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BLOG

Supreme Court Opens Door to Civil RICO Claims Arising from Personal Injury

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The Racketeer Influenced and Corrupt Organizations Act (RICO) creates a private cause of action for "[a]ny person injured in his business or property" and authorizes recovery of "threefold the damages he sustains."[1] While it is clear that the statute denies a remedy for personal injuries, appellate courts have been divided for decades over whether this provision allows a plaintiff to sue for business or property loss that derives from a personal injury. Most courts said no.[2]

On April 2, the Supreme Court said yes: RICO *does* provide "a remedy for business and property loss that derives from a personal injury."[3] In *Medical Marijuana, Inc. v. Horn*, the plaintiff, Horn, took a cannabidiol (CBD) product that was ostensibly free of tetrahydrocannabinol (THC) to treat his chronic pain.[4] Horn was then selected for a random drug screening at work and was fired after testing positive for THC.[5] He sued the seller of the product, alleging that it was a RICO enterprise whose false and misleading advertising constituted a "pattern of racketeering activity."[6] The district court granted summary judgment to the seller, finding that Horn's lost employment was derivative of a personal injury (the introduction of THC into his system through ingestion of the product).[7] The Second Circuit reversed, holding that RICO does not preclude recovery for business and property injuries that derive from a personal injury.[8]

The Supreme Court affirmed in a 5-4 decision. The Court reasoned that the "business or property" injury requirement limits only the *kinds* of harm that are compensable under RICO—not the *causes* of that harm.[9] The seller argued that the word "injury" in the RICO statute refers to an "invasion of a legal right," so RICO covers only plaintiffs who "'suffered an invasion of a business or property right'—that is, a business or property tort."[10] The majority rejected this contention, interpreting the word "injured" to mean "harmed," as it is ordinarily understood.[11] As a result, plaintiffs can bring a civil RICO claim if they suffered a business or property "harm," even if that harm is the result of a personal injury.[12]

This ruling could have major consequences for product sellers and manufacturers by exposing them to RICO liability for conduct that once gave rise to typical state-law claims. For example, as in *Medical Marijuana*, product-liability defendants are sometimes sued for making false or fraudulent representations about their products, such as when a pharmaceutical company is alleged to have concealed or misrepresented the risks of its products to doctors or to the public. If those statements are transmitted through the mail or "by means of wire, radio, or television communication in interstate or foreign commerce," it could constitute mail or wire fraud—predicate acts under RICO.

[13] Thus, a plaintiff who relied on those statements in using a product, suffered a personal injury, and experienced "business or property" loss as a result could now bring a civil RICO claim in addition to a fraudulent-misrepresentation claim.

Why would a plaintiff want to bring a RICO claim? Several reasons. The availability of treble damages is no small thing. As the *Medical Marijuana* dissent mentioned, the prospect of such damages could add "settlement pressure" even if there are slim chances of success in court.[14] What's more, a RICO claim can be brought in any district where a defendant "resides, is found, has an agent, or transacts his affairs," and the statute allows plaintiffs to join defendants residing in any other district if "the ends of justice require."[15] These provisions may provide wide latitude for plaintiffs to forum shop for favorable federal jurisdictions.

So there are good reasons for a plaintiff to bring a civil RICO claim. And this raises concerns. The dissent in *Medical Marijuana* warned that the Court's ruling could eviscerate RICO's "business or property" limitation, "federalize many traditional personal-injury tort suits," and lead to "increased litigation exposure."[16] Even the majority recognized concerns about the "over-federalization of traditional state-law claims."[17] But the Court was careful to note that several hurdles still lie in the way of a successful civil RICO suit:

1. RICO requires "some *direct relationship* between the injury asserted and the injurious conduct alleged"; mere "foreseeability does not cut it."[18]
2. "[P]leading a RICO claim is not as simple as pointing to a business or property harm. A plaintiff must first establish a pattern of racketeering activity," which "requires identifying two or more predicate crimes" within a single scheme.[19]
3. The Court's decision addressed only the meaning of the word "injured," not the words "business" or "property," and it noted that business or property does not necessarily implicate "every monetary harm."[20] The Court declined to answer whether common product-liability damages like lost wages or medical expenses could be recoverable as injuries to business or property within the meaning of the statute.[21]

Another practical consideration could limit the impact of *Medical Marijuana*: the plaintiff bar's general preference for state court over federal court. Any complaint that asserts a civil RICO claim presents a federal question and could be removed to federal court, and despite RICO's generous venue provisions, many plaintiffs would still prefer to litigate in their state court of choice.[22] This could deter some plaintiffs from adding a RICO claim.

So, does *Medical Marijuana* mean that every product-liability defendant will be adjudged a RICO conspirator? No. But will more product manufacturers and sellers be named in RICO lawsuits and face at least the prospect of treble damages? Almost certainly. As the Supreme Court made clear, the ultimate "correction must lie with Congress"[23] — but in the meantime, manufacturers and sellers should familiarize themselves with RICO law and reevaluate practices that could lead to new exposure.

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[1] 18 U.S.C. § 1964(c).

[2] *See Jackson v. Sedgwick Claims Mgmt. Servs., Inc.*, 731 F.3d 556, 565 (6th Cir. 2013) (en banc); *Doe v. Roe*, 958 F.2d 763, 770 (7th Cir. 1992); *Grogan v. Platt*, 835 F.2d 844, 847 (11th Cir. 1988); *but see Diaz v. Gates*, 420 F.3d 897, 901 (9th Cir. 2005) (en banc).

[3] *Med. Marijuana, Inc. v. Horn*, 145 S. Ct. 931, 936 (2025).

[4] *Id.*

[5] *Id.* at 937.

[6] *Id.*; *see also* 18 U.S.C. § 1961(1), (5).

[7] *Med. Marijuana*, *Inc.*, 145 S. Ct. at 937.

[8] *Id.*

[9] *Id.* at 939.

[10] *Id.*

[11] *Id.* at 939–41, 945.

[12] *Id.* at 946.

[13] 18 U.S.C. § 1961.

[14] *Med. Marijuana, Inc.*, 145 S. Ct. at 964–65.

[15] 28 U.S.C. § 1965(a)–(b).

[16] *Med. Marijuana, Inc.*, 145 S. Ct. at 953, 958, 964–65.

[17] *Id.* at 946 (quoting *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 659 (2008)).

[18] *Id.* at 945 (emphasis added).

[19] *Id.*

[20] *Id.* at 945–46.

[21] *Id*.

[22] 28 U.S.C. § 1441(a).

[23] *Med. Marijuana, Inc.*, 145 S. Ct. at 946.

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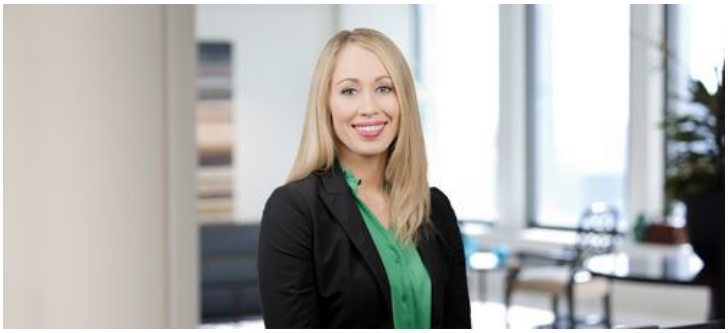

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