IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CLIFTON E. JACKSON, *et al.*,	)	
Plaintiffs-Appellants,	)	No. 10-1453
v.	)	
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., *et al.*,	)	
Defendants-Appellees.	)	

MOTION OF AMERICAN INSURANCE ASSOCIATION, NATIONAL COUNCIL OF SELF-INSURERS, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, AND AMERICAN TRUCKING ASSOCIATIONS FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE*

The American Insurance Association, National Council of Self-Insurers, Chamber of Commerce of the United States of America, and American Trucking Associations move for leave to file the proposed Brief of *Amici Curiae* that accompanies this motion. Counsel for all parties have consented to its filing.

Amicus curiae the American Insurance Association ("AIA") is a leading national trade association representing some 300 property and casualty insurance companies that write a major share of property and casualty insurance, including workers' compensation insurance, throughout the United States and in Michigan.

In 2010, AIA members collectively underwrote more than $100 billion in direct, nationwide property and casualty premiums, including nearly $180 million in Michigan workers' compensation premiums – 22.3 percent of the total workers' compensation insurance market in the State. On issues of importance to the property and casualty insurance industry and marketplace, AIA advocates sound and progressive public policies on behalf of its members in legislative and regulatory forums at the federal and state levels and files *amicus curiae* briefs in significant cases before federal and state courts. AIA members have a significant interest in the stability of the Michigan workers' compensation system and, therefore, in the principal issues presented in this case: (1) whether a claim for workers' compensation arising out of a personal injury constitutes "property" within the meaning of the Racketeer Influenced and Corrupt Organizations Act ("RICO"); and (2) whether the exclusive remedy and exclusive jurisdiction provisions of state workers' compensation laws protect them against treble damage actions under RICO that challenge their handling of injured workers' claims for benefits.

The National Council of Self-Insurers ("National Council") is a national association of employers that elect to self-insure their obligation to pay workers' compensation benefits rather than purchase insurance. Self-insurers have the same interest as insurers in the integrity of the exclusive remedy and exclusive

jurisdiction provisions in state workers' compensation law, as well as in the unavailability of RICO for personal injury claims, both of which protect them against claims for compensatory or punitive damages outside the workers' compensation system.

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. It represents 300,000 direct members and indirectly represents an underlying membership of three million professional organizations of every size, in every industry sector, and from every region of the country. A core function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus* briefs in cases that raise issues of vital concern to the nation's business community. The Chamber's members have the same substantial interest in the outcome of this litigation as do the members of the AIA and the National Council.

American Trucking Associations, Inc. ("ATA") is the national association of the trucking industry. Its direct membership includes approximately 2,000 trucking companies and, in conjunction with 50 affiliated state trucking organizations, it represents over 30,000 motor carriers. The motor carriers represented by ATA haul a significant portion of the freight transported by truck in

the United States. ATA regularly represents the common interests of the trucking industry in courts throughout the nation.

AIA, the National Council, the Chamber, and ATA all represent employers or insurers who handle and pay workers' compensation claims. In return for imposing no fault liability on employers and insurers, state workers' compensation laws cap the amount of benefits paid to injured workers based on lost wages and the reasonable costs of medical treatment. The exclusive remedy and exclusive jurisdiction provisions in these laws preclude recovery of greater amounts of damages outside of the administrative system of regulation.

Plaintiffs in this case seek to circumvent these limitations by asserting treble-damages claims under RICO for Defendants' handling of claims. The outcome of this appeal will affect the interests of *amici curiae* in preserving the stable and efficient operation of workers' compensation schemes. In addition, members of the *amici* organizations are or may become defendants in other RICO suits alleging similar claims. The decision in the *en banc* rehearing of this appeal may have significant precedential impact not only in Michigan but in other jurisdictions as well. These interests favor the filing of a brief. *See Pinney Dock and Transport Co. v. Penn Cent. Corp*., 838 F.2d 1445, 1454 n. 11 (6th Cir. 1988). *Amici* previously filed briefs in the proceedings before the three-judge panel in this

case, as well as in *Brown v. Cassens Transport Co.*, 675 F.3d 946 (6th Cir. 2012), which presented many of the same issues as here.

