No. 12-622

In the Supreme Court of the United States

CASSENS TRANSPORT COMPANY, ET AL.,
Petitioners,

V.

PAUL BROWN, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF *AMICI CURIAE* THE AMERICAN INSURANCE ASS'N, NATIONAL COUNCIL OF SELF-INSURERS, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND AMERICAN TRUCKING ASS'NS IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*[1]

Amicus curiae the American Insurance Association ("AIA") is a leading national trade

[1] No counsel for any Party authored this brief in whole or in part, and no entity or person, aside from *amici curiae* and their members, made any monetary contribution intended to fund the preparation or submission of this brief. Counsel of record for all Parties have received timely notice of *amici curiae's* intent to file this brief and have consented to filing.

association representing some 350 property and casualty insurance companies that write a major share of property and casualty insurance, including workers' compensation insurance, throughout the United States. On issues of importance to the property and casualty insurance industry, AIA regularly files *amicus curiae* briefs in cases before federal and state courts.

The National Council of Self-Insurers ("National Council") is a national association of employers that elect to self-insure their obligation to pay worker's compensation benefits rather than purchase insurance.

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. It represents 300,000 direct members and indirectly represents an underlying membership of three million professional organizations of every size, in every industry sector, and from every region of the country. The Chamber regularly files *amicus* briefs in cases that raise issues of vital concern to the nation's business community.

American Trucking Associations, Inc. ("ATA") is the national association of the trucking industry. Its direct membership includes approximately 2,000 trucking companies and, in conjunction with 50 affiliated state trucking organizations, it represents over 30,000 motor carriers. The motor carriers represented by ATA haul a significant portion of the freight transported by truck in the United States. ATA regularly represents the common interests of the trucking industry in courts throughout the nation.

Collectively, the members of the *amici* constitute a significant portion of the insurers and self-insured employers in the United States which pay workers' compensation benefits to injured workers under state workers' compensation laws. Because those laws were written to provide fair and timely compensation for injured workers without the costs of litigation, *amici* and their members have a significant interest in the continued, effective functioning of these compensation schemes.

The Petition presents the question whether workers claiming compensation for workplace injuries may evade the exclusive remedy established in state workers' compensation laws by suing insurers and self-insured employers such as *amici's* members for treble damages under the Racketeer-Influenced and Corrupt Organizations Act ("RICO"). Allowing such suits would substantially impair the effectiveness of the workers' compensation schemes on which *amici* and their members rely.

BACKGROUND

State workers' compensation laws provide compensation for lost wages and the costs of medical treament based on the severity of a worker's injury. They therefore require medical examinations into the extent and duration of injury. The state administrators and adjudicators use the results of those medical examinations to determine the proper amount of benefits.

Plaintiffs in this and other cases have attempted to challenge the adequacy of their expected award of compensation in federal court. Invoking RICO, they allege fraud in their medical examinations and in

other aspects of the handling of their claims. They contend that this fraud deprived them of workers' compensation benefits that they otherwise would have received via the state administrative process.

The United States District Court for the Eastern District of Michigan dismissed on multiple grounds, including that the plaintiffs had not alleged an injury to business or property within the meaning of RICO. Pet.App. 51a. However, the United States Court of Appeals for the Sixth Circuit reversed, holding that a claim for compensation for a workplace injury was not a claim for "personal injury" but one for injury to business or property. Pet.App. 1a.

SUMMARY OF ARGUMENT

The Court of Appeals's decision in *Brown v. Cassens Transport Co.*, 675 F.3d 946 (6th Cir. 2012), should be reviewed because it threatens to undermine the state workers' compensation laws that for almost a century have provided an efficient means to compensate employees for workplace injuries without imposing debilitating costs on employers.

Every state has enacted a workers' compensation law governing compensation for employees who suffer a personal injury resulting from a workplace accident or occupational disease. Virtually all of these laws contain exclusive remedy and exclusive jurisdiction provisions that bar a worker from seeking compensation for workplace injuries outside the comprehensive scheme of administrative adjudication and statutory standards for compensation.

The exclusiveness of the remedy protects the careful balance of employer and employee interests. The latter receives a quick and certain benefit without having to prove fault, while the former is relieved of the possibility of large damage awards. All parties benefit from the reduced costs and risks of litigation. That ensures that employees receive fair and timely compensation while the system's costs do not become unbearable for their employers.

If it stands, the decision below will disrupt the comprehensiveness and uniformity of this statutory compensation system. It will permit plaintiffs to evade the exclusivity of the state remedy by suing for treble damages under RICO based on alleged fraud in the handling of their state law claims for compensation. That will expand RICO into a federal compensation remedy for workplace accidents that would intrude on the heretofore exclusive role of the state compensation schemes.

