

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

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MEDICAL MARIJUANA, INC., ET AL.,)
 Petitioners,)
 v.) No. 23-365
DOUGLAS J. HORN,)
 Respondent.)
- - - - -

Pages: 1 through 87
Place: Washington, D.C.
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6 DOUGLAS J. HORN,)
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9
10 Washington, D.C.
11 Tuesday, October 15, 2024
12

13 The above-entitled matter came on for
14 oral argument before the Supreme Court of the
15 United States at 10:06 a.m.
16

17 APPEARANCES:
18 LISA S. BLATT, ESQUIRE, Washington, D.C.; on behalf of
19 the Petitioners.
20 EASHA ANAND, ESQUIRE, Stanford, California; on behalf
21 of the Respondent.
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1 P R O C E E D I N G S

2 (10:06 a.m.)

3 CHIEF JUSTICE ROBERTS: We'll hear
4 argument first this morning in Case 23-365,
5 Medical Marijuana versus Horn.

6 Ms. Blatt.

7 ORAL ARGUMENT OF LISA S. BLATT

8 ON BEHALF OF THE PETITIONERS

9 MS. BLATT: Thank you, and may it
10 please the Court:

11 RICO states that any person injured in
12 his business or property by reason of
13 racketeering can sue therefor and recover
14 threefold the damages he sustains. Because
15 RICO's cause of action excludes personal
16 injuries, RICO excludes damages resulting from
17 personal injuries.

18 The text differentiates the injury
19 from racketeering and the damages sustained from
20 that injury, thus showing that injury and
21 damages are distinct. And the references to
22 damages he sustains shows that damages are the
23 losses suffered as a result of the injury.
24 Damages are not themselves the injury inflicted
25 by the defendant.

1 This distinction tracks this Court's
2 recognition that lost wages and medical expenses
3 are classic damages from personal injuries.

4 Respondent's complaint alleges the
5 personal injury of unwanted ingestion of THC and
6 the resulting damages of lost wages. To quote
7 the complaint: "Defendant's behavior caused
8 Plaintiff's physical harm in the ingestion of
9 Dixie, and as a direct result of consuming this
10 product, he was dismissed from his employment."
11 That's a personal injury claim outside civil
12 RICO.

13 Respondent argues that every economic
14 loss is its own RICO injury but not to worry
15 because RICO still bars non-pecuniary damages.
16 But that view conflates injury and damages by
17 treating RICO's exclusion of personal injuries
18 as just excluding a narrow type of damages:
19 pain and suffering and emotional distress.

20 Respondent's rule also leaves the
21 personal exclusion toothless since virtually all
22 personal injuries result in monetary loss. It
23 is utterly implausible that Congress federalized
24 every slip and fall involving RICO predicates.
25 Personal injuries are serious and may support

1 state tort -- tort claims, but they are not the
2 stuff of RICO.

3 I welcome questions.

4 JUSTICE THOMAS: What does it mean to
5 be injured, someone to be injured, in his
6 business?

7 MS. BLATT: The Court in -- in the
8 Clayton Act case of Reiter talked about what --
9 injury to business, and it was referring to
10 anytime a commercial enterprise suffers any
11 monetary loss, it would be both a right -- a --
12 a injury to both business and property, a right
13 to carry on business.

14 Now the lower courts pre-RICO under
15 the Clayton Act have also recognized that an
16 employee has a business kind of a right to carry
17 on in his employment, and we haven't contested
18 that. So, in those cases, if you conspired to
19 prevent -- in those cases, they involved
20 encyclopedic salesmen, deprived those people of
21 their right to carry on their profession as a
22 salesman, the -- the lower courts recognized
23 that that was an injury to business. So it's a
24 right to carry on, you know, a profession or
25 your commercial enterprise.

1 JUSTICE THOMAS: Can loss of
2 employment ever constitute injury in business?

3 MS. BLATT: Well, it's -- it certainly
4 does in the Clayton Act. And the example I can
5 think of, the only example that readily comes to
6 mind, in RICO would be the human trafficking
7 cases, where a person is forced to work against
8 their will, and the -- there's an injury in your
9 right to get, you know, the -- the -- the
10 payment for your performed work. So that would
11 be an injury, a direct injury, to one's
12 business. And that human trafficking -- it's
13 hard to see how it would otherwise come up
14 unless you defrauded someone into quitting their
15 job, but, generally, lost wages are pretty
16 standard, prototypical damages from personal
17 injury.

18 JUSTICE SOTOMAYOR: Ms. Blatt, you're
19 raising an example that leads me to think that
20 what you're really arguing about is proximate
21 cause, meaning -- and not really whether
22 personal injury is recoverable or not. It is
23 under, by your own admission, certain
24 circumstances. And, in your brief, you list a
25 bunch of examples that seem to me quintessential

1 personal injuries, but you related them to the
2 business loss and then said those were
3 recoverable.

4 MS. BLATT: So personal --

5 JUSTICE SOTOMAYOR: So it doesn't make
6 any sense to me to say a mob can threaten a
7 store owner to take over his business and, if he
8 doesn't, injure him and he can't recover, but if
9 they put a bomb in the place and close it down,
10 they close it down by hitting him or shooting
11 him but then throw a bomb, he can recover for
12 the bomb but not for the injury to himself.

13 MS. BLATT: So no one in -- under this
14 statute can ever recover for personal injuries,
15 full stop, never ever. If there's an
16 independent infringement --

17 JUSTICE SOTOMAYOR: But why? Isn't --

18 MS. BLATT: -- of the right to
19 property --

20 JUSTICE SOTOMAYOR: -- isn't that an
21 issue or shouldn't it be an issue of proximate
22 cause, which wasn't reached in this case,
23 correct?

24 MS. BLATT: So -- so, no, and here's
25 why, because a lot of examples, the plaintiff

1 will meet a direct and proximate cause, and I
2 can start to give you a million, but they would
3 still be damages resulting from personal injury.

4 Take your -- a shooting where someone
5 is shot and suffers medical expenses and can't
6 work. Direct injury, sure, the lost wages and
7 medical expenses, but, still, it's damages
8 resulting from personal injury, so a proximate
9 cause --

10 JUSTICE SOTOMAYOR: But, no, there's a
11 whole lot more to RICO than simply damages.
12 There's also the predicate that you have to have
13 a racketeering --

14 MS. BLATT: For sure.

15 JUSTICE SOTOMAYOR: -- enterprise.
16 You have to have willful intent. In product
17 liability cases, most of those are negligence or
18 strict liability, so you're not going to have
19 willfulness or intent.

20 And, similarly, you have to show
21 proximate causation, reasonably foreseeable.
22 There's a serious question as to whether you
23 shoot someone not related to the enterprise and
24 you cause damage, but another predicate act
25 occurs that you're going to recover.

1 MS. BLATT: So, in your normal case of
2 any personal injury, you read a -- misread -- a
3 label's -- confuse -- misleading, you're
4 injured, you are -- can't work, you have lost --
5 lost --

6 JUSTICE SOTOMAYOR: You're still
7 not --

8 MS. BLATT: That's --

9 JUSTICE SOTOMAYOR: -- you're still
10 not answering my question.

11 MS. BLATT: Well, I guess what -- so
12 two things. You can always have causation, but
13 there's still an independent requirement that
14 you must be injured in your business or
15 property.

16 JUSTICE SOTOMAYOR: It has to be
17 proximate course -- causation --

18 MS. BLATT: Yes. And there's --

19 JUSTICE SOTOMAYOR: -- which is very
20 different.

21 MS. BLATT: -- plenty of proximate,
22 direct, absolute causation, no ands, ifs, or
23 buts, but it's still just a personal injury
24 action that's outside the scope of RICO.

25 JUSTICE JACKSON: But, Ms. --

1 JUSTICE KAGAN: But you --

2 JUSTICE JACKSON: Oh, go ahead. Go
3 ahead.

4 JUSTICE KAGAN: You started by talking
5 to Justice Thomas about what it means to be
6 injured in your business or property. Now there
7 might be a set of questions there that this
8 Court has not addressed, lower courts have, but
9 you said lower courts have said that to -- to
10 lose a job is to be injured in your business or
11 property.

12 MS. BLATT: No -- no. Sorry. To lose
13 a job can be both damages or an injury. It
14 depends on the nature of the cause of action.

15 So you always generally, with every
16 personal injury, can have permanent job loss.
17 You can have lost wages. Those are damages.

18 JUSTICE KAGAN: Well, it's also --

19 MS. BLATT: It is a very rare case --

20 JUSTICE KAGAN: -- it's also a loss
21 when -- you know, it's a -- it's a harm when I
22 lose a job. You know, I've been harmed. I lost
23 my job. And --

24 MS. BLATT: Yes. When you pay medical
25 expenses, you're harmed as well.

1 JUSTICE KAGAN: If you're harmed when
2 you lose a job, then you've been injured in your
3 business, haven't you?

4 I mean, just as -- I -- I guess what
5 I'm saying is the simplest, clearest reading of
6 this statutory language is it doesn't -- it
7 doesn't distinguish by what causes the harm. It
8 just says, if you're harmed in a way that's in
9 your business or property, which has been
10 understood to include being harmed by loss of a
11 job, and that's by reason of a violation of
12 Section 1962, then you're entitled to threefold
13 the damages you would otherwise be --

14 MS. BLATT: And the problem with that
15 is it's reading the statute just like the
16 Federal Tort Claims Act, the Antiterrorism Act,
17 to say any person injured in his person can
18 recover threefold the damages. And the --

19 JUSTICE KAGAN: Well, it's -- it's not
20 reading the statute the same way as injured in
21 his person because, if -- if all I come in and
22 say is, you know, I suffered emotional distress
23 or I suffered pain and suffering, I would not be
24 entitled to damage -- to threefold damages.

25 MS. BLATT: So that's an

1 infinitesimal, small number of cases that would
2 be excluded.

3 JUSTICE KAGAN: It might be an
4 infinitesimal, small number of cases. I'm just
5 trying to figure out -- like, that's the most
6 normal, natural reading of the statutory
7 language. If you've been -- it doesn't say what
8 you've been injured by. I mean, you have to be
9 injured by the RICO violation. But it doesn't
10 distinguish among different kinds of RICO
11 violations. It just says, if you've been
12 injured by a RICO violation in your business --

13 MS. BLATT: In your business, right.

14 JUSTICE KAGAN: -- which includes your
15 employment, then you're entitled to threefold
16 damages.

17 MS. BLATT: And the only way to give
18 the statute its normal meaning of "damages
19 sustained" is to distinguish between the injury.
20 If the Respondent had hit a tree because he was
21 impaired from THC, that would be a classic
22 personal injury action for lost wages and
23 medical expenses.

