

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.)
- - - - -

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MEDICAL MARIJUANA, INC., ET AL.,)

Petitioners,)

v.) No. 23-365

DOUGLAS J. HORN,)

Respondent.)

- - - - -

Washington, D.C.

Tuesday, October 15, 2024

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

APPEARANCES:

LISA S. BLATT, ESQUIRE, Washington, D.C.; on behalf of the Petitioners.

EASHA ANAND, ESQUIRE, Stanford, California; on behalf of the Respondent.

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P R O C E E D I N G S

(10:06 a.m.)

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

Ms. Blatt.

ORAL ARGUMENT OF LISA S. BLATT
ON BEHALF OF THE PETITIONERS

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

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

The text differentiates the injury from racketeering and the damages sustained from that injury, thus showing that injury and damages are distinct. And the references to damages he sustains shows that damages are the losses suffered as a result of the injury. Damages are not themselves the injury inflicted 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 fiscal 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, pain
19 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 any
10 time 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 a injury in business?

3 MS. BLATT: Well, it's -- it certainly
4 does in the Clayton Act. And the example I
5 could think of, the only example that readily
6 comes to mind, in RICO would be the human
7 trafficking cases where a person is forced to
8 work against their will, and the -- there's an
9 injury in your right to get, you know, the --
10 the payment for your performed work. So that
11 would 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, no, and here's why,
25 because a lot of examples, the plaintiff will

1 meet a direct and proximate cause, and I can
2 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
18 or 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 injured,
4 you are -- can't work, you have lost -- lost --

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

7 MS. BLATT: That's --

8 JUSTICE SOTOMAYOR: -- you're still
9 not answering my --

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

15 JUSTICE SOTOMAYOR: There has to be
16 proximate causation --

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

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

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

24 JUSTICE JACKSON: But, Ms. --

25 JUSTICE KAGAN: But you --

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

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

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

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

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

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

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

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

25 JUSTICE KAGAN: If you're harmed when

1 you lose a job, then you've been injured in your
2 business, haven't you?

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

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

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

24 MS. BLATT: So that's an
25 infinitesimal, small number of cases that would

1 be excluded.

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

12 MS. BLATT: In your business, right.

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

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

23 It sounds like you think maybe the
24 Second Circuit is right. The Second Circuit
25 seemed to think lost wages are always

1 recoverable, but medical expenses never would be
2 because that results from a physical injury.

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

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

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

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

21 MS. BLATT: No.

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

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

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

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

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

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

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

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

5 So, I mean, you're --

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

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

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

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

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

1 MS. BLATT: You can --

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

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

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

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

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

18 JUSTICE JACKSON: Go ahead.

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

25 MS. BLATT: Two -- two -- two places.

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

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

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

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

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

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

1 JUSTICE BARRETT: So you're looking
2 at, like, the Restatement?

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

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

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

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

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

22 I did not perceive Mr. Horn to be
23 relying on any sort of personal injury
24 allegation with respect to the RICO count. He
25 doesn't say, for example, that he took the THC

1 and that he got ill from it and, as a result of
2 that, he took off from work and then he got
3 fired.

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

6 MS. BLATT: Well, I think --

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

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

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

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

24 MS. BLATT: No, not in the RICO
25 statement. The RICO statement, by definition,

1 is the RICO claim.

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

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

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

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

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

19 But this was litigated at the cert
20 stage.

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

25 MS. BLATT: I think that's fair,

1 you're right.

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

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

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

11 MS. BLATT: Okay.

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

15 MS. BLATT: Mm-hmm.

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

22 I think this is an example --

23 MS. BLATT: Yeah.

24 JUSTICE JACKSON: -- that the
25 Respondents came up with.

1 MS. BLATT: Yes.

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

4 MS. BLATT: Yes.

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

8 MS. BLATT: Right.

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

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

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

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

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

1 three times his purchase price.

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

4 MS. BLATT: For purchase price.

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

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

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

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

23 JUSTICE KAGAN: And -- and isn't that
24 essentially what's wrong with this case too, is
25 what Justice Sotomayor was suggesting?

1 MS. BLATT: It does --

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

4 MS. BLATT: Absolutely.

5 JUSTICE KAGAN: Is -- is -- you know,
6 he buys this thing. He ingests this thing.

7 MS. BLATT: And someone else fired
8 him.

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

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

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

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

23 JUSTICE KAGAN: The intuition does not
24 work because he hasn't satisfied the business or
25 property requirement because he has. He's been

1 injured in his person or property --

2 MS. BLATT: No, and with all due
3 respect --

4 JUSTICE KAGAN: -- by reason of a RICO
5 violation.

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

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

15 MS. BLATT: You still lose your job,
16 but it's --

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

25 MS. BLATT: Just -- Justice Kagan, the

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

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

13 JUSTICE KAVANAUGH: Can I pick up --

14 MS. BLATT: -- of Congress.

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

19 MS. BLATT: Mm-hmm.

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

23 MS. BLATT: Yes.

24 JUSTICE KAVANAUGH: -- in tort law.
25 Can you elaborate on why injury does not equal

1 harm? Because that's --

2 MS. BLATT: So --

3 JUSTICE KAVANAUGH: -- front and
4 center in their brief.

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

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

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

25 JUSTICE JACKSON: But why is this a

1 damage from personal injury? That's the part I
2 don't understand. He's not claiming that he got
3 ill because of the product. He's not saying he
4 was personally injured. He didn't even know
5 that --

6 MS. BLATT: True.

7 JUSTICE JACKSON: -- he had ingested
8 THC until the testing and the firing.

9 MS. BLATT: Yeah.

10 JUSTICE JACKSON: Isn't that where his
11 injury comes in?

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

21 JUSTICE JACKSON: But why are you
22 saying that? You can -- I mean, you're just
23 saying that. I'm asking you, you know --

24 MS. BLATT: Why am I saying it?

25 JUSTICE JACKSON: -- there are --

1 there are personal injury claims that derive
2 from a person being harmed by -- by the
3 ingestion of the product, right? They're
4 bodily, physically harmed because they have
5 taken this thing.

6 I don't read this claim to be that
7 kind of injury. He's not saying that the
8 product itself injured him in any way.

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

13 JUSTICE JACKSON: He voluntarily took
14 the product.

15 MS. BLATT: Well, we all do.

16 JUSTICE JACKSON: He was not invaded.
17 He --

18 MS. BLATT: We all take products that
19 can be mislabeled. We take them and we either
20 get sick or we don't. But we all take products
21 and we claim, yeah, that the label told me I
22 wasn't going to have a side effect --

23 JUSTICE GORSUCH: Ms. Blatt --

24 MS. BLATT: -- and I had the side
25 effect.

1 JUSTICE GORSUCH: -- Ms. Blatt, if I
2 might ask you a different question. You rely
3 heavily on the Clayton Act and -- and the
4 similar language there.

5 I went and looked at the
6 Areeda-Hovenkamp, what they have to say about
7 this.

8 MS. BLATT: Oh, dear.

9 JUSTICE GORSUCH: I know. I know.
10 (Laughter.)

11 MS. BLATT: Okay.

12 JUSTICE GORSUCH: Yeah. "Oh, dear" is
13 right. They say Reiter thus made plain that the
14 business or property requirement is virtually
15 always satisfied provided there's some kind of
16 injury that can properly be characterized as
17 economic.

