

2nd Circ. Revives Trucker's RICO Case Against CBD Cos.

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Law360 (August 21, 2023, 5:19 PM EDT) -- The Second Circuit on Monday revived a racketeering suit against three CBD companies brought by a former commercial truck driver who alleged he lost his job after consuming products containing detectable amounts of THC.

A unanimous three-judge panel ruled that a district court erred when it determined plaintiff Douglas J. Horn did not have standing to bring a RICO action, finding while the statute does not provide for personal injury lawsuits, Horn had pled injuries to his "business or property."

The panel rejected the argument put forth by the defendant companies — Medical Marijuana Inc., Dixie Holdings LLC and Red [Dice Holdings](#), which produce and sell cannabidiol, or CBD, products — that Horn's alleged injuries were personal in nature and therefore outside the scope of the Racketeer Influenced and Corrupt Organizations Act.

Circuit Judge Gerard Lynch wrote for the panel, stating that nothing in the text or history of the law "supports an amorphous RICO standing rule that bars plaintiffs from suing simply because their otherwise recoverable economic losses happen to have been connected to or flowed from a non-recoverable personal injury."

Horn first brought his lawsuit in New York federal court in 2015, alleging he purchased the companies' hemp-derived CBD products that were marketed with the assertion they did not contain THC, the primary psychoactive component in marijuana.

Horn alleged he lost his job as well as insurance and pension benefits following a positive drug test, and that the purportedly mislabeled products were responsible for his loss of earnings. Before the case was set to go to trial, the federal district court granted summary judgment in January 2022 in favor of the CBD companies on Horn's RICO claim.

In overturning that decision, the circuit panel wrote that RICO's provisions touching on civil actions allow plaintiffs to sue for injuries to businesses or property, and that "business" in this context could be applied to mean Horn's employment.

"His suit is premised on his long-time employer terminating his employment as a commercial truck driver, for which he had 29 years' total experience, because he tested positive for THC," the court said. "That termination cost him current and future wages and his insurance and pension benefits — all of which were tied to his employment."

Jeffrey Benjamin, an attorney for Horn, told Law360 on Monday, "We're really glad the appeals court saw it our way, and we can go to trial on RICO."

Counsel for the CBD companies did not immediately respond to a request for comment on Monday.

The appeal was heard by Circuit Judges Gerard E. Lynch, John M. Walker Jr. and Beth Robinson of the Second Circuit.

Horn is represented by Jeffrey M. Benjamin of The Linden Law Group PC.

Medical Marijuana and Red Dice Holdings are represented by Roy A. Mura and Scott D. Mancuso of Mura Law

Group.

The case is Horn v. Medical Marijuana Inc. et al., case number 22-0349, in the [U.S. Court of Appeals for the Second Circuit](#).

--Editing by Philip Shea.

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Case Information

Case Title

[Horn v. Medical Marijuana, Inc.](#)

Case Number

[22-349](#)

Court

Appellate - 2nd Circuit