation of Section 1964(c)'s "business or property" injury requirement in the workers' compensation context. In particular, the Michigan workers' compensation law "is 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." *Williams v. Hofley Mfg. Co.*, 424 N.W.2d 278, 284 (Mich. 1988); *see also* Pet. App. 20a (recognizing that "compensation system reflects a complex set of bargains between employers and employees"). Petitioners' interpretation of Section 1964(c) would

threaten to disrupt that compromise and effectively restore a ceded state-law cause of action under guise of RICO.

Of course, as the court of appeals was careful to note, nothing in its decision bars Congress "from enacting remedies that supplement or supplant Michigan's workers' compensation regime." Pet. App. 23a. But in the absence of a clear statement that RICO provides an unsatisfied workers' compensation claimant with a federal cause of action to review collaterally the state's administrative decision, one should not be inferred lightly. To hold otherwise would unnecessarily and imprudently "throw[] the viability of these schemes into doubt." *Id.* at 24a. And at the very least, it would alter the careful compromise embodied in state workers' compensation schemes.

B. Petitioners' Counter-arguments Fail

Against that backdrop, Petitioners contend that the clear statement rule does not apply as a threshold matter because the phrase "business or property," as used in Section 1964(c), is unambiguous. *See* Pet. 12. This Court has explained that the clear statement rule "implies a special substantive limit on the application of an otherwise unambiguous mandate." *Spector v. Norwegian Cruise Line Ltd.*, 545 U.S. 119, 141 (2005) (plurality opinion). But even if ambiguity were required, this Court's analysis of identical statutory language in the Clayton Act conclusively demonstrates that the phrase "business or property" lacks a clear meaning when it comes to personal injuries resulting in monetary loss. *See Reiter*, 442 U.S. at 338-339.

Petitioners also argue that a federal cause of action under RICO must be available to workers' compensation beneficiaries because "Michigan's *** compensation scheme 'is not equipped to adjudicate claims similar to those that sound in RICO, as it has limited authority with respect to the availability of certain types of relief and limited expertise concerning allegations based in fraud.'" Pet. 12-13 (quoting Pet. App. 55a (dissenting opinion)). But that statement is based on an incomplete picture. Even if the state workers' compensation agency "does not have experience with resolving allegations of fraud,'" Pet. App. 56a (quoting *A&D Dev. v. Michigan Commercial Ins. Mut.*, No. 301296, 2012 WL 639334, at *4 (Mich. Ct. App. Feb. 28, 2012) (per curiam)), Michigan courts retain an independent ability to ferret out fraud on appellate review. MICH. COMP. LAWS § 418.861a(14) (specifying that court must treat the agency's findings of fact as conclusive only "in the absence of fraud"); *see also* pp. 2-5, *supra*. Indeed, the very Michigan Court of Appeals decision on which Petitioners rely—which concerns allegations of fraud against a mutual insurance companies' use of surplus funds, rather than claims for workers' compensation benefits—ultimately reverses a trial court for failing to adjudicate the fraud claim under the mistaken invocation of primary jurisdiction. *A&D Dev.*, 2012 WL 639334, at *5. Accordingly, the Michigan workers' compensation scheme is designed to address fraud within its multi-tiered review process.

More fundamentally, the fact that equitable relief and a class action mechanism are available in a RICO claim, but not in the Michigan workers' compensation system, does not lessen the force of the

clear statement rule. Quite the contrary: presumably the state struck a conscious and careful balance. As the court of appeals pointed out, the federal government could provide additional remedies where the state scheme does not. "But to say that Congress has the power to create a particular remedy does not mean that it has actually exercised that power in a particular statute." Pet. App. 23a. And when a traditional area of state concern (like tort compensation) would be affected, the clear statement rule requires Congress to make its intent to create such remedies unequivocal.

III. THIS CASE IS A POOR VEHICLE FOR CERTIORARI REVIEW

Additional hurdles to resolution of the question presented further counsel against this Court's review. Petitioners skip past an Article III standing issue raised by the district court, dismiss an interpretation of Michigan law that undermines their claim for immediate benefits, and ignore other alternative grounds supporting the decision below.

A. Petitioners' Sprint To Federal Court Raises A Question Of Article III Standing

To have Article III standing to sue in federal district court, a plaintiff must have suffered an injury that is "actual or imminent, not 'conjectural' or 'hypothetical.'" *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992) (citation omitted). A feared denial of benefits does not qualify as such an injury unless the denial is "certainly impending" *before* the plaintiff files suit. *Whitmore v. Arkansas*, 495 U.S. 149, 155, 158 (1990) (citation omitted); *see Friends of*

the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 170 (2000).

