American Bar Association
www.supremecourtpreview.org

No. 07-210

In The
Supreme Court of the United States

JOHN BRIDGE, et al.,
Petitioners,
v.

PHOENIX BOND & INDEMNITY CO., et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF *AMICUS CURIAE*, INTERNATIONAL ASSOCIATION OF INSURANCE RECEIVERS IN SUPPORT OF RESPONDENTS

C. PHILIP CURLEY
Counsel of Record
CYNTHIA H. HYNDMAN
ROBERT S. MICHAELS
ROBINSON CURLEY & CLAYTON, P.C.
300 SOUTH WACKER DRIVE, SUITE 1700
CHICAGO, ILLINOIS 60606
(312) 663-3100

Attorneys for Amicus Curiae International Association of Insurance Receivers

March 18, 2008

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

INTEREST OF AMICUS CURIAE INTERNATIONAL ASSOCIATION OF INSURANCE RECEIVERS . . 1

SUMMARY OF ARGUMENT 3

ARGUMENT 6

I. THE RELEVANT STATUTES PRECLUDE A PLAINTIFF-RELIANCE REQUIREMENT. . . 6

A. RICO Precludes a Plaintiff-Reliance Requirement. 8

1. A Plaintiff-Reliance Requirement Cannot Be Read Into the "By Reason Of" Language of Section 1964(c). 8

a. A Plaintiff-Reliance Requirement Would Violate the Flexible, Fact-Specific *Holmes* Test. 8

b. A Plaintiff-Reliance Requirement Would Conflict with the Broad Language of Section 1964(c). 11

2. RICO Does Not Otherwise Permit Imposing a Plaintiff-Reliance Requirement. 13

B. The Mail and Wire Fraud Statutes Do Not Impose A Plaintiff-Reliance Requirement . 15

II. THE *HOLMES* TEST IS MORE THAN SUFFICIENT TO ADDRESS THE POLICY CONCERNS RAISED BY PETITIONERS AND THEIR *AMICI*. 20

A. The *Holmes* Test Already Requires a "Direct Relationship" Between the Injury and the Alleged Fraud. 20

B. This Case, Like Those in the Insurance Company Fraud Context, Illustrates That the *Holmes* Criteria Can Be Met in the Absence of Plaintiff-Reliance Without in Any Way Weakening *Holmes*. 21

III. IMPOSING A PLAINTIFF-RELIANCE REQUIREMENT WOULD UNDERMINE THE ABILITY OF INSURANCE RECEIVERS TO RECOVER ASSETS OF INSURANCE COMPANIES MISAPPROPRIATED THROUGH FRAUDULENT SCHEMES AND UNDULY HARM INSOLVENT INSURANCE COMPANIES AND THEIR POLICYHOLDERS AND CREDITORS. 25

CONCLUSION 30

TABLE OF AUTHORITES

CASES

Agency Holding Corp. v. Malley-Duff & Assocs., Inc.,
483 U.S. 143 (1987) 29

Anza v. Ideal Steel Supply Corp.,
547 U.S. 451, 126 S.Ct. 1996 (2006) . . . . . *passim*

Assoc. Gen. Contractors v. Cal. State Council of Carpenters,
459 U.S. 519 (1983) 10

Beck v. Prupis,
529 U.S. 494 (2000) 7

Bogan v. United States,
522 U.S. 398 (1998) 15

Carpenter v. United States,
484 U.S. 19 (1987) 4, 16, 17, 18

Chaney, et al. v. ALA Acquisitions I, Inc., et al.,
No. 3:00CV359LN (S.D. Miss.) 29

Durland v. United States,
161 U.S. 306 (1896) 19

Holmes v. Securities Investor Protection Corp.,
503 U.S. 258 (1992) . . . . *passim*