24 It sounds like you think maybe the
25 Second Circuit is right. The Second Circuit

1 seemed to think lost wages are always
2 recoverable, but medical expenses never would be
3 because that results from a physical injury.

4 And, of course, property loss, the
5 most fundamental of all property loss is
6 monetary loss.

7 JUSTICE KAGAN: But I -- I think
8 what --

9 MS. BLATT: All personal injury
10 actions result in monetary loss except, I guess,
11 a case where there's just exclusively
12 psychological damage. But every slip and
13 fall --

14 JUSTICE KAGAN: Well, I -- I don't
15 know exactly how your rule works because, if you
16 don't read it that normal, straightforward way,
17 then, you know, you -- you get into all these --
18 you admit in a whole set of hypos that I can do
19 something to you that we would normally classify
20 as a personal injury and you would be entitled
21 to RICO damages.

22 MS. BLATT: No.

23 JUSTICE KAGAN: So, if I hit you and,
24 as a result of that -- this is your car wash
25 operator example -- there's an assault that's

1 usually understood as a personal injury, but, as
2 a result, you decide to do business with the
3 mobster rather than with a legitimate
4 businessman and you say, well, notwithstanding
5 that it was all caused by an assault, which was
6 a personal injury, you are entitled to RICO
7 damages.

8 And I think you could say the same
9 thing here.

10 MS. BLATT: But that's just not our
11 argument.

12 JUSTICE KAGAN: I mean, you could
13 have -- you could have a -- well, I don't know
14 how you get to the answers of your hypotheticals
15 if that's not your argument.

16 MS. BLATT: Sure. Whenever you have a
17 robbery where money is taken or an extortion
18 where money is taken or kidnapping where ransom
19 is taken, there are two independent
20 infringements of your legal right.

21 You have a right to not be hit or
22 assaulted or whatever, you know, kidnapped, and
23 you have a right not to have your money taken.
24 And when money is taken, you get your money back
25 under RICO because that's a monetary independent

1 loss. You cannot recover for physical --

2 JUSTICE KAGAN: Well, money is taken
3 as a result of the assault. The assault
4 happens, and then you say: Okay, I better do
5 business with you.

6 So, I mean, you're -- you're --

7 MS. BLATT: But that's why our test --

8 JUSTICE KAGAN: -- it's a -- it's a
9 consequential injury from the assault.

10 MS. BLATT: Let me give you an
11 example. If you take the money and then shove
12 the person down the stairs, you took the money.
13 You may have shoved the person down the stairs
14 to prevent them from getting your money back,
15 but our test doesn't ask which --

16 JUSTICE KAGAN: But that's not your
17 own hypos. Your own hypos are things like
18 there's an assault, there's a kidnapping,
19 there's a murder. All of those things are
20 personal injuries that don't have any particular
21 economic component.

22 As a result of those things, you lose
23 some business opportunities, and -- and you
24 yourself say you get RICO under that -- you get
25 RICO damages under those hypotheticals. So this

1 one --

2 MS. BLATT: You can --

3 JUSTICE KAGAN: -- looks pretty much
4 like that.

5 MS. BLATT: No. You can always get
6 RICO damages for independent property
7 violations. And, here, there is just an allege
8 of a right not to have -- not to be induced to
9 consume THC.

10 Our position is no different than the
11 Clayton Act. It's the exact same rule. This
12 Court, in the Truett versus Chrysler Motor
13 Company case, said: No damages resulting from
14 personal injuries. That is our test.

15 JUSTICE JACKSON: But, Ms. Blatt, can
16 I --

17 JUSTICE BARRETT: Ms. Blatt, can I ask
18 you --

19 JUSTICE JACKSON: Go ahead.

20 JUSTICE BARRETT: Ms. Blatt, can I ask
21 you where you get your definition of "legal
22 injury"? I mean, are you looking at just kind
23 of general tort principles? I guess I'm having
24 a hard time figuring out exactly how you look at
25 it and define it.

1 MS. BLATT: Two -- two -- two places.
2 So, when it says, you know, this RJR Nabisco and
3 also just the statute, you can sue and you can
4 sue for a personal injury, that, to me, conjures
5 up the infringement of a right.

6 And in WesternGeco, when the Court
7 talked about an infringement of the patent
8 right, it called it "the injury."

9 In Yegiazaryan, when it talked about
10 what the injury in that case was when trying to
11 decide if there's a domestic injury, it talked
12 about what the racketeering activity directly
13 did to the plaintiff.

14 And so injury as an infringement of a
15 legal right is a -- I think we cite Ballentine,
16 but that is a standard definition of "injury."

17 JUSTICE BARRETT: Where does the
18 "legal" in the "legal right" come from? Are you
19 looking kind of at general principles? You're
20 just looking at the nature of the harm? Does it
21 help you in terms of property or --

22 MS. BLATT: Oh, I think it's just a
23 question of federal law. I mean, so whether you
24 have an injury to person, property, or business,
25 that's a question of federal law that's informed

1 by general tort principles.

2 JUSTICE BARRETT: So are you looking
3 at, like, the Restatement?

4 MS. BLATT: You could in the Burke
5 case that dealt with whether something was a
6 personal injury on -- sorry, damages on account
7 of personal injury.

8 The Court looked at things like a
9 Dobbs and Restatements, but it was a federal
10 question on whether the damages resulted from
11 the personal injury --

12 JUSTICE JACKSON: Why -- why aren't
13 you looking --

14 MS. BLATT: -- and whether there was a
15 per -- whether -- whether discrimination under
16 Title VII was, in fact, a personal injury or
17 some other kind of injury. The Court looked at
18 a bunch of state law sources, but it was a
19 federal law question.

20 JUSTICE JACKSON: Ms. Blatt, I -- I'm
21 trying to understand the personal injury that
22 you say was alleged or happened in this case.

23 I did not perceive Mr. Horn to be
24 relying on any sort of personal injury
25 allegation with respect to the RICO count. He

1 doesn't say, for example, that he took the THC
2 and that he got ill from it and, as a result of
3 that, he took off from work and then he got
4 fired.

5 He says, instead, just directly, that
6 he -- let me see --

7 MS. BLATT: Well, I think --

8 JUSTICE JACKSON: -- it alleges a
9 pattern of mail and wire fraud related to your
10 client's alleged fraud about whether the product
11 took -- contained THC. He relied on that, and
12 he got fired as a result.

13 I don't see where personal injury is
14 doing any work in his RICO claim.

15 MS. BLATT: I think you're correct in
16 the complaint that the allegations we're talking
17 about, where he's talking about physical harm,
18 it's talking about either the -- the allegations
19 that are general. But page 21 of our brief goes
20 into great detail of all the other places in his
21 affidavit and in the RICO case statement --

22 JUSTICE JACKSON: Yeah, but those are
23 in other counts. Those are in the personal
24 injury counts. And I think that matters, right?

25 MS. BLATT: No, not in the RICO

1 statement. The RICO statement, by definition,
2 is the RICO claim.

3 JUSTICE JACKSON: No, no, no. What
4 I'm saying is the question presented in this
5 case, that you've presented, is whether economic
6 harms resulting from personal injuries are
7 injuries to business and property.

8 So I'm trying to understand the
9 allegation of personal injury here from which
10 the business harm results.

11 MS. BLATT: Yeah, and I guess --

12 JUSTICE JACKSON: He doesn't say: My
13 injury is resulting from a personal injury. He
14 says: I'm injured because I got fired.

15 MS. BLATT: Well, his entire
16 causation -- and, again, I'm not just quoting
17 from the complaint. His affidavit -- he needs
18 to rely on the consumption or he doesn't have
19 causation. Consumption is personal injury.

20 But this was litigated at the cert
21 stage.

22 JUSTICE JACKSON: But does your test
23 need to rely on the consumption? I mean,
24 suppose there was -- suppose the employer's
25 rule.

1 MS. BLATT: I think you're -- that's
2 fair, you're right.

3 JUSTICE JACKSON: So -- but -- but --
4 but that's why I'm sort of, with Justice Kagan,
5 trying to understand your rule. So --

6 MS. BLATT: I think our rule is, if
7 there's no personal injury, we don't need to be
8 here and have this discussion.

9 JUSTICE JACKSON: No, no, no. What
10 I'm asking you -- let me ask you in a
11 hypothetical.

12 MS. BLATT: Okay.

13 JUSTICE JACKSON: All right? So
14 suppose we have the same basic situation, but
15 the employer's rule is that you can't possess --

16 MS. BLATT: Mm-hmm.

17 JUSTICE JACKSON: -- THC. Can't have
18 it. And he looks at all of the advertising
19 materials. He understands that your product
20 does not have it based on your advertising
21 materials, and so he buys it and he has it in
22 his locker.

23 I think this is an example --

24 MS. BLATT: Yeah.

25 JUSTICE JACKSON: -- that the

1 Respondents came up with.

2 MS. BLATT: Yes.

3 JUSTICE JACKSON: And then he's
4 fired --

5 MS. BLATT: Yes.

6 JUSTICE JACKSON: -- because the --
7 the -- the employer says: You have it. You're
8 not supposed to have it.

9 MS. BLATT: Right.

10 JUSTICE JACKSON: Does he have a RICO
11 claim or not under those circumstances?

12 MS. BLATT: Well, he doesn't have a
13 RICO claim, but it wouldn't be covered by this
14 case because there's no personal injury. It
15 would be no different if he was --

16 JUSTICE JACKSON: No, no, no. You're
17 inserting personal injury. What I'm
18 suggesting --

19 MS. BLATT: Your example doesn't
20 involve a personal injury.

21 Now, at most -- if I can just answer
22 the direct question. If I was that person's
23 lawyer, I would say: You were injured in your
24 business or property for the purchase price.
25 You paid -- purchase price is a classic RICO

1 injury, classic Clayton Act. He's entitled to
2 three times his purchase price.

3 JUSTICE JACKSON: So you're saying he
4 would have a RICO claim in --

5 MS. BLATT: For purchase price.

6 JUSTICE JACKSON: He would -- okay.
7 So --

8 MS. BLATT: But lost wages aren't --
9 he doesn't rely on the law -- he -- and he would
10 fail any kind of causation test if he tried to
11 say: I was fired from the purchase price.

12 He would ultimately fail causation
13 under three of your Supreme Court cases that say
14 there has to be a direct relationship between
15 the conduct that was done to the plaintiff and
16 the lost claim. And there, you had the
17 independent actor of the employer.

18 It would be no different if the
19 employer fired him for being tricked into buying
20 baby powder that, you know, didn't have the
21 requisite -- it might -- he might have an
22 injury, but he just wouldn't have a RICO claim
23 because there would be lack of causation.

24 JUSTICE KAGAN: And -- and isn't that
25 essentially what's wrong with this case too, is

1 what Justice Sotomayor was suggesting?

