

Supreme Court Opens the Door to RICO Claims Arising from Personal Injuries — but with Significant Limitations

April 8, 2025

In *Medical Marijuana Inc. et al. v. Horn*, the United States Supreme Court resolved a circuit split regarding whether the Racketeer Influenced and Corrupt Organizations Act (“RICO”), which creates a cause of action for “[a]ny person injured in his business or property” (18 U.S.C. § 1964(c)), can be invoked by a plaintiff whose claim arises from a personal injury—or whether there is an “antecedent-personal-injury bar” that categorically bars such personal injury claims.¹ In a 5-4 decision, the Supreme Court held that no such bar exists. But, cognizant of the risk of the federal courts being swamped with personal injury plaintiffs trying to allege RICO violations in the hopes of obtaining treble damages, the Supreme Court emphasized the many hurdles that a personal injury plaintiff would have to overcome to bring a RICO claim.

As we will discuss below, the opinion potentially creates significant risks for corporate defendants because personal injury plaintiffs are likely to craft their claims as RICO causes of action in the hopes of seeking treble damages. If a plaintiff can plead a RICO claim that survives a motion to dismiss, then a potentially viable threat of treble damages may (depending on the circumstances) have an in terrorem effect that results in the defendant agreeing to pay significantly more money to resolve the matter. Therefore, it is imperative for defense counsel to develop strategies to seek dismissal of such RICO claims early in the litigation.

The Opinion

Douglas Horn purchased a CBD oil, “Dixie X” from Medical Marijuana, which advertised it as THC-free. After ingesting Dixie X, he failed a company-issued drug test. Horn then refused to enter into a substance abuse program and was fired by his employer. He filed suit under RICO (and various state laws) alleging that Medical Marijuana was a RICO “enterprise” engaged in marketing, distributing and selling Dixie X.² Horn claimed that the company’s false and misleading advertising satisfied the elements of mail and wire

¹ *Med. Marijuana, Inc. v. Horn*, No. 23-365, 2025 WL 978102 at *4 (U.S. Apr. 2, 2025).

² *Id.*

fraud and that those crimes constituted a “pattern of racketeering activity.”³ The district court granted summary judgment to the defendants on the RICO claim, concluding that Horn’s lost employment flowed from a personal injury (the introduction of THC into his system through the ingestion of Dixie X) and that such a harm could not give rise to a RICO injury.⁴ The district court followed the Sixth, Seventh and Eleventh Circuits, each of which had recognized an “antecedent-personal-injury bar.”

The Second Circuit reversed the district court.⁵ It stated that the term “business,” as used in Section 1964(c), included not only a “commercial or industrial establishment or enterprise,” but also an individual’s employment.⁶ It therefore concluded that Horn “suffered an injury to his business” when he lost his job.⁷ The Second Circuit held that RICO did not automatically preclude plaintiffs from recovering for business and property injuries that happen to arise from personal injuries—joining the Ninth Circuit, which previously reached a similar conclusion.⁸

The Supreme Court affirmed the Second Circuit. Although it engaged in a lengthy analysis (including an extensive response to arguments made by Justice Kavanaugh, writing for the dissent), the Supreme Court concluded: “[t]he phrase ‘injured in his business or property’ does not preclude recovery for all economic harms that result from personal injuries.”⁹ The Supreme Court, however, sandwiched that holding with a list of issues that it was not deciding and a discussion of the impediments that a plaintiff would face if he or she sought to bring a RICO claim arising from a personal injury.

The Supreme Court began by identifying three potentially controversial issues that it would not be deciding:

- The Court took no position regarding whether Horn suffered an antecedent personal injury when he consumed THC.¹⁰ It noted that Horn’s description of his injury was related solely to his livelihood, not his body, despite the Second Circuit’s undisturbed conclusion that he suffered a personal injury.

³ *Id.*

⁴ *Horn v. Med. Marijuana, Inc.*, No. 15-CV-701-JWF, 2021 WL 4173195 (W.D.N.Y. Sept. 14, 2021), judgment entered, No. 15-CV-701-JWF, 2022 WL 206235 (W.D.N.Y. Jan. 24, 2022), and vacated and remanded, No. 22-349-CV, 2023 WL 5339572 (2d Cir. Aug. 21, 2023), and vacated and remanded, 80 F.4th 130 (2d Cir. 2023).

⁵ *Horn v. Med. Marijuana, Inc.*, 80 F.4th 130 (2d Cir. 2023), *aff’d and remanded*, No. 23-365, 2025 WL 978102 (U.S. Apr. 2, 2025).

⁶ *Id.* at 136.

⁷ *Id.*

⁸ See *Diaz v. Gates*, 420 F.3d 897 (9th Cir. 2005) (en banc).

⁹ *Med. Marijuana*, 2025 WL 978102 at *12.

¹⁰ *Id.* at *5.