Marques v. Sequa Corp., et al.
No. 92-512L (D. R.I.) 29

Neder v. United States,
527 U.S. 1 (1999) . . . . *passim*

Pasquantino v. United States,
544 U.S. 349 (2005) 15, 16

Schmuck v. United States,
489 U.S. 705 (1989) 4, 18, 19

Sedima, S.P.R.L. v. Imrex Co.,
473 U.S. 479 (1985) 6, 15

Sys. Mgmt., Inc. v. Loiselle,
303 F.3d 100 (1st Cir. 2002) 13

United States v. Christopher,
142 F.3d 46 (1st Cir. 1998) 27

United States v. Gonzalez,
520 U.S. 1 (1997) 12

United States v. Martin R. Frankel, et al.,
No. 3:99-CR-235 28

United States v. Neadle,
72 F.3d 1104 (3d Cir. 1995) 27

United States v. Reeder,
170 F.3d 93 (1st Cir. 1999) 27

STATUTES

18 U.S.C. § 1341 . . . . 3, 6, 19

18 U.S.C. § 1343 . . . . 3, 16

18 U.S.C. § 1344 16

18 U.S.C. §§ 1961 *et seq*. 1, 6

18 U.S.C. § 1961(1) 14

18 U.S.C. § 1962(c) 6

18 U.S.C. § 1962(d) 7, 28

18 U.S.C. § 1964(c) . . . . *passim*

18 U.S.C. § 1965(b) 29

215 Ill. Comp. Stat. § 5/131.5 (2008) 26

215 Ill. Comp. Stat. § 5/131.24 (2008) 26

215 Ill. Comp. Stat. § 5/136 (2008) 26

215 Ill. Comp. Stat. § 5/139 (2008) 26

Ark. Code Ann. § 23-63-508 (2008) 26

Ark. Code Ann. § 23-63-522 (2008) 26

Ga. Code Ann. § 33-37-17 (2007) 28

Ga. Code. Ann. § 33-37-20 (2007) 28

Ga. Code. Ann. §§ 33-37-21, 33-37-41 (2007) 29

Iowa Code § 521A.3 (2008) 26

La. Rev. Stat. Ann. § 22:1004 (2008) 26

Minn. Stat. § 60A.13 (2007) 26

Minn. Stat. § 60B.21 (2007) 28

Minn. Stat. § 60B.25 (2007) 28

Minn. Stat. §§ 60B.26, 60B.44 (2007) 29

Minn. Stat. § 60D.09 (2007) 26

Minn. Stat. § 60D.17 (2007) 26

Miss. Code Ann. § 83-5-55 (2008) 26

Miss. Code Ann. § 83-5-69 (2008) 26

Mo. Rev. Stat. § 374.216 (2007) 26

Mo. Rev. Stat. § 375.041 (2007) 26

Mo. Rev. Stat. § 382.050 (2007) 26

Mo. Rev. Stat. § 382.275 (2007) 26

Ohio Rev. Code Ann. § 3903.18 (2008) 28

Ohio Rev. Code Ann. § 3903.21 (2008) 28

Ohio Rev. Code Ann. §§ 3903.22, 3903.42 (2008) . 29

R.I. Gen. Laws § 27-12-1 (2007) 26

R.I. Gen. Laws § 27-14.3-22 (2007) 28

R.I. Gen. Laws § 27-14.3-25 (2007) 28

R.I. Gen. Laws §§ 27-14.3-26, 27-14.3-46 (2007) . 29

Tenn. Code Ann. § 56-1-501 (2008) 26

Tenn. Code Ann. § 56-1-503 (2008) 26

RULES

Supreme Court Rule 37.6 1

OTHER AUTHORITIES

Brief for the United States as Amicus Curiae Supporting Respondents, *Bank of China v. NBM L.L.C.*, 546 U.S. 1026 (2005) 12

Michael Goldsmith & Evan S. Tilton, *Proximate Cause in Civil Racketeering Cases: The Misplaced Role of Victim Reliance*, 59 Wash. & Lee L. Rev. 83 (2002) 11

W. Keeton, D. Dobbs, R. Keeton, & D. Owen, PROSSER AND KEETON ON LAW OF TORTS § 41 (5th ed. 1984) . 8

Webster's Third New Int'l Dictionary 97 (1976) . 12

INTEREST OF AMICUS CURIAE INTERNATIONAL ASSOCIATION OF INSURANCE RECEIVERS

The International Association of Insurance Receivers ("IAIR") is an international organization of insurance liquidators and professionals who practice in the field of insurance regulation and liquidation.[1] Members of IAIR routinely serve as the statutory and court-appointed receivers of insolvent insurance companies. Some of the companies for which the members serve as receivers have failed because persons in control illegally diverted policyholder premium dollars for their own personal use. These frauds impair the insurance companies' ability to meet their obligations to policyholders and creditors.

IAIR has no private, personal or economic stake in the review of the question presented to the Court. In its members' capacities as fiduciaries for the estates of insolvent insurers, however, it has a direct interest in the preservation of the use of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961 *et seq.*, as a vehicle for the recovery of damages caused by fraud that victimizes insurance companies. Many insurance company receivers bring civil RICO actions against persons or entities whose criminal acts

---

[1] Pursuant to Supreme Court Rule 37.6, counsel for *amicus curiae* represents that it authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *amicus curiae* or its counsel, made a monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief and their letters of consent have been filed with the Clerk.

targeted the insurance company. These actions have aimed to recover diverted assets, as well as consequential damages. Amounts recovered have been added to the estates of the victimized insurers and eventually distributed to the insurers' policyholders and creditors.

Where an insurance company's failure is the result of fraud or other deceit, IAIR members believe the perpetrators should be punished and, if possible, the victims – including the insurance company itself and its policyholders – compensated by the wrongdoers. The members have found RICO to be an extraordinarily powerful weapon for vindicating their states' insurance regulatory goals by recovering damages for the benefit of the policyholders and creditors of insolvent insurers, and for punishing those whose illegal activities victimize insurance companies that are powerless to protect themselves from misconduct. Although in certain respects RICO parallels substantive state statutory or common law violations and remedies, RICO's provision for nationwide service of process has ensured the ability of receivers to sue multiple wrongdoers in a single federal forum, a convenience that the states are powerless to provide.

IAIR believes that the Seventh Circuit's holding is correct that a direct victim of fraud may recover in a civil action under RICO regardless of whether it was the direct recipient of false statements. In the kinds of schemes to defraud insurance companies that IAIR members seek to redress, the insurance companies are directly victimized although the perpetrators often make their false and misleading statements to

insurance regulators, rather than to the companies themselves. To this end, IAIR supports the position of Respondents in urging the Court to affirm the Seventh Circuit's holding.

SUMMARY OF ARGUMENT

By their terms, neither RICO, nor the federal mail and wire fraud statutes, 18 U.S.C. §§ 1341, 1343, impose a requirement that a plaintiff in a civil RICO action predicated on violations of the mail or wire fraud statute prove that it relied directly on misrepresentations by the defendant. Although common law principles may be read into statutes, those principles may not be engrafted when the statute "otherwise dictates." *Neder v. United States,* 527 U.S. 1, 23 (1999) (internal quotation marks and citations omitted). A requirement of reliance by the plaintiff is inconsistent with RICO's proximate cause requirement, the language of Section 1964(c), and the mail and wire fraud statutes themselves.

Section 1964(c) provides that "any person injured by reason of" a violation of Section 1962 may bring a civil action. In *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258 (1992), this Court held that Section 1964(c)'s "by reason of" language requires a showing of proximate cause. *Id.* at 268. But at the same time, the Court eschewed "a blackletter rule" in favor of a flexible, fact-specific inquiry based on three specific policy criteria. *Id.* at 269-70, 273 n.20. Petitioners' reliance-by-plaintiff requirement is the kind of blackletter rule the *Holmes* Court refused to adopt. Moreover, Section 1964(c) provides a cause of action to "any" person injured by a violation of Section

1962. Under Petitioners' theory, a person directly injured within the meaning of *Holmes* by a RICO violation could not recover if it had not also directly relied on a defendant's misrepresentation. Petitioners' theory is further inconsistent with Section 1964(c) because it would give a different meaning to the language of Section 1964(c) when the Section 1962 violation alleged involved predicate acts of mail or wire fraud, as opposed to other predicate acts – such as murder or kidnaping – that clearly require no showing of reliance.

This Court has already found that a reliance-by-plaintiff requirement "plainly [has] no place" in the mail and wire fraud statutes. *Neder*, 527 U.S. at 24-25. Such a requirement is inconsistent with those statutes not only because criminal liability can attach for uncompleted frauds, but because criminal liability can attach under the mail and wire fraud statutes for completed frauds that do not include the victim's direct reliance on a defendant's misrepresentations. *See, e.g., Carpenter v. United States,* 484 U.S. 19 (1987); *Schmuck v. United States*, 489 U.S. 705 (1989). Once again, Petitioners' reliance-by-plaintiff requirement would result in different requirements for the mail and wire fraud statutes in criminal and civil cases. Such an outcome is not supported by the language of the mail or wire fraud statutes or RICO.

