# Defining Civil RICO's "Injury to Business or Property" Requirement: The Supreme Court Takes a Few Steps, Says It Punts, but Actually Fumbles

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**ABSTRACT**

Throughout its history, the RICO statute has presented lawyers with something of an interpretive parlor game. It is indefinite along multiple dimensions and thereby given multiple interpretations, even down to the word level. In *Medical Marijuana v. Horn*, the Supreme Court set out to define one of RICO's civil-standing provisions: Namely, whether the statute's "injury to business or property" requirement can be satisfied when a plaintiff suffers both economic and personal injuries. In a 5-4 decision, members of the Court engaged in an interpretive battle over the meaning of the phrase and succeeded only in holding that civil RICO does not necessarily bar all claims for damages deriving from personal injuries. The Court can perhaps be forgiven for its skimpy holding, given that the record in the case was messy and contradictory (and was therefore not cert-worthy). But more troublesome is that *everyone* involved missed the point at which Horn, the plaintiff, suffered a possible RICO injury. For that and other reasons, the case is a muddle that will merely revive, rather than settle, disagreements in the lower courts.

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## I. INTRODUCTION

More than 50 years after its statutory birth, the Racketeer Influenced and Corrupt Organizations Act (RICO) continues to present interpretation and application challenges.[1] The problem springs from the statute's complicated structure and language, the latter of which is by turns ambiguous or vague.[2] The statute's purpose is also uncertain, a state of affairs that leads to disparate conclusions regarding its applicability, depending on whether a particular case is criminal or civil.[3] It's not surprising, then, that the United States Supreme Court must step in every few years to resolve a fresh circuit split. The 2024 term was no exception: There, the Supreme Court ventured into an open question—in *Medical Marijuana v. Horn*—namely, what it means for a civil RICO

1. *See generally* Randy D. Gordon, *RICO Had a Birthday! A 50-Year Retrospective of Questions Answered and Open*, 105 MARQ. L. REV. 131 (2021).

2. *See generally* Randy D. Gordon, *Making Meaning: Towards a Narrative Theory of Statutory Interpretation and Judicial Justification*, 12 OHIO ST. BUS. L.J. 1 (2017).

3. *See generally* Gordon, *supra* note 1.

plaintiff to be "injured in his business or property."[4] To that question this Article will shortly turn—but first a quick tour of RICO's interpretive landscape.

## II. THE MEANING AND PEDIGREE OF RICO'S CIVIL STANDING PROVISION

Divining a legislature's intent is a fraught exercise, and sifting through legislative history often provides ammunition for competing interpretive arguments. RICO's legislative history is no exception. There are, nonetheless, intentional assumptions that aren't subject to reasonable dispute. In fact, Congress declared that it passed the Organized Crime Control Act of 1970—of which RICO is one part—"to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime."[5] But of course RICO reaches far beyond "organized crime" in the Mafia sense, and, when Congress included a civil-standing provision, it extended its reach even further.

Debates over the scope of RICO began in earnest in the 1980s and have not abated since.[6] And despite well-documented hostility to civil RICO,[7] courts have long conceded that RICO has evolved "into something quite different from the original conception of its enactors,"[8]

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4. Med. Marijuana, Inc. v. Horn, 604 U.S. 593, 598 (2025); Racketeering Influenced and Corrupt Organizations (RICO) Act of 1970 § 4(c), 18 U.S.C. § 1964(c).

5. Pub. L. 91-452, § 1, 84 Stat. 922, 923 (1970). Courts have quoted this language to permit broad interpretations of organized criminal activity. *See, e.g.*, United States v. Turkette, 452 U.S. 576, 589 (1981) (overturning the 5th Circuit's narrow interpretation of criminal activity for running counter to legislative intent). For a breakdown of the purposes behind The Organized Crime Act, see generally J. Brian Williams, *Organized Crime Control Act of 1970: Introduction*, 4 U. MICH. J. L. REFORM 546 (1971) (noting that "[t]he first five titles of the Act are design to aid in the evidence-gathering process"). *See also* United States v. DiFrancesco, 449 U.S. 117, 119 (1980) (discussing the application of increased sentences for dangerous offenders).

6. *See generally* Gordon, *supra* note 1.

7. *See id.* at 142.

8. For the curious, it is possible to trace the roots and branches of RICO, including the genesis of RICO's civil standing provision and its relationship to Section 4 of the Clayton Act. Working backwards in time, the OCCA, of which RICO is Title IX, was derived from Senate Bill 30. *See* Religious Tech. Ctr. v. Wollersheim, 796 F.2d 1076, 1084 (9th Cir. 1986) (citing S. 30, 91st Cong., 115 CONG. REC. 769 (1969)); *see also* G. Robert Blakey & Brian Gettings, *Racketeer Influenced and Corrupt Organizations (RICO): Basic Concepts—Criminal and Civil*, 53 TEMP. L.Q. 1009, 1017 (1980), https://perma.cc/KU5K-RXS7 ("In 1969, Senator John L. McClellan, in response to his longstanding interest in organized crime, introduced Senate bill 30, which was based on a number of the recommendations of the President's Crime Commission."). The Senate added Title IX to Senate Bill 30. Nonetheless, the substance of Title IX appears in the

who hoped to "supplement old remedies and develop new methods for fighting crime."[9] This evolution in scope is a function of the statute itself, which—depending on one's point of view—is (1) written with "self-consciously expansive language"[10] that is to be given a liberal construction,[11] or (2) poorly drafted and void for vagueness.[12] As a consequence, lower courts have been left in precedential lurch and therefore have, generally speaking, oscillated between constructions that facilitate criminal RICO prosecutions and tamp down civil RICO litigation.[13]

High in importance among the civil dampers placed on RICO's civil-standing provision, § 1964(c), is the recognition "that Congress modeled § 1964(c) on the civil-action provision of the federal antitrust

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earlier Senate Bill 1861. *See Wollersheim*, 796 F.2d at 1084 (citing S. 1861, 91st Cong., 115 CONG. REC. 9568–71 (1969)); *see also* 116 CONG. REC. 591 (remarks of Sen. McClellan)).

Parallel actions in the House included a robust private-plaintiff provision. More telling than the House bills themselves is that § 1964(c) originated in the House as an amendment to Senate Bill 30. *See* Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 486–87 (1985). The House Judiciary hearings on Senate Bill 30 are instructive on the connection between § 1964(c) and § 4 of the Clayton Act. In those hearings, Representative Steiger proposed the addition of a treble-damages provision "similar to the private damage remedy found in the antitrust laws . . . [T]hose who have been wronged by organized crime should at least be given access to a legal remedy." *Wollersheim*, 796 F.2d at 1084 (alteration in original) (quoting *Organized Crime Control: Hearings on S. 30, and Related Proposals, Before Subcommittee No. 5 of the House Committee on the Judiciary*, 91st Cong. 520 (1970) [hereinafter *House Hearings*]). The American Bar Association made a similar Clayton Act-rooted proposal. *See id.* (quoting *House Hearings*, *supra*, at 543–44, 548, 559). In introducing the Senate bill for House debate—the House sponsor, Representative Poff, underscored the notion that Section 1964(c) of RICO and Section 4 of the Clayton Act were of a piece. *See id.* at 1085:

> Courts are given broad powers under the title to proceed civilly, using essentially their equitable powers, to reform corrupted organizations, for example, by prohibiting the racketeers to participate any longer in the enterprise, by ordering divestitures, and even by ordering dissolution or reorganization of the enterprise. *In addition*, at the suggestion of the gentleman from Arizona (Mr. Steiger) and also the American Bar Association and others, the committee has provided that private persons injured by reason of a violation of the title may recover treble damages in Federal courts—another example of the antitrust remedy being adapted for use against organized criminality.

*Id.* (quoting 116 CONG. REC. 35295 (1970)). The statutory language that was ultimately enacted came from House Bill 19,586, not House Bill 19,215, *id.*, which has given rise to enduring debates: For example, whether a court may provide equitable relief under 1964(c), the latter explicitly including it, the former silent on the matter.

9. *Sedima*, 473 U.S. at 498, 500.

10. *Id.* at 498.

11. *See* Organized Crime Control Act of 1970, Pub. L. 91-452, § 904(a), 84 Stat. 922, 947.

12. *See* Gordon, *supra* note 1, at 132 n.2; *see also* H.J. Inc. v. Nw. Bell Telephone Co., 492 U.S. 229, 255–56 (1989) (Scalia, J., concurring).

13. *See* Gordon, *supra* note 2, at 8–9.

laws."[14] "Courts have therefore looked to § 4 of the Clayton Act; its predecessor, § 7 of the Sherman Act; and cases construing these statutes in order to identify limits to the civil remedy afforded by § 1964(c)."[15] As a clear example of this phenomenon, the Court in *Holmes* reviewed § 4 and § 7 of the antitrust jurisprudence to conclude that § 1964(c)'s "by reason of" proviso mandated more than "but-for" cause: Proximate cause.[16] This reasoning required no linguistic contortions: Congress "used the same words" to establish a private right of action in both domains, so "we can only assume [Congress] intended them to have the same meaning that courts had already given them."[17] We'll soon see how that argument fared within the context of *Horn.*

## III. CIVIL RICO'S "BUSINESS OR PROPERTY" REQUIREMENT

Despite the nearly identical language forming the basis of § 1964(c) and Clayton Act § 4, courts do not always interpret and apply them *in pari materia*.[18] In fact, the Supreme Court has noted, "[a]lthough we have often looked to the Clayton Act in guidance in construing § 1964(c), we have not treated the two statutes as interchangeable. We have declined to transplant features of the Clayton Act's cause of action into the RICO context where doing so would be inappropriate."[19] For over five decades, one unsolved interpretive puzzle has been the meaning of RICO's "business or property" proviso, injury to which must be shown to establish RICO standing. So what is injury to business or property? As with many questions that RICO poses, there are no clear answers at the margins, a situation compounded by a lack of much guidance in the text of the statute itself.[20] What ensues, therefore, is the application of various techniques designed to harmonize with legislative intent, including reviews of Clayton Act jurisprudence as well as other sources of law (e.g., state law definitions of "property").[21]

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14. Holmes v. Secs. Investor Prot. Corp., 503 U.S. 258, 267 (1992).