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

20 JUSTICE GORSUCH: Okay. So --

21 MS. BLATT: I would go -- no.

22 JUSTICE GORSUCH: -- you just disagree
23 with Areeda --

24 MS. BLATT: Oh, yeah. No, that's
25 definitely wrong.

1 JUSTICE GORSUCH: Okay. Okay. Okay.

2 MS. BLATT: Absolutely. And --

3 JUSTICE GORSUCH: That's all I need to
4 know. Thank you.

5 MS. BLATT: Yeah. No. Wrong, wrong,
6 wrong. And Reiter, I think, I mean, says
7 anytime a commercial enterprise suffers any
8 monetary loss it's going to be a business or
9 injury. But let's -- look, there are Clayton
10 Act cases after Clayton -- any -- any conspiracy
11 to affect drug prices that result in a personal
12 injury would mean treble damages under Clayton
13 Act. That would be a sea change, a sea change
14 in Clayton Act if you had personal injury
15 recovery for price fixing.

16 JUSTICE GORSUCH: So even Homer nods,
17 the great Areeda and Hovenkamp treatise wrong?

18 MS. BLATT: No, absolutely.

19 JUSTICE GORSUCH: Okay.

20 MS. BLATT: No, absolutely, because
21 you would -- you would -- that would be, like I
22 said, a sea change under Clayton Act. I mean,
23 it might be a boondoggle for plaintiffs'
24 lawyers, but I think it would freak everyone
25 else out.

1 JUSTICE JACKSON: Ms. Blatt, aren't
2 you estopped from claiming that he has a
3 personal injury here when below you argued or
4 your client argued that he had no personal
5 injury, which is why all the personal injury
6 claims were dismissed?

7 MS. BLATT: Mm-hmm.

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

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

18 JUSTICE JACKSON: I understand. I'm
19 talking about what you argued. Your client
20 argued, to get rid of the personal injury
21 claims, that he had no personal injury; the only
22 thing was economic.

23 MS. BLATT: So -- so --

24 JUSTICE JACKSON: And so now that he's
25 left with the economic, you say no, there is a

1 personal injury and he can't get damages for
2 that.

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

13 If you want to let that, I guess, I
14 don't know, reverse, you'd have to reverse the
15 rule and then decide if we're estopped, but I
16 don't -- I'm not sure how that would work out if
17 that's what you thought.

18 JUSTICE KAVANAUGH: Do you want to
19 respond to their invocation of the liberal
20 construction canon?

21 MS. BLATT: Yes, a couple responses.

22 I mean, liberal construction in light
23 of its remedial purposes, but the one thing all
24 nine of you should agree on, its remedial
25 purposes did not extend to personal injuries.

1 You've already said that twice in the Clayton
2 Act and in RJR Nabisco. It doesn't extend to
3 remediate personal injury.

4 Second of all, I think it's a
5 tie-breaker. Their -- their serious reading of
6 the statute inserts the word "injured in its
7 person" to read just like the Antiterrorism Act.

8 And, finally, I think it does run up
9 against the constitutional principle of
10 federalism, that their view does cannibalize all
11 of state tort law. Every -- every slip and fall
12 from a mislabel now is a RICO case.

13 So I think, I mean, that should be --
14 the Court -- I mean, one more thing I'll try on
15 that, the Court last cited that clause in 1985.
16 I mean, it hasn't relied on it since and says
17 you shouldn't use it to put RICO in contexts
18 that Congress, you know, didn't want or couldn't
19 have contemplated.

20 And, here, it is just so -- would be
21 so striking to think that RICO remedied personal
22 injuries.

23 CHIEF JUSTICE ROBERTS: Thank you,
24 counsel.

25 Justice Thomas, anything?

1 Justice Alito?

2 JUSTICE ALITO: Well, you say that
3 under RICO, injury is "the invasion of a legal
4 right." So how would we go about determining
5 whether something is a legal right for this
6 purpose?

7 MS. BLATT: So, first, you look at the
8 complaint. I think property's pretty easy
9 because the Court has already said any monetary
10 loss is a property loss. So, I mean, you could
11 quibble about whether loss of consortium, if
12 state law defines that as a property loss.

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

15 JUSTICE ALITO: Well, what authorities
16 would we look at?

17 MS. BLATT: Oh. Look at the
18 complaint, look at state law, general tort
19 principles. Again, that Burke case --

20 JUSTICE ALITO: General tort
21 principles?

22 MS. BLATT: Yeah. What Burke said is
23 -- which I like because it -- I think it works
24 -- is that are the damages -- what are the
25 damages seeking to redress? Are the damages

1 redressing a -- something that happened to the
2 body, are they redressing stolen property, or
3 are they redressing a right to carry on in your
4 business?

5 JUSTICE ALITO: All right. Thank you.

6 CHIEF JUSTICE ROBERTS: Justice
7 Sotomayor?

8 JUSTICE SOTOMAYOR: Ms. Blatt, you
9 rely a lot on WesternGeco. You mentioned it a
10 few minutes ago.

11 MS. BLATT: Yeah.

12 JUSTICE SOTOMAYOR: But you ignore its
13 language where they differentiate a patent case
14 where the legal right is the right not to be
15 infringed and where you feel the economic loss
16 is different.

17 And we said there that the Patent Act
18 was different from civil RICO because the
19 question in civil RICO is where the plaintiff
20 feels the injury, in other words, where he
21 suffers the economic harm that the damages
22 compensate.

23 So why should we think -- in -- in
24 Sedima, we were very, very clear that RICO
25 doesn't rely on state law -- state tort law

1 concepts. We said that explicitly.

2 What we said was that RICO complicates
3 injuries to have been caused by predicate acts.
4 That's our --

5 MS. BLATT: Yeah.

6 JUSTICE SOTOMAYOR: -- and we
7 explicitly -- explicitly say: Not otherwise an
8 injury cognizable under state tort law.

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

13 But, on RJR Nabisco -- sorry, the
14 WesternGeco citing RJR Nabisco, I didn't --

15 JUSTICE SOTOMAYOR: But that goes back
16 to what Justice Jackson and -- and what I tried
17 earlier and Justice Kagan point out: You're
18 trying to say there's a difference between the
19 two, but we've made very clear in WesternGeco
20 there isn't. Injury is where you feel the harm.