Petitioners and their *amici* have not advanced any compelling reason to impose a reliance-by-plaintiff requirement in the limited circumstance of a RICO civil action based on predicate acts of mail and wire fraud. In fact, the concerns raised by Petitioners – that it is necessary to show a direct relation between

a plaintiff's injury and the defendant's conduct – are adequately addressed by the *Holmes* three part analysis. Here, Respondents' injury meets every part of the *Holmes* test: (1) there were no other factors other than Petitioners' fraud affecting the auction process or leading to Respondents' loss of tax liens; (2) Respondents and others like them who were awarded fewer tax liens were the only parties injured as a result of Petitioners' fraud, so there is no risk of multiple recoveries; and (3) there is no other party with a financial incentive to bring a civil action against Respondents, so the most directly injured victims would in fact be the persons vindicating the law.

A reliance-by-plaintiff requirement is not only unnecessary given the existing *Holmes* test, it would serve to prevent a host of actual victims of fraudulent schemes from recovering under RICO for their injuries. This is especially true in circumstances like those involving the misappropriation of assets from insurance companies, where a state insurance regulator acts as a gatekeeper to protect those assets so they will be available to pay policyholders' claims when they come due. Millions have been stolen from insurance companies by unscrupulous owners who make misrepresentations to regulators to perpetrate their schemes. The court-appointed receivers, who stand in the shoes of the victimized companies, should have a cause of action available under RICO, along with its procedural conveniences and substantive might, to recover those millions.

ARGUMENT

I. THE RELEVANT STATUTES PRECLUDE A PLAINTIFF-RELIANCE REQUIREMENT.

As with any issue of statutory construction, the analysis of whether RICO requires a plaintiff in a civil RICO action to prove that it relied on direct misrepresentations by the defendant begins with the language of the statute itself. *See Neder v. United States*, 527 U.S. 1, 20 (1999) ("we first look to the text of the statutes at issue to discern whether they require a showing"). The operative statutory provisions here are the mail fraud statute, 18 U.S.C. § 1341, and the civil action provision of RICO, 18 U.S.C. § 1964(c).[2] As Petitioners concede, neither of those provisions includes the word "reliance" (Pet. Br. at 19), and there is no basis or reason to read a requirement of plaintiff-reliance into them. *See Anza v. Ideal Steel Supply*

---

[2] Section 1964(c) provides that "any person injured in his business or property by reason of a violation of Section 1962" may bring a civil action. Respondents alleged below that they were injured because Petitioners violated Section 1962(c) of RICO by participating in the conduct of an enterprise's affairs through a pattern of racketeering activity, in the form of multiple violations of the mail fraud statute, 18 U.S.C. § 1341. *See* 18 U.S.C. § 1961 (defining "racketeering activity" to include "any act indictable" under title 18 section 1341). As this Court has previously held, "[a]ny recoverable damages occurring by reason of a violation of § 1962(c) will flow from the commission of the predicate acts." *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 497 (1985). Thus, Respondents must prove that they were injured in their business or property by Petitioners' violations of the mail fraud statute.

Corp., 547 U.S. 451, 476-78 (2006) (Thomas, J., dissenting) (no plaintiff-reliance requirement in civil RICO claims based on mail or wire fraud predicate acts).

Petitioners argue that the plaintiff-reliance element must be read into the mail and wire fraud statutes and RICO Section 1964(c) because this Court requires those statutes to be interpreted by incorporating principles of common law fraud. *See* Pet. Br. at 19-20 (*citing Neder*, 527 U.S. at 20 and *Beck v. Prupis*, 529 U.S. 494 (2000)). But in *Neder*, the Court stated "we must presume that Congress intended to incorporate [common law requirements] unless the statute otherwise dictates." 527 U.S. at 23 (emphasis, internal quotation marks and citation omitted).[3] A reliance-by-plaintiff requirement would be inconsistent with RICO's proximate cause requirement, the language of Section 1964(c), and the mail fraud statute. Thus, because those statutes "otherwise dictate," a reliance-by-plaintiff requirement cannot be engrafted onto them.

---

[3] In *Beck*, the Court interpreted the word "conspiracy" in Section 1962(d) to incorporate common law principles of civil conspiracy for a civil RICO conspiracy action. 529 U.S. at 500-501. But the principles of civil conspiracy were not otherwise inconsistent with Section 1962(d) or Section 1964(c) and, thus, the *Neder* standard for incorporation of those principles had been met.

A. RICO Precludes a Plaintiff-Reliance Requirement.

1. A Plaintiff-Reliance Requirement Cannot Be Read Into the "By Reason Of" Language of Section 1964(c).

Petitioners and their *amici* claim that the language in Section 1964(c) requiring plaintiff to show injury "by reason of" a RICO violation, or the intersection of that provision with the mail fraud statute, compels imposition of a plaintiff-reliance requirement. *See* Pet. Br. at 18-19. But *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258 (1992), which established that Section 1964(c)'s language requires a flexible, fact-specific proximate cause inquiry, forecloses that possibility, and the broad language of Section 1964(c) only reinforces that conclusion.

a. A Plaintiff-Reliance Requirement Would Violate the Flexible, Fact-Specific *Holmes* Test.

In *Holmes*, the Court found that Section 1964(c)'s requirement that RICO plaintiffs suffer injury "by reason of" defendant's RICO violation requires a showing of proximate cause. 503 U.S. at 268. The Court explained that proximate cause refers to a set of "judicial tools used to limit a person's responsibility for the consequences of that person's own acts. At bottom, the notion of proximate cause reflects 'ideas of what justice demands, or of what is administratively possible and convenient.'" *Id*. (quoting W. Keeton, D. Dobbs, R. Keeton, & D. Owen, PROSSER AND KEETON ON LAW OF TORTS § 41, p. 264 (5th ed. 1984)).