15. Jackson v. Sedgwick Claims Mgmt. Servs., Inc., 731 F.3d 556, 563 (6th Cir. 2013), *abrogated by*, Med. Marijuana, Inc. v. Horn, 604 U.S. 593 (2025) (footnotes omitted); *see* Clayton Act of 1914 § 4(a), 15 U.S.C. § 15(a); Chattanooga Foundry & Pipe Works v. City of Atlanta, 203 U.S. 390, 395 (1906) (citing The Sherman Act of 1890, ch. 647, § 7, 26 Stat. 209, 210).

16. *Holmes,* 503 U.S. at 265–68.

17. *Id.* at 268.

18. *See* RJR Nabisco, Inc. v. European Cmty., 579 U.S. 325, 352 (2016); *see also* Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 495 (1985) (holding that the statutory language of the RICO statute does not require a "racketeering injury" the way that Clayton Act claims require an "antitrust injury").

19. *RJR Nabisco*, 579 U.S. at 352.

20. *See* Jacob Poorman, *Exercising the Passive Virtues in Interpreting Civil RICO "Business or Property"*, 75 U. CHI. L. REV. 1773, 1778–80 (2008).

21. For legislative intent considerations, see Van Schaik v. Church of Scientology of Cal., Inc., 535 F. Supp. 1125, 1136 (D. Mass. 1982) (collecting cases where courts

There exists something close to a consensus that state-law definitions of "property" should be engrafted onto § 1964(c).[22] And courts also look to state law, at least in part, to discern the meaning of "business."[23] In one pre-*Horn* view (which is that of the Sixth and Seventh Circuits), "business" generally means that RICO does not encompass claims that arise from personal injuries.[24] In another view (that of the Second and Eleventh Circuits), the issue is not so clear-cut,

look to legislative intent for "business or property" injuries). For state law considerations, see Logan v. Zimmerman Brush Co., 455 U.S. 422, 430 (1982) (finding that "the hallmark of property . . . is an individual entitlement grounded in state law."). *See, e.g.*, Deck v. Engineered Laminates, 349 F.3d 1253, 1259–60 (10th Cir. 2003) (finding that a cause of action or contractual right is an interest in "property"); Leach v. FDIC, 860 F.2d 1266, 1274 (5th Cir. 1988) (finding no "property" injury for depreciating stock value based on Texas law); Doe v. Roe, 958 F.2d 763, 768 (7th Cir. 1992) (rejecting a property injury for its lack of basis in state law while simultaneously claiming that the court is "not required to" adopt state law property definitions if they "contravene" Congressional intent); *see also Holmes*, 503 U.S. at 265–68 (1992) (comparing the Clayton Act's "business or property" language to RICO's "business or property" language); Agency Holding Corp. v. Malley-Duff & Assocs., 483 U.S. 143, 150–53 (1987) (same).

22. *See Logan*, 455 U.S. at 430; Brown v. Cassens Transport Co., 675 F.3d 946, 954 (6th Cir. 2012); DeMauro v. DeMauro, 115 F.3d 94, 96 (1st Cir. 1997); Evans v. City of Chicago, 434 F.3d 916, 929 (7th Cir. 2006); Leach v. FDIC, 860 F.2d 1266, 1274 n.14 (5th Cir. 1988). *But cf.* Doe v. Roe, 958 F.2d 763 (7th Cir. 1992) (noting that some definitions of property may prevail over state definitions if the state definition is not aligned with the purpose of RICO).

23. *See* Hatfield v. Ornelas, No. 5:22-cv-05110, 2023 WL 8878203, at *2–3 (W.D. Ark. Dec. 22, 2023) (finding that a lawyer-client contract is a "business interest" under Arkansas law).

24. *See* Jackson v. Sedgwick Claims Mgmt. Servs., Inc., 731 F.3d 556, 564 (6th Cir. 2013) (en banc) (holding that the plaintiff-employee's alleged injury flowing from fraudulent scheme to avoid paying workers compensation was a personal injury, not an injury to business or property). The *Sedgwick* court rested its reasoning on plain-meaning, citing *Black's Law Dictionary* for the proposition that "[a] personal injury—that is, an injury 'to a person, such as a broken bone, a cut, or a bruise' or a 'bodily injury'—is different in kind from an injury to 'business or property,' in the sense that those terms are commonly understood." *Id.*; *see Doe*, 958 F.2d at 767 (holding that "whether [a plaintiff] can show a financial loss does not, by definition, establish that [they] ha[ve] suffered a business or property injury within the meaning of § 1964(c)"). In *Doe*, the plaintiff alleged that her attorney fraudulently induced her into a sexual relationship that caused her to lose her claim to attorney's fees because she essentially paid fees non-monetarily. *See id.* at 765. She further claimed that the lawyer's fraudulent sexual inducement led her to pay an excessive retainer because he knew he would no longer be charging standard fees (he overvalued the retainer on account of uncompensated sexual favors). *See id.* While finding the defendant's conduct reprehensible, the court could not brand it a RICO violation. *See id.* at 770:

> We can do no more than interpret the statute according to its plain language and as we believe Congress intended the language to be understood. In our view, Congress never contemplated that sexual services would be construed as property, the loss of which would be recoverable under § 1964(c). Illinois law is consistent with this interpretation.

*Id.*

especially in a case when there are both personal and business/property injuries.[25]

Of more moment in our present context is that a civil RICO *or* antitrust plaintiff must be "*injured* in his business or property" to establish standing.[26] Even though the phrase eludes definitive interpretation even after *Horn*, the Supreme Court has previously construed this injury requirement in the context of the antitrust laws.[27] In *Reiter v. Sonotone Corp.*, the Court held that "business or property" means more than "business activity or property" but the phrase is not unconstrained: Personal injuries are excluded.[28] In any event, these efforts to identify what "business or property" includes need not further detain us, for our primary object of study is what "business or property" excludes: Personal injuries.

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25. Bankers Tr. Co. v. Rhoades, 741 F.2d 511, 515 (2d Cir. 1984), *vacated on other grounds*, 473 U.S. 922 (1985) ("The requirement that the injury be to the plaintiff's business or property means that plaintiff must show a proprietary type of damage."); Grogan v. Platt, 835 F.2d 844, 846 (11th Cir. 1988). In *Grogan*, FBI agents were injured in a shootout with suspects of an organized crime group. *See Grogan*, 835 F.2d at 845. The agents sought relief under RICO, arguing that their physical injuries caused them to incur medical costs, which they urged was an economic injury. *See id.* The court acknowledged that "[t]his argument has some merit." *Id.* at 846. But the court ultimately saw that "if Congress had intended for the victims of predicate acts to recover for all types of injuries suffered, it would have drafted the statute to read: 'A person *injured* by reason of a violation of section 1962 in this chapter may sue therefor.'" *Id.* (alteration in original). Thus, the interpretive task was to decide whether *derivative* economic damages are compensable under RICO. *See id.* The court held that such damages were not compensable, but it left the door open to more favorable facts. *See id.* at 848:

> We do not hold that plaintiffs may never recover under RICO for the loss of employment opportunities . . . . Without ruling on hypothetical cases, we can conceive of injuries resulting from murder for which recovery would be possible that do not involve issues such as loss of earnings and loss of support that are part of many personal injury claims.

*Id.*; *see also* Blevins v. Aksut, 849 F.3d 1016, 1021 (11th Cir. 2017) (holding that economic damage from personal injuries can lead to RICO standing). In *Blevins*, the plaintiffs brought a RICO claim against a doctor who conned them into getting unnecessary heart surgeries. *See Blevins*, 849 F.3d at 1018. The court held that this led to economic injuries that *were* either "business or property." *Id.* at 1021. Although physical bodies were involved, the economic loss was independent of any medical malpractice or battery claim: "Plaintiffs seek to recover damages under § 1964(c) for amounts they paid for the unnecessary heart procedures. These injuries do not flow from any personal injuries. Rather . . . the payments themselves are economic injuries." *Id.*; *see also* Ironworkers Local Union 68 v. AstraZeneca Pharmaceuticals, LP, 634 F.3d 1352, 1363–64 (11th Cir. 2011). Although the case failed for want of sufficient pleading of operative facts, a plaintiff who "allege[s] that her purchase payments were the product of physicians medically unnecessary or inappropriate prescriptions" has likely pled a valid RICO injury. *Blevins*, 849 F.3d at 1363.

26. *See* Clayton Act of 1914 § 4(a), 15 U.S.C. § 15(a); RICO Act of 1970 § 4(c), 18 U.S.C. § 1964(c).

27. *See generally* Reiter v. Sonotone Corp., 442 U.S. 330 (1979).

28. *Id.* at 338; *see id.* at 338–39.

