

- **Title:** Supreme Court expands civil RICO: Cannabis industry faces new risks in wake of Horn decision

- **Brief Overview (50–60 words / 250–300 characters):** Last month, the U.S Supreme Court issued a pivotal 5-4 decision ruling in favor of a commercial trucker suing three CBD companies under the Racketeer Influenced and Corrupt Organizations Act (RICO). Alexander Malyshev and Sarah Ganley discuss the decision as it relates to the type of harm that may be actionable under RICO relating to cannabis products that are mislabeled or falsely marketed.

- **Full Article:** [Supreme Court expands civil RICO: Cannabis industry faces new risks in wake of Horn decision | Secondary Sources | National | Westlaw Today](#)

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## **Supreme Court expands civil RICO: Cannabis industry faces new risks in wake of Horn decision**

(May 14, 2025) - Alexander Malyshev and Sarah Ganley of Carter Ledyard & Milburn LLP discuss the Supreme Court's decision as to the type of harm that may be actionable under RICO relating to cannabis products that are mislabeled or falsely marketed.

Last month, the United States Supreme Court issued a pivotal 5-4 decision (<https://bit.ly/4k1oQMi>) ruling in favor of a commercial trucker suing three CBD companies under the Racketeer Influenced and Corrupt Organizations Act (RICO). The trucker claimed that he failed a random drug screening and was subsequently fired by his employer as a result of ingesting a product falsely marketed by the companies as containing 0% tetrahydrocannabinol (THC) — the primary psychoactive compound in cannabis. See *Medical Marijuana, Inc. v. Horn*, 604 U.S. \_\_ (2025) (*Horn*).

The case focused on whether the civil prongs of RICO permit plaintiffs to seek redress for economic harms (e.g., loss of employment, future wages) stemming from personal injuries (e.g., unwanted ingestion of THC). In the lead-up to the decision, Circuit Courts were split on the question.

The 2nd and 9th Circuits had allowed civil RICO claims for economic harms in such cases to proceed while the 6th, 7th and 11th Circuits took the position that RICO excludes economic harms resulting from personal injuries. In its decision, the Supreme Court clarified that economic harms stemming from personal injuries *can* be actionable under RICO, thereby expanding the types of civil actions that can be brought under the statute.

While the Court did not address the merits of the allegations, the decision could have a significant impact on the cannabis industry. Some industry watchers predict an uptick in civil RICO claims against cannabis-related companies, with plaintiffs' attorneys looking to *Horn* as a potential blueprint to turn personal injury cases into civil RICO cases. The decision also serves as a reminder to cannabis companies to be diligent in making sure they are compliant with state cannabis laws (especially those related to labeling and advertising), to mitigate the risk of these types of lawsuits.

## **RICO: an overview**

Enacted in 1970 by Title IX of the Organized Crime Control Act, RICO is a federal law originally designed (<https://bit.ly/43sU3l9>) to combat organized crime.

While RICO cases are generally associated with prosecutions of criminal organizations, the statute also includes a civil provision permitting "any person" to sue for injuries to "businesses or property" caused by a "pattern of racketeering activity" committed by a "RICO enterprise." [18 U.S.C. § 1964\(c\)](#).

Both "Racketeering activity" and "RICO enterprise" are defined broadly under the statute. "Racketeering activity" refers to various criminal activities including, the sale of illegal drugs as well as wire and mail fraud (which can be implicated when a product is intentionally mislabeled and sent to consumers). [18 U.S.C. § 1961\(1\)](#). A "RICO enterprise" encompasses various organizations and groups, both formal and informal, that operate together for a common purpose. [18 U.S.C. § 1961\(4\)](#).

RICO's civil penalties can be significant. In addition to attorney fees and litigation costs, a plaintiff who brings a successful civil RICO action is entitled to recover treble damages.

## **Background of the case and procedural history**

Douglas Horn, a commercial truck driver, suffered from chronic pain because of an automobile accident. In an effort to manage his pain, he purchased and began using an over-the-counter product called "Dixie X," a tincture infused with cannabidiol or CBD (a naturally occurring, non-intoxicating chemical compound found in the cannabis plant). The product was marketed as containing 0% THC.

Shortly after he began using Dixie X, Horn's employer selected him for a random drug screening. The results detected THC in Horn's system. After refusing to participate in a substance abuse program, Horn's employer terminated him. Horn maintained that he had not ingested any other product that could have contained THC prior to the drug screen. Independent lab testing confirmed that Dixie X contained THC, contradicting its labeling. In October 2023, Horn sued three entities responsible for the production and sale of Dixie X in the United States District Court for the Southern District of New York alleging civil RICO violations. Specifically, Horn alleged that the companies operated as a RICO "enterprise" that distributes and sells Dixie X and that their false advertising that Dixie X has 0% THC

constituted a pattern of racketeering activity (specifically, mail and wire fraud) in violation of RICO, leading to his economic loss through job termination.

The District Court dismissed Horn's claim on the basis that RICO offers redress for injuries to business or property only — not for personal injuries. According to the District Court, Horn's injury (the unwanted ingestion of THC) was a personal injury and that any alleged injury to his business or property (loss of employment, future wages, etc.) stemmed from this personal injury. Taking the position that RICO imposes an "antecedent-personal-injury bar" to recovery, the court concluded that Horn's alleged injuries were not compensable.

The 2nd Circuit disagreed, holding that RICO does not foreclose an action to recover business or property loss when the loss stems from a personal injury. The 2nd Circuit concluded that RICO does not impose an "antecedent-personal-injury bar" to recovery, thus joining the 9th Circuit in allowing civil RICO claims for economic harms resulting from personal injuries to proceed and expanding the circuit split.

## **The Supreme Court's decision**

The Supreme Court granted certiorari to resolve the circuit split and answer the narrow question of whether the civil prongs of RICO categorically bar recovery for business or property losses that derive from a personal injury.

The majority opinion, authored by Justice Amy Coney Barrett and joined by Justices Sonia Sotomayor, Elena Kagan, Neil Gorsuch, and Ketanji Brown Jackson, concluded that such economic harms *are* recoverable under RICO and are *not* categorically barred because they stem from an antecedent personal injury.

Barrett emphasized that the phrase used in the statute "injured in his business or property" does not preclude recovery for business or property losses that derive from personal injuries. Distinguishing between non-recoverable personal injuries (like pain and suffering) and consequential economic damages (such as lost employment), the decision affirmed that the latter falls within RICO's remedial scope.

## **Implications for the cannabis industry**

The Supreme Court's decision could have significant ramifications for the cannabis sector, including increased litigation risk, heightened compliance requirements, increased insurance and operational costs, and stricter regulatory scrutiny.

In the wake of *Horn*, cannabis companies may face a surge in civil RICO lawsuits alleging economic damages resulting from product mislabeling or misrepresentation and, thus, should ensure accurate product labeling and marketing to mitigate potential RICO liability. Moreover, the threat of treble damages under RICO could lead to higher insurance premiums and operational expenses and could prompt stricter regulatory oversight to ensure consumer protection and industry accountability.

The decision also underscores the necessity for cannabis companies to adhere strictly to truthful marketing and product representation. In particular, caution is warranted before

marketing or labeling CBD products as THC-free, as failure to accurately label or market such products could result in a civil RICO action by a consumer who experiences business or property loss stemming from the unknowing consumption of THC via a product sold as THC-free.

As the legal landscape evolves, industry stakeholders must remain vigilant to navigate the complexities introduced by the *Horn* decision.