***RICO Report* — Horn Case**
Host: Cal Stein
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Cal Stein (00:05)**:**

Hello, and thank you for joining me on this installment of the *RICO Report*. My name is Cal Stein, and I'm a partner in the white-collar and litigation practice groups at Troutman Pepper Locke. I represent clients in white-collar, criminal, and government investigation matters, as well as in complex civil lawsuits and in RICO litigation. I come to you today with something of a planned and unplanned episode of the *RICO Report*. It's planned because, as listeners know, we have been tracking a very important RICO case that has been pending before the United States Supreme Court.

(00:38):

The case which is Medical Marijuana Inc. v. Horn, was accepted by the Supreme Court for the purpose of settling a circuit split around whether economic harm that flows from a personal injury is compensable under the RICO statute. The case was argued way back in October, but the decision just came out today, which is why I'm coming to you quickly and without a lot of preparation. As I've noted, this case is critical because it challenges one of the longest-standing preconceptions about RICO, namely that the civil RICO provision cannot and does not reach personal injury claims, whether they're asserted directly or indirectly.

(01:19):

Well, thanks to the Supreme Court ruling, that is no longer the case. The Supreme Court had a chance to rule that RICO unequivocally excludes all personal injury claims, but it declined to do so in this case. Instead, holding that, in some cases, economic injuries that flow from a personal injury can and will satisfy RICO's standing requirement. And that is what we're going to discuss in some detail today. All right, so let's start with a little bit of background on the case, which, as I said, is captioned Medical Marijuana Inc. v. Horn. It is on appeal from the Second Circuit, and the plaintiff is a gentleman named Douglas Horn, who worked as a commercial truck driver.

(02:08):

After Mr. Horn injured his back, he decided to take a natural alternative to medicine called Dixie X, which was a product sold by the defendant, Medical Marijuana Inc. Dixie X was a CBD product, and as listeners may know, CBD is a naturally occurring chemical compound that is found in the cannabis plant. Importantly to Horn, though, CBD is very different than its similar cousin THC, which is also found in the cannabis plant. And this distinction was important to Mr. Horn because taking THC would result in a positive drug test for him, which he knew could cost him his job. So, he only took the product Dixie X after confirming that it was described by its manufacturer as being CBD-rich and containing 0% THC.

(03:12):

Well, lo and behold, a few weeks after Mr. Horn took this product, his employer required a drug test, which he failed because of the presence of THC in his system. He was fired as a result of that positive drug test. Mr. Horn then went out, bought another bottle of Dixie X, shipped it to a test lab, and had that lab confirm the presence of THC, contrary to its manufacturer's representation that there was 0% THC in it. On this basis, Mr. Horn sued the manufacturer, Medical Marijuana Inc., including under the RICO statute, seeking damages due to his loss of employment.

(03:58):

Mr. Horn alleged essentially that Medical Marijuana was a RICO enterprise, and he pointed to its false and misleading advertising as satisfying the mail and wire fraud statutes as predicate acts. The district court, however, granted Medical Marijuana Inc. summary judgment. It ruled that Horn's lost employment flowed from and was derivative of a personal injury that he suffered, namely the introduction of THC into his system through the product he took. The court ruled that civil RICO does not cover personal injuries, and it is only available to people injured in their business or property.

(04:39):

Therefore, because Horn cannot recover for personal injuries, his RICO claim failed. Horn then appealed that decision to the Second Circuit who reversed. The Second Circuit rejected the district court ruling that Horn could not recover for business or property harm, i.e., his lost wages flowing from what it called an antecedent personal injury. The Second Circuit, of course, acknowledged that the RICO statute does contain the business or property language and that that language implicitly excludes recovery for personal injuries.

(05:18):

But the Second Circuit found that nothing, nothing in the RICO statute justifies reading that requirement as excluding recovery for all business or property injuries that just so happened to derive from a personal injury. So, when the Second Circuit ruled in this manner, it deepened a circuit split that already existed on this issue. The Sixth Circuit, Seventh Circuit, and Eleventh Circuit had all already interpreted RICO to preclude relief for any economic loss, including loss to business or property that results from a personal injury.

(05:59):

The Ninth Circuit, and now the Second Circuit, took the other approach, refusing to distinguish between a business where property loss suffered as an immediate consequence of a RICO violation or such a loss derived from or as a secondary effect of a personal injury. Because of this circuit split, the Supreme Court granted cert to resolve it. Okay, so that now brings us to the decision that was released today, which is April 2nd, 2025, and was written and delivered by Justice Barrett on behalf of a court majority. Justices Thomas, Kavanaugh, Roberts, and Alito all dissented.