The Court emphasized that proximate cause imposes a "demand for some direct relation between the injury asserted and the injurious conduct alleged. Thus, a plaintiff who complained of harm flowing merely from the misfortunes visited upon a third person by the defendant's acts was generally said to stand at too remote a distance to recover." *Holmes*, 503 U.S. at 268-69. The Court explained the three chief policy reasons behind the "directness" requirement:

> First, the less direct an injury is, the more difficult it becomes to ascertain the amount of a plaintiff's damages attributable to the violation, as distinct from other factors. Second, quite apart from the problems of proving factual causation, recognizing claims of the indirectly injured would force courts to adopt complicated rules apportioning damages among plaintiffs removed at different levels of injury from the violative acts, to obviate the risk of multiple recoveries. And, finally, the need to grapple with these problems is simply unjustified by the general interest in deterring injurious conduct, since directly injured victims can generally be counted on to vindicate the law as private attorneys general, without any of the problems attendant upon suits by plaintiffs injured more remotely.

Id. at 269-70 (internal citations omitted).

Proximate cause, then, is not a simple, yes-or-no inquiry; it is a flexible, fact-specific inquiry made in light of the policy concerns just quoted. As the Court

made clear in *Holmes*, "'the infinite variety of claims that may arise make it virtually impossible to announce a blackletter rule that will dictate the result in every case.'" *Id*. at 273 n.20 (quoting *Assoc. Gen. Contractors v. Cal. State Council of Carpenters*, 459 U.S. 519, 536 (1983)). "Thus," the Court continued, "our use of the term 'direct' should merely be understood as a reference to the proximate-cause enquiry that is informed by the concerns set out in the text" (*i.e.*, the three concerns quoted above). *Holmes*, 503 U.S. at 273 n.20. Consistent with that statement, the Court analyzed the "directness" of the *Holmes* plaintiff's injury by reference to each of these policy concerns, and found that it failed to show proximate cause. *Id*. at 276. *Anza* performed the same analysis (and reached the same result). *Anza*, 547 U.S. at 457-58.

The strict reliance-by-plaintiff requirement Petitioners would have govern all civil RICO actions with mail or wire fraud predicates is exactly the type of "blackletter rule" the Court rejected in *Holmes*. In place of the detailed, fact-specific analysis of proximate cause encompassing the three policy concerns identified in *Holmes*, Petitioners would substitute a blinkered, one-dimensional test – whether the plaintiff personally relied on the false or misleading statements. Petitioners' approach is at odds with the proximate cause test this Court announced in *Holmes* and reaffirmed in *Anza*.

That does not mean, of course, that the question of whether plaintiff itself relied on defendant's misrepresentations is irrelevant to the *Holmes* proximate cause analysis. If such reliance occurred, it

would typically be Exhibit A in showing the "direct" link between defendant's conduct and plaintiff's harm that *Holmes* requires. But as Justice Thomas explained in his *Anza* dissent, "the fact that proof of reliance is often used to prove an element of the plaintiff's cause of action, such as the element of causation, does not transform reliance itself into an element of the cause of action." *Anza*, 547 U.S. at 478 (Thomas, J. disssenting).[4]

b. A Plaintiff-Reliance Requirement Would Conflict with the Broad Language of Section 1964(c).

Petitioners and their *amici* argue that RICO's proximate cause requirement necessitates reliance by the plaintiff when mail or wire fraud predicates are involved because such reliance is central to proving causation in the common law fraud context. *See, e.g.*, Pet. Br. at 25-29; McKesson Corp. Br. at 10-20. But the text of § 1964(c) that requires proximate cause precludes imposition of any common law reliance-by-plaintiff requirement. It allows a civil claim by "*any person* injured in his business or property by reason of

---

[4] *See also* Michael Goldsmith & Evan S. Tilton, *Proximate Cause in Civil Racketeering Cases: The Misplaced Role of Victim Reliance*, 59 Wash. & Lee L. Rev. 83, 126 (2002) ("The victim reliance controversy stems from judges asking whether plaintiffs can prove they relied on fraudulent misrepresentations *rather than asking whether plaintiffs can demonstrate proximate cause*. Those courts that measure proximate cause exclusively by looking to victim reliance fail to appreciate that victim reliance is sufficient – *but not always necessary* – to show proximate cause.") (emphasis in original).

a violation of section 1962." 18 U.S.C. § 1964(c) (emphasis added). According to the Court, "read naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *United States v. Gonzalez*, 520 U.S. 1, 5 (1997) (quoting Webster's Third New Int'l Dictionary 97 (1976)). As the Seventh Circuit found (*see* Pet. App. at 5a-6a), and Respondents properly allege, they were directly injured in their business or property "by reason of" Petitioners' alleged conduct as *Holmes* defines that phrase, even though Petitioners' misrepresentations were made to a third party. As a result, imposing a reliance-by-plaintiff requirement would deprive some "persons" who were injured "by reason of" a scheme to defraud – such as Respondents, or an insurance company directly injured by misrepresentations made to state regulators – of a cause of action under Section 1964(c) and accordingly violate that provision.[5] In other words, by providing a cause of action to "any person" injured "by reason of" a scheme to defraud, and not restricting claims to persons who actually relied on fraudulent statements, the plain language of Section 1964(c) precludes imposition of a plaintiff-reliance requirement.

The "any person" language in Section 1964(c) is similarly fatal to Petitioner's argument that *Neder*

---

[5] The United States made this argument in a case involving virtually the same question presented here. *See* Brief for the United States as *Amicus Curiae* Supporting Respondents, *Bank of China v. NBM L.L.C.*, 546 U.S. 1026 (2005), (No. 03-1559), *available at* 2005 U.S. S. Ct. Briefs LEXIS 780, at **35 (arguing that third-party reliance "is a viable avenue of causation" in civil RICO claims based on mail or wire fraud predicate acts).

requires importation of the supposed common law reliance-by-plaintiff requirement. By providing that "any person" injured "by reason of" a RICO violation may bring suit, and not limiting claims to those who can show personal reliance, Section 1964(c) "otherwise dictates" against the imposition of any common law reliance-by-plaintiff requirement. *See Neder*, 527 U.S. at 23.

2. RICO Does Not Otherwise Permit Imposing a Plaintiff-Reliance Requirement.

As just shown, imposing a plaintiff-reliance requirement is not compelled by, and would actually conflict with, the proximate cause requirement of Section 1964(c). No other portion of RICO supports a plaintiff-reliance requirement either. Petitioners do not, and cannot, point to any language in RICO that expressly imposes such a requirement. Nor can one be read into or inferred from RICO's text, including the "by reason of" language in Section 1964(c), and neither Petitioners nor their *amici* identify any case that suggests otherwise.