At a surface level, this inquiry is easily resolvable: Personal injuries are not injuries to business or property. But as courts and commentators have noted, many tort claims involve both personal injuries ("I was hit by a bus and broke my leg") and proprietary harm ("I lost my job as a dancer because my leg was broken").[29] And civil RICO is, after all, a statutory tort, so it's not as if there's an agreed-upon way to always carve personal and property/business injuries at the joint. Now, this is not to say that purely physical personal injuries can form the basis of a cognizable civil RICO claim. But an injury analysis under § 1964(c), in which many predicate acts—like murder or felony assault—essentially presume the presence of personal injuries, can be much more complicated than one under § 4 of the Clayton Act, where it's unlikely that someone can be physically injured by monopolization or price fixing. It is that complication that the Supreme Court set out to explore in *Horn*.[30]

## IV. *MEDICAL MARIJUANA, INC. V. HORN* TURNS ON THE MEANING OF "INJURED IN HIS BUSINESS OR PROPERTY"

### *A. The Facts Giving Rise to the Claim of Injury*

Douglas Horn was an over-the-road trucker.[31] He lost his job after failing a random drug test that revealed the presence of tetrahydrocannabinol (THC) in his system.[32] THC is the substance that gives marijuana its psychotropic properties.[33] Cannabidiol (CBD) is also a substance found in the marijuana plant, which has both drug-use (pot) and industrial (hemp) strains,[34] and in recent years, studies have found it

29. *See* Patrick Wackerly, *Personal Versus Property Harm and Civil RICO Standing*, 73 U. CHI. L. REV. 1513, 1515–20 (2006); United States v. Burke, 504 U.S. 229, 235 (1992) ("[T]he victim of a physical injury may be permitted . . . to recover damages not only for lost wages, medical expenses, and diminished future earning capacity on account of the injury, but also for emotional distress and pain and suffering."); *see, e.g.*, Frankel v. Heym, 466 F.2d 1226, 1229 (3d Cir. 1972) (affirming damages for both physical injury and loss of future earnings for a disabling car crash); Reilly v. United States, 863 F.2d 149, 174 (1st Cir. 1988) (upholding an award of pain and suffering and lost earning potential for an infant who suffered physical injury from a doctor's negligence); Flannery for Flannery v. United States, 718 F.2d 108, 111–13 (4th Cir. 1983).

30. *See* Med. Marijuana, Inc. v. Horn, 604 U.S. 593, 593 (2025).

31. *See id.* at 597.

32. *See id.*

33. *See Marijuana*, MAYO CLINIC (Aug. 15, 2025), https://perma.cc/Q5U9-GRBK.

34. *Cannabis sativa* is the plant from which marijuana is derived and is also the species of plant from which industrial hemp is derived. The Eighth Circuit explained, *see* Horn v. Med. Marijuana, Inc., 383 F. Supp. 3d 114, 119–20 (W.D.N.Y. 2019):

> Both industrial hemp and the drug commonly known as marijuana derive from the plant designated *Cannabis sativa* L. In general, drug-use cannabis is produced from the flowers and leaves of certain strains of the plant, while

to have medicinal value, especially in the context of pain management.[35] In September 2012, Horn purchased a bottle of Medical Marijuana's "Dixie X Dew Drops," a CBD oil derived from hemp, in the hope of mitigating pain and inflammation that he suffered as a result of a motor vehicle accident.[36] Before purchasing Dixie X, Horn and his wife investigated the product and Medical Marijuana's marketing materials stated that the product contained "no THC" and "0% THC."[37] After Horn failed the drug test, he purchased a second bottle of Dixie X, had it tested, and learned that it did in fact contain THC.[38] Horn then sued, alleging a host of state-law claims and a RICO violation, all predicated on his loss of earnings and other benefits.[39]

### *B. The District Court Grants Medical Marijuana Judgment as a Matter of Law*

The district court granted summary judgment to Medical Marijuana on some of Horn's state-law claims because he did not claim that he "suffered any personal injury or injury to property as a result of Defendants' conduct."[40] But later, as trial approached, Medical Marijuana filed a motion in limine to preclude the testimony of Horn's damages expert, because the type of damages that Horn sought were not recoverable under RICO.[41] The court sensed that "in truth" the motion was dispositive and, as such, would be treated under Rule 56(f).[42] In an abrupt volte-face in light of its previous attack on Horn's state-law claims, Medical Marijuana now argued that his alleged damages were not cognizable under RICO "because they are predicated on the bodily invasion plaintiff allegedly sustained when THC was introduced into his system through the ingestion of Dixie X."[43] In short, therefore, the district court concluded that "because plaintiff's loss of earnings flows

> industrial-use cannabis is typically produced from the stalks and seeds of other strains of the plant. All cannabis plants contain tetrahydrocannabinol (THC), the substance that gives marijuana its psychoactive properties, but strains of the plant grown for drug use contain a higher THC concentration than those typically grown for industrial use.

*Id.* (quoting Monson v. Drug Enforcement Admin., 589 F.3d 952, 955 (8th Cir. 2009)).

35. *See* Jennifer Fisher, *Can CBD Oil Help Manage Pain?*, HARV. HEALTH PUBL'G (Sep. 3, 2024), https://perma.cc/WM9T-CKG4.

36. *See Med. Marijuana*, 604 U.S. at 597.

37. *Id.*; Joint App. at 19, *Med. Marijuana*, 604 U.S. 593 (No. 23-365), 2024 WL 3392572.

38. *See Med. Marijuana*, 604 U.S. at 598.

39. *See id.*

40. *Med. Marijuana*, 383 F. Supp. 3d at 134.

41. *See* Horn v. Med. Marijuana, Inc., No. 15-CV-701, 2021 WL 4173195, at *1 (W.D.N.Y. Sep. 14, 2021).

42. *Id.*

43. *Id.* at *2.

from, and is derivative of, a personal injury he suffered, his lost earnings do not constitute an injury 'to business or property' that is recoverable in a civil RICO action."[44] We'll return to the issue later, but—framed in this "derivative" language—the court was to some extent conflating two issues: *Type* of injury and *cause* of injury.

### *C. The Second Circuit Revives Horn's RICO Claim*

The Second Circuit reversed, reasoning that "while § 1964(c) implicitly excludes recovery for personal injuries, nothing in § 1964(c)'s text, or RICO's structure or history, supports an amorphous RICO standing rule that bars plaintiffs from suing simply because their otherwise recoverable economic losses happen to have been connected to or flowed from a non-recoverable personal injury."[45] The court was satisfied that a loss of employment qualifies as a business injury, so the remaining question was whether there is an "antecedent-personal-injury bar" that stands to disable claims that derive from personal injuries.[46] The court found that there was not, even though § 1964(c) "implicitly excludes recovery for personal injuries."[47] This decision is so because "the negative implication that RICO excludes recovery for personal injury does not mean that a plaintiff cannot sue for injuries to business or property simply because they flow from, or are derivative of, a personal injury."[48] This summons another question, because Horn's argument below was that the ingestion of THC caused him "economic damage," not a separate "injury": "The nexus between the RICO violations . . . and [plaintiff's] resulting economic damages . . . is the harm of the THC that was introduced into [his] system by Defendants' product."[49] That question was left for the Supreme Court to resolve.

### *D. The Supreme Court Steps In to Resolve a Circuit Split*

The Court granted Medical Marijuana's petition for writ of certiorari to answer this question:

> Whether economic harms resulting from personal injuries are injuries to "business or property" under civil RICO or are instead personal-injury damages.[50]

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44. *Id.* at *3.

45. Horn v. Med. Marijuana, Inc., No. 22-349-CV, 2023 WL 5339572, at *1 (2d Cir. Aug. 21, 2023).

46. *Id.* at *4.

47. *Id.* at *5.

48. *Id.*

49. *Horn*, 2021 WL 4173195, at *3.

50. *See* Med. Marijuana, Inc. v. Horn, 604 U.S. 593, 614 (2025) (Thomas, J., dissenting).

In a 5-4 decision authored by Justice Barrett, the majority held that they can be, although it reached this conclusion by a circuitous path. Before retracing that path, pause to consider Justice Thomas's position that the Court improvidently granted the writ of certiorari. Although Justice Thomas agreed that the question presented was rooted in a circuit split ripe for resolution, he had a twofold objection to proceeding: One factual and one definitional.[51] The factual problem arose because the question presented assumed the existence of a "personal injury," a hotly contested fact.[52] The definitional problem flowed from what he saw as inadequate briefing.[53] Each of these issues bears examination.