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

22 MS. BLATT: Yegiazaryan is just the
23 opposite. Yeah.

24 JUSTICE SOTOMAYOR: And, as Justice
25 Jackson said, the harm is not ingesting the

1 drugs. That's the personal injury. The harm is
2 from being fired. And whether there's a
3 connection between the predicate acts and that
4 harm --

5 MS. BLATT: So --

6 JUSTICE SOTOMAYOR: -- is a question
7 of proximate cause, not a question of personal
8 injury.

9 MS. BLATT: -- Yegiazaryan is the most
10 recent case where you said the injury was the
11 inability to collect the California judgment,
12 was a domestic injury. You did not say it was
13 the injury where all the effects were felt,
14 which were a million different places --

15 JUSTICE SOTOMAYOR: But that has
16 nothing to do with the language of RICO -- of
17 RICO, which says --

18 MS. BLATT: It was the language of
19 RICO.

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

23 MS. BLATT: Yeah. So --

24 JUSTICE SOTOMAYOR: It's where you
25 feel the harm.

1 MS. BLATT: -- Yegiazaryan quotes that
2 exact same language, and I think it's talk -- it
3 begs the question about what is the harm talking
4 about. Is it the harm that's the legal invasion
5 of the right, or is it the damages at the end of
6 the day?

7 JUSTICE SOTOMAYOR: Thank you,
8 counsel.

9 CHIEF JUSTICE ROBERTS: Justice Kagan?
10 Justice Gorsuch?
11 Justice Kavanaugh?
12 Justice Jackson?

13 JUSTICE JACKSON: Can I just ask you
14 about a hypo? Because I'm still trying to
15 understand your rule.

16 You seem to be suggesting that the
17 mere existence of physical harm renders any
18 business injury not compensable. Is that -- is
19 that the -- do I have the sum total of your --

20 MS. BLATT: No.

21 JUSTICE JACKSON: No? Okay.

22 MS. BLATT: Because you just said --

23 JUSTICE JACKSON: So what is your
24 rule?

25 MS. BLATT: -- you just -- because you

1 just said it's any personal injury renders the
2 damages not recoverable.

3 Obviously, if you have a business
4 injury, a property injury, you can recover
5 damages.

6 JUSTICE JACKSON: Even if you have a
7 physical injury too?

8 MS. BLATT: Absolutely, because that's
9 the example of a robbery. If you are thrown
10 down a flight of stairs and they take your
11 wallet, you have two injuries. You fell down
12 the stairs and you lost your wallet.

13 JUSTICE JACKSON: Okay.

14 MS. BLATT: You've got -- so you have
15 a property injury --

16 JUSTICE JACKSON: Okay.

17 MS. BLATT: -- and a personal injury
18 --

19 JUSTICE JACKSON: And --

20 MS. BLATT: -- two independent
21 invasions.

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

25 Why isn't that two injuries too?

1 MS. BLATT: Because every -- you
2 would -- because -- because that conflates
3 damages. Every personal injury, you could say I
4 slip and fell --

5 JUSTICE JACKSON: But this is --
6 imagine that this is not damages in the
7 following sense, all right? If we have a case
8 in which he takes the drugs --

9 MS. BLATT: Mm-hmm.

10 JUSTICE JACKSON: -- and, as a result
11 of taking the drugs, he has to go to the
12 hospital, and, as a result of being in the
13 hospital, he can't work.

14 MS. BLATT: Mm-hmm.

15 JUSTICE JACKSON: And then he's fired.

16 MS. BLATT: Right.

17 JUSTICE JACKSON: I kind of understand
18 the argument you're making.

19 But, in this situation, he takes the
20 drugs and there is no harm --

21 MS. BLATT: Okay.

22 JUSTICE JACKSON: -- to him from
23 taking the drugs.

24 MS. BLATT: Let me leave you with one
25 more example. He goes to the hospital and he

1 loses his sight and he can't drive anymore, so
2 he gets fired. He still has a loss of
3 employment. It is a damage.

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

7 Instead, what happened to him, I
8 think -- and this is -- maybe I'm just not
9 understanding.

10 MS. BLATT: Well, he failed a drug
11 test. It changed his -- well, allegedly, it had
12 THC in it. I think it's the same thing as if
13 you took something and had an allergic reaction.
14 It's a physical, chemical, bodily invasion. He
15 didn't want -- he didn't want THC and he took
16 it. It's like taking cocaine. That's a -- to
17 me, that's a physical injury --

18 JUSTICE JACKSON: Thank you.

19 MS. BLATT: -- whether or not you hid
20 something.

21 CHIEF JUSTICE ROBERTS: Thank you,
22 counsel.

23 Ms. Anand.

24

25

1 ORAL ARGUMENT OF EASHA ANAND, ESQ.

2 ON BEHALF OF THE RESPONDENT

3 MS. ANAND: Mr. Chief Justice, and may
4 it please the Court:

5 I want to address two quick points.
6 The first is about the "damages sustained"
7 locution in Section 1964(c). That means
8 compensatory damages. We know that from the
9 rest of the U.S. Code, the syntax of the
10 sentence, and the plain meaning of the word
11 "damages."

12 So rest of the U.S. Code, that
13 locution, "damages sustained," appears some
14 three dozen times in the U.S. Code. It always
15 means compensatory damages. So we point you to
16 the example of 18 U.S.C. 2255, where victims of
17 crimes choose between liquidated damages and
18 damages sustained. You can't choose between
19 liquidated damages and harm. Those have to be
20 two measures of compensation.

21 Syntax of the rest of the sentence.
22 The sentence says: Recover the damages
23 sustained. If it meant harm, you would expect
24 it to say "recover for the damages sustained."
25 You recover for harm. You don't recover the

1 harm. But, if it means compensatory damages,
2 that's a perfectly sensible sentence.

3 And, finally, the plain meaning of
4 "damages." Every dictionary will tell you
5 damages is a measure of compensation, including
6 the treatise that Petitioners cite at page 15 of
7 their opening brief.

8 So, absent that textual hook, the
9 other problem with Petitioners' rule is they
10 still have not told you how to distinguish the
11 human trafficking case from this case.

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

14 Well, we think the relevant
15 Restatement principle is Section 525, the
16 fraudulent misrepresentation tort. That's the
17 only state law tort that survived to trial,
18 right? It's not a products liability claim.
19 It's an economic tort, fraudulent
20 misrepresentation.

21 She said: Look to a legal right.

22 Well, Sedima tells us that the legal
23 right protected by RICO is the right not to be
24 harmed by reason of the predicate acts.

25 She said: Look at whether money was

1 taken.

2 This isn't a forfeiture or a unjust
3 enrichment statute, right? It's not worded that
4 way.

5 She said: Look to directness.

6 As Justice Kagan explained, that's a
7 proximate cause problem. We recognize we have a
8 heavy burden on remand, but that's not the
9 argument before you.

10 And she said: Look at what is trying
11 to be redressed.

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

14 I welcome the Court's questions.

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

17 MS. ANAND: Yes, Your Honor. And I
18 believe my friend on the other side conceded
19 that. She said inability to carry on one's
20 livelihood is an injury to business.

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

23 MS. ANAND: So injury is the harm.
24 Damages is how you compensate for that harm.
25 And, again, I think that's a perfectly sensible

1 reading of the statute.

2 JUSTICE THOMAS: So, if the harm is a
3 loss of income, aren't you collapsing or
4 conflating the two?

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

10 And, again, that "damages" definition,
11 damages is compensation, that's the definition
12 that every legal dictionary or treatise
13 articulates.

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

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

18 Now, as a measure of compensation for
19 that, the damages we claim are an amount equal
20 to the salary we would have made and the other
21 economic benefits we would have gotten had we
22 remained employed.