- It did not decide whether the Second Circuit correctly interpreted “business” (as used in Section 1964(c)) to encompass employment.¹¹
- It did not opine as to how a plaintiff can be “injured in his... property” under Section 1964(c)—noting that the Second Circuit had expressly reserved the question regarding “whether Horn suffered an injury to property when he lost his job.”¹²

At the conclusion of the opinion, the majority acknowledged the dissent’s concern that “plaintiffs can easily transform garden-variety personal-injury claims into suits for treble damages.”¹³ The Court therefore highlighted three significant constraints on RICO claims:

- First, RICO has a strict “direct-relationship requirement.”¹⁴ The Court explained that Section 1964(c)’s usage of the phrase “by reason of” demands “some direct relation between the injury asserted and the injurious conduct alleged” and that “foreseeability does not cut it.”¹⁵ “[W]henver the plaintiff’s theory of causation requires moving ‘well beyond the first step,’ it cannot meet the RICO direct relationship requirement.”¹⁶ The Court observed that in light of the “number of steps in Horn’s theory” (from the alleged misrepresentations to the alleged job loss) and the multiplicity of actors involved, this requirement could be an “insurmountable obstacle.”¹⁷
- Second, RICO requires that a plaintiff must establish “a pattern of racketeering activity,” which “requires identifying two or more predicate crimes ‘within a single scheme that were related and that amounted to . . . continued criminal activity.’”¹⁸ The harm arising from a single tortious act cannot give rise to a RICO claim.
- Third, the Court noted that the terms “business” and “property” have limits: (i) “‘business’ may not encompass every aspect of employment” and (ii) “‘property’ may not include every penny in plaintiff’s pocketbook.”¹⁹ Therefore, “not every monetary harm – be it lost wages, medical expenses, or otherwise – necessarily implicates RICO.”²⁰

¹¹ *Id.*

¹² *Id.* (citing *Horn v. Med. Marijuana, Inc.*, 80 F.4th 130 (2d Cir. 2023)).

¹³ *Id.* at *11.

¹⁴ *Id.*

¹⁵ *Id.* (emphasis added) (internal citations omitted).

¹⁶ *Id.* (citing *Hemi Grp., LLC v. City of New York, N.Y.*, 559 U.S. 1, 12 (2010)).

¹⁷ *Id.*

¹⁸ *Id.* (citing *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 237 (1989)).

¹⁹ *Id.*

²⁰ *Id.*

The Court acknowledged that civil RICO had vastly evolved from its original conception—a weapon to be used against organized crime—but stated that concerns about over-federalization of tort claims could be addressed only by Congress.

In dissent, Justice Kavanaugh concurred that the limitations on RICO actions outlined by the Court “may mitigate some of the potential consequences” of what he considered to be the Court’s incorrect statutory conclusion.²¹ Nonetheless, he expressed concern that the question as to whether civil RICO plaintiffs can bring claims for lost wages and medical expenses as property injuries would need to be resolved by lower courts. That, he warned, “will leave substantial confusion and litigation in its wake.”²²

Lessons for Defense Counsel

As both the majority and dissent acknowledge, the plaintiffs’ bar is likely to search for every opportunity to use artful pleading to transform ordinary tort claims into RICO actions that may give them the opportunity to recover treble damages. In response, defense counsel should use the limitations on civil RICO claims identified at the end of the Court’s opinion as a guidebook for potential dispositive motions that will result in these claims being dismissed before trial.

First, the “direct relationship” requirement is likely to be a potent weapon because there is frequently a chain of events between the allegedly illegal conduct and the injury.²³ A defendant may have the opportunity to file a motion to dismiss if it is clear on the face of the complaint that there are multiple steps between the alleged conduct and the plaintiff’s injury—meaning the “direct relationship” requirement cannot be satisfied. In some cases, careful discovery may be necessary to build out an attenuated causal chain. In the matter before the Supreme Court, for example, it is significant that the plaintiff’s termination resulted not from his failed drug test—but rather his refusal to participate in a substance abuse program. If such discovery is necessary, defense counsel can seek to have the matter dismissed on summary judgment.

Second, a defendant can seek to dismiss a complaint on the pleadings if the plaintiff cannot plead facts that establish a pattern of racketeering activity. A plaintiff’s claim could fail if it is just based on one act, as was the case here. A court may also be receptive to the argument that a plaintiff cannot turn an ordinary tort claim arising from alleged misstatements about a consumer product into a RICO action by relabeling

²¹ *Id.* at *29 (Kavanaugh, J. dissenting).

²² *Id.* at *30 (Kavanaugh, J. dissenting).

²³ *Id.* at *11.

misstatements as mail and wire fraud (without pleading facts showing actual criminal activity).

Third, the defense bar will likely expend considerable effort to convince courts that “business” and “property” should be limited to traditional business injuries—not an individual’s lost wages or medical expenses. Courts may well conclude that adopting narrow interpretations of those terms is not only warranted by the plain statutory meaning, but is also necessary to prevent the federal courts from being flooded with tort suits masquerading as RICO claims.

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