The reason for that is straightforward. Unlike proximate cause, "[r]eliance is not a general limitation on civil recovery in tort; it 'is a specialized condition that happens to have grown up in common law fraud.'" *Anza*, 547 U.S. at 477 (Thomas, J.,dissenting) (quoting *Sys. Mgmt., Inc. v. Loiselle*, 303 F.3d 100, 104 (1st Cir.

2002)).[6] As a result, a reliance-by-plaintiff requirement cannot be inherent in the RICO "by reason of" provision because it could not, as a legal or logical matter, apply to all civil RICO actions. The long list of RICO predicate acts in 18 U.S.C. § 1961(1) makes this clear. It includes murder, kidnaping, arson, robbery, "dealing in a controlled substance" and other acts that could not conceivably require or involve any element of "reliance." *See* 18 U.S.C. § 1961(1).

Moreover, no part of Section 1964(c) suggests that plaintiffs must prove additional elements, beyond those of the predicate acts themselves, in RICO claims based on some predicate acts (*e.g.*, mail and wire fraud) but not others. As Justice Thomas explained in his *Anza* dissent, "there is no language in § 1964(c) (2000 ed.) that could fairly be read to add a reliance requirement in fraud cases only." 547 U.S. at 477. Indeed, if the Court were to impose a reliance-by-

---

[6] As Justice Thomas explained, and as *Holmes* itself makes clear, the Court found the "by reason of" language to require proximate cause because: a) Congress could not have rationally "meant to allow all factually injured plaintiffs to recover," largely because proximate cause is "not only a general condition of civil liability at common law but is almost essential to shape and delimit a rational remedy," *Anza*, 547 U.S. at 477 (Thomas, J. dissenting) (internal quotation marks and citations omitted); and b) RICO's "by reason of language" is identical to that in Section 7 of the Sherman Act, which, at the time Congress enacted RICO, had been held to require proximate cause in civil actions under that statute. *Id. See also Holmes*, 503 U.S. at 266, 268. As Justice Thomas correctly recognized, neither of those considerations is present with respect to the issue of reliance. *Anza*, 547 U.S. at 477-78.

plaintiff requirement in Section 1964(c) claims based on mail and wire fraud predicates, and not in Section 1964(c) claims based on other predicates, it would be "'giv[ing] these same words a different meaning for each category,'" thereby "'invent[ing] a statute rather than interpret[ing] one.'" *Pasquantino v. United States*, 544 U.S. 349, 358-59 (2005) (*quoting Bogan v. United States,* 522 U.S. 398, 406 (1998)).

Finally, declining to impose an additional, unwritten requirement on a subset of Section 1964(c) claims, the approach Justice Thomas took in *Anza,* is consistent with the principle that "RICO is to be read broadly. This is the lesson not only of Congress' self-consciously expansive language and overall approach, but also of its express admonition that RICO is to be 'liberally construed to effectuate its remedial purposes,' Pub. L. 91-542, § 904(a), 84 Stat. 947." *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 497-98 (1985) (internal citation omitted). Neither Petitioners nor their *amici* mention this fundamental precept of RICO law. Consistent with that precept, and with Justice Thomas' *Anza* dissent, the Court should decline Petitioners' request to read requirements into Section 1964(c) that do not appear in its text.

B. The Mail and Wire Fraud Statutes Do Not Impose A Plaintiff-Reliance Requirement.

In *Neder*, the Court made clear that "the common-law requirement[] of 'justifiable reliance' . . . plainly [has] no place in the federal fraud statutes." 527 U.S.

at 24-25.[7] Despite that unequivocal pronouncement, Petitioners and their *amici* argue that the Court must read a common law reliance-by-plaintiff requirement into the mail and wire fraud statutes when they are being used as predicate acts in a civil action.[8]

Neither Petitioners nor their *amici* cite any authority suggesting that an element that has "no place" in a federal statute may nonetheless be read into that statute when it is being used as a predicate act in a civil RICO case. Congress chose statutory mail and wire fraud, and not common law fraud, as predicate acts for RICO liability – both criminal and civil. There is no basis in the RICO statutory framework to support adding additional requirements to the mail fraud statute when it is being used in the civil, rather than the criminal, context. *See Pasquantino*, 544 U.S. at 358-59 (improper to give same words in statute different meaning in two different contexts).

In any event, the case Petitioners and their *amici* make for imposing a plaintiff-reliance argument rests on a faulty premise: that the only reason mail and

---

[7] *Neder* involved interpretation of the federal mail fraud, wire fraud (18 U.S.C. § 1343) and bank fraud (18 U.S.C. § 1344) statutes. This Court has held that to the extent the mail and wire fraud statutes share the same language, it applies the same analysis to offenses under both statutes. *See Carpenter v. United States*, 484 U.S. 19, 25 n.6 (1987).

[8] As Respondents explain, Petitioners' assumption that common law fraud necessarily requires a showing of plaintiff reliance is incorrect. *See* Resp. Br. at 26-33.

wire fraud cases do not require plaintiff-reliance is because they impose criminal liability for uncompleted schemes to defraud, and a scheme to defraud must be completed and cause injury before civil liability will arise. That certainly is one difference, as the Court suggested in *Neder*. 527 U.S. at 25. But as this Court has also recognized, criminal mail fraud liability can also be imposed for completed frauds that do not involve reliance on misrepresentations made directly to the victims.

For example, in *Carpenter v. United States,* 484 U.S. 19 (1987), a *Wall Street Journal* reporter who wrote a daily column "Heard on the Street," which discussed selected stocks, was convicted of mail and wire fraud. *Id.* at 22-24. The information in the column was considered the *Journal*'s confidential information prior to its publication. *Id.* at 23, 26. The reporter devised a scheme with two brokers whereby he gave them advance information about the content and timing of the columns. *Id.* The brokers traded based on the probable impact the column would have on the market and, over a four month period, recovered net profits of about $690,000. The primary question considered by the Court was whether the confidential information was the *Journal*'s property; however, the Court also considered the further argument that the reporter's conduct did not amount to fraudulent activity proscribed by the mail fraud statute. *Id.* at 27. Even though this completed scheme to defraud did not involve direct misrepresentations to the *Journal* upon which it relied, the Court nevertheless upheld the mail and wire fraud convictions:

> [T]he words "to defraud" in the mail fraud statute have the "common understanding" of "wronging one in his property rights by dishonest methods or schemes, and usually signify the deprivation of something of value by trick, deceit, chicane or overreaching." The concept of "fraud" includes the act of embezzlement, which is "the fraudulent appropriation to one's own use of the money or goods entrusted to one's care by another."