23 JUSTICE THOMAS: But Medical Marijuana
24 did not fire you.

25 MS. ANAND: So, again, Your Honor, we

1 accept that on remand we will have to meet the
2 kind of heavy factual burden of showing
3 proximate cause, but that's the home for the
4 problem Your Honor is articulating: how direct
5 is the link between the predicate acts and what
6 happened here.

7 And, in this case, you know, our
8 argument is we acted in reasonable reliance on
9 Medical Marijuana's misrepresentations that the
10 classic, right, Restatement 525, the pecuniary
11 loss occasioned as a result of relying on a
12 fraudulent misrepresentation is usually
13 actionable.

14 We think we can prove proximate cause.
15 But, again, that's a question for remand, not
16 for this Court.

17 CHIEF JUSTICE ROBERTS: Counsel, I
18 understood the business or property limitation
19 as having been intended to be a significant
20 limitation on the reach of RICO.

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

23 Why isn't that the case?

24 MS. ANAND: So two reasons, Your
25 Honor.

1 The first is sort of empirical. We
2 can look at, for instance, the evidence from the
3 Ninth Circuit, which has had this rule for 20
4 years. And, as we explain in our -- in our
5 brief, you have substantially fewer civil RICO
6 complaints than you would expect.

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

16 The second -- sorry. Does that --
17 CHIEF JUSTICE ROBERTS: No, no, go --
18 go ahead.

19 MS. ANAND: The sort of second point
20 I'll -- I'll make on that front is, you know,
21 RICO has a number of guardrails. In your
22 average slip-and-fall case, you're not going to
23 be able to prove a predicate act, let alone a
24 pattern of predicate acts, let alone a pattern
25 carried on through a racketeering enterprise.

1 CHIEF JUSTICE ROBERTS: Well, but, I
2 mean, those guardrails are addressing different
3 things. I mean, the business or property
4 requirement is pretty central to the heart of
5 RICO and what separates it from all these other
6 cases.

7 So I'm not sure it's very responsive
8 to say, oh, don't worry about that basic
9 fundamental question because there are all these
10 other more subsidiary ones that are going to
11 take care of the problem.

12 MS. ANAND: So I think that's -- I
13 think that's right, that it's still -- it's
14 doing meaningful work, because, again, it fences
15 out the sort of pain and suffering, emotional
16 distress, the kind of lion's share of the
17 recoveries.

18 You know, as Justice Gorsuch noted and
19 as lower courts have kind of grappled with, it
20 turns out that Congress maybe wasn't doing quite
21 as much work as it wanted to with this
22 guardrail. We know that from the antitrust
23 context, where it's virtually always satisfied.
24 But, as this Court has said time and --

25 CHIEF JUSTICE ROBERTS: You mean by

1 this guardrail -- you mean the
2 business-or-property restriction?

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

10 JUSTICE KAVANAUGH: Do you agree that
11 the statute excludes damages for personal
12 injuries?

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

16 JUSTICE KAVANAUGH: And I think what
17 the other side is saying, that the damages for
18 personal injuries are usually including lost
19 wages and medical expenses and that what you're
20 doing, even though you just admitted that the
21 statute excludes damages for personal injuries,
22 is taking lost wages and medical expenses and
23 saying, oh, well, we can get around that
24 limitation that the Chief Justice referred to by
25 characterizing the lost wages or medical

1 expenses as separate injuries to your business
2 or property. That's the concern. I'm curious,
3 your response.

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

7 JUSTICE KAVANAUGH: But they're also
8 damages for the personal injury --

9 MS. ANAND: So yes --

10 JUSTICE KAVANAUGH: -- in some of
11 these cases.

12 MS. ANAND: So --

13 JUSTICE KAVANAUGH: And the question
14 is whether -- I think the question and the
15 problem here that we have to figure out is, when
16 you characterize them, if they are damages from
17 personal injury, can you just recharacterize
18 them as injury to business or property and get
19 around, as the Chief Justice's point, the
20 limitation that Congress at least thought was
21 important?

22 MS. ANAND: So I think that when
23 Congress wants to exclude something that is
24 intertwined with a personal injury, it knows how
25 to do so, right? It can exclude -- there's lots

1 of statutes, we give examples in our brief,
2 where it says you cannot recover damages on
3 account of a personal injury. That is, if
4 there's a personal injury intertwined with the
5 business injury or in the chain of causation
6 leading up to the business injury, you are out
7 of luck.

8 Congress didn't do that here.
9 Congress just said find an injury to business --
10 and we think being fired is a classic injury to
11 business; you can no longer carry out your
12 livelihood -- and that's all you need to get to
13 --

14 JUSTICE KAVANAUGH: But that would
15 mean, I think you're saying -- okay -- I think
16 you're saying yes, the damages from personal
17 injuries can be characterized as injuries to
18 business or property. Therefore, you can just
19 bring them under RICO. That would mean that
20 every state tort personal injury suit in which
21 you're seeking lost wages or medical expenses
22 can be now brought on -- under RICO and seek
23 treble damages.

24 And I would think the federalism
25 canon, among several others, would kick in there

1 and say, well, that would be a dramatic, really
2 radical shift in how tort suits are -- are
3 brought throughout the United States, and we
4 would expect a clearer indication from Congress.

5 MS. ANAND: Sure, Your Honor. So two
6 responses on that front.

7 The first is I think it's a mistake to
8 think that most state garden-variety torts can
9 form the basis of a RICO claim. There's a
10 reason why most product liability cases are
11 brought in strict liability or negligence.
12 There's a reason why the pattern --

13 JUSTICE KAVANAUGH: There may be a lot
14 of false advertising kind of cases, inadequate
15 warning cases that can easily be made into a
16 RICO predicate than can, under your theory, be
17 brought in federal court under RICO for treble
18 damages and then -- you know, you've seen it in
19 the amicus briefs -- I'm just raising what's
20 there -- class actions and MDLs, where you have
21 the treble damages. And that's a dramatic --
22 I'm not saying it's right or wrong, but I think
23 it's a dramatic shift -- and the Ninth Circuit
24 doesn't have exactly the rule you're asking for,
25 so I don't think the Ninth Circuit is actually a

1 good answer to the Chief Justice -- a dramatic
2 shift in how tort suits are prosecuted, which
3 may be good, may not be good. I'm not sure
4 Congress really put that into this statute.

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

20 JUSTICE KAVANAUGH: Well, they -- they
21 didn't -- I think the lack of the language in
22 the criminal RICO provision shows that they were
23 more concerned about federalizing the civil RICO
24 side because, there, they did have the
25 limitation, injured in your business or

1 property, not injured in your person.

2 MS. ANAND: So maybe two -- two more
3 responses let me try to -- to Your Honor's
4 hypothetical.

5 The first is the word "injured," if it
6 doesn't mean harm, my friend on the other side
7 haven't -- hasn't told you what else it might
8 mean. And --

9 JUSTICE KAVANAUGH: Well, the
10 Restatement -- I'm sorry to interrupt.

11 MS. ANAND: Please.

12 JUSTICE KAVANAUGH: But your brief
13 starts with injured equals harm.

14 MS. ANAND: Yeah.

15 JUSTICE KAVANAUGH: It's right on page
16 1, like, fifth line, and that's the linchpin of
17 your argument, which I think, as a matter of
18 ordinary meaning, yes, but, as a matter of tort
19 law, the Restatement makes very clear, like
20 Restatement 7 says injury and harm contrasted.