2 MS. BLATT: It --

3 JUSTICE KAGAN: I mean, there is a
4 definite causation problem in this case.

5 MS. BLATT: Absolutely.

6 JUSTICE KAGAN: His -- his -- you
7 know, he buys this thing. He ingests this
8 thing.

9 MS. BLATT: And someone else fired
10 him.

11 JUSTICE KAGAN: A different person
12 fires him. This is not a good RICO claim for
13 that reason, but it has nothing to do with the
14 reason that you're giving.

15 MS. BLATT: Oh, no, no, no, no. You
16 can win for more than one reason, Justice Kagan.
17 The Second Circuit held that a --

18 JUSTICE KAGAN: But you're relying on
19 an intuition that your client should win and
20 Ms. Anand should lose. And that intuition may
21 be a very valid one and -- but the -- but the
22 intuition works because there's no proximate
23 cause.

24 MS. BLATT: But all -- with all --

25 JUSTICE KAGAN: The intuition does not

1 work because he hasn't satisfied the business or
2 property requirement because he has. He's been
3 injured in his person or property --

4 MS. BLATT: No, and with all due
5 respect --

6 JUSTICE KAGAN: -- by reason of a RICO
7 violation.

8 MS. BLATT: -- with all due respect,
9 every classic slip-and-fall personal injury
10 case, you could talk about causation clearly,
11 but it would still be the lost wages, you're
12 fired because you either can't work because
13 you're permanently disabled, or your employer
14 fires you because you can no longer see or have
15 an arm.

16 JUSTICE KAGAN: Well, maybe there's --

17 MS. BLATT: You still lose your job,
18 but it's --

19 JUSTICE KAGAN: -- maybe there's also
20 an issue -- I mean, we haven't -- we haven't
21 decided what this "business or property" phrase
22 means. Maybe "business or property" doesn't
23 mean lost wages. But, again, it -- that's a --
24 that's a second reason why you might win but
25 also a reason that has nothing to do with the

1 reason that you're articulating here.

2 MS. BLATT: Justice Kagan, the Ninth
3 Circuit and the Second Circuit hold, if you have
4 a personal injury, and what the other side reads
5 the statute to say anybody injured in his
6 person, have at it under RICO; just don't assert
7 economic damages.

8 That flips the statute on its head.
9 It doesn't say anything about being injured in
10 your person. And, under their rule, all
11 personal injuries are recoverable under RICO,
12 which is an absurd not just intuitive
13 proposition, but that cannot be within the
14 contemplation --

15 JUSTICE KAVANAUGH: Can I pick up --

16 MS. BLATT: -- of Congress.

17 JUSTICE KAVANAUGH: -- on Justice
18 Barrett's question? Because I think the other
19 side says that injury, just ordinary meaning,
20 means harm.

21 MS. BLATT: Mm-hmm.

22 JUSTICE KAVANAUGH: And you say that's
23 wrong based on an idea that "injury" is a term
24 of art, I think --

25 MS. BLATT: Yes.

1 JUSTICE KAVANAUGH: -- in tort law.

2 Can you elaborate on why injury does not equal
3 harm? Because that's --

4 MS. BLATT: So --

5 JUSTICE KAVANAUGH: -- front and
6 center in their brief.

7 MS. BLATT: -- so I think injury could
8 mean harm just as it means the -- the legal harm
9 that was invaded. So I don't have a problem
10 with the word "harm." But what it doesn't mean
11 is loss in terms of any damage.

12 And they have no meaning or
13 independent distinction between "injury" and
14 "damages sustained." And I think inherent in
15 that distinction between the injury that -- the
16 injury that you sue over is the type of
17 infringement. And you have to have -- look,
18 everyone agrees at least I think since you've
19 said it twice under Clayton Act and RICO that
20 the cause of action excludes personal injuries.

21 So what does that mean? We think it
22 means what it says. It excludes personal
23 injuries. So that means the damages from
24 personal injuries. They say no, no, no, it
25 includes personal injuries and it includes all

1 damages from personal injuries.

2 JUSTICE JACKSON: But why is this a
3 damage from personal injury? That's the part I
4 don't understand. He's not claiming that he got
5 ill because of the product. He's not saying he
6 was personally injured.

7 MS. BLATT: Was it --

8 JUSTICE JACKSON: He didn't even
9 know --

10 MS. BLATT: True.

11 JUSTICE JACKSON: -- that he had
12 ingested THC until the testing and the firing.

13 MS. BLATT: Yeah.

14 JUSTICE JACKSON: Isn't that where his
15 injury comes in?

16 MS. BLATT: I think -- I mean, this
17 was the -- this was what the other side briefed
18 to the Second Circuit and the Second Circuit
19 didn't decide it. But, if I ate poppyseed
20 bagels and failed a drug test, it's a personal
21 injury. If I took a medicine like doxycycline,
22 which is an antibiotic, and I can't be out in
23 the sun and I lose my job as a lifeguard, it's a
24 personal injury claim.

25 JUSTICE JACKSON: But why are you

1 saying that? You can -- I mean, you're just
2 saying that. I'm asking you, you know --

3 MS. BLATT: Why am I saying it?

4 JUSTICE JACKSON: -- there are --
5 there are personal injury claims that derive
6 from a person being harmed by -- by the
7 ingestion of the product, right? They're
8 bodily, physically harmed because they have
9 taken this thing.

10 I don't read this claim to be that
11 kind of injury.

12 MS. BLATT: I --

13 JUSTICE JACKSON: He's not saying that
14 the product itself injured him in any way.

15 MS. BLATT: I think it is inconsistent
16 with all of tort law to say a bodily invasion is
17 not a personal injury just because you didn't
18 have to go to the hospital or cough.

19 JUSTICE JACKSON: He voluntarily took
20 the product.

21 MS. BLATT: Well, we all do.

22 JUSTICE JACKSON: He was not invaded.
23 He --

24 MS. BLATT: We all take products that
25 can be mislabeled. We take them and we either

1 get sick or we don't. But we all take products
2 and we claim, yeah, but the label told me I
3 wasn't going to have a side effect --

4 JUSTICE GORSUCH: Ms. Blatt --

5 MS. BLATT: -- and I had the side
6 effect.

7 JUSTICE GORSUCH: -- Ms. Blatt, if I
8 might ask you a different question. You rely
9 heavily on the Clayton Act and -- and the
10 similar language there.

11 I went and looked at the
12 Areeda-Hovenkamp, what they have to say about
13 this.

14 MS. BLATT: Oh, dear.

15 JUSTICE GORSUCH: I know. I know.

16 (Laughter.)

17 MS. BLATT: Okay.

18 JUSTICE GORSUCH: Yeah. "Oh, dear" is
19 right. They say: "Reiter thus made plain that
20 the business-or-property requirement is
21 virtually always satisfied provided there's some
22 kind of injury that can properly be
23 characterized as economic."

24 MS. BLATT: Yeah. Well, I don't -- I
25 mean, that's not right.

1 JUSTICE GORSUCH: Okay. So --
2 MS. BLATT: I would go -- no.
3 JUSTICE GORSUCH: -- you just disagree
4 with Areeda --
5 MS. BLATT: Oh, yeah. No, that's
6 definitely wrong.
7 JUSTICE GORSUCH: Okay. Okay. Okay.
8 MS. BLATT: Absolutely. And --
9 JUSTICE GORSUCH: That's all I need to
10 know. Thank you.
11 MS. BLATT: Yeah. No. Wrong, wrong,
12 wrong. And Reiter, I think, I mean, says
13 anytime a commercial enterprise suffers any
14 monetary loss it's going to be a business or
15 injury. But let's -- look, there are Clayton
16 Act cases after -- any -- any conspiracy to
17 affect drug prices that result in a personal
18 injury would mean treble damages under Clayton
19 Act. That would be a sea change -- a sea change
20 in Clayton Act if you had personal injury
21 recovery for price-fixing.
22 JUSTICE GORSUCH: So even Homer nods,
23 the great Areeda and Hovenkamp treatise wrong?
24 MS. BLATT: No, absolutely.
25 JUSTICE GORSUCH: Okay.

1 MS. BLATT: No, absolutely, because
2 you would -- you would -- that would be, like I
3 said, a sea change under Clayton Act. I mean,
4 it might be a boondoggle for plaintiffs'
5 lawyers, but I think it would freak everyone
6 else out.

7 JUSTICE JACKSON: Ms. Blatt, aren't
8 you estopped from claiming that he has a
9 personal injury here when below you argued or
10 your client argued that he had no personal
11 injury, which is why all the personal injury
12 claims were dismissed?

13 MS. BLATT: Mm-hmm.

14 JUSTICE JACKSON: I don't understand
15 how you can have it both ways.

16 MS. BLATT: Sure. On page 113 of the
17 Pet. App., the district court is recognizing
18 that we argued, and the court said, there's no
19 cognizable injury. But, on pages 49 and 50,
20 which I think is pretty bad for the other side,
21 the court is saying but there's clearly a --
22 this is a classic personal injury claim, which
23 is why he can get lost wages for fraud.

24 JUSTICE JACKSON: I understand. I'm
25 talking about what you argued. Your client

1 argued, to get rid of the personal injury
2 claims, that he had no personal injury; the only
3 thing was economic.

4 MS. BLATT: So -- so --

5 JUSTICE JACKSON: And so now that he's
6 left with the economic, you say no, there is a
7 personal injury and he can't get damages for
8 that.

9 MS. BLATT: Yeah -- sorry. On pages
10 49 and 50, it goes through how we, the
11 defendants, are arguing this is a personal
12 injury claim. So we did argue it was a personal
13 injury claim. We claimed what we're talking
14 about before, there's no cognizable personal
15 injury. It's like saying emotional damage, it's
16 not -- it doesn't count because you didn't -- it
17 didn't manifest itself in physical. So I don't
18 think we're estopped.

19 If you want to let that, I guess, I
20 don't know, reverse, you'd have to reverse the
21 rule and then decide if we're estopped, but I
22 don't -- I'm not sure how that would work out if
23 that's what you thought.

24 JUSTICE KAVANAUGH: Do you want to
25 respond to their invocation of the liberal

1 construction canon?

2 MS. BLATT: Yes, a couple responses.

3 I mean, liberal construction in light
4 of its remedial purposes, but the one thing all
5 nine of you should agree on, its remedial
6 purposes did not extend to personal injuries.
7 You've already said that twice, in the Clayton
8 Act and in RJR Nabisco. It doesn't extend to
9 remediate personal injury.

10 Second of all, I think it's a
11 tie-breaker. We -- their -- their serious
12 reading of the statute inserts the word "injured
13 in its person" to read just like the
14 Antiterrorism Act.

15 And, finally, I think it does run up
16 against the constitutional principle of
17 federalism, that their view does cannibalize all
18 of state tort law. Every -- every slip and fall
19 from a mislabel now is a RICO case.