(06:44):

And now we're going to go through that opinion and talk a little bit about the court's reasoning and then the fallout from this decision. But first, I want to start where the Supreme Court started, which is enumerating what the Supreme Court did not decide in this case, and this is where Justice Barrett started. First, she made clear that the Supreme Court was not deciding whether Mr. Horn in fact suffered a personal injury. I find this odd because that's really at the heart of this case, but neither party asked the Supreme Court to revisit this issue, which the District Court had decided in Horn's favor.

(07:22):

This quirk featured pretty heavily in Justice Thomas's dissent. Second, the Supreme Court did not decide whether the Second Circuit correctly ruled that a business in the context of injury to one's business or property that business encompasses employment. Again, seems a little bit odd because it's at the heart of the case, but the defendant, Medical Marijuana Inc. never challenged that. So they did not decide whether employment constitutes business. And then third, the Supreme Court did not decide what it means for a RICO plaintiff to be injured in his property. Again, they ruled Horn's claim didn't depend on that, so they didn't reach it.

(08:11):

Rather, Justice Barrett, in her opinion, was clear that the only question the Supreme Court was deciding is, quote, "Whether civil RICO bars recovery for all business or property harms that derive from a personal injury." And as I've already foreshadowed, the Supreme Court's answer to that question is no. Not all business or property harms that derive from a personal injury are barred. Some are compensable. Now, if you look at the court's decision, the answer to that question really comes down to the civil RICO standing provision that we have talked so much about on this podcast.

(08:53):

It's that phrase, "Any person injured in his business or property by reason of the RICO violation may sue." That is what the civil RICO provision says, and that is its standing requirement. So, let's now walk through the Supreme Court's decision here and how they reached their ultimate conclusion. So first, the Supreme Court acknowledged the personal injury limitation that exists within the RICO statute and had been applied pretty uniformly until this circuit split emerged. What the Supreme Court said was, "Look, Section 1964(c) does not allow recovery for all harms. It implicitly excludes recovery for harm to one's person."

(09:44):

But the Supreme Court then made a very important distinction stating that 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. Thus, the court found a plaintiff can seek damages for business or property loss regardless of whether the loss resulted from a personal injury. So, really, we have two truths here as far as the Supreme Court is concerned.

Truth number one is that RICO's business or property requirement excludes personal injuries. But truth number two is that it only excludes that kind of injury, that type of injury.

(10:31):

It does not exclude injuries caused by personal injury. So how did the Supreme Court get to that conclusion? Well, really it comes down to a simple choice by the majority. The choice to apply the plain ordinary meaning of the words in the RICO standing requirement rather than ascribing to them some more specialized meaning along the lines of what the defendant, Medical Marijuana Inc., urged. Justice Barrett wrote, "When a word carries both an ordinary and specialized meaning, we look to the context to choose between them. Here, context cuts decisively in favor of ordinary meaning." Now, let's take a look at what Medical Marijuana Inc. was arguing.

(11:21):

They were arguing for a specialized meaning for the phrase injured in his business or property, a meaning that was informed by its context within the RICO statute. Essentially, Medical Marijuana argued, "Look, this phrase in the context of RICO means that a plaintiff has suffered an invasion of a business or property right." So, put another way. Medical Marijuana was urging the Supreme Court to interpret the phrase to refer only and exclusively to business torts. Thus, Medical Marijuana said, "The invasion of a personal right, i.e., a personal injury, can never, never give rise to a RICO violation."

(12:05):

Now, this may sound like something of a tortured linguistic argument, but Medical Marijuana had a decent basis for arguing it. And they based their argument primarily on the RICO statute's use of the word injured, injured in your business or property. They argued that, "Look, Congress chose to use the word injured there. One who has been injured in his business or property. And in this context, the word injured must refer to something other than damages. It must mean something different, or else Congress would have and could have used the word damages."

(12:47):

Damages, Medical Marijuana argued, refers to the loss, the hurt, or the harm suffered. Thus injured must refer to something else, and that something else must be the invasion of a legal right, which got Medical Marijuana back to its claim that the invasion of a personal right can never give rise to a RICO claim. It is, in my opinion, a very clever argument that was steeped in deep statutory interpretation case law.

(13:19):

But ultimately, the Supreme Court, the majority at least, didn't buy it in large part because, according to Justice Barrett, it ignored the vast history of Supreme Court precedent already on the books that in fact used those two terms injured and damages interchangeably in the RICO context. In the opinion, Judge Barrett goes into great detail, citing some of the most seminal

Supreme Court Rico cases like Sedima and Hemi and quoting how the court in those cases used those two terms to mean the exact same thing.