There can be no doubt that recovery for economic harms resulting from personal injuries requires the predicate existence of personal injuries. At the Supreme Court, Medical Marijuana argued that "Horn suffered a quintessential personal injury [by] ingesting an unwanted substance."[54] Horn, by contrast, contended that he "did not suffer any harm to his person and that his injuries were only economic in nature."[55] And one could not sort this conflict out with reference to the record: The Second Circuit "sidestepped" the question and the District Court "expressed different views at different points."[56] In Justice Thomas's view, then, this put the Court in the position of rendering an advisory opinion or functioning as a fact-finder.[57]

Further troubling the analysis is the uncertain nature of the key phrase "injured in his business or property," which the Second Circuit did not decide the meaning of, and neither party offered a complete definition of the phrase in briefing. Indeed, the lower court seized on "business," without regard to the possible meaning of "property" and how the definition of one term might color the definition of the other.[58] In drawing attention to the definitional conundrum, Justice Thomas identified yet another unresolved gap in civil RICO: Namely, what sources a court should draw on to give meaning to the phrase "business or property." Lower courts have relied on the states's definitions of

51. *See id.* at 615–16 (Thomas, J., dissenting).
52. *Id.* at 616.
53. *See id.* at 617.
54. *Id.* at 618.
55. *Id.*
56. *Id.*
57. He was also concerned that there was a looming issue of judicial estoppel, given that Medical Marijuana had successfully argued that Horn had not suffered a personal injury.
58. *See* Horn v. Med. Marijuana, No. 15-CV-701, 2021 WL 4173195, at *1 (W.D.N.Y. Sep. 14, 2021).

business or property,[59] RICO's legislative history,[60] and Clayton Act interpretations.[61]

The majority began with an implicit nod to Justice Thomas's concerns, emphasizing what they would "*not* decide": Namely, whether Horn suffered a personal injury when he consumed THC, whether "business" encompasses "employment," and what "injured in . . . property" means.[62] With those items left for another day, the Court moved on to address a narrow issue: "[W]hether civil RICO bars recovery for all business or property harms that derive from a personal injury."[63] To answer this question, Justice Barrett faced and made an interpretive choice: In essence, whether to give the word "injure" an ordinary dictionary meaning or a specialized tort-law meaning. She chose the former, which set up the principal point of friction with the main dissent. In her view, "injure" means nothing more than "harm" or "damage."[64] Thus, "[a] plaintiff has been 'injured in his business or property' if his business or property has been harmed or damaged."[65] So conceived, cognizable "injury" is bounded by "business or property," which cuts off recovery for all other injuries.[66] "But the 'business or property' requirement operates with respect to the *kinds* of harm for which the plaintiff can recover, not the *cause* of the harm for which he seeks relief."[67] Cast in the form of a hypothetical,

> [I]f the owner of a gas station is beaten in a robbery, he cannot recover for his pain and suffering. But if his injuries force him to shut his doors, he can recover for the loss of his business.[68]

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59. *See* Diaz v. Gates, 420 F.3d 897, 900 (9th Cir. 2005); Logan v. Zimmerman Brush Co., 455 U.S. 422, 430 (1982); Brown v. Cassens Transport Co., 675 F.3d 946, 954 (6th Cir. 2012); DeMauro v. DeMauro, 115 F.3d 94, 96 (1st Cir. 1997); Evans v. City of Chicago, 434 F.3d 916, 929 (7th Cir. 2006); Leach v. FDIC, 860 F.2d 1266, 1274 n.14 (5th Cir. 1988).

60. *See* Zimmerman v. Poly Prep Country Day School, 888 F. Supp. 317, 329–331 (E.D.N.Y. 2012); La Delite, Ltd. v. Chipwhich, 691 F. Supp 613, 616 (E.D.N.Y. 1988); Van Schaik v. Church of Scientology of Cal., Inc., 535 F. Supp. 1125, 1136 (D. Mass. 1982) (collecting cases).

61. *See* Holmes v. Secs. Investor Prot. Corp., 503 U.S. 258, 265–68 (1992) (comparing the Clayton Act's "business or property" language to RICO's "business or property" language); Agency Holding Corp. v. Malley-Duff & Assocs., 483 U.S. 143, 143 (1987) (same); *see also supra* notes 20–25 and accompanying text.

62. Med. Marijuana, Inc. v. Horn, 604 U.S. 593, 600 (2025).

63. *Id.*

64. *Id.* at 601 (Barrett, J.).

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.* In a nice bit of irony, it's exactly this type of scenario that Justice Thomas believes that the Court should await: "[I]magine a case in which racketeering activity inflicts a classic personal injury—such as a broken arm—and as a result, the plaintiff

This Article later discusses more about the hypotheticals that the parties and Justices offered, but for now, suffice it to say that the majority held that "a plaintiff can seek damages for business or property loss regardless of whether the loss resulted from a personal injury."[69]

This conclusion only holds, though, if "injured" is given its ordinary, rather than specialized, meaning. The specialized meaning is a tort-law staple which defines "injury" as an "invasion of a legal right,"[70] whereas "harm" is the actual loss or damage resulting from the invasion.[71] In the context of Horn's case, Medical Marijuana and the principal dissent argued that Horn would need to show that he "suffered an invasion of a business or property right," which Justice Barrett equates to "a business or property tort."[72] Whether this equation is quite right bears further examination and is an issue that this Article will rejoin shortly.

The majority hung its choice of ordinary meaning on two related pegs. First, legal dictionaries define "injury" in both the contested senses.[73] Second, because § 1964(c) chooses the participial form ("injured") rather than the nominal ("injury"), Medical Marijuana's proffered dictionary (*Ballentine's Law Dictionary*) undercut its position because it defines "injured" as "hurt, damaged, [or] wounded."[74] This smacks of definitional trickery,[75] but, in fairness, Medical Marijuana did a bit of the same in positing that "damage" and "damages" are interchangeable terms and that, therefore, the fact that "damages" appears in § 1964(c) ("shall recover threefold the damages he sustains")[76] means that Congress was drawing a distinction between the concepts of injury and damage.[77] This argument is paper thin, given that it is well settled that "damages" is a term of art signaling the monetary quantification of harm and rarely used otherwise in legal contexts. The principal dissent partially rescued the argument by conceding that although damages *can* mean "monetary redress," in the context of §

suffers economic loss in the form of medical expenses. Such a case would cleanly tee up the question dividing the Circuits." *Id.* at 620 (Thomas, J., dissenting).

69. *Id.* at 601 (Barrett, J.).

70. *Id.* at 594 (quoting BALENTINE'S LAW DICTIONARY 627 (3d ed. 1969)).

71. *Id.*

72. *Med. Marijuana*, 604 U.S. at 594.

73. *See id.* at 601–04.

74. *Id.* at 603.

75. Treating "injured" as coming from a definitional source divorced from that of "injury" denies that "injured" means "suffered an injury," the point being that—in a specific legal context—both words either have to have an ordinary or specialized meaning. It logically won't do to cleave the words definitionally as the majority has done because the words exist in parallel, with the latter's meaning depending on that of the former.

76. 18 U.S.C. § 1964(c).

77. *See Med. Marijuana*, 604 U.S. at 603–04.

1964(c)—in which "damages" are the thing that a victim "sustains"—the word can only mean something like "losses."[78] This interpretation is so because, as the dissent saw it, "[a] plaintiff cannot suffer or sustain 'monetary redress,' as the Court seems to think, but he *can* sustain losses."[79] Although this reading is marginally plausible, it denies the practical realities of litigation, in which a court will ask jury something like:

> [I]n dollars and cents, if any, what do you find to be the *damages* that would fairly and reasonably compensate plaintiff for *injuries* proximately caused by defendant's violation of [§ 1962]?[80]

The root interpretive problem is that courts use injury, harm, and damages loosely and synonymously in a variety of contexts, including civil RICO. So, at the end of the day, the definitional word-games wind up as an exercise in question begging. A more fruitful line of inquiry is the *nature* of § 1964(c), which—as this Article has already posited—is that of a statutory tort.

## V. CIVIL RICO IS A STATUTORY TORT

The majority's misconception of § 1964(c) resides in a category error—namely, in the assumption that civil RICO is something other than a tort. To be sure, civil RICO is not coterminous with any particular common-law tort, but that does not mean that that it is an entirely different genus and species. (Common-law fraud and wire fraud have different elements to be pled and proven, but both are still "fraud."). So the question is not—as the majority contends—whether a court can "match the alleged facts with a particular business or property tort" or find a "particular tort [that] squarely governs the facts of the case."[81] Rather, the task is to interpret and apply RICO in harmony with its statutory and common-law cousins by using certain baseline assumptions and common linguistic understandings, including concepts like "injury" and "causation." And this requires no great analytical leap, as many courts and commentators have demonstrated.[82]

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78. *Id.* at 639 (Kavanaugh, J., dissenting).

79. *Id.*

80. *Jury Instructions for Civil and Criminal RICO Cases Approved by: RICO Cases Committee, Criminal Justice Section of the American Bar Association*, 1987 BYU L. REV. 1, 135 (1987), https://perma.cc/J58T-KE8L; *see, e.g.*, 11th Cir. Civil Pattern Jury Instrs. §§ 7.1–7.5 (2024), https://perma.cc/TP8P-FTVL; 5th Cir. Civil Pattern Jury Instrs. § 8, at 79 (2020), https://perma.cc/H7CJ-WZET; 9th Cir. Manual Model Civil Jury Instr. § 8, at 119 (2025), https://perma.cc/Y4ZV-KLLX; 10th Cir. Pattern Criminal Jury Instr. § 2.74.1, at 229, https://perma.cc/3QT7-JNN5 (last updated Feb. 7, 2025).

81. *Med. Marijuana*, 604 U.S. at 610 (Barrett, J.).

82. *See generally* Laura Ginger, *Causation and Civil RICO Standing: When Is a Plaintiff Injured "By Reason of" a RICO Violation?*, 64 ST. JOHNS L. REV. 849 (1990).

It's worth noting that treating civil-standing provisions included in criminal laws as torts predates RICO. Perhaps most on-point—for the hereditary reasons already discussed—are the antitrust laws.[83] So conceived, "[a] private suit under the antitrust laws is a suit seeking relief against a statutory tort."[84] What this entails, then, "is the application of the age-old tort principle[s] . . . to the novel statutory tort created by the federal antitrust laws."[85] Courts treat many other statutory redressive schemes as "torts."[86] Unsurprisingly, an unbroken line of cases—when tasked with categorization—refer to civil RICO as a "statutory tort."[87]

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*See* Poorman, *supra* note 20, at 1793–03; *Holmes*, 503 U.S. at 258, 270–71; Assoc. Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters, 459 U.S. 519, 531–546 (1983).