20 So I think, I mean, that should be --
21 the Court -- I mean, one more thing I'll try on
22 that, the Court last cited that clause in 1985.
23 I mean, it hasn't relied on it since and says
24 you shouldn't use it to put RICO in contexts
25 that Congress, you know, didn't want or couldn't

1 have contemplated.

2 And, here, it is just so -- would be
3 so striking to think that RICO remedied personal
4 injuries.

5 CHIEF JUSTICE ROBERTS: Thank you,
6 counsel.

7 Justice Thomas, anything?

8 MS. BLATT: Oh.

9 CHIEF JUSTICE ROBERTS: Justice Alito?

10 JUSTICE ALITO: Well, you say that
11 under RICO, injury is "the invasion of a legal
12 right." So how would we go about determining
13 whether something is a legal right for this --
14 this purpose?

15 MS. BLATT: So, first, you look at the
16 complaint. I think property's pretty easy
17 because the Court has already said any monetary
18 loss is a property loss. So, I mean, you could
19 quibble about whether loss of consortium, if
20 state law defines that as a property loss.

21 And then injury is also, I think,
22 pretty easy because that involves the body.

23 JUSTICE ALITO: Well, what authorities
24 would we look at?

25 MS. BLATT: Oh. Look at the

1 complaint. Look at state law general tort
2 principles. Again, that Burke case --

3 JUSTICE ALITO: General tort
4 principles?

5 MS. BLATT: Yeah. What Burke said
6 is -- which I like because it -- I think it
7 works -- is that are the damages -- what are the
8 damages seeking to redress? Are the damages
9 redressing a -- something that happened to the
10 body, are they redressing stolen property, or
11 are they redressing a right to carry on in your
12 business?

13 JUSTICE ALITO: All right. Thank you.

14 CHIEF JUSTICE ROBERTS: Justice
15 Sotomayor?

16 JUSTICE SOTOMAYOR: Ms. Blatt, you
17 rely a lot on WesternGeco. You mentioned it a
18 few minutes ago.

19 MS. BLATT: Yeah.

20 JUSTICE SOTOMAYOR: But you ignore its
21 language where they differentiate a patent case
22 where the legal right is the right not to be
23 infringed and where you feel the economic loss
24 is different.

25 And we said there that the Patent Act

1 was different from civil RICO because the
2 question in civil RICO is where the plaintiff
3 feels the injury, in other words, where he
4 suffers the economic harm that the damages
5 compensate.

6 So why should we think -- in -- in --
7 in Sedima, we were very, very clear that RICO
8 doesn't rely on state law -- state tort law
9 concepts. We said that explicitly. What we
10 said was that RICO complicates injuries to have
11 been caused by predicate acts. That's our --

12 MS. BLATT: Yeah.

13 JUSTICE SOTOMAYOR: -- and we
14 explicitly -- explicitly say: Not otherwise an
15 injury cognizable under state tort law.

16 MS. BLATT: But that's even better for
17 me because our position is you shouldn't -- you
18 can't get recovery that's -- that's caused by
19 personal injury, which I think this case is.

20 But, on RJR Nabisco -- sorry, the
21 WesternGeco citing RJR Nabisco, I didn't --

22 JUSTICE SOTOMAYOR: But that goes back
23 to what Justice Jackson and -- and what I tried
24 earlier and Justice Kagan point out: You're
25 trying to say there's a difference between the

1 two. But we've made very clear in WesternGeco
2 there isn't. Injury is where you feel the harm.

3 Now the question is: What's the harm?

4 MS. BLATT: Yegiazaryan said the
5 opposite. Yeah.

6 JUSTICE SOTOMAYOR: And, as Justice
7 Jackson said, the harm is not ingesting the
8 drugs. That's the personal injury. The harm is
9 from being fired. And whether there's a
10 connection between the predicate acts and that
11 harm --

12 MS. BLATT: So --

13 JUSTICE SOTOMAYOR: -- is a question
14 of proximate cause, not a question of personal
15 injury.

16 MS. BLATT: -- Yegiazaryan is the most
17 recent case where you said the injury was -- the
18 inability to collect the California judgment was
19 a domestic injury. You did not say it was the
20 injury where all the effects were felt, which
21 were a million different places --

22 JUSTICE SOTOMAYOR: But that has
23 nothing to do with the language of RICO -- of
24 RICO, which says --

25 MS. BLATT: It was the language of

1 RICO.

2 JUSTICE SOTOMAYOR: -- compensable
3 injuries are the harms caused by predicate acts.
4 And that's what we said in *WesternGeco*.

5 MS. BLATT: Yeah. So --

6 JUSTICE SOTOMAYOR: It's where you
7 feel the harm.

8 MS. BLATT: -- Yegiazaryan quotes that
9 exact same language, and I think it's -- it begs
10 the question about what is the harm talking
11 about. Is it the harm that's the legal invasion
12 of the right, or is it the damages at the end of
13 the day?

14 JUSTICE SOTOMAYOR: Thank you,
15 counsel.

16 CHIEF JUSTICE ROBERTS: Justice Kagan?
17 Justice Gorsuch?
18 Justice Kavanaugh?
19 Justice Barrett?
20 Justice Jackson?

21 JUSTICE JACKSON: Can I just ask you
22 about a hypo? Because I'm still trying to
23 understand your rule.

24 You seem to be suggesting that the
25 mere existence of physical harm renders any

1 business injury not compensable. Is that -- is
2 that the -- do I have the sum total of your --

3 MS. BLATT: No.

4 JUSTICE JACKSON: No? Okay.

5 MS. BLATT: Because you just said --

6 JUSTICE JACKSON: So what is your
7 rule?

8 MS. BLATT: -- you just -- because you
9 just said it's any personal injury renders the
10 damages not recoverable.

11 Obviously, if you have a business
12 injury, a property injury, you can recover
13 damages.

14 JUSTICE JACKSON: Even if you have a
15 physical injury too?

16 MS. BLATT: Absolutely, because that's
17 the example of a robbery. If you are thrown
18 down a flight of stairs and they take your
19 wallet, you have two injuries. You fell down
20 the stairs and you lost your wallet.

21 JUSTICE JACKSON: Okay.

22 MS. BLATT: You've got -- so you have
23 a property injury --

24 JUSTICE JACKSON: Okay.

25 MS. BLATT: -- and a personal

1 injury --

2 JUSTICE JACKSON: And --

3 MS. BLATT: -- two independent
4 invasions.

5 JUSTICE JACKSON: -- and so, here, you
6 say he took the drugs and that was an injury.
7 And he says: I was also fired.

8 Why isn't that two injuries too?

9 MS. BLATT: Because every -- you
10 would -- because -- because that conflates
11 damages. Every personal injury, you could say I
12 slip and fell --

13 JUSTICE JACKSON: But this is --
14 imagine that this is not damages in the
15 following sense, all right? If we have a case
16 in which he takes the drugs --

17 MS. BLATT: Mm-hmm.

18 JUSTICE JACKSON: -- and, as a result
19 of taking the drugs, he has to go to the
20 hospital, and, as a result of being in the
21 hospital, he can't work.

22 MS. BLATT: Mm-hmm.

23 JUSTICE JACKSON: And then he's fired.

24 MS. BLATT: Right.

25 JUSTICE JACKSON: I kind of understand

1 the argument you're making.

2 But, in this situation, he takes the
3 drugs and there is no harm --

4 MS. BLATT: Okay.

5 JUSTICE JACKSON: -- to him from
6 taking the drugs.

7 MS. BLATT: Let me leave you with one
8 more example. He goes to the hospital and he
9 loses his sight and he can't drive anymore, so
10 he gets fired. He still has a loss of
11 employment. It is a damage.

12 JUSTICE JACKSON: I understand. But
13 that's not this case. Nothing happened to him
14 as a result of taking the drugs.

15 Instead, what happened to him, I
16 think -- and this is -- maybe I'm just not
17 understanding.

18 MS. BLATT: Well, he failed a drug
19 test. It changed his -- well, allegedly, it had
20 THC in it. I think it's the same thing as if
21 you took something and had an allergic reaction.
22 It's a physical, chemical, bodily invasion. He
23 didn't want -- he didn't want THC and he took
24 it. It's like taking cocaine. That's a -- to
25 me, that's a physical injury --

1 JUSTICE JACKSON: Thank you.

2 MS. BLATT: -- whether or not you hit
3 something.

4 CHIEF JUSTICE ROBERTS: Thank you,
5 counsel.

6 Ms. Anand.

7 ORAL ARGUMENT OF EASHA ANAND

8 ON BEHALF OF THE RESPONDENT

9 MS. ANAND: Mr. Chief Justice, and may
10 it please the Court:

11 I want to address two quick points.

12 The first is about the "damages sustained"
13 locution in Section 1964(c). That means
14 compensatory damages. We know that from the
15 rest of the U.S. Code, the syntax of the
16 sentence, and the plain meaning of the word
17 "damages."

18 So rest of the U.S. Code, that
19 locution, "damages sustained," appears some
20 three dozen times in the U.S. Code. It always
21 means compensatory damages. So we point you to
22 the example of 18 U.S.C. 2255, where victims of
23 crime choose between liquidated damages and
24 damages sustained. You can't choose between
25 liquidated damages and harm. Those have to be

1 two measures of compensation.

2 Syntax of the rest of the sentence.

3 The sentence says: "Recover the damages
4 sustained." If it meant harm, you would expect
5 it to say "recover for the damages sustained."
6 You recover for harm. You don't recover the
7 harm. But, if it means compensatory damages,
8 that's a perfectly sensible sentence.

9 And, finally, the plain meaning of
10 "damages." Every dictionary will tell you
11 damages is a measure of compensation, including
12 the treatise that Petitioners cite at page 15 of
13 their opening brief.

14 So, absent that textual hook, the
15 other problem with Petitioners' rule is they
16 still have not told you how to distinguish the
17 human trafficking case from this case.

18 Here are some of the things I heard my
19 friend say: Look at the Restatement.

20 Well, we think the relevant
21 Restatement principle is Section 525, the
22 fraudulent misrepresentation tort. That's the
23 only state law tort that survived to trial,
24 right? It's not a product liability claim.
25 It's an economic tort, fraudulent

1 misrepresentation.

2 She said: Look to a legal right.

3 Well, Sedima tells us that the legal
4 right protected by RICO is the right not to be
5 harmed by reason of the predicate acts.

6 She said: Look at whether money was
7 taken.

8 This isn't a forfeiture or a unjust
9 enrichment statute, right? It's not worded that
10 way.

11 She said: Look to directness.

12 As Justice Kagan explained, that's a
13 proximate cause problem. We recognize we have a
14 heavy burden on remand, but that's not the
15 argument before you.