21 MS. ANAND: That's right.

22 JUSTICE KAVANAUGH: They're two --
23 they're two different concepts and have been for
24 years and decades and centuries in tort law.
25 Injury and harm are two very different concepts.

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

12 So we're happy with a definition that
13 says invasion of a legal right, but Sedima tells
14 you what that legal right is, and it is harm
15 caused by the predicate acts. The right that
16 RICO protects is the right not to be harmed by
17 the predicate acts.

18 And so I think whether you say injury
19 just means harm, period, or it means an invasion
20 of a legal right, there's no way on the text of
21 the statute to somehow distinguish between the
22 human trafficking and kidnapping hypotheticals
23 --

24 JUSTICE KAVANAUGH: Just to close it
25 out, you're okay if we say injury is the

1 invasion of legal right?

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

5 JUSTICE GORSUCH: Ms. Anand, just a
6 couple quick questions.

7 First, in your dialogue with Justice
8 Kavanaugh, there was some discussion of lost
9 wages and medical expenses.

10 Do you think medical expenses are
11 recoverable as well as lost wages under business
12 and property?

13 MS. ANAND: So I happen to think yes,
14 and I think that follows from Rotella and
15 Reiter. But we don't particularly have a dog in
16 that fight because that's under the property
17 branch and not the business branch.

18 So I'm happy to explain why I think
19 the answer is yes. Reiter seems to say --

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

24 MS. ANAND: Top-line answer is you
25 don't need to decide that question. The way you

1 know that is the Second Circuit, Pet. App. 18a,
2 Judge Moore's dissent in Jackson, all these
3 jurists who have accepted our rule have reserved
4 the question of medical expenses --

5 JUSTICE GORSUCH: Okay.

6 MS. ANAND: -- as just a separate
7 question.

8 JUSTICE GORSUCH: And would you --
9 would you encourage us to do so here?

10 MS. ANAND: No, I would not urge you
11 to do so.

12 JUSTICE GORSUCH: You encourage us to
13 decide it, of course. Okay. So briefly give me
14 your best shot at it.

15 MS. ANAND: So -- okay. So -- so, on
16 the precedent piece, Reiter/Clayton Act context
17 says economic expenditure equals injury.

18 JUSTICE GORSUCH: Okay.

19 MS. ANAND: And Rotella Petitioners
20 seem to accept at reply brief page 8, right?
21 This is the case doctors wrongly impose
22 psychiatric confinement and then bill someone
23 for it, and Petitioners seem to accept that that
24 bill counts as a harm to property.

25 JUSTICE GORSUCH: Okay. All right.

1 And the second question: There was an extensive
2 dialogue about the car wash hypothetical and the
3 kidnapping hypothetical, and if I understood
4 Ms. Blatt, her argument, it goes something like
5 this: that there are two injuries, however
6 characterized, whether it is a harm or an
7 invasion of a legal right. One is the assault
8 or the kidnapping. The other is the act of
9 extortion. And only the latter is recoverable,
10 and it isn't a causation question so much as the
11 nature of the injury in those two cases.

12 Your best response?

13 MS. ANAND: I think, under that
14 framework, we also have two injuries, right?
15 There's the bodily invasion, the sort of
16 undetected consumption of THC --

17 JUSTICE GORSUCH: No, no, the --

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

19 JUSTICE GORSUCH: Deal -- I understand
20 that, but deal with the hypotheticals if you
21 will.

22 MS. ANAND: So I --

23 JUSTICE GORSUCH: You both -- you both
24 go back and forth forever on these
25 hypotheticals, and they're very interesting

1 ones, so --

2 MS. ANAND: Sure. So I -- I agree the
3 car wash owner gets to recover, and I would say
4 that is because the only thing you're looking at
5 in the "injured in his business or property"
6 requirement is, was the person harmed in his
7 business? And the answer is yes.

8 Now there are other parts of the
9 statute that take care of how direct is the
10 connection between the predicate offense and the
11 injury to business. That's the "by reason of"
12 language. That's the proximate cause test.

13 JUSTICE GORSUCH: So the assault, if I
14 understand your answer if I -- see if this is
15 right. I just want to understand it.

16 MS. ANAND: Sure.

17 JUSTICE GORSUCH: That the assault in
18 -- in the car wash hypothetical and the kid --
19 act of kidnapping in the kidnapping hypothetical
20 may or may not be recoverable depending upon
21 whether they're proximately related to the
22 extortion acts in both cases?

23 MS. ANAND: I think that's right. So
24 the -- the only part that's recoverable is the
25 money or business part. And the only --

1 JUSTICE GORSUCH: The extortion.

2 MS. ANAND: Right.

3 JUSTICE GORSUCH: The extortion part
4 that I paid money --

5 MS. ANAND: Or -- or the ransom in the
6 kidnapping hypothetical.

7 JUSTICE GORSUCH: Or the ransom.
8 Right.

9 MS. ANAND: And the only question is,
10 are those proximately caused by the RICO
11 predicate of the kidnapping or the extortion?

12 JUSTICE GORSUCH: Thank you.

13 MS. ANAND: And, you know, I think, in
14 those cases, right, the causal connection may be
15 tighter, but, again, right, that's, again,
16 classic proximate cause. Congress connected
17 predicate act with injury to business and
18 property using the phrase "by reason of."

19 JUSTICE GORSUCH: Got it.

20 MS. ANAND: It anticipated some link
21 to the cause.

22 JUSTICE KAVANAUGH: Can I ask one --

23 JUSTICE ALITO: If we --

24 JUSTICE BARRETT: Ms. Anand --

25 CHIEF JUSTICE ROBERTS: Justice Alito?

1 JUSTICE ALITO: If we agree with your
2 reasoning but reserve the question of the
3 coverage of medical expenses, would there, in a
4 later case, be a principled basis for drawing
5 that distinction, or would we be effectively
6 deciding that by agreeing with your reasoning?

7 MS. ANAND: So, again, I think the
8 answer is that those count, but I can tell you
9 what lower courts have sort of said to
10 distinguish those. There's been kind of two
11 explanations.

12 One is that Reiter's "all money counts
13 as property" definition doesn't map on cleanly
14 to civil RICO. And the other is that there's
15 sort of a common law principle that mitigation
16 measures don't count. And so, if you're trying
17 to mitigate your pain and suffering through
18 medical expenses, that wouldn't count.

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

24 JUSTICE ALITO: One other question.
25 There's been talk about proximate cause. I

1 assume you believe on remand you can show that
2 the injury here, the lost wages, were
3 proximately caused. Could you explain why?

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

6 The first is how the Restatement
7 provision talks about fraudulent
8 misrepresentation, and it says: Any pecuniary
9 loss occasioned by reasonable reliance on the
10 misrepresentation is usually recoverable.