83. *See* Weeks v. Bareco Oil Co., 125 F.2d 84, 88 (7th Cir. 1941) (treating a Clayton Act claim as a "statutory tort, incident to a criminal conspiracy."); Olympia Equipment Leasing Co. v. W. Union Telegraph Co., 797 F.2d 370, 379 (7th Cir. 1986) ("[A]n antitrust violation is a statutory tort.").

84. Blue Cross & Blue Shield United of Wis. v. Marshfield Clinic, 152 F.3d 588, 592 (7th Cir. 1998); *see id.* (noting that general tort-law injury requirement obtains under Clayton Act); Mendelovitz v. Adolph Coors Co., 693 F.2d 570, 578 (5th Cir. 1982) ("Antitrust suits under the Texas statutes are tort actions.") (citing Erickson v. Times Herald Printing Co., 271 S.W.2d 329, 332 (Tex. Civ. App. 1954)).

85. Grip-Pak, Inc. v. Ill. Tool Works, Inc., 694 F.2d 466, 473 (7th Cir. 1982); *see id.* (opining that "[t]he tort principle serves practical goals of preventing duplicate recovery of damages and proliferation of lawsuits.").

86. To provide just a few examples, see generally Mack v. City of Detroit, 649 N.W.2d 47 (Mich. 2002) (discrimination); L'Aiglon Apparel v. Lana Lobell, Inc., 214 F.2d 649 (3d Cir. 1954) (Lanham Act); Taylor v. Meirick, 712 F.2d 1112 (7th Cir. 1983) (copyright); Lancaster v. Norfolk & W. Ry. Co., 773 F.2d 807 (7th Cir. 1985) (Federal Employers's Liability Act), and see Imbler v. Pachtman, 424 U.S. 409, 417 (1976) (section 1983 claims); L.A. Lakers, Inc. v. Fed. Ins. Co., 869 F.3d 795, 802, 804 (9th Cir. 2017) (Telephone Consumer Protection Act). *See also* John C.P. Goldberg & Benjamin C. Zipursky, *Rights and Responsibility in the Law of Torts*, *in* DONAL NOLAN & ANDREW ROBERTSON, RIGHTS AND PRIVATE LAW 251, 267 (2012), https://perma.cc/D73K-3H5R (discussing and identifying statutory torts). Goldberg and Zipursky note that courts treat statutory torts the same as common-law torts. *See id.* For example, with respect to securities fraud, courts treat "investors as holders of a power to extract a remedy upon proof that of the violation of the right not to be manipulated or defrauded in connection with the purchase or sale of securities." *Id.*

87. Brandenburg v. Seidel, 859 F.2d 1179, 1189 (4th Cir. 1988) ("Civil RICO is of course a statutory tort remedy—simply one with particularly drastic remedies."); Reynolds v. E. Dyer Dev. Co., 882 F.2d 1249, 1253 (7th Cir. 1989) ("Civil RICO is a statutory tort, so causation principles that generally apply in tort cases apply in civil RICO cases"); Mid Atlantic Telecom, Inc. v. Long Distance Servs., 18 F.3d 260, 263 (4th Cir. 1994) (same as *Brandenburg*); *In re* EpiPen Direct Purchaser Lit., No. 20-cv-0827, 2023 WL 4104000, at *2 (D. Minn. June 21, 2023) ("[T]he Eight Circuit Court of Appeals has instructed courts evaluating RICO damages claims to look to tort law principles, because RICO is 'a statutory tort remedy.'"); The Preserve at Boulder Hills, LLC v. Kenyon, 312 A.3d 475, 484 (R.I. 2024) (state-law analogue to federal RICO); Alix v. McKinsey & Co., 739 F. Supp. 3d 172, 183 (S.D.N.Y. 2024) ("[C]ivil RICO 'is often described as [a] statutory tort.'" (alteration in original) (quoting Lateral Recovery, LLC v. Cap. Merch. Servs., LLC, 632 F. Supp. 3d 402, 444 (S.D.N.Y. 2022))).

## VI. INJURY CONCEIVED OF AS AN INVASION OF RIGHTS

Starting from the premise that civil RICO is—categorically speaking—a tort, then Medical Marijuana and the dissent's conception of injury as an invasion of rights is a sensible stance. Justice Kavanaugh's description of a pedestrian's injury at the hands of a negligent driver as a "wrongful invasion of the physician's physical safety" is well taken.[88] And this, despite the majority's insistence that "not even a cover-to-cover reading of the Restatement will reveal a 'wrongful invasion of physical safety'" tort.[89] This position is at once unfair and beside the point. It's unfair because Justice Kavanaugh did not posit the existence of a freestanding tort by that name, he merely described the content of one element—injury—of a negligence claim based on a hypothetical scenario. It's beside the point because—although Justice Barrett searched in vain for those words—the history of tort law is littered with the notion behind them.

At least as far back as Blackstone, a "wrong" (the older name for a "tort") was defined as "an infringement or privation of the private or civil rights belonging to individuals."[90] As a matter of procedure, Professor Lisa Laplante notes that "[j]udges first determined whether the plaintiff proved a violation of an individual's right of person or property; if proven, this private wrong provided the grounds to trigger the claim for a remedy to make the defendant pay for the harm caused by the injury."[91] This equation of an act invading a right *as an injury* causing compensable harm carried forward in early American jurisprudence, which Professor Laplante locates in a decision of Justice (then Judge) Story in *Webb v. Portland Manufacturing Co.*[92] In that case, Justice Story explicitly endorsed the notion that violation of a right is "injury," even in a case of no actual harm:

> Actual, perceptible damage is not indispensable as the foundation of an action. The law tolerates no further inquiry than whether there has been a violation of a right. If so, the party injured is entitled to maintain his action for nominal damages, in vindication of his right, if no other damages are fit and proper to remunerate him.[93]

88. Med. Marijuana, Inc. v. Horn, 604 U.S. 593, 609 n.9 (2025).
89. *Id.*
90. WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 116–17 (1st ed. 1769).
91. Lisa J. Laplante, *Human Torts*, 39 CARDOZO L. REV. 245, 281 (2017).
92. *See* 29 F. Cas. 506, 506–07 (C.C. Me. 1838).
93. *Id.* at 508.

Chief among these rights was "bodily security" (also called "personal security"),[94] a violation of which gave rise to a presumptive injury.[95] Nonetheless, "property rights were one of the most clearly identifiable rights."[96]

The notion of "injury" as an invasion of a plaintiff's rights is not a mere historical artifact. Even in the early modern era, the concept held, both as to business/property[97] and physical rights. Although Cardozo and Arnold agreed about little else in *Palsgraf v. Long Island Railroad Co.*, both equated injury with a rights invasion.[98] And, in a personal injury case, "the right to be protected against [is] interference with one's bodily security."[99] Now, it is true that, over time, courts began to talk more about duties of defendants than rights of plaintiffs, but because, as the saying goes, rights and duties hunt in pairs, the underlying concept remains the same. That is, a plaintiff has a right not to be injured and a defendant has a correlative duty not to injure.[100] As Goldberg and Zipursky put it, "rights invasion" is a definitional and foundational concept: "All torts are relational wrongs, and hence are, by definition, rights invasions. A tort is a breach of a relational legal duty of non-injury."[101] For example, in the context of a factual misrepresentation, a defendant breaches a duty not to induce someone to part with something of value in reliance on that misrepresentation and breach of that duty

94. *See* Murphy v. N.Y. & New Haven R.R. Co., 30 Conn. 184, 187 (1861) (holding, in a wrongful death case caused by negligent operation of railroad, that "[t]he intestate's right of personal security has been wrongfully invaded, and that has been distinctly alleged as the cause of action. In both cases the law attaches an injury to such a wrongful act").

95. *See* LaPlante, *supra* note 91, at 285–86.

96. *Id.* at 285.

97. *See* Louis Kamm, Inc. v. Flink, 175 A. 62, 66 (N.J. 1934) ("The right to pursue a lawful business is a property right that the law protects against unjustifiable interference. Any act or omission which unjustifiably disturbs or impedes the enjoyment of such a right constitutes its wrongful invasion, and is properly treated as tortious.").

98. *See* Palsgraf v. Long Island R.R. Co., 162 N.E. 99, 99 (N.Y. 1928) ("Negligence is not actionable unless it involves the invasion of a legally protected interest, the violation of a right.") (Cardozo, C.J.); *id.* at 103 (Andrews, J., dissenting) ("The right to recover damages rests on additional considerations. The plaintiff's right must be injured, and this injury must be caused by the negligence.").

99. *Id.* at 101 (Cardozo, C.J.).

100. *See, e.g.*, JOHN GOLDBERG AND BENJAMIN ZIPURSKY, RECOGNIZING WRONGS 186–87 (2020); *Louis Kamm*, 175 A. at 67 ("This right to pursue one's business without such undue interference, and the correlative duty, are fundamentals of a well-ordered society.").

101. GOLDBERG & ZIPURSKY, *supra* note 100, at 261; *see also Injury*, BALENTINE'S LAW DICTIONARY 627 (3d ed. 1969) (defining an injury as an "invasion of a legal right"); PROSSER & KEETON, ON THE LAW OF TORTS 2 (5th ed. 1984) (defining a tort as "a civil wrong, other than a breach of contract, for which the court will provide remedy in the form of an action for damages").

