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WLF Urges Supreme Court To Limit Scope Of Civil RICO *(Medical Marijuana, Inc. v. Horn)*

“Civil RICO’s statutory language clearly bars recovery for personal injuries.”

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to reverse a decision permitting plaintiffs to sue under civil RICO for economic damages flowing from personal injuries. In an amicus brief supporting the petitioners, WLF argues that the U.S. Court of Appeals for the Second Circuit’s analysis ignores a key part of RICO and infringes the petitioners’ due-process rights.

The case arises from a suit by Douglas Horn, a truck driver who ingested a CBD product called Dixie X. According to Horn, the petitioners advertised the product as containing 0% THC. But after he ingested the product, he failed a drug test for THC and was fired from his job. He sued under civil RICO, and the District Court dismissed the suit because he was suing for personal injury, not injury to business or property. The Second Circuit reversed, holding that a personal injury that results in economic damages is an injury to business or property. As this view splits from decisions of other courts of appeals, the Supreme Court agreed to hear the case.

WLF’s brief argues that the Second Circuit erred in finding that the canon against superfluidity requires allowing plaintiffs to sue for economic damages that flow from personal injuries. First, the lower court’s decision overlooks the fact that all RICO predicate offenses can cause direct injuries to business or property, making the inclusion of predicates like murder and kidnapping not superfluous. Second, the decision ignores the structure of the RICO statute, which allows the Department of Justice to bring criminal charges for those who murder and kidnap as part of their racketeering activities. The DOJ takes this responsibility seriously and often brings such charges.

WLF’s brief also explains that the Second Circuit’s decision infringed on the petitioners’ due-process rights. The petitioners were entitled to heightened due process protections for two reasons. First, treble damages trigger heightened due-process protections. Second, RICO’s possible criminal penalties also trigger heightened due-process protections. At the heart of due process of law is the right to know what conduct the law forbids. Here, it was not clear that the petitioners could face a RICO suit for economic damages that stemmed from a personal injury. Thus, the Second Circuit’s decision infringed on their due-process rights.

Celebrating its 47th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.