11 And so we think, here, that's exactly
12 what happened. In reasonable reliance on
13 Petitioners' misrepresentation, we took this
14 drug. The foreseeable consequence is that we
15 got fired.

16 The second is a sort of factual point.
17 Remember, it's not just about general
18 misrepresentations on YouTube and on the
19 website. Ms. Harp-Horn called customer service,
20 says: I'm a trucker. Can you promise me this
21 doesn't have THC? And they say: Yes.

22 Now, again, we know we're going to
23 have a heavy burden on remand. This Court's
24 cases have said that proximate cause is not just
25 a common law concept, but you layer on top of

1 that specific civil RICO directness
2 requirements.

3 JUSTICE ALITO: Is this a jury
4 question?

5 MS. ANAND: The question of proximate
6 cause? We think there are factual issues
7 embedded in the proximate cause question.

8 JUSTICE ALITO: What percentage of --

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

10 JUSTICE ALITO: What percentage of
11 RICO cases go to trial?

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

14 I will say that on this point,
15 Petitioners' proximate cause arguments at
16 summary judgment related primarily to
17 Ms. Harp-Horn and not to Mr. Horn.

18 So, in other words, had they made the
19 argument that Justice Kagan articulated, we
20 don't know how the district court would have
21 ruled. They did not make that argument.

22 JUSTICE ALITO: Thank you.

23 JUSTICE BARRETT: Ms. Anand, it seems
24 to me -- and -- and, you know, I just would like
25 to get your take on this -- that Medical

1 Marijuana has litigated this case differently
2 than it was framed below and differently than
3 the circuits that are on its side of the split
4 in this definition of "injury." You know, the
5 Second Circuit said: Well, if personal injury
6 is the derivative of the property damage, it
7 doesn't count.

8 As you said and as Justice Kagan said
9 when she was going back and forth with
10 Ms. Blatt, proximate cause seems a natural home
11 for this.

12 I mean, what do you think? I mean,
13 can you point to developed ideas in the courts
14 of appeals about how to define this injury?
15 This idea of looking to a federal definition of
16 it, looking to Restatements, I mean, in your
17 view, are there circuits that are actually doing
18 that?

19 MS. ANAND: So I don't think so, Your
20 Honor, and I think you can see that in the
21 question presented, which asks: When economic
22 harm results from a personal injury, is it
23 actionable? Right?

24 So the -- the question presented seems
25 to contemplate this sort of chain-of-causation

1 test, which, as we're sort of talking about, I
2 think proximate cause and not some sort of
3 per se rule about what the links are should
4 count.

5 I don't see that there's a body of
6 case law doing something different in the -- in
7 the -- in the lower courts.

8 JUSTICE BARRETT: So, in your view,
9 Medical Marijuana's theory of the case is kind
10 of novel?

11 MS. ANAND: I think Medical
12 Marijuana's theory of the case is novel,
13 although I guess I -- I would say again I'm not
14 sure I understand it. That is, I'm not sure I
15 understand where they're asking you to look to
16 find the legal right.

17 It's not civil RICO because Sedima
18 tells us we can't do that. I don't think it's
19 state tort law because it would be a little bit
20 strange to have a list of predicates that
21 includes trafficking in nuclear weapons and
22 counterfeit phonograph records and say, look at
23 the Restatement.

24 And if you look at the Restatement in
25 this case, the only state tort law claim that's

1 still live in our case, fraudulent
2 misrepresentation, looks economic and not
3 personal.

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

7 JUSTICE BARRETT: I share your
8 confusion.

9 JUSTICE JACKSON: Ms. Anand, did your
10 client suffer a personal injury that caused his
11 firing and lost wages?

12 MS. ANAND: So we think that he did
13 not suffer any harm to his person. And we are
14 not here challenging the district court's ruling
15 that we cannot even bring a products liability
16 claim because we did not suffer harm.

17 Does that answer your question? So,
18 in other words --

19 JUSTICE JACKSON: Yeah, I mean, I
20 think so. I guess I'm -- I'm still struggling
21 with the question presented in this case --

22 MS. ANAND: Yeah.

23 JUSTICE JACKSON: -- which assumes
24 that sort of connection, that there's a personal
25 injury from which economic damages result.

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

3 MS. ANAND: Well, so we -- we
4 vociferously argued at the brief in opposition
5 stage that this is an improper vehicle to grant
6 cert because we did not think there was a
7 personal injury here. Or, at the very least,
8 the personal injury here is so strange, right,
9 the personal injury that only gets discovered
10 after the economic injury, that it would be a
11 strange case to connect those overall.

12 JUSTICE JACKSON: In fact, below, they
13 argued there was no personal injury --

14 MS. ANAND: That's right.

15 JUSTICE JACKSON: -- in seeking to
16 dismiss all of the personal injury claims,
17 correct?

18 MS. ANAND: That's exactly right. And
19 none of those claims are proceeding to trial.
20 So they successfully argued for dismissal of
21 those claims.

22 JUSTICE GORSUCH: Well, why wouldn't
23 there be a personal injury, though? Just --
24 you -- there's a failure to warn that this
25 product contains ingredients that your --

1 your -- your client didn't know about and should
2 have known about and had a right to know about.

3 I would have thought that that would
4 have been kind of a classic personal injury.

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

7 The first is --

8 JUSTICE GORSUCH: I mean, perhaps --
9 perhaps that's what you argued below. I don't
10 know.

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

14 JUSTICE GORSUCH: No, I understand.
15 But this is -- this -- that was your theory
16 below?

17 MS. ANAND: That -- that was our
18 theory below --

19 JUSTICE GORSUCH: Yeah.

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

24 JUSTICE GORSUCH: Got it. Got it.
25 Thank you.

1 MS. ANAND: It's what the -- the only
2 other thing I'll say is, kind of going back to
3 the hypothetical earlier, we just don't think
4 that ingestion is particularly critical to our
5 case. In other words, we would bring exactly
6 the same case, we would allege exactly the same
7 predicate acts, the same measure of
8 compensation, the same sort of theory of harm,
9 if the Medical -- if the Medical Marijuana's
10 product had been found in a locker and we'd been
11 fired as a result.

12 CHIEF JUSTICE ROBERTS: Thank you,
13 counsel.

14 A big part of your answer in your
15 dialogue with Justice Scalia to why this -- why
16 we shouldn't worry about the expansion of RICO
17 that your -- your friend suggests might follow
18 is that you have to show proximate cause.

19 And I -- I don't quite remember your
20 formulation. I'm sure it was carefully guarded.
21 But you -- you -- you suggested that that was
22 going to be hard to do, right?

23 And tell me again why that is.

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

1 CHIEF JUSTICE ROBERTS: That sounds
2 hard.

3 MS. ANAND: But I think that if we can
4 prove that, in fact, you know, there was
5 reasonable reliance on this misrepresentation
6 and, more specifically, that Ms. Harp-Horn
7 called Customer Service, said, you know, I'm a
8 trucker, promise me this does have zero percent
9 THC, I think that satisfies proximate cause even
10 under this Court's more restrictive test. But
11 we accept we're going to have to prove those
12 things up.