Id. (internal citations omitted). Indeed, *amicus* Washington Legal Foundation ("WLF") concedes that embezzlement is a type of scheme to defraud even though a victim of embezzlement does not rely on the misrepresentations by an embezzler. *See* WLF Br. at 13, n.3.

Similarly, in *Schmuck v. United States*, 489 U.S. 705 (1989), defendant Schmuck was convicted of "devising and executing a scheme to defraud Wisconsin retail automobile customers," *id.* at 711, that continued successfully for fifteen years. Schmuck hired a man known only as "Fred" to turn back the odometers on used cars and then sold them to unwitting dealers, who in turn sold them to retail customers. *Id.* Schmuck and members of his operation never dealt directly with the retail customers. Any "misrepresentations" Schmuck made were directed to the unwitting used car dealers. But those dealers were neither the intended nor the actual victims of his scheme. Even though the used car dealers paid higher prices to Schmuck for the cars, they suffered no monetary loss, presumably because they in turn charged higher prices to the retail

customers. Thus, the retail customers were the intended and actual victims of Schmuck's scheme – even though he had no direct contact or relationship with those customers and those customers were unaware of Schmuck's existence. *Id.* at 707.[9] This Court affirmed Schmuck's conviction for defrauding those retail automobile customers. *Id.* at 722.

These cases illustrate what this Court held long ago in *Durland v. United States*, 161 U.S. 306, 312 (1896), that the mail fraud statute does not reach "only such cases as, at common law, would come within the definition of 'false pretences.'" Section 1341 punishes "any" scheme or artifice to defraud, even those not involving traditional reliance by the victim on a direct misrepresentation by the defendant. Thus, Petitioners' suggestion that the common law concept of reliance by the plaintiff be engrafted onto the mail fraud statute is incompatible with the statute itself, and "plainly [has] no place" there. *Neder*, 527 U.S. at 25.

---

[9] In addressing the precise question presented in *Schmuck* -- whether the mailing of title registrations by the retail customers was necessary to the execution of the scheme for the purposes of Section 1341 -- the Court acknowledged the key role of the intermediary dealers who relied on Schmuck's misrepresentations, explaining that had title not successfully passed to the retail customers it "would have jeopardized Schmuck's relationship of trust and goodwill with the retail dealers upon whose unwitting cooperation his scheme depended." *Schmuck*, 489 U.S. at 714.

II. THE *HOLMES* TEST IS MORE THAN SUFFICIENT TO ADDRESS THE POLICY CONCERNS RAISED BY PETITIONERS AND THEIR *AMICI*.

A. The *Holmes* Test Already Requires a "Direct Relationship" Between the Injury and the Alleged Fraud.

Petitioners and their *amici* argue that unless the Court modifies *Holmes* with a strict plaintiff-reliance requirement in mail and wire fraud cases, businesses will face runaway RICO liability. *See, e.g.*, Pet. Br. at 37-39; McKesson Corp. Br. at 29-35; Chamber of Commerce Br. at 21-30. But when Petitioners and their *amici* try to identify what, exactly, the reliance requirement would add to the analytical mix in order to provide this supposedly essential safeguard, they reveal that the *Holmes* test already provides it. Petitioners' key public policy argument bears this heading: "A Reliance Requirement Ensures A Direct Relationship Between The Injury And The Alleged Fraud, Preventing The Over-Federalization Of Traditional State Law Claims." Pet. Br. at 39. And *amicus* McKesson Corporation states that "[a]doption of a third-party reliance exception . . . would represent a significant retreat from this Court's decisions in *Holmes* and *Anza* [which] held that there must be 'some direct relation between the injury asserted and the injurious conduct alleged.'" McKesson Br. at 33 (quoting *Holmes*, 503 U.S. at 268; *Anza*, 126 S. Ct. at 1996).

Respondents' position involves no "retreat" whatsoever from *Holmes* and its strict requirement for

a "direct relationship between the injury and the alleged fraud." The existence of that requirement is simply not at issue. Respondents and IAIR propose only that plaintiffs be permitted to meet it, and prove the "direct relationship" between fraud and injury, using the flexible, but demanding, fact-specific criteria set forth in *Holmes*. As Justice Thomas recognized in his *Anza* dissent, while "'[r]eliance [by plaintiff] is doubtless the most obvious way in which fraud can cause harm, . . . it is not the only way.'" *Anza*, 547 U.S. at 478 (quoting *Loiselle*, 303 F.3d at 104).

B. This Case, Like Those in the Insurance Company Fraud Context, Illustrates That the *Holmes* Criteria Can Be Met in the Absence of Plaintiff-Reliance Without in Any Way Weakening *Holmes*.

Neither Petitioners nor their *amici* seriously argue that Respondents fail to satisfy the *Holmes* proximate cause test.[10] Nor do they explain why any particular injustice would result from RICO liability in these circumstances if Respondents proved their case at trial. This is unsurprising, since under the *Holmes* criteria, Respondents' injuries – like those of a typical defrauded insurance company but unlike those of the plaintiffs in *Holmes* or *Anza* – were directly caused by Petitioners' fraud.

---

[10] In fact, *amicus* Washington Legal Foundation admits that "[a]lthough Phoenix Bond has no direct relationship with Bridge, it makes out a quite plausible case that, if its allegations are proven accurate at trial, its injuries were caused by Bridge's bidding scheme." WLF Br. at 13.

1. The first *Holmes* criteria is whether it is problematic to determine damages attributable to defendant's misconduct "as distinct from other . . . factors." *Holmes*, 503 U.S. at 269. This was a major problem for the *Holmes* plaintiff, the Securities Investor Protection Corporation, suing on behalf of customers of a failed broker-dealer. The immediate cause of the customers' losses was the failure of the broker-dealer, which was, in turn, allegedly caused by defendants' misconduct. This meant that "the district court would first need to determine the extent to which [the investors'] inability to collect from the broker-dealers was the result of the alleged conspiracy to manipulate, as opposed to, say, the broker-dealers' poor business practices or their failures to anticipate developments in the financial markets." *Holmes*, 503 U.S. at 273. The *Anza* plaintiff, who alleged that a competitor defrauded state tax authorities and used the savings to lower its prices, faced the same problem:

> [Defendant] could have lowered its prices for any number of reasons unconnected to the asserted pattern of fraud. It may have received a cash inflow from some other source or concluded that the additional sales would justify a smaller profit margin. Its lowering of prices in no sense required it to defraud the state tax authority. Likewise, the fact that a company commits tax fraud does not mean the company will lower its prices; the additional cash could go anywhere from asset acquisition to research and development to dividend payouts.