"constitutes a violation of the victim's right not to be deceived in a certain kind of transactional setting."[102]

## VII. THE MEANING OF "INJURY" AS A MATTER OF RECENT PRECEDENT

The majority saw its analysis buttressed by the Court's recent decision in *Yegiazaryan v. Smagin*, which undertook the question whether a particular injury to property (a massive California judgment) was "domestic" and thus actionable under § 1964(c).[103] And while it is true that the Court there rejected the defendants's assertion that an injury is located at the plaintiff's domicile,[104] there was no sweeping pronouncement that tort-law principles are irrelevant in the context of § 1964(c).[105] Indeed, the Court's analysis explicitly cast the plaintiff's injury in tort-law terms: The defendant's racketeering acts "were devised, initiated, and carried out . . . through acts and communications initiated in and directed towards Los Angeles County, California, with the central purpose of frustrating enforcement of [the] California judgment."[106] And what did this "frustrating" enforcement entail? Invading plaintiff's rights to his judgment, "including the right to obtain post-judgment discovery, the right to seize assets in California, and the right to seek other appropriate relief from the California District Court."[107] And because the alleged RICO scheme thwarted those rights and thereby undercut the orders of the California District Court and plaintiff's collection efforts, plaintiff sufficiently alleged domestic injury.[108]

Further, to the extent that Justice Barrett posits that *Medical Marijuana*'s "tort-centric" reading of § 1964(c) "stands in significant tension with" *Yegiazarian*, that distorts the common-law argument proffered in that case.[109] In what's really just an aside in *Yegiazarian*, given its factual finding that plaintiff had indeed sufficiently alleged a domestic injury, the Court interrupted its analytical flow to consider defendants's common-law arguments, which—as already noted—would

102. GOLDBERG & ZIPURSKY, *supra* note 100, at 261. In the briefing, Horn argues that injuries are "sustained" while damages are not. *See Sustains*, AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (1969) (defining "sustains" as "experience[s] or suffer[s]"); *see also* WesternGeco LLC v. ION Geophysical Corp., 585 U.S. 407, 417 (2018) (noting that the injury requirement under § 1964(c) is a separate legal concept than damages); United States v. Burke, 504 U.S. 229, 325–37 (1992) (analyzing damages through use of traditional tort principles).

103. *See* 599 U.S. 533, 536–49 (2020).

104. *See id.* at 547–58.

105. *See id.* at 548–49.

106. *Id.* at 546.

107. *Id.*

108. *See id.*

109. Med. Marijuana, Inc. v. Horn, 604 U.S. 593, 594 (2025).

lodge any injury at the plaintiff's residence.[110] But defendants got there by relying on what Professor George Bermann, in an amicus brief, called "shockingly outdated" authority. The Court thus concluded:

> Although the First Restatement was in effect in 1970, when RICO was enacted, numerous jurisdictions had by then moved away from the First Restatement's methodology and toward a "'most significant relationship'" test, which resembles "the kind of 'multi-factor' analysis the Court of Appeals conducted here." This shift was reflected in § 145 of the Restatement (Second) of Conflict of Laws, which superseded the First Restatement the following year in 1971. Thus, even assuming choice-of-law principles are relevant, petitioners' identification and application of those principles is questionable.[111]

At bottom, then, the place-of-injury dispute was not so much wrangling over whether common-law tort theories have any bearing on RICO but what an appropriate reading of the common law would yield as a result. Cast in this light, the *Yegiazarian* opinion doesn't have much at all to say about the nature of a § 1964(c) injury, as opposed to whether an injury—however conceived—is foreign or domestic.

## VIII. MORE ON THE UTILITY OF ANTITRUST PRECEDENTS

Medical Marijuana and the principal dissent made a compelling argument that antitrust precedents settle the interpretive dispute over the meaning of "injured." As already noted, antitrust law is relevant to RICO because § 1964(c) of RICO derives its operative language from § 4 of the Clayton Act, both of which give private plaintiffs standing to sue for otherwise criminal violations that cause them injury. Because the meaning of Clayton Act § 4 had been litigated for over half a century at the time of § 1964(c)'s adoption, it's reasonable to ask whether the two sections should be interpreted and applied *eodem modo*, given the symmetrical lingo.[112] Justice Kavanaugh says "yes": "Those prior

110. The gist of defendants's argument was that because plaintiff alleged an "economic injury" or an "injury in intangible property," common-law principles dictate "the situs" of such injuries. *Yegiazaryan*, 599 U.S. at 546. In support, with respect to economic injuries, Defendants invoked the *Restatement (First) of Conflict of Laws* § 377, under which "a fraud plaintiff suffers an economic loss at the plaintiff 's domicile." *Id.* at 546–47 (citing RESTATEMENT (FIRST) OF CONFLICT LAW § 377 (A.L.I. 1934)). As to the judgment, which they labeled an "intangible," defendants relied on the principle of *mobilia sequuntur personam*, which they claimed "generally locat[es] intangible property at the domicile of its owner." *Id.* at 547. Under both principles, so the argument goes, plaintiff was injured at his residence in Russia.

111. *Yegiazaryan*, 599 U.S. at 547 n.4 (citations omitted).

112. *See* 18 U.S.C § 1964(c). As further evidence of shared DNA, both Section 4 of the Clayton Act and 1964(c) of the RICO Act have a common ancestor: Each contain the same injury-and-causation language found in Section 7 of the Sherman Act, as originally

antitrust holdings interpreting that same statutory language carry weight both as a matter of precedent and because this Court presumes that in enacting RICO, Congress adopted 'the interpretation federal courts had given the words earlier Congresses had used' in the antitrust laws."[113]

Taking this approach would seem to settle the matter because venerable authority held that an antitrust claim arises only for "one who has been *injured* in his business or property. *Injury* implies *violation of a legal right*."[114] From this, the principal dissent—in agreement with Medical Marijuana—concluded that "'injured' referred to the violation of a legal right, not to the harm or damage resulting from the damage resulting from the violation of a legal right."[115] Later courts "applied those basic principles to hold that that the antitrust laws 'exclude personal injuries.'"[116] Accordingly, "antitrust precedents therefore strongly buttress . . . that RICO excludes personal-injury torts, *regardless of what kinds of losses or damages ensue*."[117] For now, this Article brackets the italicized phrase, though it raises a point that calls for amplification.

The majority mostly sidesteps the Clayton Act-RICO analogy by noting that (1) RICO has no specialized "racketeering injury" requirement, unlike § 4, which courts have read to demand a showing of "antitrust injury,"[118] (2) case law supporting the dissent's position is sparse, and (3) there is plenty of precedent holding "that the Clayton Act and 1964(c) are not 'interchangeable.'"[119] With respect to the second point, it's not all that surprising that there is little antitrust authority dealing with personal injuries. For as both the majority and dissent agree, "[f]ew antitrust violations are likely to inflict personal injury [because] anticompetitive acts break laws, not legs."[120] And with respect to the third point, the majority is correct that courts routinely follow § 4 precedent—or not—depending on whether it supports—or not—an ultimate holding. This case amply illustrates that observation. And so,

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adopted in 1890. *See* Chattanooga Foundry & Pipe Works v. Atlanta, 203 U.S. 390, 395–99 (1906) (quoting language from Section 7 of the Sherman Act).

113. *Med. Marijuana*, 604 U.S. at 631–32 (Kavanaugh, J., dissenting) (quoting Holmes v. Secs. Inv. Protection Corp., 503 U.S. 258, 268 (1992)).

114. *Id.* at 632 (cleaned up).

115. *Id.* at 632.

116. *Id.* at 633 (quoting Reiter v. Sonotone Corp., 442 U.S. 330, 339 (1979)).

117. *Id.* at 634 (emphasis added).

118. *See* Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477, 489 (1977). Probably too much has been made of the "antitrust injury" standing argument: The plaintiff in that case was injured by competition, which the antitrust laws are designed to foster and which, therefore, a plaintiff should have no standing to complain about, even if that competition caused it harm.

119. *Med. Marijuana*, 604 U.S. at 608 (Barrett, J.).

120. *Id.* at 636 (Kavanaugh, J., dissenting).

once again, we're left with no principled guidance as to how § 4 interpretive precedent can illuminate the meaning of § 1964(c); rather, an ever-growing pile of ad hoc split decisions is left to puzzle over.

## IX. HORN APPEARS TO SUFFER DEFEAT IN VICTORY

In a familiar (and nearly always futile)[121] move, the Kavanaugh dissent invoked "federalism" and "floodgate" concerns. That is, "[i]f RICO covered personal injuries that lead to lost wages and medical expenses, as Horn advocates, then civil RICO would federalize huge swaths of state tort law in a manner that Congress never contemplated or authorized."[122] Consequently, "RICO would suddenly authorize a vast new category of personal-injury suits seeking treble damages in federal court."[123] As examples, Justice Kavanaugh suggested that "plaintiffs could routinely repackage"—as civil RICO violations—"claims for personal injuries from drug mislabeling, dangerous products, medical malpractice, car accidents, and health consequences from pollution to name a few."[124] This ability would produce many "cascading effects on the American economy," including increased litigation exposure and attendant settlement pressure, mounting insurance premiums, higher prices, fewer jobs, and lower wages.[125]

The majority parried these objections in two ways. First, with respect to the technical "over-federalization" point, the majority met it as the Court had before: "If the breadth of the statute leads to the undue proliferation of RICO suits, the correction must lie with Congress."[126]

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121. *See* Garland v. Cargill, 602 U.S. 406, 428 (2024) ("[I]t is never our job to rewrite . . . statutory text under the banner of speculation about what Congress might have done." (quoting Henson v. Santander Consumer USA Inc., 582 U.S. 79, 89 (2017))); Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 576 (1982) ("Congress may amend the statute; we may not."); Lamie v. U.S. Tr., 540 U.S. 526, 538 (2004); Loper Bright Enters. v. Raimondo, 603 U.S. 369, 403 (2024) ("And to the extent that Congress and the Executive Branch may disagree with how the courts have performed that job in a particular case, they are of course always free to act by revising the statute."); Consumer Product Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 124 (1980); *Reiter*, 422 U.S. at 344; Dodd v. United States, 545 U.S. 353, 354, 359–60 (2005); Michigan v. Bay Mills Indian Cmty., 572 U.S. 782, 803 (2014); Jesner v. Arab Bank, PLC, 584 U.S. 241, 264 (2018) (quoting Ziglar v. Abbasi, 582 U.S. 120, 137 (2017); Rivers v. Roadway Exp., Inc., 511 U.S. 298, 305 (1994); Wis. Cent. Ltd. v. United States, 585 U.S. 274, 284 (2018); Nasrallah v. Barr, 590 U.S. 573, 583 (2020); United States v. Davis, 588 U.S. 445, 448 (2019); Nat'l Ass'n of Mfrs. v. Dep't of Def., 583 U.S. 109, 123 (2018); United States v. Stevens, 559 U.S. 460, 481 (2010); United States v. Locke, 471 U.S. 84, 95 (1985); AMG Cap. Mgmt. v. FTC, 593 U.S. 67, 82 (2021); Rucho v. Common Cause, 588 U.S. 684, 687–88 (2019).