13 CHIEF JUSTICE ROBERTS: Well, what's
14 so hard about that? In other words, if you're
15 concerned about the reach of your argument and
16 your answer is, don't worry, we have to show
17 proximate cause, that seems like a pretty normal
18 proximate cause argument?

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

23 CHIEF JUSTICE ROBERTS: Yeah, fraud,
24 mail fraud.

25 MS. ANAND: -- strict liability,

1 right?

2 CHIEF JUSTICE ROBERTS: Right.

3 MS. ANAND: But, again, that's
4 intentional. And there's a reason why most
5 people bring product liability claims under
6 strict liability or negligence. You're also
7 going to have to prove a pattern, right,
8 continuity and relatedness. You have to prove
9 the enterprise requirement.

10 And I think, most importantly, again,
11 the mine-run of cases, the big chunk of recovery
12 is pain and suffering or economic distress, and
13 you cannot get those in -- under civil RICO,
14 right? Those are not injuries to business or
15 property.

16 And I think that the --

17 CHIEF JUSTICE ROBERTS: Well, again,
18 you're talking about these other guardrails, not
19 to worry about the fact that you're diluting the
20 business or property requirement.

21 MS. ANAND: So I guess I disagree that
22 we're diluting the business-or-property
23 requirement. We think that lost employment is a
24 classic business injury.

25 Now the relationship between the lost

1 employment and the predicate acts, you know,
2 Congress put "by reason of" in there. It didn't
3 put a more stringent test. It didn't say, you
4 know, in the course of the predicate act you
5 have to injure a business or property. It
6 didn't -- you know, it didn't have a motive or a
7 targeting requirement.

8 And we think that the plain import of
9 that, as this Court has held in Holmes and from
10 there on, is, if you have a predicate act, you
11 have a loss of livelihood, and the -- the work
12 to do is to connect those with the proximate
13 cause requirement.

14 CHIEF JUSTICE ROBERTS: Thank you.

15 Justice Thomas?

16 Justice Alito?

17 JUSTICE ALITO: Well, just out of
18 curiosity, why do you think you're going to face
19 a heavy burden on remand to show foreseeability?
20 Wouldn't you argue that a company that
21 advertises its product as being completely free
22 of THC, not just that it has only such an
23 infinitesimal amount that it's not going to get
24 people high, but it is completely free of THC,
25 is appealing to a category of potential

1 customers who, for some reason, want to make
2 sure that they don't ingest even a tiny, tiny
3 amount of -- of THC?

4 And when someone who purchases the
5 product then suffers the consequences of having
6 a very small amount of THC in that person's
7 system, that is an entirely foreseeable result?

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

9 JUSTICE ALITO: Yeah.

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

14 JUSTICE ALITO: Yeah, I know.

15 MS. ANAND: -- but for exactly the
16 reason --

17 JUSTICE ALITO: You're -- you're
18 trying to tell us that the proximate -- among
19 other things, you have other arguments, but the
20 proximate cause requirement is going to do some
21 of the work that some of us might fear will be
22 needed if we agree with your interpretation of
23 "injury to business or property." I get it.
24 But I'm not sure why they're -- why your case is
25 a -- is a good example of that.

1 MS. ANAND: Sure. I think that's
2 right. I was responding only to Justice Kagan's
3 concern about the third-party actor, but, you
4 know, we agree, we think we're going to meet the
5 proximate cause test.

6 I just want to say that my bottom-line
7 position here is defendants have come to this
8 Court for decades and said the sky is going to
9 fall if you interpret RICO the way its text
10 literally says it should be interpreted. The
11 sky hasn't fallen. This Court has, time after
12 time, including unanimously in *Bridge*, said, you
13 know, Congress probably wrote a statute that's a
14 little too broad in some ways, but here we are.

15 And it should stay the course here.
16 That's my fundamental position.

17 JUSTICE ALITO: Well, I think you're
18 -- are you overstating your argument? If we
19 look back at everything that the Court has done
20 in civil RICO cases, I -- I certainly don't
21 think the Court has consistently applied the --
22 the liberal construction policy or just relied
23 on the plain language of the statute.

24 RICO is a -- RICO is a tough thing to
25 deal with.

1 MS. ANAND: I think that's right, but
2 I think that's because of things in the statute,
3 like the enterprise requirement, right? It's
4 not just someone commits a predicate act; they
5 have to use an enterprise to do it or fund an
6 enterprise through doing so. It's because the
7 predicate acts often require sort of higher
8 degrees of proof. There's lots of reasons in
9 the text why RICO --

10 JUSTICE ALITO: All right.

11 MS. ANAND: -- is challenging.

12 JUSTICE ALITO: Thank you.

13 CHIEF JUSTICE ROBERTS: Justice
14 Sotomayor?

15 Justice Kagan?

16 Justice Kavanaugh?

17 JUSTICE KAVANAUGH: A couple
18 questions. The -- the larger issue afoot from
19 the amicus briefs, of course, is the class
20 action MDL, that state tort suits are going to
21 be converted into civil RICO because you can get
22 treble damages, and this is going to be a bit of
23 a change.

24 On that, one thing you've stressed is
25 proximate cause. When -- of course, in those

1 types of suits -- and you can respond whether
2 you think that's correct or not, that factual
3 prediction. But, in those kinds of suits, of
4 course, getting past the motion to dismiss,
5 getting past summary judgment is the key. When
6 would proximate cause be resolved?

7 MS. ANAND: So I think some of those
8 can be resolved early on, right? In most cases,
9 it's not going to be the case that firing is the
10 obvious consequence of whatever mislabeling
11 happened, right? And so I think fairly early on
12 --

13 JUSTICE KAVANAUGH: But you're saying
14 in this case --

15 MS. ANAND: Well, because of what
16 Justice Alito explained, right? The only reason
17 to market this as having zero percent THC, right
18 -- there are a couple reasons you might market
19 it. You can say no psychoactive effect for the
20 person who's worried about that, but the
21 emphasis on zero percent THC, that's for someone
22 who's either worried about their employer or
23 about federal law. Like, the particular
24 misrepresentation here is intimately tethered to
25 the business harm that occurred, right?

1 And that won't be the case in every
2 kind of, you know, average -- or product
3 mislabeling case.

4 JUSTICE KAVANAUGH: What about the
5 factual prediction? Do you want to say anything
6 about that? Because the amicus briefs really
7 are quite aggressive on that. And you could say
8 yes, but that's good, or you can say no, that's
9 not going to happen. And, if it's the latter,
10 I'd like to hear why.

11 MS. ANAND: Right. So I think we have
12 two data points for why this is unlikely to
13 happen. The first is sort of the Ninth Circuit,
14 as I explained. The second is, right, there are
15 lots of product liability cases -- think the
16 washing machine that floods your home, right --
17 where there's no personal injury anywhere in the
18 ambit, right? It's all property damage.

19 You see those cases. You see lots of
20 those cases in state court. You don't see them
21 being brought as civil RICO. That's not because
22 of Petitioners' rule. Petitioners' rule has
23 nothing to do with the oven that burns the house
24 or the washing machine that floods the basement.
25 That's all the other aspects of RICO are keeping

1 that case out.