Application of RICO will undermine the States' compensation systems in several respects. Allowing injured workers unsatisfied with their administrative awards to resort to RICO will create expensive, parallel litigation at odds with the principles underlying the state compensation laws.

RICO cases often involve extensive discovery and prolonged litigation that is contrary to the goal of efficiently disposing of claims. Injured workers might recover treble damages far in excess of the statutory caps on lost wages established by state law. The federal suits would be based on standards – such as an "enterprise" and "pattern of racketeering activity" – utterly foreign to state law while federal

judges and juries would lack the medical expertise of state administrators and adjudicators.

In sum, the decision below should be reviewed because it would establish a parallel federal system for workers' compensation never intended by the authors of RICO. This duplicative federal law remedy would trespass upon a state scheme of regulation that for a century has been an efficient and fair way to compensate for workplace injuries.

ARGUMENT

I. RICO SHOULD NOT APPLY TO WORKERS' COMPENSATION CLAIMS BECAUSE STATE LAW ALLOWS COMPENSATION ONLY UPON PROOF OF A QUALIFYING PERSONAL INJURY

The Sixth Circuit's decision should be reviewed because it is in conflict with other circuit court decisions holding that RICO's limitation to injuries to "business or property" excludes claims for compensation for personal injuries. Without disputing that physical injury caused by a workplace accident is a quintessential form of personal injury, the Court of Appeals attempted to bridge this distinction by holding that plaintiffs' claims were not for "personal injury" because Michigan's workers' compensation law either created "a property interest in the expectancy of statutory benefits" or because a claim for compensation was itself a species of property. Pet.App. 13a-36a.

It is clear under the Michigan law and the similar laws of other states, however, that workers'

compensation is not an automatic entitlement to statutory benefits but is available only upon proof of a "personal injury" that qualifies under causation, medical and other criteria that are different in kind than under traditional tort law but have the same objective of awarding damages for lost income and the costs of medical treatment.

Applying RICO to the workers' compensation context therefore would involve a substantial expansion of its scope from a remedy for injuries to business and property into a federal remedy for personal injuries suffered in the workplace.

The core purpose of Michigan's Workers' Disability Compensation Act ("WDCA") is "to prescribe certain benefits for persons suffering a ***personal injury***. . . ." MCL § 418.101 (emphasis added). The act thus repeatedly refers to "personal injury" as the predicate for compensation. *See, e.g., id.* § 418.131 ("the right to the recovery of benefits as provided in this act shall be the employee's exclusive remedy against the employer for a personal injury or occupational disease."); *id.* § 418.141 (referring to an "action to recover damages for personal injury sustained by an employee in the course of his employment or for death resulting from personal injuries so sustained . . ."); *id.* § 418.301 ("an employee, who receives a personal injury arising out of and in the course of employment by an employer who is subject to this act at the time of the injury, shall be paid compensation as provided in this act.").

Under the statute, compensation is available only if the employee proves a type of personal injury covered by the act. Most importantly, "[a] personal

injury under this act is compensable if work causes, contributes to, or aggravates pathology in a manner so as to create a pathology that is medically distinguishable from any pathology that existed prior to the injury." MCL § 418.301(1). There are many additional requirements concerning the type of personal injury qualifying for compensation, such as a disability that limits the employee's wage earning capacity "in work suitable to his or her qualifications." *Id.* § 418.301(4).

That personal injury is the touchstone for compensation is confirmed by the fact that medical examinations of the type challenged in this case play an important role in determining whether the employee should recover for costs of medical treatment and lost wages. *See, e.g.*, MCL §§ 418.385, 418.851. Indeed, the fact that the RICO claims in this case are for personal injury is best demonstrated by plaintiffs' own theory of their case: they challenge the accuracy of the physician defendant's medical examinations into the extent of their injuries.

In sum, the central objective of the Michigan law (and those of its sister States) is to replace the preexisting tort regime governing compensation for workplace accidents with a statutory scheme prescribing different standards for compensation. The statutory schemes do jettison the tort law negligence standard in order to make the employer strictly liable for compensation irrespective of its negligence or the employee's or co-employee's contributory negligence. MCL § 418.141. But, while proof of a claim for compensation under the statutory scheme is subject to different standards than under

prior tort law, a claim for statutory compensation is as much for personal injury as was a claim under the prior tort law approach.

The decision below should therefore be reviewed because its application of RICO to personal injuries stands in conflict with other circuits' interpretation of the federal statute and threatens unprecedented expansion of the federal law into a remedy for personal injuries suffered in the workplace.