Petitioners filed their lawsuit *before* Michigan had an opportunity to pass on their compensation claims. As the district court recognized, until Michigan determined whether Petitioners were eligible for benefits, any injury to those benefits was "conjectural and hypothetical." Pet. App. 151a n.33. Accordingly, the district court was right to take issue with Petitioners' standing—a threshold question that counsels against this Court's review.[5]

B. The Sixth Circuit's Interpretation Of Michigan Law Underscores The Prematurity Of Petitioners' Suit

Petitioners claim that Respondents "fraudulently denied" Scharnitzke's claim and "fraudulently revoked" Jackson's benefits, injuring each in "property" protected by state law and thus, they contend, triggering Section 1964(c). Pet. 11. But the Sixth Circuit disagreed with the state-law premise of Petitioners' argument: it expressly held that "[a]n employer is not obligated to pay benefits or fines when there is an 'ongoing dispute' over an employee's claim, regardless of the merits of the

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[5] Petitioners did not challenge the district court's finding on standing in their opening brief on appeal. *See* Corrected C.A. Br. 47-51. After one of the Respondents pointed out that "[p]laintiffs do not *** argue that their purported injuries satisfy the standing requirements set forth in *Lujan*," Sedgwick C.A. Br. 9, Petitioners addressed the issue in reply, *see* Corrected C.A. Reply Br. 11-13.

dispute." Pet. App. 6a.[6] Consequently, "[e]ven if one assumes that an employee has a 'legal entitlement'" to the ultimate payment of benefits, Pet. 20a, an employee is not entitled to receive benefits while a dispute over those benefits is ongoing. For this Court to reach the question presented, at least in the posture in which Petitioners chose to bring it, the Court presumably would first need to consider and reject that interpretation of Michigan law. That presents another potential obstacle to this Court's review.

C. Alternative Grounds Support Affirmance On The Merits

Respondents have advanced multiple other grounds supporting the Sixth Circuit's judgment throughout this litigation. The district court dismissed Petitioners' complaint on some of those grounds, including that Petitioners failed adequately to allege mail fraud, a pattern, or that Coca-Cola and Dr. Drouillard were connected to the operation or management of any enterprise. Pet. App. 133a-148a, 159a-162a, 172a-178a; see p. 8, *supra*. Although the Sixth Circuit did not reach them, each of those grounds supports the judgment below.

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[6] An employer who wrongly refuses to pay may owe interest, MICH. COMP. LAWS § 418.801(6), but will not be fined even if his or her refusal was a product of bad faith, *id.* § 418.801(2). And while a self-insured employer too slow to pay claims may be disqualified from self-insuring, that disqualification arises out of failure "to pay promptly claims for compensation for which [the employer] *shall become* liable"—recognizing that liability for payment can arise after an employer refuses to pay. *Id.* § 418.631(1) (emphasis added).

Beyond those grounds, as argued below (p. 7, *supra*), the McCarran-Ferguson Act forecloses Petitioners' proposed construction of Section 1964(c). Because RICO does not "specifically relate[] to the business of insurance," it may not be construed to provide a cause of action here if doing so would "impair" a state law aimed at regulating the business of insurance. 15 U.S.C. § 1012(b). Michigan's Compensation Act is precisely such a law, s*ee, e.g.*, MICH. COMP. LAWS § 418.631(1); *id.* § 418.621(2), (4); *id.* § 418.631(2) (regulating self-insurance),[7] and allowing RICO claims for the alleged denial of Compensation Act benefits would "hinder its operation or 'frustrate [a] goal' of that law." *Humana Inc. v. Forsyth*, 525 U.S. 299, 311 (1999) (alteration in original); *see also* pp. 22-23, *supra* (explaining how RICO's treble damages remedy risks significant disruption of Michigan's carefully constructed regime for administration of workers' compensation benefits). Accordingly, regardless how the question presented were resolved, the ultimate result in this case would not change. *Cf. Thigpen v. Roberts*, 468 U.S. 27, 29-30 (1984) (affirming on alternative grounds without reaching the question presented).

[7] "[S]elf-insurance in the worker's compensation arena is the functional equivalent of purchasing a commercial insurance policy." *Heinz v. Chicago Rd. Inv. Co.*, 549 N.W.2d 47, 54 (Mich. Ct. App. 1996); *see also* Martin L. Critchell, *Workers' Disability Compensation*, 56 WAYNE L. REV. 551, 555 (2010).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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