Amici's brief may assist the Court in resolving this appeal in several respects. First, many members of the *amici* organizations are large employers or large underwriters of workers' compensation insurance that have much experience handling workers' compensation claims. This experience enables *amici* to describe the practical impact on the functioning of the workers' compensation system of subjecting employers and insurers to RICO claims for damages far in excess of those permitted under state law. Second, *amici's* experience enables them to explain why application of RICO would impair the effective functioning of state laws that have been in place for more than a century and federalize an area that long has been the exclusive responsibility of the States.

Third, this appeal presents complex questions involving the intersection of state workers' compensation law and federal RICO law. The attached brief brings relevant authority in this circuit and others to the attention of the court. In particular, the proposed brief cites authority holding that plaintiffs' claims are not for injury to business or property within the meaning of RICO and that the exclusive jurisdiction doctrine bars RICO suits that challenge conduct within the exclusive jurisdiction of a state administrative agency.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that on April 22, 2013, I served the Motion of American Insurance Association, National Council of Self-Insurers, Chamber of Commerce of the United States of America, and American Trucking Associations for Leave to File Brief of *Amici Curiae* by electronic case filing on the following:

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No. 10-1453

United States Court of Appeals

for the Sixth Circuit

CLIFTON E. JACKSON and CHRISTOPHER M. SCHARNITZKE,

Plaintiffs-Appellants,

- v. -

SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., COCA COLA ENTERPRISES, INC., and DR. PAUL DROUILLARD,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

BRIEF OF *AMICI CURIAE* THE AMERICAN INSURANCE ASSOCIATION, NATIONAL COUNCIL OF SELF-INSURERS, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND AMERICAN TRUCKING ASSOCIATIONS IN SUPPORT OF DEFENDANTS-APPELLEES AND AFFIRMANCE OF THE DECISION BELOW

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 10-1453 Case Name: Jackson v. Sedgwick Claims Mgmt

Name of counsel: Mark F. Horning

Pursuant to 6th Cir. R. 26.1, American Insurance Association
Name of Party
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No

CERTIFICATE OF SERVICE

I certify that on April 22, 2013 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Mark F. Horning

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 10-1453 Case Name: Jackson v. Sedgwick Claims Mgmt

Name of counsel: Mark F. Horning

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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Name of counsel: Mark F. Horning

Pursuant to 6th Cir. R. 26.1, Chamber of Commerce of the United States of America
Name of Party
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1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 10-1453 Case Name: Jackson v. Sedgwick Claims Mgmt

Name of counsel: Mark F. Horning

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s/ Mark F. Horning

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INTRODUCTION AND SUMMARY OF ARGUMENT

The panel's decision, *Jackson v. Sedgwick Claims Management Services, Inc.*, 699 F.3d 466 (6th Cir. 2012), relied upon *Brown v. Cassens Transport Co.*, 675 F.3d 946 (6th Cir. 2012) ("*Cassens*"), to hold that: (1) plaintiffs had standing to sue because their claims for compensation for workplace injuries under Michigan's workers' compensation law constituted "property" within the meaning of the Racketeer Influenced and Corrupt Organizations Act ("RICO"); and (2) the exclusive remedy and exclusive jurisdiction provisions of the Michigan law did not bar RICO claims. Both holdings should be reversed.

First, RICO's text excludes personal injuries from the statute's ambit. Although *Cassens* acknowledged that RICO does not permit suits for personal injury, it characterized statutory compensation for workplace injuries as an "expectancy of a statutory entitlement" and a claim for such compensation as a property interest separate from that expectancy. Neither ruling is correct.