II. APPLICATION OF RICO WOULD DISRUPT THE EXCLUSIVE REMEDY AND EXCLUSIVE JURISDICTION PROVISIONS OF STATE WORKERS' COMPENSATION LAWS THAT ARE CRITICAL TO THE STATUTORY SCHEME

Exclusive administrative jurisdiction over any dispute relating to workers' compensation is an essential component of the States' statutory schemes. The Michigan Supreme Court has explained that "[t]he history of the development of statutes, such as this, creating a compensable right independent of the employer's negligence and notwithstanding an employee's contributory negligence, recalls that the keystone was the exclusiveness of the remedy." *Balcer v. Leonard Refineries, Inc.*, 122 N.W.2d 805, 807 (Mich. 1963), *quoted in Hesse v. Ashland Oil, Inc.*, 642 N.W.2d 330, 334 (Mich. 2002) (italics omitted).

The Sixth Circuit's decision, however, would create a new and broad exception to the exclusivity of the state laws. RICO would become an alternative

federal remedy for injured workers accessible *via* the simple device of alleging fraud in the handling of the state law claim. That would destroy the efficiencies that have allowed the state schemes to function for a hundred years.

A. State Workers' Compensation Laws Preclude Other Remedies for Workplace Injury

The heart of state workers' compensation laws is the "compensation bargain" between employees and their employers. Employees get quick and certain compensation for on-the-job injuries under a "no fault" standard that does not require them to prove that their employer was negligent or otherwise at fault. They receive compensation for lost earnings, typically according to statutory schedules based on wages, and for the costs of medical treatment and rehabilitation. In return, "the employer . . . is relieved of the prospect of large damage verdicts." 6 Lex K. Larson, *Larson's Workers' Compensation* § 100.01[1] (2010).

Together, the presumption of liability and the statutory compensation schedules reduce the scope and stakes of litigation. That permits cheaper, more efficient handling of cases and generates large cost savings compared to traditional tort litigation. Employers and employees need not litigate every case with intensive discovery and complex theories of liability focused on the largest possible verdict. In addition, the workers' compensation system ensures that compensation is evenly distributed among injured workers, rather than concentrated in the

hands of a few lucky recipients of out-sized damage awards.

As the Michigan Supreme Court has put it:

> This concept emerged from a balancing of the sacrifices and gains of both employees and employers, in which the former relinquished whatever rights they had at common law in exchange for a sure recovery under the compensation statutes, while the employers on their part, in accepting a definite and exclusive liability, assumed an added cost of operation which in time could be actuarially measured and accurately predicted; incident to this both parties realized a saving in the form of reduced hazards and costs of litigation.

Hesse, 642 N.W.2d at 334 (citations and quotation marks omitted).

The exclusive remedy and exclusive jurisdiction provisions of workers' compensation laws are critical to preserving the system's efficiencies and the balance between the interests of employees and employers. The exclusive remedy provision in the WDCA states that: "The right to the recovery of benefits as provided in this act shall be the employee's exclusive remedy against the employer for a personal injury or occupational disease." MCL § 418.131(1). With the exception of injuries intentionally inflicted by the employer, the exclusive remedy provision prevents employees from recovering damages from employers for workplace accidents under other theories, whether based on common law or statute. *See, e.g., Wells v. Firestone*

Tire & Rubber Co., 364 N.W.2d 670 (Mich. 1984) (WDCA bars product liability claims against employers); *Adams v. Nat'l Bank of Detroit*, 508 N.W.2d 464 (Mich. 1993) (WDCA bars claims for gross negligence or recklessness).

The exclusive remedy is administered by a dedicated state agency given exclusive jurisdiction over disputes regarding compensation. In Michigan, that is the Michigan Bureau of Workers' Compensation ("Bureau"). *See* MCL § 418.841(1) ("Any dispute or controversy concerning compensation or other benefits shall be submitted to the bureau and all questions arising under this act shall be determined by the bureau or a workers' compensation magistrate, as applicable."). The Bureau is tasked with operating a streamlined administrative process that avoids the costs and burdens of protracted judicial proceedings. Proceedings are "administrative, not judicial, – inquisitorial, not contentious, – disposed of, not by litigation and ultimate judgment, but summarily." *Hebert v. Ford Motor Co.*, 281 N.W. 374, 375 (Mich. 1938). That generates the cost savings that are a primary benefit of the workers' compensation regime.