16 And she said: Look at what is trying
17 to be redressed.

18 Here, we're trying to redress the loss
19 of income from being fired.

20 I welcome the Court's questions.

21 JUSTICE THOMAS: Is the loss of income
22 from being fired an injury in business?

23 MS. ANAND: Yes, Your Honor. And I
24 believe my friend on the other side conceded
25 that. She said inability to carry on one's

1 livelihood is an injury to business.

2 JUSTICE THOMAS: And is -- what's the
3 difference between injury and damages?

4 MS. ANAND: So injury is the harm.
5 Damages is how you compensate for that harm.
6 And, again, I think that's a perfectly sensible
7 reading of the statute.

8 JUSTICE THOMAS: So, if the harm is a
9 loss of income, aren't you collapsing or
10 conflating the two?

11 MS. ANAND: So it's true that we use
12 the term "lost wages" as shorthand for both.
13 But, in one case, you are losing your source of
14 income. Lost wages is the measure of
15 compensation you need to make yourself whole.

16 And, again, that "damages" definition,
17 damages is compensation, that's the definition
18 that every legal dictionary or treatise
19 articulates.

20 JUSTICE THOMAS: Okay. So just walk
21 me through factually what is the injury here.

22 MS. ANAND: So the injury here is we
23 were fired. That's the injury to our business.

24 Now, as a measure of compensation for
25 that, the damages we claim are an amount equal

1 to the salary we would have made and the other
2 economic benefits we would have gotten had we
3 remained employed.

4 JUSTICE THOMAS: But Medical Marijuana
5 did not fire you.

6 MS. ANAND: So, again, Your Honor, we
7 accept that on remand we will have to meet the
8 kind of heavy factual burden of showing
9 proximate cause, but that's the home for the
10 problem Your Honor is articulating: how direct
11 is the link between the predicate acts and what
12 happened here.

13 And, in this case, you know, our
14 argument is we acted in reasonable reliance on
15 Medical Marijuana's misrepresentations -- that's
16 a classic, right, Restatement 525, the pecuniary
17 loss occasioned as a result of relying on a
18 fraudulent misrepresentation, is usually
19 actionable.

20 We think we can prove proximate cause,
21 but, again, that's a question for remand, not
22 for this Court.

23 CHIEF JUSTICE ROBERTS: Counsel, I
24 understood the business-or-property limitation
25 as having been intended to be a significant

1 limitation on the reach of RICO.

2 Your friend said that your position
3 would make every slip and fall a RICO violation.

4 Why isn't that the case?

5 MS. ANAND: So two reasons, Your
6 Honor.

7 The first is sort of empirical. We
8 can look at, for instance, the evidence from the
9 Ninth Circuit, which has had this rule for 20
10 years, and, as we explain in our -- in our
11 brief, you actually see fewer civil RICO
12 complaints than you'd expect.

13 And that's because the "injured in his
14 business or property" requirement is still doing
15 something really important, which is fencing out
16 any claim that the harm I suffered is pain and
17 suffering or emotional distress. Those are the
18 sort of lion's share of recoveries in most of
19 these tort cases, right? This is the reason
20 that plaintiffs' lawyers bring these cases, are
21 for those massive recoveries.

22 The second -- sorry. Does that --

23 CHIEF JUSTICE ROBERTS: No, no, go --
24 go ahead.

25 MS. ANAND: The sort of second point

1 I'll -- I'll make on that front is, you know,
2 RICO has a number of guardrails. In your
3 average slip-and-fall case, you're not going to
4 be able to prove a predicate act, let alone a
5 pattern of predicate acts, let alone a pattern
6 carried on through a racketeering enterprise.

7 CHIEF JUSTICE ROBERTS: Well, but, I
8 mean, those guardrails are addressing different
9 things. I mean, the business-or-property
10 requirement is pretty central to the heart of
11 RICO and what separates it from all these other
12 cases.

13 So I'm not sure it's very responsive
14 to say, oh, don't worry about that basic,
15 fundamental question because there are all these
16 other more subsidiary ones that are going to
17 take care of the problem.

18 MS. ANAND: So I think that's -- I
19 think that's right, that it's still -- it's
20 doing meaningful work because, again, it fences
21 out the sort of pain and suffering, emotional
22 distress, the kind of lion's share of the
23 recoveries.

24 You know, as Justice Gorsuch noted and
25 as lower courts have kind of grappled with, it

1 turns out that Congress maybe wasn't doing quite
2 as much work as it wanted to with this
3 guardrail. We know that from the antitrust
4 context, where it's virtually always satisfied.
5 But, as this Court has said time and --

6 CHIEF JUSTICE ROBERTS: You -- by
7 "this guardrail," you mean the
8 business-or-property restriction?

9 MS. ANAND: Yes. As Justice Gorsuch
10 noted, in the antitrust context, it's virtually
11 always satisfied. And what this Court has said
12 time and again, right, that's Sedima, that's
13 Bridge, that's Turkette, Congress may have
14 written the statute too broadly, but that's a
15 problem for Congress to have its say.

16 JUSTICE KAVANAUGH: Do you agree that
17 the statute excludes damages for personal
18 injuries?

19 MS. ANAND: So, yes, I agree that if
20 the injury you suffered is an injury to your
21 body, you can't claim damages for that.

22 JUSTICE KAVANAUGH: And I think what
23 the other side is saying, that the damages for
24 personal injuries are usually including lost
25 wages and medical expenses and that what you're

1 doing, even though you just admitted that the
2 statute excludes damages for personal injuries,
3 is taking lost wages and medical expenses and
4 saying, oh, well, we can get around that
5 limitation that the Chief Justice referred to by
6 characterizing the lost wages or medical
7 expenses as separate injuries to your business
8 or property. That's the concern. I'm curious,
9 your response.

10 MS. ANAND: So I do think lost wages
11 are an injury to business. And my friend on the
12 other side said --

13 JUSTICE KAVANAUGH: But they're also
14 damages for the personal injury --

15 MS. ANAND: So yes --

16 JUSTICE KAVANAUGH: -- in some of
17 these cases.

18 MS. ANAND: So --

19 JUSTICE KAVANAUGH: And the question
20 is whether -- I think the question and the
21 problem here that we have to figure out is, when
22 you characterize them, if they are damages from
23 personal injury, can you just recharacterize
24 them as injury to business or property and get
25 around, as the Chief Justice's point, the

1 limitation that Congress at least thought was
2 important?

3 MS. ANAND: So I think that -- when
4 Congress wants to exclude something that is
5 intertwined with a personal injury, it knows how
6 to do so, right? It can exclude -- there's lots
7 of statutes, we give examples in our brief,
8 where it says you cannot recover damages on
9 account of a personal injury. That is, if
10 there's a personal injury intertwined with the
11 business injury or in the chain of causation
12 leading up to the business injury, you are out
13 of luck.

14 Congress didn't do that here.
15 Congress just said find an injury to business --
16 and we think being fired is a classic injury to
17 business; you can no longer carry out your
18 livelihood -- and that's all you need to get
19 to --

20 JUSTICE KAVANAUGH: But that would
21 mean, I think you're saying -- okay -- I think
22 you're saying yes, the damages from personal
23 injuries can be characterized as injuries to
24 business or property. Therefore, you can just
25 bring them under RICO. That would mean that

1 every state tort personal injury suit in which
2 you're seeking lost wages or medical expenses
3 can be now brought on -- under RICO and seek
4 treble damages.

5 And I would think the federalism
6 canon, among several others, would kick in there
7 and say, well, that would be a dramatic, really
8 radical shift in how tort suits are -- are
9 brought throughout the United States, and we
10 would expect a clearer indication from Congress.

11 MS. ANAND: Sure, Your Honor. So two
12 responses on that front.

13 The first is I think it's a mistake to
14 think that most state garden-variety torts can
15 form the basis of a RICO claim. There's a
16 reason that why most product liability cases are
17 brought in strict liability or negligence.
18 There's a reason why the pattern --

19 JUSTICE KAVANAUGH: There are going to
20 be a lot of false advertising kind of cases,
21 inadequate warning cases that can easily be made
22 into a RICO predicate than can, under your
23 theory, be brought in federal court under RICO
24 for treble damages and then -- you know, you've
25 seen it in the amicus briefs, I'm just raising

1 what's there -- class actions and MDLs, where
2 you have the treble damages. And that's a
3 dramatic -- I'm not saying it's right or wrong,
4 but I think it's a dramatic shift -- and the
5 Ninth Circuit doesn't have exactly the rule
6 you're asking for, so I don't think the Ninth
7 Circuit's actually a good answer to the Chief
8 Justice -- a dramatic shift in how tort suits
9 are prosecuted, which may be good, may not be
10 good. I'm not sure Congress really put that
11 into this statute.

12 MS. ANAND: Sure. So just on the
13 federalism canon point, I'll note that if Your
14 Honor is right that every state false
15 advertising case actually can be actionable as
16 intentional fraud committed through a
17 racketeering enterprise, that means that under
18 criminal RICO -- remember, does not have an
19 injured in his business or property
20 requirement -- those are prosecutable with a
21 20-year sentence. And so, if Congress did not
22 have any federalism concerns with subjecting the
23 garden-variety state tortfeasor to criminal --
24 federal criminal liability, I think it's hard to
25 say the federalism canon kicks in when they're

1 subjected to civil liability.

2 JUSTICE KAVANAUGH: Well, they -- they
3 didn't -- I -- I think the lack of the language
4 in the criminal RICO provision shows that they
5 were more concerned about federalizing the civil
6 RICO side because, there, they did have the
7 limitation, injured in your business or
8 property, not injured in your person.

9 MS. ANAND: So maybe two -- two more
10 responses let me try to -- to Your Honor's
11 hypothetical.

12 The first is the word "injured," if it
13 doesn't mean harm, my friend on the other side
14 haven't -- hasn't told you what else it might
15 mean. And --

16 JUSTICE KAVANAUGH: Well, the
17 Restatement -- I'm sorry to interrupt.

18 MS. ANAND: Oh, please.

19 JUSTICE KAVANAUGH: But your -- your
20 brief starts with injured equals harmed.

21 MS. ANAND: Yeah.

22 JUSTICE KAVANAUGH: It's right on page
23 1, like, fifth line, and that's the linchpin of
24 your argument, which I think, as a matter of
25 ordinary meaning, yes, but, as a matter of tort

1 law, the Restatement makes very clear, like
2 Restatement 7 says injury and harm contrasted.

3 MS. ANAND: That's right.

4 JUSTICE KAVANAUGH: They're two --
5 they're two different concepts and have been for
6 years and decades and centuries in tort law.
7 Injury and harm are two very different concepts.