Michigan law makes clear that compensation is available to the claimant only upon proof of a "personal injury" occurring in the workplace; that the employer can dispute the claim; and that a disputed claim is subject to adjudication by a workers' compensation judge. Thus, workers' compensation is no more an entitlement than was recovery under the tort law governing workplace injuries that predated enactment of the statutory compensation scheme. Nor is a claim for

statutory compensation a property interest separate from the personal injury that is the subject of the claim; the claim is simply the statutorily-required procedure by which the injured worker seeks to prove a personal injury eligible for compensation.

Second, even if plaintiffs could assert a property interest under RICO, their claims are barred by the exclusive jurisdiction doctrine. As other circuit courts have found, state law obligations subject to state exclusive jurisdiction provisions cannot form the basis of a RICO suit. Here, allowing RICO to override the exclusive remedy provisions of Michigan's workers' compensation laws would undermine the workers' compensation system, to the detriment of both employers and employees.

INTEREST OF THE *AMICI* AND AUTHORTHIP STATEMENT

As described more fully in the accompanying motion for leave, *amici curiae* are leading national trade associations that represent employers and insurers who have a stake in the stable and efficient functioning of the workers' compensation system.

No party or its counsel authored this brief or contributed money that was intended to fund this brief. No person, other than *amici* and their members, contributed money that was intended to fund this brief.

ARGUMENT

I. WORKERS' COMPENSATION CLAIMS ARE NOT ENTITLEMENTS CONSTITUTING PROPERTY BECAUSE STATE LAW ALLOWS COMPENSATION ONLY UPON PROOF OF A QUALIFYING PERSONAL INJURY

RICO provides recovery for "[a]ny person injured in his business or property." 18 U.S.C. § 1964(c). RICO does not permit recovery for personal injuries. *Fleischhauer v. Feltner*, 879 F.2d 1290, 1300 (6th Cir. 1989); *Evans v. City of Chicago*, 434 F.3d 916, 930-31 (7th Cir. 2006). While acknowledging that physical injury caused by a workplace accident is a quintessential form of personal injury, the majority in *Cassens* nevertheless held that plaintiffs' claims were not for personal injury either because Michigan's workers' compensation law created "a property interest in the expectancy of statutory benefits" or because a claim for compensation was a type of property separate from the statutory compensation. *Cassens*, 675 F.3d at 958. Neither proposition is correct.

Michigan workers' entitlement to compensation cannot be considered property because it is neither automatic nor based on ministerial criteria that are not subject to dispute or adjudication. Compensation is conditioned upon the claimant's proof of a "personal injury" that the employer or insurer can dispute and is subject to adjudication by administrative law judges.

"Personal injury" is a predicate for compensation under the Michigan Workers' Disability Compensation Act ("WDCA"). *See, e.g.*, MCL §§ 418.131,

418.301. Compensation is available only if the employee proves a ***type*** of personal injury covered by the act. "A personal injury under this act is compensable if work causes, contributes to, or aggravates pathology . . . ." MCL § 418.301(1). Even then, the personal injury must meet other criteria, for example that it limit the employee's wage earning capacity. MCL § 418.301(4).

To characterize statutory compensation for workplace injuries as a species of property, the majority in *Cassens* relied heavily on due process cases that considered whether a plaintiff's entitlement to statutory benefits was sufficiently certain that it gave rise to a constitutionally-protected property interest. *See Cassens*, 675 F.3d at 962-63. Even under these cases, workers' compensation is not so certain that it creates a property interest for the reasons above.

More important, when enacting RICO, Congress adopted a definition of property that is narrower than the due process standard. RICO takes the term "business or property" from the Clayton Act because RICO was intended to allow recovery of damages only for conduct causing economic injury to businesses or consumers of the sort that might give rise to an antitrust claim. *See, e.g.*, *Agency Holding Corp. v. Malley-Duff & Associates, Inc.*, 483 U.S. 143, 150-52 (1987); *Grogan v. Platt*, 835 F.2d 844, 846 (11th Cir. 1988). That excludes economic loss resulting from a personal injury as opposed to a loss of revenues or diminution of the value of a business or of real or intangible property.