The Bureau's exclusive jurisdiction extends broadly to "[a]ny dispute or controversy concerning compensation or other benefits." MCL § 418.841(1). As the Michigan Court of Appeals has explained, "the resolution of all disputes relating to workmen's compensation is vested exclusively in the Workmen's Compensation Bureau." *St. Paul Fire & Marine Ins. Co. v. Littky*, 230 N.W.2d 440, 442 (Mich. Ct. App. 1975); *see also Dixon v. Sype*, 284 N.W.2d 514, 516

(Mich. Ct. App. 1979) (Bureau's "[j]urisdiction is not limited to claims for compensation."). Thus, the Bureau is the exclusive forum in which to bring claims involving denial or termination of benefits such as alleged in this case. *See Lisecki v. Taco Bell Rests., Inc.*, 389 N.W.2d 173, 175 (Mich. Ct. App. 1986) ("allegation by the plaintiff that compensation benefits were wrongfully terminated by the defendants in order to further some ulterior motive of the defendants" was not addressable in court because "[a]n adequate remedy for the defendants' termination of benefits was available to and exercised by plaintiff Donald Lisecki, i.e., his filing of a petition for hearing with the Bureau of Worker's Disability Compensation, which resulted in an open award of benefits").

The Michigan law has an extensive range of penalties and sanctions to enforce the obligations of insurers and self-insured employers. In particular, Michigan's workers' compensation regime provides a remedy for fraud in claims handling as alleged in this case. Allegations of fraud can be presented to the magistrate, reviewed by the Workers' Compensation Appellate Commission, and appealed to the Michigan Court of Appeals. Fraud nullifies the presumption that the Bureau's findings of fact were correct. MCL § 418.861a(14).

In addition, the administrative scheme prescribes fines and other sanctions for employers and insurers that do not comply with their statutory claims-handling obligations. The Bureau can revoke an insurer's license or an employer's privilege to self-insure. See MCL § 418.611(5); MCL § 418.631. It

can levy statutory fines for failure to pay benefits within the prescribed deadlines, and the WDCA automatically assesses interest on any delayed payment of benefits. See MCL § 418.801(2). A claimant can recover attorney's fees upon proof that the employer failed to provide needed medical services. See MCL § 418.315(1). And the WCAC may assess costs or take other disciplinary action against employers who bring frivolous appeals "for purposes of hindrance or delay." MCL § 418.861b(a).

These exclusivity and agency enforcement features are characteristic of and essential to workers' compensation schemes across the nation. *See* Lex K. Larson, *Larson's Workers' Compensation* §§ 100.01, 100.03 (2010).

Because of the centrality of the exclusive remedy and exclusive jurisdiction provisions to the statutory scheme, other courts of appeals have rejected RICO claims involving matters subject to the state workers' compensation agency's exclusive jurisdiction. *See, e.g., Prine v. Chailland Inc.*, 402 F. App'x 469, 470-71 (11th Cir. 2010); *Patterson v. Mobil Oil Corp.*, 335 F.3d 476, 487-88, 492 (5th Cir. 2003); *Lee v. Hunter*, No. 98-17084, 2000 U.S. App. Lexis 23898, at *2 (9th Cir. Sept. 22, 2000). Yet other circuit courts have barred the use of RICO to circumvent exclusive remedy provisions in similar laws. *See, e.g., Hubbard v. United Airlines, Inc.*, 927 F.2d 1094, 1098 (9th Cir. 1991) (plaintiffs may not use "artful pleading" to bring a RICO claim for fraudulent denial of disability benefits afforded by the Railway Labor Act, which has an exclusive remedy clause similar to those in state workers' compensation laws); *Fry v. Airline*

Pilots Ass'n, 88 F.3d 831, 835-39 (10th Cir. 1996) (same); *Danielsen v. Burnside-Ott Aviation Training Ctr., Inc.*, 941 F.2d 1220, 1226-29 (D.C. Cir. 1991) (no RICO action could be maintained where conduct was wrongful under the Service Contract Act, which includes an exclusive statutory scheme for relief); *Adkins v. Mireles*, 526 F.3d 531, 542 (9th Cir. 2008) (RICO not available to challenge misconduct within the exclusive jurisdiction of the NLRB); *Tamburello v. Comm-Tract Corp.*, 67 F.3d 973, 976-79 (1st Cir. 1995) (same); *Brennan v. Chestnut*, 973 F.2d 644, 647 (8th Cir. 1992) (same).