(13:56):

Thus, she wrote, quote, "Accepting Medical Marijuana's argument would require an about-face, and that was just something the court was not willing to do." All right, having disposed of Medical Marijuana's linguistics-based argument, Justice Barrett also addressed its next argument, which was essentially that, "Look, the Supreme Court's precedent in the antitrust space compels a decision in its favor."

(14:27):

And on its face, Medical Marijuana relying on antitrust law and looking to antitrust law would not appear to be a bad argument because it's well established, and we've discussed it on this podcast that Congress, number one, based the RICO statute on antitrust laws, and number two, that federal courts will sometimes look to antitrust laws to help it interpret RICO. But again, the majority just wasn't buying it. And again, for the same reason, namely that the court's prior RICO precedent foreclosed the argument Medical Marijuana was making.

(15:04):

Specifically, Justice Barrett recounted that the antitrust precedent Medical Marijuana was largely relying on derived from a single case interpreting the Clayton Act to require a specific type of injury, namely an injury of the type the antitrust laws were intended to prevent. But critically, Justice Barrett notes, the Supreme Court in RJR Nabisco, a very famous Supreme Court Rico case, explicitly declined to apply that exact Clayton Act rule in the RICO context.

(15:42):

So, on her and the majority's logic, this line of precedent on which Medical Marijuana was relying in the antitrust space does not apply to RICO and the court has already ruled that it does not apply to RICO. So, after all of that, we finally have our answer to the circuit split. And that answer is that, no, Civil RICO does not, does not bar recovery for all business or property harms, including those that derive from a personal injury. That is the holding of the case. But let's think about the fallout here and the consequences.

(16:21):

What does that holding really tell us? Well, it really only tells us one thing. That it is possible. It is within the realm of possibility that a business or property harm that derives from a personal injury will be compensable under the RICO statute. That, of course, does not mean that all harms derived from a personal injury will be compensable, and therein lies what I expect to be the next phase of federal litigation over this issue, defining what harms fall within this rule and what harms fall outside it.

(17:01):

Now, Medical Marijuana argued, and the dissent authored by Justice Kavanaugh agreed with this, that the rule the Supreme Court majority announced would open the doors for plaintiffs to transform garden variety personal injury claims into federal RICO suits simply by recasting personal injuries as economic injuries flowing from a personal injury. And this is a very, very valid concern, in my opinion.

(17:37):

We have already seen the plaintiff's bar expand tremendously the reach and scope of the RICO statute from what Congress intended to be when it was enacted, largely driven by the desire to get treble damages and attorney's fees in as many cases as possible. This decision by the Supreme Court would appear to open up even more avenues for plaintiffs to take advantage of those provisions by recasting personal injuries in a way that fits them within the RICO statute. Well, Justice Barrett acknowledges this exact concern in the opinion for the majority, and she immediately tries to downplay it.

(18:22):

And in doing so, I think she begins to define the next phase of this litigation in this area. I mean, it seems clear to me that the plaintiff's bar is going to seize on this ruling and that we are going to see a whole spate of new RICO claims alleging what are essentially personal injuries and couching them as business or property harm flowing from those personal injuries. And this is where the portion of Justice Barrett's majority opinion should be most helpful as I think she signals to the Defense Bar how we might go about defending against some of those suits.

(19:08):

So first, Justice Barrett raises the fact that the RICO statute requires a direct relationship between the harm alleged and the racketeering activity. And this, she says, is a reason why the Supreme Court's ruling is not going to transform all garden variety personal injuries into RICO cases. She emphasizes that civil RICO's language that requires the injury be, quote, "By reason of," that requires a direct relationship.

(19:43):

And in doing so, Justice Barrett strongly suggested that plaintiffs who rely on economic injuries flowing from personal injuries may have a very difficult time satisfying that directness requirement, whether it be at the Rule 12 stage for motion to dismiss or later in the case. Interestingly, Justice Barrett even suggested that the plaintiff in this very case, Mr. Horn himself, may not be able to satisfy this directness requirement. Here's what she said.

(20:14):

She said, "Given the number of steps in Horn's theory and the multiple actors involved, this requirement may present an insurmountable obstacle in this case. There is, after all, some distance between the first link in the chain, Medical Marijuana's misrepresentation, and the last, Horn's job loss. To me, this language is very important." Justice Barrett is suggesting that even though the ruling by the Supreme Court is that, "Yeah, sure, it's possible that some economic losses that flow from personal injuries will be compensable under RICO.