There is no basis for characterizing a "claim" for workers' compensation as a type of property that is distinguishable from the statutory compensation itself. A claimant can seek compensation only for a personal injury and not for any other type of economic loss. Thus, other circuits have held that RICO does not apply to pecuniary losses flowing from a personal injury. *See Evans v. City of Chicago*, 434 F.3d 916, 926 (7th Cir. 2006); *Grogan v. Platt*, 835 F.2d at 847.

II. STATE LAW OBLIGATIONS SUBJECT TO STATE EXCLUSIVE REMDY AND EXCLUSIVE JURISDICTION PROVISIONS CANNOT FORM THE BASIS FOR A RICO SUIT

A. Allowing Plaintiffs to Invoke RICO in These Circumstances Would Undermine Michigan's System for Workers' Compensation

Like all fifty states, Michigan long ago enacted a workers' compensation system that guarantees injured workers no-fault compensation for lost wages and medical treatment while relieving them of the delays and vicissitudes of litigation. The system keeps costs reasonable by limiting recovery of non-economic and punitive damages, by relieving employers from the possibility of mammoth jury awards, and by directing the parties to a streamlined administrative process that minimizes the transactional costs of litigation.

The exclusive remedy and exclusive jurisdiction provisions of workers' compensation laws are critical to preserving the system's efficiencies and the balance between the interests of employees and employers. "The history of the

development of statutes, such as this, creating a compensable right independent of the employer's negligence and notwithstanding an employee's contributory negligence, recalls that the keystone was the exclusiveness of the remedy." *Balcer v. Leonard Refineries, Inc.*, 122 N.W.2d 805, 807 (Mich. 1963), *quoted in Hesse v. Ashland Oil, Inc.*, 642 N.W.2d 330, 334 (Mich. 2002) (italics omitted). With the exception of injuries intentionally inflicted by the employer, the exclusive remedy provision prevents employees from recovering damages from employers for workplace accidents under other theories, whether based on common law or statute. *See, e.g., Wells v. Firestone Tire & Rubber Co.*, 364 N.W.2d 670 (Mich. 1984); *Adams v. Nat'l Bank of Detroit*, 508 N.W.2d 464 (Mich. 1993).

The exclusive remedy is administered by a dedicated state agency given exclusive jurisdiction over disputes regarding compensation. The Michigan Bureau of Workers' Compensation operates a streamlined administrative process that avoids the costs and burdens of protracted litigation. Proceedings are "administrative, not judicial, – inquisitorial, not contentious, – disposed of, not by litigation and ultimate judgment, but summarily." *Hebert v. Ford Motor Co.*, 281 N.W. 374, 375 (Mich. 1938). That generates the cost savings that are a primary benefit of the workers' compensation regime.

Allowing injured workers to use RICO to challenge the handling of their state law compensation claims would undermine the exclusivity of these state

schemes and thereby compromise their effectiveness. Litigating compensation disputes under RICO would expand the scope of litigation and the available damages far beyond that permitted by the WDCA. RICO damages are not limited to the compensation specified in the WDCA and they may include consequential damages exceeding lost wages and the cost of treatment. RICO also permits trebling of damages – essentially, a form of punitive damages. That too is at odds with the WDCA. *See* MCL §§ 418.301 *et seq*. The objective of workers' compensation systems is not punishment or deterrence but compensation of injured workers for lost wages and provision of the medical treatment required for their recovery and return to work. Meanwhile, RICO suits will involve intensive discovery and extensive motions practice not permitted in administrative hearings.