B. RICO Suits Based on Federal Standards Would Disrupt the State Schemes

Allowing injured workers to use RICO to challenge the handling of their state law compensation claims would compromise the exclusivity provisions of these state schemes and thus disrupt the effectiveness of the administrative regimes as a whole. The threat of such litigation is not speculative. In addition to the four pending suits noted in the Petition, Pet. at 24, there have been at least two others similarly challenging workers compensation claims handling under RICO. *See Yax v. UPS*, 196 F. App'x 379 (6th Cir. 2006); *Moon v. Harrison Piping Supply*, 465 F.3d 719 (6th Cir. 2006). Most of these cases have been brought as putative class actions seeking broad injunctive relief as well as treble damages and thus potentially could have a severe impact on the functioning of the state schemes.

Litigating compensation disputes under RICO would significantly expand the scope of litigation and

the available damages beyond that permitted by state compensation laws such as the WDCA. RICO damages are not limited to the compensation specified in the WDCA and other state law schedules; they may include consequential damages exceeding lost wages and the cost of medical treatment. RICO also permits trebling of damages – essentially, a form of punitive damages. That is at odds with the WDCA and other compensation schemes, which do not provide punitive damages for workplace injuries. *See*, *e.g.*, MCL §§ 418.301 *et seq*. The objective of workers' compensation systems is not punishment or deterrence but compensation of injured workers for lost wages and provision of the reasonable and necessary medical treatment required for their recovery and return to work. At the same time, RICO suits will involve intensive discovery and extensive motions practice not permitted in state administrative hearings.

Between them, tort-style litigation and punitive damages would create great uncertainty for employers and insurers, which it is a major purpose of the WDCA to avoid. No longer would employers be subject to "a definite and exclusive liability" that is an "actuarially measure[able] and accurately predict[able]" "cost of operation" that allows them to "realize[] a saving" on the "costs of litigation." *Hesse*, 642 N.W.2d at 334 (quoting *Balcer*, 122 N.W.2d at 805).

That uncertainty will affect every stage of the claims handling process, particularly because RICO extends liability to those who have no financial responsibility under state law such as examining

physicians and claims handlers. The threat of liability will undermine the independence and objectivity of physicians conducting medical examinations of injured workers and will deter claims handlers from refusing compensation for fraudulent claims.

Indeed, RICO suits will make every claims management decision the potential subject of treble damages litigation. A major goal of the workers' compensation system is to encourage workers to return to work, but the possibility of recovering treble damages may deter workers from doing so. And the threat of treble damages will cause employers and insurers to consult counsel at every stage of the claims-handling process out of fear of liability for any decision the claimant or his counsel contest, whether the existence and extent of permanent or temporary disability, the nature and intensity of medical treatment, or the amount and duration of compensation. That will shift the focus of claims handling from managing disability to obtaining legal protection, impairing the system's rehabilitative goals while increasing its costs.

Meanwhile, application of RICO will permit claimants for workers' compensation to evade scrutiny by the agency with expertise on medical questions and substitute the less tutored views of a federal judge or jury. It will also subject disputes over compensation to a set of federal legal standards inconsistent with those in the WDCA. There is nothing analogous to the concept of an "enterprise" or a "pattern of racketeering activity" in the Michigan law. And the federal standards for proving

"wire fraud" or "mail fraud" as "predicate acts" are quite different than the standards in the WDCA for proving fraud or other misconduct in the handling of claims. The end result will be a duplicative system of federal review of medical findings rife with the potential for inconsistent decisions.

Ultimately, RICO suits will end with the usurpation of state administrative, adjudicatory and enforcement functions. In this case, for example, Plaintiffs contend that the examining physician gave fraudulent medical opinions concerning their injuries in order to deny or terminate benefits. A federal judge or jury thus would be asked to second guess the assessment of those medical examinations by a workers' compensation judge.

Plaintiffs additionally seek injunctive relief that will control Defendants' use of physicians, require them to keep various records, and order them to comply with the WDCA. Under Michigan law, however, enforcement of the WDCA is exclusively the function of the Bureau, subject to state court review. *See, e.g.*, MCL § 418.801(1) (requiring keeping of certain records and the furnishing of reports "to the [Bureau] as the director may reasonably require"); MCL § 418.631(1) (allowing the Bureau to recommend revocation of a workers' compensation insurer's license if it "fails to pay promptly claims for compensation for which it shall become liable or if it repeatedly fails to make reports to the director as provided in this act"). The requested injunctive relief shows how RICO litigation would transform federal district courts into co-administrators of the WDCA and other state compensation schemes. That would

be an unprecedented federal intrusion into a traditional area of state responsibility.

The Sixth Circuit's decision thus threatens to destabilize a nationwide and effective system of workplace injury compensation based on state law that has served this country well for a century.

CONCLUSION

For the foregoing reasons, the petition should be granted.

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