2 So I think, you know, those are the
3 two data points I can give you. You know, the
4 -- and just the other thing I would say is I do
5 think that the other guardrails do some work in
6 fencing out those cases. I think that's why you
7 don't see those cases being brought.

8 And, again, as a kind of incentive
9 matter, ruling out all pain and suffering and
10 emotional distress means that it isn't proper.

11 JUSTICE KAVANAUGH: Well, you've said
12 that umpteen times, which I -- and I understand
13 why you've said it.

14 MS. ANAND: Yes.

15 JUSTICE KAVANAUGH: But lost wages and
16 medical expenses are a huge part of personal
17 injury tort suits, the damages.

18 MS. ANAND: I think we -- I think
19 that's right. My friend on the other side and I
20 disagree on exactly what -- what fraction, but,
21 you know, the Chamber of Commerce study that we
22 cite in our brief says the lion's share of the
23 recovery are these sort of non-pecuniary
24 intangible harms.

25 And I think that's correct, right?

1 Medical expenses, you may see insurance
2 companies bringing these suits, although I
3 think, under Petitioners' theory, insurance
4 companies can still sue for medical expenses, is
5 I think what they told you in the brief. But,
6 in the sort of average case, the big incentives,
7 I think that's why you're not seeing -- I don't
8 know the reason you're not seeing these cases in
9 the Ninth Circuit or in the products liability
10 that don't result in bodily injury contexts, but
11 you're not. And I think that should give you
12 some solace.

13 My fallback position is just Congress
14 wrote this statute to just ask about an injury
15 to business or property. That may have been
16 profoundly unwise. It may have been profoundly
17 unwise to use mail and wire fraud as predicate
18 offenses.

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

22 MS. ANAND: I don't think the
23 federalism canon kicks in because Petitioners
24 have not been able to give you any definition
25 that's tenable on the plain text of the statute,

1 which is where the canon would kick in as a tie
2 break, if at all.

3 JUSTICE KAVANAUGH: Thank you.

4 CHIEF JUSTICE ROBERTS: Justice
5 Barrett?

6 JUSTICE BARRETT: No.

7 CHIEF JUSTICE ROBERTS: Justice
8 Jackson?

9 JUSTICE JACKSON: And I just wanted to
10 let you finish the discussion of whether or not
11 this statute is overly broad. I mean, it gives
12 me some solace that we have actual text from
13 Congress directing courts to liberally construe
14 the provisions of RICO to effectuate its
15 purposes. So it seems as though Congress
16 contemplated that this was going to have a
17 pretty broad sweep and that we should allow it
18 to do that.

19 MS. ANAND: I think that's right.
20 It's very rare Congress writes a liberal
21 construction canon into the text of the statute.
22 And I think that the ill that Congress was
23 targeting is one that's sort of hard to pin down
24 and define, right?

25 We've talked a little bit about the

1 wire and mail fraud predicates, which I think
2 are -- I think sort of what is causing this
3 Court some heartburn is the fact that mail and
4 wire fraud are among the predicate offenses, and
5 those seem to map onto a lot of state tort law
6 claims but that the --

7 JUSTICE JACKSON: And it seems as
8 though some of the concern is, you know, are we
9 expanding beyond what the text says here and
10 would it be a sea change that actually brings in
11 a lot of things that weren't intended to be
12 covered, or is Ms. Blatt asking us to narrow
13 down what the text says and make business and --
14 or property, you know, narrower?

15 I kind of see it as the latter, but
16 can you just speak to that as the final word
17 here?

18 MS. ANAND: So I agree it would be the
19 latter. "Injury to business or property" means
20 injury to business or property, whether that's
21 harm or legal harm. It just means that you are
22 harmed in your ability to earn a livelihood.

23 Now, again, I think that Congress used
24 that language and used the liberal construction
25 provision and put things like mail and wire

1 fraud in the predicate -- in the list of
2 predicate offenses because they wanted the
3 statute to sweep quite broadly. And I think
4 that this Court should just enforce the text as
5 it was written.

6 JUSTICE JACKSON: Thank you.

7 CHIEF JUSTICE ROBERTS: Thank you,
8 counsel.

9 Rebuttal, Ms. Blatt?

10 REBUTTAL ARGUMENT OF LISA S. BLATT

11 ON BEHALF OF THE PETITIONERS

12 MS. BLATT: Thank you, and may it
13 please the Court:

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

1 On the consequences, we cite, I think
2 on page 27, this case, Hopp. It involves a
3 boxer. And that's a case where the district
4 court just ignored the Ninth Circuit. And
5 that's why there's not consequences, is because
6 district courts aren't crazy, and when they see
7 a personal injury action, they're just not
8 citing Diaz and they're preventing personal
9 injury cases from going forward.

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

13 In terms of the lion's share, that
14 mega-study is just dealing with gargantuan
15 mega-hits. It doesn't matter if pain and
16 suffering is 60 percent or 20 percent;
17 99.99999 percent of all personal injury cases
18 come in under their rule. All they're doing is
19 excluding a narrow type of damages. So any
20 personal injury comes in as long as there's an
21 economic damage.

22 In terms of proximate cause, proximate
23 cause, we think there is no proximate cause, but
24 that's not the problem. You have a case before
25 you that it will be a legal rule where there is

1 proximate cause in all personal injury actions
2 resulting in medical expenses and lost wages.
3 There's direct cause. You don't even need
4 proximate cause. It's but proximate, direct,
5 what have you. Yet only our rule will exclude
6 it. There will be proximate cause when you have
7 a slip and fall and lose your job, either lose
8 wages or you can't work because you lose your
9 ability to use your hands or eyesight.

10 In terms of the other thing about:
11 Oh, RICO's a big deal, on 107, 108 at 76, 77A,
12 two sales were the RICO predicate act and three
13 ads. That's what it took to state a mail and
14 wire fraud; two sales in a ten-year period.
15 That is not that complicated.

16 Justice Barrett, in terms of the
17 shifting position, I do think we came up with
18 WesternGeco at the merit stage, but both the
19 Sixth, Seventh, and Eleventh Circuit do talk
20 about damages in recovery for personal injury.
21 So I think we refined it here, but we certainly
22 got it from those cases. The district court
23 itself held this is a personal injury action and
24 there's lost wages damages.

25 The other thing I will say is we took

1 your language from that -- Chrysler Motor case
2 that said damages resulting from personal
3 injury, so we stole it straight from your
4 language because we figured we can't go wrong if
5 we just stick with the Clayton Act rule.

6 In terms of medical expenses, I'm
7 sorry, I don't see how you can carve out medical
8 expenses. That's the biggest loss of property
9 to say that what the -- the court below did, it
10 just said well, personal injury damages would be
11 excluded, but lost wages will be recoverable
12 because that's an injury to business.

13 Well, all lost wages could be
14 categorized as injury to business when they're
15 just damages. To be sure, you can have a lost
16 property damage or a lost property injury. You
17 could have damages or injury to both. It just
18 depends on what the nature of the cause of
19 action is.

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

21 CHIEF JUSTICE ROBERTS: Thank you,
22 counsel. The case is submitted.

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

25

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