122. *Med. Marijuana*, 604 U.S. at 635 (Kavanaugh, J., dissenting).

123. *Id.*

124. *Id.* at 646.

125. *Id.*

126. *Id.* at 613 (Barrett, J.).

Second, and this is perhaps the most interesting aspect of the whole case, Justice Barrett essentially says, none of this will much matter in the real world.[127] Why? Causation will do the work and tamp down any undue litigation uptrend: "Time and again, we have reiterated that § 1964(c)'s 'by reason of' language demands 'some direct relation between the injury asserted and the injurious conduct alleged.'"[128] With the key being directness ("foreseeability does not cut it"),[129] causation may have presented an "insurmountable obstacle" to Horn's case.[130] And if that were not enough, RICO's myriad pleading and proof requirements serve as critical dampers on potential litigation explosions. Then too, as Justice Thomas noted and Justice Barrett now concedes, the majority opinion has noticeable definitional lacunae that might well prove devastating to Horn: "'[B]usiness' may not encompass every aspect of employment, and 'property' may not include every penny in the plaintiff's pocketbook. Accordingly, not every monetary harm—be it lost wages, medical expenses, or otherwise—necessarily implicates RICO."[131]

## X. HORN'S INJURIES

### *A. Where Did Horn Suffer an Injury?*

Much of the argument in *Horn* turns on whether Horn suffered a personal injury (at least at the Supreme Court, he says "no," and Medical Marijuana says "yes") and how that impacts any remedy for the loss of his job. To better understand what *Horn* may ultimately mean, it is useful to step back and look at Horn's threshold factual assertions and where that leads in the chain of events. In his Complaint, Horn stated:

> In reliance on the numerous claims, assertions, allegations, false advertising and misleading press releases of the defendants, claiming the product contains "0% THC" . . . plaintiff purchased and consumed from said defendants the product DIXIE X, an elixir marketed to be a natural, safe way to relieve pain, nausea, anxiety and convulsions.[132]

Horn embedded two factual aversions here: (1) DIXIE X contains "0% THC" and (2) the product has medicinal value. Horn's RICO case is

127. *See id.* at 612–13.

128. *Id.* at 612 (quoting Holmes v. Secs. Inv. Protection Corp., 503 U.S. 258, 268 (1992)).

129. *Id.*

130. *Id.* at 612–13.

131. *Id.* at 613.

132. Complaint ¶ 19, at 5, Horn v. Med. Marijuana, 604 U.S. 593 (2025) (No. 1:15-CV-00701); *see also id.* ¶ 53, at 12 ("Plaintiffs reasonably relied on Defendants intentional misrepresentations, concealments or omissions inducing them [to] purchase and consume their products.").

built on the first assertion—i.e., Medical Marijuana committed predicate acts of mail- and wire-fraud by falsely claiming that DIXIE X contained no THC. Had Horn known that the product contained THC, he would not have purchased it. That he parted with money because Medical Marijuana misrepresented the content of DIXIE X thus constitutes his RICO injury. Why?

### *B. How Did Horn Suffer an Injury?*

Starting with *Sedima*, the Supreme Court has been clear that—in a civil RICO case—"the compensable injury necessarily is the harm caused by predicate acts sufficiently related to constitute a pattern, for the essence of the violation is the commission of those acts in connection with the conduct of an enterprise."[133] Accordingly, "[a]ny recoverable damages occurring by reason of a violation of § 1962(c) will flow from the commission of the predicate acts."[134] In Horn's case, Medical Marijuana's predicate acts of mail- and wire-fraud induced Horn to buy DIXIE X, thus setting in motion the sequence of events in which he makes the purchase, ingests the product, fails a drug test, and is fired from his job. Somewhat ironically, assuming that a loss of money in a fraudulent transaction counts as an injury to "property," Horn may well have established that he was "injured in his business or property."

So where does that leave us? Under Goldberg and Zipursky's framework discussed above, the mail- and wire-fraud statutes constitute a directive that a person may not (for this Article's purposes) devise a scheme to obtain money or property by false or fraudulent pretenses, representations, or promises. This legal directive created a legal duty in Medical Marijuana, the violation of which instantiates a legal wrong known as the crimes of mail- and wire-fraud. That wrong in turn constitutes a violation of Horn's right not to be deceived in the particular consumer transaction alleged.[135] And invasion of that right is Horn's injury.

*Horn* leaves unresolved the meaning and impact of the second link in the chain (Horn's consumption of DIXIE X), which the parties and the Court treated as the first. Though it's easy to establish injury in the first link, the second is more problematic because Horn suffered no negative physical effects from ingesting the elixir. And although it's true that he wouldn't have purchased the product had he known that it contained THC, he consumed it for its medicinal value and there was no allegation

133. Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 497 (1985); *see also* Hemi Grp. v. City of New York, 559 U.S. 1, 1–3 (2010).

134. *Sedima*, 473 U.S. at 497.

135. *See* GOLDBERG & ZIPURSKY, *supra* note 100, at 261.

that Medical Marijuana misrepresented anything in that connection.[136] In any event, whether injury is located in the transaction or the ingestion, there still remains the question of what to make of Horn's lost wages-and-benefits. There is a simple answer: They are consequential damages.

### *C. Horn's Supposed "Injuries" are Really Consequential Damages*

Consequential damages are defined as "[l]osses that do not flow directly and immediately from an injurious act but that result indirectly from the act."[137] Under one line of reasoning, to tie back to our injury-as-right-invasion discussion, "every infringement of a right triggers an award of damages for the value of that right and compensatory damages are merely additional consequential damages in so far as losses have been suffered."[138] So, to revert to Justice Kavanaugh's example, a judgment in the case of a negligently run-down plaintiff contains two parts: (1) damages for the value of the infringed right to bodily integrity and (2) consequential damages for pecuniary (medical bills, lost wages, etc.) and non-pecuniary (pain and suffering, consortium, etc.) losses. This scheme works for intentional torts as well—for example, false imprisonment damages would include direct damages for the invaded right to freedom, plus consequential damages for any pecuniary and non-pecuniary losses.[139]

In *Horn*, the acts complained of, which civil RICO jurisprudence helpfully labels as predicate *acts*, are—as already discussed—mail- and wire-fraud founded on misrepresentations that Dixie X is THC free. Both the main dissent and Medical Marijuana argue about the impact of losses that are downstream from, flow from, or are consequences of, but nobody considered them in light of the well-developed and much discussed tort and contract concept, "consequential damages," a concept that traces to *Hadley v. Baxendale*.[140] In that case, millers contracted with

136. If it had, for instance, represented that DIXIE X contained no THC *and* that it contained no toxins, yet was laced with strychnine, which caused a series of convulsions and permanent muscle pain, then the two, different misrepresentations caused two, different injuries at two, different times.

137. Haynes & Boone v. Bowser Bouldin, Ltd., 896 S.W.2d 179, 182 (Tex. 1995) ("Consequential damages are 'those damages which result naturally, but not necessarily from the acts complained of.'") (citing Henry S. Miller Co. v. Bynum, 836 S.W.2d 160, 163 (Tex. 1992)); *see also* First Am. Bank v. First Am. Transp. Title Ins. Co., 585 F.3d 833, 839 (5th Cir. 2009) (defining consequential damages as "[l]osses that do not flow directly and immediately from an injurious act but that result indirectly from the act" (alteration in original) (quoting BLACK'S LAW DICTIONARY 416 (8th ed. 2004))); United States v. Wilfong, 551 F.3d 1182, 1187 (10th Cir. 2008) (same).

138. Andrew Stephen Burrows, *Damages and Rights*, *in* RIGHTS IN PRIVATE LAW 277 (Donal Nolan & Andrew Robertson eds., 2012) (citing ROBERT STEVENS, TORTS AND RIGHTS (2007)).

139. *See id.*

140. 9 Exch. 341 (1854) (Eng.), https://perma.cc/CZ92-DT7S.

a somewhat distant manufacturer to fabricate a crankshaft to replace one that had broken. To ensure a proper fit, the millers needed to transport the broken crankshaft to the factory as a pattern before it could begin the new fabrication. In response, the millers contracted with the defendants to deliver the crankshaft to the factory. But the shipper negligently delivered the shaft late, which resulted in a delay in the manufacture of the new shaft and a concomitant delay in resumption of milling operations. As a consequence, the millers suffered losses in the form of lost profits and wages paid to their idle workforce.