Anza, 547 U.S. at 458-59 (also noting that "it would require a complex assessment to establish what

portion of [plaintiff's] lost sales were the product of [defendant's] decreased prices").

Here, by contrast, the causal chain between Petitioners' submission of improper additional bids and Respondents' loss was direct. Petitioners have not, and cannot, identify any "other factors" analogous to the complex variables present in *Holmes* or *Anza* that meaningfully affected the auction process and could have led Respondents to lose the tax liens on which they properly bid. The same would be true in the context of many insurance company frauds, as explained in Section III below, where the gatekeeping function of the regulators is the only obstacle between the wrongdoers and their misappropriation of an insurance company's assets.

2. The second *Holmes* criteria is whether the court would have to "adopt complicated rules apportioning damages among plaintiffs" with "different levels of injury" to prevent "multiple recoveries." *Holmes*, 503 U.S. at 269. This was a problem in *Holmes* because "the district court would have [had] to find some way to apportion possible respective recoveries by the broker-dealers and the customers." *Id*. at 273. There are no such "multiple recovery" concerns here because, as the Seventh Circuit explained, Respondents were "[t]he *only* injured parties" in the alleged scheme. Pet. App. at 5a (emphasizing that "Cook County did not lose even a penny" because "each winning bidder always pays all back taxes and interest," and the "property owners are indifferent to who acquires the[ir] tax lien[s]" because the penalty is at 0%). The same would be true in the insurance insolvency context because the receiver stands in the shoes of the

insolvent insurance company, suing to recover funds stolen directly from its coffers. As explained in Section III below, other, derivatively injured parties, such as policyholders and creditors, generally cannot sue the wrongdoers and instead must file claims in the receivership or liquidation court, where the proceeds of the receivers' recoveries are distributed. And like Cook County in this case, state insurance regulators who received and relied on the wrongdoers' false statements have no monetary loss to recover in a RICO or any other civil action. The state insurance commissioner acting as receiver has the sole ability to act on behalf of the insolvent insurance company, which is the only entity with a direct financial injury from a looting scheme.

3. The third *Holmes* criteria is whether the most "directly injured victims" can "vindicate the law as private attorneys general, without any of the problems attendant upon suits by plaintiffs injured more remotely." *Holmes*, 503 U.S. at 269-70. This criteria cut against the *Holmes* plaintiff because "those directly injured, the broker-dealers, could be counted on to bring suit for the law's vindication" and had, in fact, sued in that case through their trustees. *Id*. at 273. For the same reasons just stated, there is no one else with a financial incentive to "vindicate the law as private attorneys general" in this case, and no one even capable of doing so in the insurance insolvency context. The fact that law enforcement authorities could criminally prosecute RICO violators is immaterial to this factor. That would be true in nearly every RICO case, and *Holmes* explicitly focuses on enforcement by "private attorneys general," not the State. *Id*. at 269-70.

In short, cases like this one and those in the insurance insolvency context show that the *Holmes* proximate cause test is perfectly capable of sorting plaintiffs with direct injuries from those without them. A plaintiff-reliance requirement would be a pointless deviation from *Holmes*, and one that finds no support in the mail fraud statute or Section 1964(c).

III. IMPOSING A PLAINTIFF-RELIANCE REQUIREMENT WOULD UNDERMINE THE ABILITY OF INSURANCE RECEIVERS TO RECOVER ASSETS OF INSURANCE COMPANIES MISAPPROPRIATED THROUGH FRAUDULENT SCHEMES AND UNDULY HARM INSOLVENT INSURANCE COMPANIES AND THEIR POLICYHOLDERS AND CREDITORS.

Insurance companies are attractive targets of fraud because they are repositories of huge sums of money derived from policyholders' premium dollars. For this reason, the primary goal of insurance regulation is to protect policyholders so their premium dollars will be available to pay claims when they come due. Consequently, states require that any change of control for an insurance company be approved by insurance regulators in the state in which the company is domiciled. The change of control or "Form A" process generally requires that the proposed acquiring party disclose information about, among other things, the method of acquisition, the identity and background of the ultimate controlling party and associated persons, the nature, source and amount of consideration to be paid for the acquisition, and the

future plans for the insurance company. *See, e.g.,* Ark. Code Ann. § 23-63-508 (2008); 215 Ill. Comp. Stat. § 5/131.5 (2008); Iowa Code § 521A.3 (2008); La. Rev. Stat. Ann. § 22:1004 (2008); Minn. Stat. § 60D.17 (2007); Mo. Rev. Stat. § 382.050 (2007). It is typically a criminal offense willfully or knowingly to make false statements in connection with a Form A application. *See, e.g.,* Ark. Code Ann. § 23-63-522 (2008); 215 Ill. Comp. Stat. § 5/131.24 (2008); Minn. Stat. § 60D.09 (2007); Mo. Rev. Stat. § 382.275 (2007).

After acquisition, insurance regulators continue to monitor a company's activities to assure that it does not become a victim of fraud. For example, state insurance codes require that each insurance company domiciled in that state file an Annual Statement disclosing financial information relating to the insurance company, including information relating to investments. *See, e.g.,* 215 Ill. Comp. Stat. § 5/136 (2008); Minn. Stat. § 60A.13 (2007); Miss. Code Ann. § 83-5-55 (2008); Mo. Rev. Stat. § 375.041 (2007); R.I. Gen. Laws § 27-12-1 (2007); Tenn. Code Ann. § 56-1-501 (2008). It is also a criminal offense for an insurance company director to subscribe to an Annual Statement knowing it to contain any material false statement. *See, e.g.,* 215 Ill. Comp. Stat. § 5/139 (2008); Miss. Code Ann. § 83-5-69 (2008); Mo. Rev. Stat. § 374.216 (2007); Tenn. Code Ann. § 56-1-503 (2008).