8 MS. ANAND: So that's right, injury
9 can mean invasion of a legal right, but, here,
10 that's trivially true, right? That's the square
11 holding of Sedima. In Sedima, someone tried to
12 come to this Court and say, look, it can't just
13 be an injury meaning you were harmed by the
14 predicate acts. There's got to be some sort of
15 racketeering injury. That's the legal right
16 being invaded. And this Court said, "The
17 compensable injury necessarily is the harm
18 caused by the predicate acts."

19 So we're happy with a definition that
20 says invasion of a legal right, but Sedima tells
21 you what that legal right is, and it is harm
22 caused by the predicate acts. The right that
23 RICO protects is the right not to be harmed by
24 the predicate acts.

25 And so I think whether you say injury

1 just means harm, period, or it means an invasion
2 of a legal right, there's no way on the text of
3 the statute to somehow distinguish between the
4 human trafficking and kidnapping hypotheticals
5 and I --

6 JUSTICE KAVANAUGH: Just to close it
7 out, you're okay if we say injury is the
8 invasion of legal right?

9 MS. ANAND: We're -- we are completely
10 okay with that so long as you accept that Sedima
11 tells you what that legal right looks like.

12 JUSTICE GORSUCH: Ms. Anand, just a
13 couple quick questions.

14 First, in your dialogue with Justice
15 Kavanaugh, there was some discussion of lost
16 wages and medical expenses.

17 Do you think medical expenses are
18 recoverable as well as lost wages under business
19 and property?

20 MS. ANAND: So I happen to think yes,
21 and I think that follows from Rotella and
22 Reiter. But we don't particularly have a dog in
23 that fight because that's under the property
24 branch and not the business branch.

25 So I'm happy to explain why I think

1 the answer is yes. Reiter seems to say --

2 JUSTICE GORSUCH: Briefly, but I --
3 I -- I -- it seems to me you're telling me we
4 don't need to decide that question in this case,
5 is your top-line answer.

6 MS. ANAND: Top-line answer is you
7 don't need to decide that question. The way you
8 know that is the Second Circuit, Pet. App. 18a,
9 Judge Moore's dissent in Jackson, all these
10 jurists who have accepted our rule have reserved
11 the question of medical expenses --

12 JUSTICE GORSUCH: Okay.

13 MS. ANAND: -- as just a separate
14 question.

15 JUSTICE GORSUCH: And would you --
16 would you encourage us to do so here?

17 MS. ANAND: No, I would not encourage
18 you do so.

19 JUSTICE GORSUCH: You encourage us to
20 decide it, of course. Okay. So, briefly, give
21 me your best shot at it.

22 MS. ANAND: So -- okay. So -- so, on
23 the precedent piece, Reiter/Clayton Act context
24 says economic expenditure equals injury.

25 JUSTICE GORSUCH: Okay.

1 MS. ANAND: And Rotella Petitioners
2 seem to accept at Reply Brief page 8, right?
3 This is the case doctors wrongly impose
4 psychiatric confinement and then bill someone
5 for it, and Petitioners seem to accept that that
6 bill counts as a harm to property.

7 JUSTICE GORSUCH: Okay. All right.
8 And the second question: There was an extensive
9 dialogue about the car wash hypothetical and the
10 kidnapping hypothetical, and if I understood
11 Ms. Blatt, her argument -- it goes something
12 like this: that there are two injuries, however
13 characterized, whether as a harm or invasion of
14 a legal right. One is -- you -- the assault or
15 the kidnapping. The other is the act of
16 extortion. And only the latter is recoverable,
17 and it isn't a causation question so much as the
18 nature of the injury in those two cases.

19 Your best response?

20 MS. ANAND: I think, under that
21 framework, we also have two injuries, right?
22 There's the bodily invasion, the sort of
23 undetected consumption of THC --

24 JUSTICE GORSUCH: No, no, the --

25 MS. ANAND: -- and then the firing.

1 JUSTICE GORSUCH: Deal -- I understand
2 that, but deal with the hypotheticals if you
3 will.

4 MS. ANAND: So I --

5 JUSTICE GORSUCH: You both -- you both
6 go back and forth forever on these
7 hypotheticals, and they're very interesting
8 ones, so --

9 MS. ANAND: Sure. So I -- I agree the
10 car wash owner gets to recover, and I would say
11 that is because the only thing you're looking at
12 in the "injured in his business or property"
13 requirement is, was the person harmed in his
14 business? And the answer is yes.

15 Now there are other parts of the
16 statute that take care of how direct is the
17 connection between the predicate offense and the
18 injury to business. That's the "by reason of"
19 language. That's a proximate cause test.

20 JUSTICE GORSUCH: So the assault, if I
21 understand it -- your answer if I -- see if this
22 is right. I just want to understand it.

23 MS. ANAND: Sure.

24 JUSTICE GORSUCH: That the assault
25 in -- in the car wash hypothetical and the

1 kid -- act of kidnapping in the kidnapping
2 hypothetical may or may not be recoverable
3 depending upon whether they're proximately
4 related to the extortion acts in both cases?

5 MS. ANAND: I think that's right. So
6 the -- the only part that's recoverable is the
7 money or business part. And the only --

8 JUSTICE GORSUCH: The extortion.

9 MS. ANAND: Right.

10 JUSTICE GORSUCH: The extortion part
11 that I paid money --

12 MS. ANAND: Or -- or the ransom in the
13 kidnapping hypothetical.

14 JUSTICE GORSUCH: And the ransom.
15 Right.

16 MS. ANAND: And the only question is,
17 are those proximately caused by the RICO
18 predicate of the kidnapping or the extortion?

19 JUSTICE GORSUCH: Thank you.

20 MS. ANAND: And, you know, I -- I
21 think, in those cases, right, the causal
22 connection may be tighter, but, again, right,
23 that's, again, classic proximate cause.
24 Congress connected predicate act with injury to
25 business and property using the phrase "by

1 reason of."

2 JUSTICE GORSUCH: Got it.

3 MS. ANAND: It anticipated some link

4 to the cause.

5 JUSTICE KAVANAUGH: Can I ask one --

6 JUSTICE ALITO: If we --

7 JUSTICE BARRETT: Ms. Anand --

8 CHIEF JUSTICE ROBERTS: Justice Alito?

9 JUSTICE ALITO: If we agree with your

10 reasoning but reserve the question of the

11 coverage of medical expenses, would there at --

12 in a later case, be a principled basis for

13 drawing that distinction, or would we be

14 effectively deciding that by agreeing with your

15 reasoning?

16 MS. ANAND: So, again, I think the

17 answer is that those count, but I can tell you

18 what lower courts have sort of said to

19 distinguish those. There's been kind of two

20 explanations.

21 One is that Reiter's "all money counts

22 as property" definition doesn't map on cleanly

23 to civil RICO. And the other is that there's

24 sort of a common law principle that mitigation

25 measures don't -- count. And so, if you're

1 trying to mitigate your pain and suffering
2 through medical expenses, that wouldn't count.

3 Now, again, I'm not -- I -- we have no
4 dog in that fight. I don't know whether those
5 are right or wrong. And, again, I think Rotella
6 kind of already crosses that bridge, but I think
7 you can reserve the question here.

8 JUSTICE ALITO: One other question.
9 There's been talk about proximate cause. I
10 assume you believe on remand you can show that
11 the injury here, the lost wages, were
12 proximately caused. Could you explain why?

13 MS. ANAND: Sure, Your Honor. So I
14 think our -- the -- the two best points for us.

15 The first is how the Restatement
16 provision talks about fraudulent
17 misrepresentation, and it says: Any pecuniary
18 loss occasioned by reasonable reliance on the
19 misrepresentation is usually recoverable.

20 And so we think, here, that's exactly
21 what happened. In reasonable reliance on
22 Petitioners' misrepresentation, we took this
23 drug. The foreseeable consequence is that we
24 got fired.

25 The second is a sort of factual point.

1 Remember, it's not just about general
2 misrepresentations on YouTube and on the
3 website. Ms. Harp-Horn called Customer Service,
4 says: I'm a trucker. Can you promise me this
5 doesn't have THC? And they say: Yes.

6 Now, again, we know we're going to
7 have a heavy burden on remand. This Court's
8 cases have said that proximate cause is not just
9 a common law concept, but you layer on top of
10 that specific civil RICO directness
11 requirements.

12 JUSTICE ALITO: Is this a jury
13 question?

14 MS. ANAND: The question of proximate
15 cause? We think there are factual issues
16 embedded in the proximate cause question.

17 JUSTICE ALITO: What percentage of --

18 MS. ANAND: But, again -- apologies.

19 JUSTICE ALITO: What percentage of
20 RICO cases go to trial?

21 MS. ANAND: I don't know the answer to
22 that off the top of my head, Justice Alito.

23 I -- I will say that on this point,
24 Petitioners' proximate cause arguments at
25 summary judgment related primarily to

1 Ms. Harp-Horn and not to Mr. Horn.

2 So, in other words, had they made the
3 argument that Justice Kagan articulated, we
4 don't know how the district court would have
5 ruled. They did not make that argument.

6 JUSTICE ALITO: Thank you.

7 JUSTICE BARRETT: Ms. Anand, it seems
8 to me -- and -- and, you know, I just would like
9 to get your take on this -- that Medical
10 Marijuana has litigated this case differently
11 than it was framed below and differently than
12 the circuits that are on its side of the split
13 in this definition of "injury." You know, the
14 Second Circuit said: Well, if personal injury
15 is the derivative of the property damage, it
16 doesn't count.

17 As you said and as Justice Kagan said
18 when she was going back and forth with
19 Ms. Blatt, proximate cause seems a natural home
20 for this.

21 I mean, what do you think? I mean,
22 can you point to developed ideas in the courts
23 of appeals about how to define this injury?
24 This idea of looking to a federal definition of
25 in it, looking to Restatements, I mean, in your

1 view, are there circuits that are actually doing
2 that?

3 MS. ANAND: So I don't think so, Your
4 Honor, and I think you can see that in the
5 question presented, which asks: When economic
6 harm results from a personal injury, is it
7 actionable? Right?

8 So the -- the question presented seems
9 to contemplate this sort of chain-of-causation
10 test, which, as we're sort of talking about, I
11 think proximate cause and not some sort of
12 per se rule about what the links are should
13 count.

14 I don't see that there's a body of
15 case law doing something different in the -- in
16 the -- in the lower courts.

17 JUSTICE BARRETT: So, in your view,
18 Medical Marijuana's theory of the case is kind
19 of novel?

20 MS. ANAND: I think Medical
21 Marijuana's theory of the case is novel,
22 although I guess I -- I would say again I'm not
23 sure I understand it. That is, I'm not sure I
24 understand where they're asking you to look to
25 find the legal right.

1 It's not civil RICO because Sedima
2 tells us we can't do that. I don't think it's
3 state tort law because it would be a little bit
4 strange to have a list of predicates that
5 includes trafficking in nuclear weapons and
6 counterfeit phonograph records and say, look at
7 the Restatement.