Between them, tort-style litigation and punitive damages will create great uncertainty for employers and insurers, which it is a major purpose of the WDCA to avoid. No longer will employers be subject to "a definite and exclusive liability" that is an "actuarially measure[able] and accurately predict[able]" "cost of operation" that allows them to "realize[] a saving" on the "costs of litigation." *Hesse*, 642 N.W.2d at 334 (*quoting Balcer*, 122 N.W.2d at 805).

Further, the threat of RICO liability will undermine the independence and objectivity of physicians conducting medical examinations of injured workers and deter claims handlers from refusing compensation for fraudulent claims by making

every claims management decision the potential subject of treble damages litigation. A major goal of the workers' compensation system is to encourage workers to return to work, but the possibility of recovering treble damages may deter workers from doing so. And the threat of treble damages will cause employers and insurers to consult counsel at every stage of the claims-handling process out of fear of liability for any decision that a claimant and his counsel may choose to contest. That will shift the focus of claims handling from managing disability to preventing legal liability and, in the process, frustrate the system's rehabilitative goals while increasing its costs.

Meanwhile, application of RICO will permit workers' compensation claimants to evade scrutiny by the agency with the greatest expertise on medical questions and subject disputes over compensation to a set of federal legal standards inconsistent with those in the WDCA. There is nothing analogous to the concept of an "enterprise" or a "pattern of racketeering activity" in the Michigan law. And the federal standards for proving "wire fraud" or "mail fraud" as "predicate acts" are quite different than the standards in the WDCA for proving fraud or other misconduct in the handling of claims. The result will be a duplicative system of federal review of medical findings rife with the potential for inconsistent decisions.

Ultimately, RICO suits will end with the usurpation of state administrative, adjudicatory and enforcement functions. In this case, plaintiffs contend that the

examining physician gave fraudulent medical opinions concerning their injuries in order to deny or terminate benefits. A federal judge or jury thus will be asked to second guess the state administrators' assessment of those medical examinations.

Plaintiffs also seek injunctive relief that will control defendants' use of physicians, require them to keep various records, and order them to comply with the WDCA. Under Michigan law, however, enforcement of the WDCA is exclusively the function of the Bureau, subject to state court review. The requested injunctive relief thus shows how RICO litigation would transform federal district courts into co-administrators of state compensation schemes. That would be an unprecedented federal intrusion into a traditional area of state responsibility.

B. RICO Suits Cannot be Predicated upon a Violation of State Law That is Subject to an Exclusive State Administrative Procedure

Cassens held that the Supremacy Clause prevents state exclusivity provisions from limiting the scope of RICO. *See* 675 F.3d at 953-55. However, the Supremacy Clause is not at issue in this case because there is no conflict between RICO and state workers' compensation laws. RICO does not apply to plaintiffs' claims because, as a matter of federal law, state law obligations subject to state exclusive jurisdiction provisions cannot form the basis for a RICO suit.

Principles of federalism counsel interpretation of federal laws in a manner that does not intrude on sovereign state functions absent explicit statutory language

to the contrary. *See Gregory v. Ashcroft*, 501 U.S. 452 (1991) (interpreting federal age discrimination act to exclude state judges); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947) (setting forth the "assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress").

Because RICO contains no express language overriding state laws, RICO should not be interpreted to permit claims where the predicate is a violation of a state law that is subject to an exclusive state administrative procedure. Plaintiffs here base their RICO claims on defendants' alleged violation of compensation and claims handling duties created by the WDCA – specifically, fraud in conducting and reporting medical examinations. However, the state law that creates those duties provides that violations are cognizable only within the exclusive jurisdiction of the Bureau. As the Eleventh Circuit has explained in the context of Florida's exclusive compensation law system, "Were it not for the alleged conduct required of defendant by Florida, there would be no ground for asserting civil rights or constitutional claims because of wrongful conduct. The remedy for that wrongful conduct cannot rise above the exclusive remedy provided by the Florida statutes." *Connolly v. Maryland Cas. Co.*, 849 F.2d 525, 528 (11th Cir. 1988).