The millers sued the carriers for their losses, who defended on the theory that the millers's losses were too remote. The millers won at trial and the carriers appealed. The Court of Exchequer ordered a new trial and "deem[ed] to be expedient and necessary to state explicitly the rule which the Judge, at the next trial, ought, in our opinion, to direct the jury to be governed by when they estimate the damages."[141] Without using the phrase "consequential damages," the Court set out the general rule for determining cognizable damages, a rule that courts follow to this day:

> Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, i.e., according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it.[142]

Initially, this was of course a contract rule, but it soon enough became a tort rule, too.[143] *Evra Corp. v. Swiss Bank Corp.* is representative of the spillover from one domain to another. [144] There, to simplify a bit, a bank allowed a $27,000 wire order to go astray with enormous consequences for the sender.[145] In a bench trial, the judge determined that the bank was negligent and liable to the plaintiff for $2.1 million. On appeal, Judge Posner framed the judgment as one for "costs and lost profits—'consequential' or, as they are sometimes called, 'special' damages."[146] Given that framing, "[t]he only issue is whether it was entitled to consequential damages."[147] As a court sitting in diversity,

141. *Id.* at 353–54.
142. *Id.* at 354.
143. *See* N.J. Steam Nav. Co. v. Merchant's Bank of Bos., 47 U.S. 344, 434 (1848).
144. *See generally* 673 F.2d 951 (7th Cir. 1982).
145. *See id.* For a good discussion of *Hadley* and *Evra*, see generally Paul S. Turner, *Consequential Damages:* Hadley v. Baxendale *Under the Uniform Commercial Code*, 54 SMU L. REV. 655 (2001).
146. *Evra*, 673 F.2d at 955.
147. *Id.*

the first task was to decide how Illinois would view consequential damages. Ample precedent was in place: "The rule of *Hadley v. Baxendale*—that consequential damages will not be awarded unless the defendant was put on notice of the special circumstances giving rise to them—has been applied in many Illinois cases, and *Hadley* cited approvingly."[148] One case in particular, *Siegel v. Western Union Tel. Co.*,[149] seemed particularly apt:

> In *Siegel,* the plaintiff had delivered $200 to Western Union with instructions to transmit it to a friend of the plaintiff's. The money was to be bet (legally) on a horse, but this was not disclosed in the instructions. Western Union misdirected the money order and it did not reach the friend until several hours after the race had taken place. The horse that the plaintiff had intended to bet on won and would have paid $1650 on the plaintiff's $200 bet if the bet had been placed. He sued Western Union for his $1450 lost profit, but the court held that under the rule of *Hadley v. Baxendale* Western Union was not liable, because it "had no notice or knowledge of the purpose for which the money was being transmitted." [150]

The remaining issue was whether it made any difference that—in the precedential authority (*Hadley* and *Siegel*)—the negligence took place within the context of a contractual relationship.[151] The Court found that it did, for two reasons: First, because the plaintiff was culpable in that it could have avoided the consequences with minimal effort[152] and second, because—and this is a more salient point with respect to *Horn*—"[t]he rule of *Hadley v. Baxendale* links up with tort concepts in another way. [Namely, t]he rule is sometimes stated in the form that only foreseeable damages are recoverable in a breach of contract action."[153] Cast in this light, "it corresponds to the tort principle that limits liability to the foreseeable consequence of the defendant's carelessness."[154] Armed with those insights, the Court determined that—although the

148. *Id.*

149. *See* 37 N.E.2d 868, 871 (1941).

150. *Evra*, 673 F.2d at 956 (citing *Siegel*, 37 N.E.2d at 871).

151. Although it's a matter that goes unmentioned, Horn pled a breach of contract claim. *See* Complaint, *supra* note 132, ¶¶ 60–64, at 13.

152. *See Evra*, 673 F.2d at 957:

> *Siegel,* we conclude, is authority for holding that defendant is not liable for the consequences of negligently failing to transfer [plaintiffs's] funds to [third-party bank]; reason for such a holding is found in the animating principle of *Hadley v. Baxendale,* which is that the costs of the untoward consequence of a course of dealings should be borne by that party who was able to avert the consequence at least cost and failed to do so.

*Id.*

153. *Id.*

154. *Id.*

defendant might have a metaphysical awareness that failure to perfect a $27,000 wire transfer could cause substantial damage—"that kind of general foreseeability, which is present in virtually every case, does not justify an award of consequential damages."[155]

This line of reasoning should have doomed Horn's case.[156] For if—as Justice Barrett suggests (and other Justices noted in oral argument)—Horn's RICO claim should fail for reasons of remoteness of causation, then, even if he suffered a loss in his business or property, it too must fail *for the same reason*.

## XI. A HYPOTHETICAL ROAD TO UNDERSTANDING § 1964(C)

Because this case presented a question that was nearly of first impression, both the Justices and the parties argued via hypotheticals rather than precedent. And with no agreed-upon organizing principle at hand, the hypotheticals tell in scattered directions and wind up illuminating very little. But once the logic of consequential damages is applied to the hypotheticals, the troubles with them mostly evaporate. This Article first looks at Medical Marijuana's hypotheticals, which—as Justice Barrett correctly notes—aren't susceptible to a "guiding principle."[157] In the first, "if a mobster assaults a carwash owner and the owner does 'business with the mob' as a result, the owner has suffered a 'business or property injury.'"[158] But has it? No. The owner has suffered a personal injury (invasion of bodily integrity) and then *later*, lost profits in his business when he can no longer use "a cheaper, legitimate competitor."[159] So instead of having "a prototypical business or property injury,"[160] the owner has suffered consequential damages to his business. And what "if Tony Soprano drains a bank account using a computer password obtained by violence, Mr. Soprano has injured the account holder's property by taking his money."[161] This example is at once better and worse because there are two separate acts: The violent assault that dislodged the account number from the owner (personal injury) and the digital bank fraud when Tony uses the purloined number to drain the account (property injury). So no, the act of assault is not compensable, but the act of stealing the stolen money is, but not for the reasons that the

155. *Id.* at 959.

156. *See* DAN B. DOBBS, LAW OF REMEDIES §§ 3.2, 5.13, at 217, 545 (2d ed. 1993); *see also* RESTATEMENT (FIRST) OF TORTS § 901 cmt. a (A.L.I. 1939).

157. Med. Marijuana v. Horn, 604 U.S. 593, 608 (2025).

158. *Id.*

159. *Id.* at 609.

160. *Id.*

161. *Id.*

parties disputed—it's because two separate acts (assault and bank fraud) invaded two separate rights (bodily integrity and freedom from deceit).

Now, for comparison, a cleaner example of a single predicate act causing personal and business/property injury is that the hypothetical mobster running a protection racket has a recalcitrant storeowner in his territory. As a lesson to the other shopkeepers in the area, he firebombs the store of the holdout, while the owner is inside. Here, assuming that act of arson causes the building to burn down and the owner to suffer smoke inhalation, then there is both business/property injury and personal injury *from the same act*. The former will be recoverable and the latter will not, the reason being that the single act invaded two separate rights, simultaneously causing two separate injuries, one within § 1964(c), one without.[162]

## XII. A CONCLUSION AND WORK TO BE DONE.

What's next? As Justice Thomas plainly saw, the number of open questions will no doubt sow confusion in the lower courts and soon enough provide occasion for a more thorough review on a tidier record. In the meantime, although this Article agrees with Justice Barrett's prediction that causation problems will weed out claims like Horn's and thereby limit ultimate RICO *liability*, the majority overlooks the litigation *risk* that the majority opinion will inject into the system. The invitation to seek treble damages and attorney's fees is an attractive lure for plaintiffs looking for an opportunity to pursue fraud-based product liability claims as class actions or MDLs. And as everyone knows from the pre-*Anza*, pre-*Hemi* days, the threat of multibillion-dollar liability is sufficient to drive massive settlements.[163]

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162. *See* Sandwich Chef of Tex., Inc. v. Reliance Nat'l Indem. Ins., 319 F.3d 205, 223–24 (5th Cir. 2003); Summit Props., Inc. v. Hoechst Celanese Corp., 214 F.4th 556, 561 n.22 (5th Cir 2000); Feld Ent., Inc. v. Am. Soc'y for the Prevention of Cruelty for Animals, 873 F. Supp. 2d 288, 321 (D.D.C. 2012). *Horn* confirms the holding in *Hemi* that "foreseeability" is not a sufficient way to establish causation in civil RICO cases. But this is not a wholesale departure from general tort law—courts still consider the "directness" test associated with *In re Polemis* in non-RICO. *See generally In re* Polemis and Furness, Withy & Co., 3 K.B. 560 (C.A. 1921); *see, e.g.*, *In re* Am. Express, 19 F.4th 127, 139–40 (2d. Cir. 2021) (antitrust standing); Moshi v. Kia Am., No. 24-3616, 2025 WL 2650600, at 662 n.4 (6th Cir. 2025) (Ohio law).

163. There are some recent class actions that have been filed after the Supreme Court's decision in *Medical Marijuana v. Horn*. *See* Painters & Allied Trades Dist. Council 82 Health Care Fund v. Takeda Pharm. Co., No. 23-55742, 2025 WL 1683472, at *1 (9th Cir. June 16, 2025) (affirming the class certification of a civil RICO case for injury from taking prescription drugs); Starr v. VSL Pharms., Inc., No. 19-cv-02173, 2025 WL 1258016, *1 (D. Md. Apr. 30, 2025) (certifying a class for injury from misrepresentation regarding prescription drugs).