(20:54):

They're still going to have to satisfy this directness requirement, which is going to be difficult when you are starting from a place of indirect injury already." So I would expect this to be a very fertile ground for the Defense Bar to explore even at the Rule 12 stage as we see more and more RICO cases. The second point that Justice Barrett made was to give a nod to the many other pleading requirements in the RICO statute to make the point that this ruling isn't going to open the floodgates and make every personal injury case a RICO case.

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As we know from our many episodes going through the elements, RICO has many, many, many pleading requirements that a plaintiff has to satisfy in addition to pleading standing. Justice Barrett wrote, "Pleading a RICO claim is not as simple as pointing to a business or property harm." And she's right. She pointed to the pattern element to make the point that, "Look harm resulting from a single tort is not going to be a ticket to a federal court where you can get treble damages."

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Now, this section of Justice Barrett's opinion is short. But I predict it's also going to be critical in warding off some of these personal injury RICO cases that I think we're going to see. Just pleading that economic injuries flow from personal harm, that's not going to be enough if the personal harm is in a single episode if there's no pattern. Implicit in this are the other RICO requirements, including to prove an alleged racketeering activity. That's going to be another way to attack these personal injury RICO cases.

(22:45):

The Horn case itself is somewhat unique in that the mail fraud and the wire fraud, which of course are racketeering acts pursuant to the RICO statute at least arguably caused the personal injury. But those facts are not going to be present in many cases involving personal injuries. Think about things like a car accident or a slip and fall. That conduct is not going to fit within any of RICO's racketeering activity definitions, at least not directly. Now let's talk about one more point that comes out of this decision that I think is going to be very important for future cases.

(23:25):

As we have been discussing, the holding here is that not all injuries flowing from personal injuries are going to be prohibited. Thus, some are going to be permitted. So that begs the obvious question of what guidance does the court give us on how to identify which injuries are going to be permitted and which are going to be excluded. And Justice Barrett addresses this ever so briefly in the majority opinion. She writes, "Not every monetary harm, be it lost wages, medical expenses or otherwise, necessarily implicates RICO."

(24:00):

This is, of course, true if not obvious, but Justice Barrett and the majority don't really provide any further answers to the question. Now, Justice Kavanaugh picked up on this in his dissent, and he wrote, "The court agrees with Horn that personal injury suits are not excluded by RICO so long as the personal injuries lead to business or property loss." But the court then declines to decide whether lost wages and medical expenses qualify as business or property loss recoverable in those RICO suits.

(24:36):

This, Justice Kavanaugh argued, is going to leave substantial confusion in its wake, and he's right. It's actually pretty stunning. The court announces this new rule that settles the circuit split, but it just kind of glosses over this critical question of, "Well, what kind of damages are going to qualify?" And what that means is that lower courts are going to be left to decide this. They're going to be left to interpret what Justice Barrett meant when she wrote, "Not every monetary harm necessarily implicates RICO."

(25:13):

And while one interpretation of this is that the Supreme Court is kind of throwing a grenade and then walking away, leaving lower courts to pick up the pieces. Another interpretation, perhaps a more optimistic interpretation, is that the Supreme Court, in announcing this rule, is leaving very wide open an argument for defendants to pursue, including at the Rule 12 stage when they inevitably face the type of personal injury-based RICO cases that Medical Marijuana and Justice Kavanaugh cautioned against.

(25:48):

Look, there's little question in my mind that this ruling by the Supreme Court is going to lead to more RICO suits by more plaintiffs against more defendants. And what is equally clear to me is that these new suits, ones alleging ostensibly personal injuries, are going to be challenged over and over by the Defense Bar at the motion to dismiss stage and at the summary judgment stage. And while the Supreme Court has cleared a path for these new RICO suits, its ruling in doing so has, I believe, left enough crevices for RICO defense attorneys to utilize them to attack the suits at the early stages and whittle them down and even knock them out.

(26:33):

It will be those motions and the accompanying federal court rulings that ultimately drive the next phase of RICO litigation in this area that we are all going to watch with great interest. And with that, we are out of time here today, so I want to bring this discussion to a conclusion. I want to thank everyone for listening. If you have any thoughts or any comments about this episode or about this series generally, I invite you to contact me directly at callan.stein@troutman.com. You can subscribe and listen to other Troutman Pepper Locke podcasts wherever you listen to podcasts, including on Apple, Google, and Spotify. Thank you for listening and stay safe.