Alleged state law misconduct entrusted to the exclusive jurisdiction of a state workers' compensation agency cannot be the basis for a federal claim. *See*,

e.g., *Prine v. Chailland Inc.*, 402 F. App'x 469, 470-71 (11th Cir. 2010). More generally, other circuit courts have refused to permit the use of RICO to litigate disputes that are entrusted to the exclusive jurisdiction of a state regulatory agency. *See Wah Chang v. Duke Energy Trading & Mktg., LLC*, 507 F.3d 1222, 1226 n.4 (9th Cir. 2007); *Sun City Taxpayers' Ass'n v. Citizens Utils. Co.*, 45 F.3d 58, 62 (2d Cir. 1995); *Wegoland Ltd. v. NYNEX Corp.*, 27 F.3d 17, 18-22 (2d Cir. 1994); *H.J., Inc. v. Nw. Bell Tel. Co.*, 954 F.2d 485, 494 (8th Cir. 1992); *Taffet v. Southern Co.*, 967 F.2d 1483, 1490-95 (11th Cir. 1992) (en banc).

Plaintiffs argue that RICO claims should be permitted because the Michigan compensation law does not provide for compensation for pain or suffering. Supp. Br. at 12. But that is exactly why allowing RICO claims would be so disruptive – the Michigan legislature chose to eliminate those elements of compensation when striking a balance that would afford employees more certain compensation while protecting employers against outsize damages awards.

Plaintiffs also contend that allowing RICO suits directed at claims handling would "repair [the workers' compensation system] by deterring fraud which corrupts the system . . . ." Supp. Br. at 23. Yet, Michigan's workers' compensation law itself provides remedies for fraud as part of the state agency's exclusive jurisdiction. Allegations of fraud can be presented to the magistrate, reviewed by the Workers' Compensation Appellate Commission, and appealed to

the Michigan Court of Appeals. Fraud nullifies the presumption that the Bureau's findings of fact were correct. MCL § 418.861a(14). In addition, the administrative scheme prescribes fines and other sanctions for employers and insurers that do not comply with their statutory claims-handling obligations. *See* MCL §§ 418.611(5), 418.631, 418.801(2), 418.351(1), 418.8616(a); 418.801(2).

The Bureau's exclusive jurisdiction extends broadly to "[a]ny dispute or controversy concerning compensation or other benefits." MCL § 418.841(1). As the Michigan Court of Appeals has explained, "the resolution of all disputes relating to workmen's compensation is vested exclusively in the Workmen's Compensation Bureau." *St. Paul Fire & Marine Ins. Co. v. Littky*, 230 N.W.2d 440, 442 (Mich. Ct. App. 1975); *see also Dixon v. Sype*, 284 N.W.2d 514, 516 (Mich. Ct. App. 1979) (Bureau's "[j]urisdiction is not limited to claims for compensation."). Thus, the Bureau is the exclusive forum in which to bring claims involving denial or termination of benefits such as alleged in this case. *See Lisecki v. Taco Bell Rests., Inc.*, 389 N.W.2d 173, 175 (Mich. Ct. App. 1986).

CONCLUSION

For the foregoing reasons, the District Court's judgment should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 32(A)

This brief complies with the length limitation of Fed. R. App. P. 29 because, excluding the parts exempted by Fed. R. App. P. 32(a)(7)(B)(iii), this brief contains no more than one-half the maximum length (25 pages) for Defendants-Appellees' supplemental brief as set forth in the Court's January 18, 2013 Order.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 14 point.

/s/
Mark F. Horning

CERTIFICATE OF SERVICE

I certify that on April 22, 2013, I served the Brief of *Amici Curiae* the American Insurance Association, National Council of Self-Insurers, Chamber of Commerce of the United States of America, and American Trucking Associations in Support of Defendants-Appellees by electronic case filing on the following:

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