8 And if you look at the Restatement in
9 this case, the only state tort law claim that's
10 still live in our case, fraudulent
11 misrepresentation, looks economic and not
12 personal.

13 So I'm not positive what their test
14 is, but I agree that it is not something that
15 we've seen in the lower courts.

16 JUSTICE BARRETT: I share your
17 confusion.

18 JUSTICE JACKSON: Ms. Anand, did your
19 client suffer a personal injury that caused his
20 firing and lost wages?

21 MS. ANAND: So we think that he did
22 not suffer any harm to his person. And we are
23 not here challenging the district court's ruling
24 that we cannot even bring a products liability
25 claim because we did not suffer harm.

1 Does that answer your question? So,
2 in other words --

3 JUSTICE JACKSON: Yeah, I mean, I
4 think so. I guess I'm -- I'm still struggling
5 with the question presented in this case --

6 MS. ANAND: Yeah.

7 JUSTICE JACKSON: -- which assumes
8 that sort of connection, that there's a personal
9 injury from which economic damages result.

10 And I don't see a personal injury, and
11 maybe I'm just looking it in a peculiar way.

12 MS. ANAND: Well, so we -- we
13 vociferously argued at the brief-in-opposition
14 stage that this is an improper vehicle to grant
15 cert because we did not think there was a
16 personal injury here. Or, at the very least,
17 the personal injury here is so strange, right,
18 the personal injury that only gets discovered
19 after the economic injury, that it would be a
20 strange case to connect those overall.

21 JUSTICE JACKSON: And, in fact, below,
22 they argued there was no personal injury --

23 MS. ANAND: That's right.

24 JUSTICE JACKSON: -- in seeking to
25 dismiss all of the personal injury claims,

1 correct?

2 MS. ANAND: That's exactly right. And
3 none of those claims are proceeding to trial.
4 So they successfully argued for dismissal of
5 those claims.

6 JUSTICE GORSUCH: Well, why wouldn't
7 there be a -- a personal injury, though?
8 Just -- you -- there's a failure to warn that
9 this product contains ingredients that your --
10 your -- your client didn't know about and should
11 have known about and had a right to know about.

12 I would have thought that that would
13 have been kind of a classic personal injury.

14 MS. ANAND: So two responses, Your
15 Honor.

16 The first is --

17 JUSTICE GORSUCH: I mean, perhaps --
18 perhaps that's what you argued below. I don't
19 know.

20 MS. ANAND: That is what -- so I was
21 going to say the strange thing about how this
22 case comes to you, right, is --

23 JUSTICE GORSUCH: No, I understand.
24 But this is -- this -- that was your theory
25 below?

1 MS. ANAND: That -- that was our
2 theory below --

3 JUSTICE GORSUCH: Yeah.

4 MS. ANAND: -- that we should be able
5 to bring a state law products liability claim.
6 Opposing counsel said: No, you can't. District
7 court sided with them.

8 JUSTICE GORSUCH: Got it. Got it.
9 Thank you.

10 MS. ANAND: It's what the -- the only
11 other thing I'll say is, kind of going back to a
12 hypothetical earlier, we just don't think that
13 ingestion is particularly critical to our case.
14 In other words, we would bring exactly the same
15 case, we would allege exactly the same predicate
16 acts, the same measure of compensation, the same
17 sort of theory of harm, if the -- if Medical
18 Marijuana's product had been found in a locker
19 and we'd been fired as a result.

20 CHIEF JUSTICE ROBERTS: Thank you,
21 counsel.

22 A big part of your answer in your
23 dialogue with Justice Scalia to why this -- why
24 we shouldn't worry about the expansion of RICO
25 that your -- your friend suggests might follow

1 is that you have to show proximate cause.

2 And I -- I don't quite remember your
3 formulation. I'm sure it was carefully guarded.
4 But you -- you -- you suggested that that was
5 going to be hard to do, right?

6 And -- and -- tell me again why that
7 is.

8 MS. ANAND: So -- so I said we would
9 have a heavy factual burden to carry on remand.

10 CHIEF JUSTICE ROBERTS: That sounds
11 hard.

12 MS. ANAND: But I think that if we can
13 prove that, in fact, you know, there was
14 reasonable reliance on this misrepresentation
15 and, more specifically, that Ms. Harp-Horn
16 called Customer Service, said, you know, I'm a
17 trucker, promise me this doesn't have
18 zero percent THC, I think that satisfies
19 proximate cause even under this Court's more
20 restrictive test. But we accept we're going to
21 have to prove those things up.

22 CHIEF JUSTICE ROBERTS: Well, what's
23 so hard about that? In other words, if you're
24 concerned about the reach of your argument and
25 your answer is, don't worry, we have to show

1 proximate cause, that seems like a pretty normal
2 proximate cause argument.

3 MS. ANAND: So -- so apologies. My
4 answer isn't just proximate cause. It's also
5 you have to show RICO predicates, right? Most
6 products liability are --

7 CHIEF JUSTICE ROBERTS: Yeah, fraud,
8 mail fraud.

9 MS. ANAND: -- strict liability,
10 right?

11 CHIEF JUSTICE ROBERTS: Right.

12 MS. ANAND: But, again, that's
13 intentional. And there's a reason why most
14 people bring products liability claims under
15 strict liability or negligence. You're also
16 going to have to prove a pattern, right,
17 continuity and relatedness. You have to
18 prove -- the enterprise requirement.

19 And I think, most importantly, again,
20 the mine-run of cases, the big chunk of recovery
21 is pain and suffering or economic distress, and
22 you cannot get those in -- under civil RICO,
23 right? Those are not injuries to business or
24 property.

25 And I think that that's --

1 CHIEF JUSTICE ROBERTS: Well, again,
2 you're talking about these other guardrails, not
3 to worry about the fact that you're diluting the
4 business-or-property requirement.

5 MS. ANAND: So I guess I disagree that
6 we're diluting the business-or-property
7 requirement. We think that lost employment is a
8 classic business injury.

9 Now the relationship between the lost
10 employment and the predicate acts, you know,
11 Congress put "by reason of" in there. It didn't
12 put a more stringent test. It didn't say, you
13 know, in the course of the predicate act you
14 have to injure a business or property. It
15 didn't -- you know, it didn't have a motive or a
16 targeting requirement.

17 And we think that the plain import of
18 that, as this Court has held in Holmes and from
19 there on, is, if you have a predicate act, you
20 have a loss of livelihood, and the -- the work
21 to do is to connect those with the proximate
22 cause requirement.

23 CHIEF JUSTICE ROBERTS: Thank you.

24 Justice Thomas?

25 Justice Alito?

1 JUSTICE ALITO: Well, just out of
2 curiosity, why do you think you're going to face
3 a -- a heavy burden on remand to show
4 foreseeability? Wouldn't you argue that a
5 company that advertises its product as being
6 completely free of THC, not just that it has
7 only such an infinitesimal amount that it's not
8 going to get people high, but it is completely
9 free of THC, is appealing to a category of
10 potential customers who, for some reason, want
11 to make sure that they don't ingest even a tiny,
12 tiny amount of -- of THC?

13 And when someone who purchases the
14 product then suffers the consequences of having
15 a very small amount of THC in that person's
16 system, that is an entirely foreseeable result?

17 MS. ANAND: So I agree, Justice Alito.

18 JUSTICE ALITO: Yeah.

19 MS. ANAND: I was just responding to
20 Justice Kagan's point that, in many cases, the
21 intervening act of a third party does cut off
22 the chain of custody --

23 JUSTICE ALITO: Yeah, I know.

24 MS. ANAND: -- but for exactly the
25 reason --

1 JUSTICE ALITO: You're -- you're
2 trying to tell us that the proximate -- among
3 other things, you have other arguments, but the
4 proximate cause requirement is going to do some
5 of the work that some of us might fear will be
6 needed if we agree with your interpretation of
7 "injury to business or property." I get it.
8 But I'm not sure why they're -- why your case is
9 a -- is a good example of that.

10 MS. ANAND: Sure. I think that's
11 right. I was responding only to Justice Kagan's
12 concern about the third-party actor, but, you
13 know, we agree, we think we're going to meet the
14 proximate cause test.

15 I -- I just want to say so my
16 bottom-line position here is defendants have
17 come to this Court for decades and said the sky
18 is going to fall if you interpret RICO the way
19 its text literally says it should be
20 interpreted. The sky hasn't fallen. This Court
21 has, time after time, including unanimously in
22 Bridge, said, you know, Congress probably wrote
23 a statute that's a little too broad in some
24 ways, but here we are.

25 And it should stay the course here.

1 That's my fundamental position.

2 JUSTICE ALITO: Well, I think
3 you're -- are you overstating your argument? If
4 we look back at everything that the Court has
5 done in civil RICO cases, I -- I -- I certainly
6 don't think the Court has consistently applied
7 the -- the liberal construction policy or just
8 relied on the plain language of the statute.

9 RICO is a -- RICO is a tough thing to
10 deal with.

11 MS. ANAND: I think that's right, but
12 I think that's because of things in the statute,
13 like the enterprise requirement, right? It's
14 not just someone commits a predicate act; they
15 have to use an enterprise to do it or fund an
16 enterprise through doing so. It's because the
17 predicate acts often require sort of higher
18 degrees of proof. There's lots of reasons in
19 the text why RICO --

20 JUSTICE ALITO: All right.

21 MS. ANAND: -- is challenging.

22 JUSTICE ALITO: Thank you.

23 CHIEF JUSTICE ROBERTS: Justice
24 Sotomayor?

25 Justice Kagan?

1 Justice Kavanaugh?

2 JUSTICE KAVANAUGH: A couple
3 questions. The -- the larger issue afoot from
4 the amicus briefs, of course, is the class
5 action MDL, that state tort suits are going to
6 be converted into civil RICO because you can get
7 treble damages, and this is going to be a bit of
8 a change.

9 On that, one thing you've stressed is
10 proximate cause. When -- of course, in those
11 types of suits -- and you can respond whether
12 you think that's correct or not, that factual
13 prediction. But, in those kinds of suits, of
14 course, getting past the motion to dismiss,
15 getting past summary judgment is the key. When
16 would proximate cause be resolved?

17 MS. ANAND: So I think some of those
18 can be resolved early on, right? In most cases,
19 it's not going to be the case that firing is the
20 obvious consequence of whatever mislabeling
21 happened, right? And so I think fairly early
22 on --

23 JUSTICE KAVANAUGH: But you're saying
24 in this case --

25 MS. ANAND: Well, because of what

1 Justice Alito explained, right? The only reason
2 to market this as having zero percent THC,
3 right --

4 JUSTICE KAVANAUGH: Mm-hmm.

5 MS. ANAND: -- there are a couple
6 reasons you might market it. You can say no
7 psychoactive effect for the person who's worried
8 about that, but the emphasis on zero percent
9 THC, that's for someone who's either worried
10 about their employer or about federal law.
11 Like, the particular misrepresentation here is
12 intimately tethered to the business harm that
13 occurred, right?