Thus, in order to misappropriate insurance company assets, a crook must necessarily get past the insurance regulator gatekeepers by either filing false and misleading Form A applications concealing the real controlling party or source of the funds for the

acquisition, or by filing annual statements that include false and misleading statements about the nature and quality of the company's investments and assets.[11] In

---

[11] For example, Charles Christopher and Wayne Reeder wanted to buy two insurance companies. They represented to the regulators that if the regulators approved the purchases, they would strengthen the financial condition of the companies by contributing valuable real estate, owned by Reeder, to the companies. They promised the regulators that by the time the purchases were approved all existing liens on the property would be paid in full. But Christopher and Reeder broke their promise. When the regulators approved the purchases, the liens had not been paid – a fact that was hidden from the regulators. Within weeks of obtaining control of the insurance companies, Christopher and Reeder diverted approximately $40 million of insurance company money to their own accounts, using the funds to clear the liens and pay off other personal and business debts. Both companies failed, of course, unable to recover from the looting. Christopher and Reeder were both convicted of wire fraud. *United States v. Christopher*, 142 F.3d 46, 47 (1st Cir. 1998) and *United States v. Reeder*, 170 F.3d 93, 97 (1st Cir. 1999).

Similarly, Lawrence Neadle gave false financial information to regulators in order to obtain approval to operate a property and casualty insurer in the Virgin Islands. This misconduct was discovered after the insurer's policyholders suffered more than $37 million of losses in a hurricane, none of which the insurer could pay. Neadle pleaded guilty to mail fraud. *United States v. Neadle*, 72 F.3d 1104 (3d Cir. 1995).

In one of the most costly insurance company frauds in history, Martin Frankel and others created an entity called the Thunor Trust to conceal Frankel's acquisition of seven insurance companies in five states. Immediately upon acquisition of each of the companies, Frankel liquidated their assets and transferred them to his control at a Swiss bank account. He concealed his ongoing fraud by filing false annual statements with insurance regulators in multiple states. Over the course of the ten years

those circumstances where wrongdoers succeed in misappropriating an insurance company's assets through fraud on the regulators, and such misappropriation results in the company's insolvency, the state's insurance commissioner becomes the court-appointed receiver. *See, e.g.,* Ga. Code Ann. § 33-37-17 (2007); Minn. Stat. § 60B.21 (2007); Ohio Rev. Code Ann. § 3903.18 (2008); R.I. Gen. Laws § 27-14.3-22 (2007). Such receivers are directed by their respective receivership courts to administer the affairs of the insolvent insurance company. To this end, the corporate authority of the insolvent company is placed in the hands of the receiver, and title to all assets and causes of action is vested by operation of law in the receiver. *See, e.g.,* Ga. Code. Ann. § 33-37-20 (2007); Minn. Stat. § 60B.25 (2007); Ohio Rev. Code Ann. § 3903.21 (2008); R.I. Gen. Laws § 27-14.3-25 (2007). Receivers locate, marshal and take into possession all assets of the insolvent company and are vested by operation of law with the authority to prosecute any action which may exist on the company's behalf, as well as on behalf of its creditors, policyholders, and shareholders, against any culpable parties. *See, e.g.,* Ga. Code. Ann. § 33-37-20 (2007); Minn. Stat. § 60B.25 (2007); Ohio Rev. Code Ann. § 3903.21 (2008); R.I. Gen. Laws § 27-14.3-25 (2007). Creditors and policyholders who have claims against those assets must bring them in the receivership court, where any

---

that Frankel's scheme continued, he looted over $200 million dollars of the insurance companies' assets. Frankel pleaded guilty to twenty counts of wire fraud, one violation of RICO § 1962(c), and RICO conspiracy in violation of 18 U.S.C. § 1962(d) in *United States v. Martin R. Frankel, et al.*, No. 3:99-CR-235 (D. Conn.).

recovered assets are then distributed. *See, e.g.,* Ga. Code. Ann. §§ 33-37-21, 33-37-41 (2007); Minn. Stat. §§ 60B.26, 60B.44 (2007); Ohio Rev. Code Ann. §§ 3903.22, 3903.42 (2008); R.I. Gen. Laws §§ 27-14.3-26, 27-14.3-46 (2007).

RICO has been a vital tool for receivers of insurance companies victimized by fraudulent schemes, and, under the receivership and liquidation process, those benefits have inured to creditors and policyholders (as well as taxpayers, who fund the state guaranty funds).[12] RICO claims are not subject to complex and uneven state laws regarding contribution and joint tortfeasor liability. RICO also allows for nationwide service of process and has liberal venue requirements, both of which are essential in complex, multi-state schemes. *See* 18 U.S.C. § 1965(b). RICO has a reasonable, predictable limitations provision, *see Agency Holding Corp. v. Malley-Duff & Assocs., Inc.*, 483 U.S. 143, 156 (1987) (borrowing four year statute of limitations from Clayton Act for RICO civil actions), while state law actions are subject to myriad local statutes of limitations.

---

[12] The Receiver of American Universal and Canadian Universal Insurance Companies, which were looted by Charles Christopher and Wayne Reeder, brought a RICO action in the District of Rhode Island against the looters and those who helped them obtain control of the companies. *See Marques v. Sequa Corp., et al.*, No. 92-512L, (D. R.I.). The Receivers of the seven insurance companies victimized by the Martin Frankel fraud have brought a RICO action in the Southern District of Mississippi against Frankel and his co-conspirators. *See Chaney, et al. v. ALA Acquisitions I, Inc., et al.,* No. 3:00CV359LN (S.D. Miss.).

Barring RICO claims with mail and wire fraud predicates based on deception of state insurance regulators would seriously hamper receivers' ability to obtain these benefits from RICO. It would thereby leave many receivers unable to seek civil RICO remedies that Congress permitted in Section 1964(c) from wrongdoers who indisputably violated RICO and are subject to criminal RICO and mail or wire fraud liability. In cases where the wrongdoers have been found criminally liable, RICO's treble damage provision is an especially powerful weapon to facilitate timely settlements for the benefit of victimized policyholders and creditors. *See* 18 U.S.C. § 1964(c). The position Petitioners advance concerning RICO would leave rampant deception of state insurance regulators largely unpunished by civil remedies, particularly if receivers also could not, as Petitioners argue, bring common law fraud claims based on such deception.

CONCLUSION

The judgment of the court of appeals should be affirmed.

C. PHILIP CURLEY
Counsel of Record
CYNTHIA H. HYNDMAN
ROBERT S. MICHAELS
ROBINSON CURLEY & CLAYTON, P.C.
300 S. Wacker Drive
Suite 1700
Chicago, Illinois 60606

Counsel for Amicus International Association of Insurance Receivers

March 18, 2008