14 And that won't be the case in every
15 kind of, you know, average -- or product
16 mislabeling.

17 JUSTICE KAVANAUGH: What about the
18 factual prediction? Do you want to say anything
19 about that? Because the amicus briefs really
20 are quite aggressive on that. And you could say
21 yes, but that's good, or you can say no, that's
22 not going to happen. And, if it's the latter,
23 I'd like to hear why.

24 MS. ANAND: Right. So I think we have
25 two data points for why this is unlikely to

1 happen. The first is sort of the Ninth Circuit,
2 as I explained. The second is, right, there are
3 lots of products liability cases -- think the
4 washing machine that floods your home, right --
5 where there's no personal injury anywhere in the
6 ambit, right? It's all property damage.

7 You see those cases. You see lots of
8 those cases in state court. You don't see them
9 being brought as civil RICO. That's not because
10 of Petitioners' rule. Petitioners' rule has
11 nothing to do with the oven that burns the house
12 or the washing machine that floods the basement.
13 That's all the other aspects of RICO are keeping
14 that case out.

15 So I think, you know, those are the
16 two data points I can give you. You know,
17 the -- and just the other thing I would say is I
18 do think that the other guardrails do some work
19 in fencing out those cases. I think that's why
20 you don't see those cases being brought.

21 And, again, as a kind of incentive
22 matter, ruling out all pain and suffering and
23 emotional distress means it isn't proper.

24 JUSTICE KAVANAUGH: Well, you've said
25 that umpteen times, which I -- and I understand

1 why you've said it.

2 MS. ANAND: Yes.

3 JUSTICE KAVANAUGH: But lost wages and
4 medical expenses are a huge part of personal
5 injury tort suits, the damages.

6 MS. ANAND: I think we -- I think
7 that's right. My friend on the other side and I
8 disagree on exactly what -- what fraction, but,
9 you know, the Chamber of Commerce study that we
10 cite in our brief says the lion's share of the
11 recovery --

12 JUSTICE KAVANAUGH: Mm-hmm.

13 MS. ANAND: -- are these sort of
14 non-pecuniary intangible harms.

15 And I think that's correct, right?
16 Medical expenses, you may see insurance
17 companies bringing these suits, although I
18 think, under Petitioners' theory, insurance
19 companies can still sue for medical expenses, is
20 I think what they told you in the brief. But,
21 in the sort of average case, the big incentives,
22 I think that's why you're not seeing -- I don't
23 know the reason you're not seeing these cases in
24 the Ninth Circuit or in the products liability
25 that don't result in bodily injury contexts, but

1 you're not. And I think that should give you
2 some solace.

3 My fallback position is just Congress
4 wrote this statute to just ask about an injury
5 to business or property. That may have been
6 profoundly unwise. It may have been profoundly
7 unwise to use mail and wire fraud as predicate
8 offenses.

9 JUSTICE KAVANAUGH: And the federalism
10 canon doesn't kick in at all you said. I just
11 want to make I had that answer nailed down.

12 MS. ANAND: I don't think the
13 federalism canon kicks in because Petitioners
14 have not been able to give you any definition
15 that's tenable on the plain text of the statute,
16 which is where the canon would kick in as a tie
17 break, if at all.

18 JUSTICE KAVANAUGH: Thank you.

19 CHIEF JUSTICE ROBERTS: Justice
20 Barrett?

21 JUSTICE BARRETT: No.

22 CHIEF JUSTICE ROBERTS: Justice
23 Jackson?

24 JUSTICE JACKSON: And I just wanted to
25 let you finish the discussion of whether or not

1 this statute is overly broad. I mean, I -- it
2 gives me some solace that we have actual text
3 from Congress directing courts to liberally
4 construe the provisions of RICO to effectuate
5 its purposes. So it seems as though Congress
6 contemplated that this was going to have a
7 pretty broad sweep and that we should allow it
8 to do that.

9 MS. ANAND: I think that's right.
10 It's very rare Congress writes a liberal
11 construction canon into the text of the statute.
12 And I think that the ill that Congress was
13 targeting is one that's sort of hard to pin down
14 and define, right?

15 We've talked a little bit about the
16 wire and mail fraud predicates, which I think
17 are -- I think sort of what is causing this
18 Court some heartburn is the fact that mail and
19 wire fraud are among the predicate offenses, and
20 those seem to map onto a lot of state tort law
21 claims but that the --

22 JUSTICE JACKSON: And it seems as
23 though some of the concern is, you know, are we
24 expanding beyond what the text says here and
25 would it be a sea change that actually brings in

1 a lot of things that weren't intended to be
2 covered, or is Ms. Blatt asking us to narrow
3 down what the text says and make business and --
4 or property, you know, narrower?

5 I kind of see it as the latter, but
6 can you just speak to that as the final word
7 here?

8 MS. ANAND: So I agree it would be the
9 latter. "Injury to business or property" means
10 injury to business or property, whether that's
11 harm or legal harm. It just means that you are
12 harmed in your ability to earn a livelihood.

13 Now, again, I think that Congress used
14 that language and used the liberal construction
15 provision and put things like mail and wire
16 fraud in the predicate -- in the list of
17 predicate offenses because they wanted the
18 statute to sweep quite broadly. And I think
19 that this Court should just enforce the text as
20 it was written.

21 JUSTICE JACKSON: Thank you.

22 CHIEF JUSTICE ROBERTS: Thank you,
23 counsel.

24 Rebuttal, Ms. Blatt?

25

1 REBUTTAL ARGUMENT OF LISA S. BLATT
2 ON BEHALF OF THE PETITIONERS

3 MS. BLATT: Thank you, and may it
4 please the Court:

5 Let's just start with the text. I
6 don't think there's a response to the fact that
7 the other side is reading this as any person
8 injured in his person, business, or property can
9 recover three times the economic damages. So
10 they're adding the word "injury," a personal
11 injury, to the injury requirement, and they're
12 adding the economic restriction to the damages.
13 It completely flips this statute on its head.
14 And this is the way the Clayton Act has been
15 read since eternity, that personal injuries are
16 not recoverable.

17 On the consequences, we cite, I think
18 on page 27, this case, Hopp. It involves a
19 boxer. And that's a case where the district
20 court just ignored the Ninth Circuit, and that's
21 why there's not consequences, is because
22 district courts aren't crazy, and when they see
23 a personal injury action, they're just not
24 citing Diaz and they're preventing personal
25 injury cases from going forward.

1 The Ninth Circuit also has some
2 language that says lost wages may not be
3 recoverable. So it's a little bit quirky.

4 In terms of the lion's share, that
5 mega-study is just dealing with gargantuan
6 mega-hits. It doesn't matter if pain and
7 suffering is 60 percent or 20 percent;
8 99.99999 percent of all personal injury cases
9 come in under their rule. All they're doing is
10 excluding a narrow type of damages. So any
11 personal injury comes in as long as there's an
12 economic damage.

13 In terms of proximate cause, proximate
14 cause, we think there is no proximate cause, but
15 that's not the problem. You have a case before
16 you that will be a legal rule where there is
17 proximate cause in all personal injury actions
18 resulting in medical expenses and lost wages.
19 There's direct cause. You don't even need
20 proximate cause. It's but proximate, direct,
21 what have you. Yet only our rule will exclude
22 it. There will be proximate cause when you have
23 a slip and fall and lose your job, either lose
24 wages or you can't work because you lose your
25 ability to use your hands or eyesight.

1 In terms of the other thing about, oh,
2 RICO's a big deal, on 107, 108, and 76, 77a, two
3 sales were the RICO predicate act and three ads.
4 That's what it took to state a mail and wire
5 fraud: two sales in -- 10-year period. That is
6 not that complicated.

7 Justice Barrett, in terms of the
8 shifting position, I do think we came up with
9 WesternGeco at the merits stage, but both the
10 Sixth, Seventh, and the Eleventh Circuit do talk
11 about damages in recovery for personal injury.
12 So I think we refined it here, but we certainly
13 got it from those cases. The district court
14 itself held this is a personal injury action and
15 there's lost wages damages.

16 The other thing I will say is we took
17 your language from that -- Chrysler Motor case
18 that said damages resulting from personal
19 injury, so we stole it straight from your
20 language because we figured we can't go wrong if
21 we just stick with the Clayton Act rule.

22 In terms of medical expenses, I -- I'm
23 sorry, I don't see how you can carve out medical
24 expenses. That's the biggest loss of property
25 to say that what the -- the court below did, it

1 just said, well, personal injury damages would
2 be excluded, but lost wages will be recoverable
3 because that's an injury to business.

4 Well, all lost wages could be
5 categorized as injury to business when they're
6 just damages. To be sure, you can have a lost
7 property damage or a lost property injury. You
8 can have damages or injury to both. It just
9 depends on what the nature of the cause of
10 action is.

11 And I think that's it. Thank you.

12 CHIEF JUSTICE ROBERTS: Thank you,
13 counsel. The case is submitted.

14 (Whereupon, at 11:14 a.m., the case
15 was submitted.)

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<div>1</div> <div>1^[1] 55:23</div> <div>10-year^[1] 86:5</div> <div>10:06^[2] 1:15 3:2</div> <div>107^[1] 86:2</div> <div>108^[1] 86:2</div> <div>11:14^[1] 87:14</div> <div>113^[1] 32:16</div> <div>15^[2] 1:11 44:12</div> <div>18^[1] 43:22</div> <div>18a^[1] 58:8</div> <div>1962^[1] 11:12</div> <div>1964(c)^[1] 43:13</div> <div>1985^[1] 34:22</div> <div>2</div> <div>20^[2] 48:9 85:7</div> <div>20-year^[1] 54:21</div> <div>2024^[1] 1:11</div> <div>21^[1] 19:19</div> <div>2255^[1] 43:22</div> <div>23-365^[1] 3:4</div> <div>27^[1] 84:18</div> <div>3</div> <div>3^[1] 2:4</div> <div>4</div> <div>43^[1] 2:7</div> <div>49^[2] 32:19 33:10</div> <div>5</div> <div>50^[2] 32:19 33:10</div> <div>525^[2] 44:21 47:16</div> <div>6</div> <div>60^[1] 85:7</div> <div>7</div> <div>7^[1] 56:2</div> <div>76^[1] 86:2</div> <div>77a^[1] 86:2</div> <div>8</div> <div>8^[1] 59:2</div> <div>84^[1] 2:10</div> <div>9</div> <div>99.99999^[1] 85:8</div> <div>A</div> <div>a.m^[3] 1:15 3:2 87:14</div> 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