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AT WHAT COST? ANALYZING THE STANDING ELEMENT OF
THE RACKETEER INFLUENCED AND CORRUPTION
ORGANIZATIONS ACT (RICO) IN
RESPONSE TO *EVANS V. ARIZONA*
CARDINALS FOOTBALL CLUB

I. INTRODUCTION

Today, society is constantly adding to its body of knowledge about the long-term effects of injuries resulting from professional sports.¹ While the standard response to player complaints pertaining to injuries has always been “[they] knew the risk of playing a sport”, a multitude of recent cases grappled with the idea of whether a player can truly assume a risk, especially if the full extent of that risk is unknown.² Carving a pathway in the area of player settlements, the groundbreaking National Football League (“NFL”) concussion litigation and settlement allowed former players the right to recover based on past actions with present-day effects.³ Af-

1. See Play Smart Play Safe, *2017 Injury Data*, NFL <https://www.playsmartplay.com/newsroom/reports/2017-injury-data/> [<https://perma.cc/36CV-9JRX>] (last visited Jan. 28, 2020) (showing increase in many injuries during practices and games); see also Margot Putukian, *Mind, Body and Sport: How Beings Injured Affects Mental Health*, NCAA, <http://www.ncaa.org/sport-science-institute/mind-body-and-sport-how-being-injured-affects-mental-health> [<https://perma.cc/Q7XT-3ANL>] (last visited Jan. 28, 2020) (detailing new developments surrounding how depression plagues injured athletes and prolongs recovery); see generally Michael Powell, *Mounds of Injury Data Can't Bury Brutality of the NFL*, N.Y. TIMES (Jan. 26, 2017), <https://www.nytimes.com/2017/01/26/sports/nfl-injuries-report.html> [<https://perma.cc/M7V6-3Y59>] (“But the bottom line does not change: We can pile protocol atop protocol and drop a moonshot’s worth of dough on studies, but at its core, football remains an inherently brutal and dangerous sport.”).

2. See *Muchhala v. U.S.*, 532 F. Supp. 2d 1215, 1228 (E.D. Cal. 2007) (“In general, the doctrine [of primary assumption of the risk] applies to activities or sports where ‘conditions or conduct that otherwise might be viewed as dangerous often are an integral part of the sport itself.’” (quoting *Saville v. Sierra College*, 133 Cal. App. 4th 857, 866 (2005))); see also *In re Nat’l Football League Players Concussion Litig.*, 821 F.3d 410, 420 (3d Cir. 2016) [hereinafter *NFL Concussion*] (referring to class action litigation that resulted in settlement for former players suffering from early on-set traumatic brain injuries resulting from former professional careers); *In re Nat’l Hockey League Players’ Concussion Injury Litig.*, 327 F.R.D. 245, 265 (D. Minn. 2018) (detailing class action suit filed by former and current professional hockey players for injuries stemming from repetitive brain injuries).

3. See *In re Nat’l Football League Players Concussion Injury Litig.*, 821 F.3d at 447–48 (“[The] settlement will provide nearly \$1 billion in value to the class of retired players. It is a testament to the players, researchers, and advocates who have worked to expose the true human costs of a sport so many love. Though not perfect, it is fair.”).

ter the settlement, a landslide of litigant athletes filed lawsuits against their respective leagues, arguing the league should be held accountable for their injuries.⁴ With more information coming forward regarding whether an athlete can assume an unknown risk, claimants are becoming more advantaged in the court room in all ways but one: the law.⁵

With a majority of state negligence laws barring relief for claimants due to their athlete status, claimants turned to other statutes for relief.⁶ One of these statutes, the Racketeer Influenced and Corruption Organizations Act (“RICO”), provides relief to those suffering as a result of intentional organized crime within a busi-

4. See *id.* at 425 (showing hundreds of litigants claiming football exposed them to early stage brain injuries); see also Sean McIndoe, *How the NHL Concussion Lawsuit Could Threaten the Future of the League*, THE GUARDIAN (Apr. 5, 2017) <https://www.theguardian.com/sport/2017/apr/05/nhl-concussion-lawsuit-could-threaten-future-of-league> [<https://perma.cc/6JD7-A4KP>] (detailing players’ proximate cause arguments that sport caused chronic traumatic brain injuries). “Much of this revolves around a degenerative disease called chronic traumatic encephalopathy, or CTE. Most experts agree that CTE is related to a history of concussions and brain injuries, and can lead to all sorts of symptoms late in life, including dementia, aggression, depression and suicidal thoughts.” *Id.* (illustrating pervasive nature of unknown injuries resulting from football).

5. See 114 AM. JUR. TRIALS § 269 (2009) (explaining “most jurisdictions impose limitations on liability in order to promote vigorous participating in athletics which courts fear might be ‘chilled’ by applying ordinary liability standards”). In some states, a claimant may be able to overcome the assumption of the risk defense by showing evidence of intentional action or reckless conduct outside the realm of the sport that lead to claimant’s injury. See e.g., *Mammoth Mountain Ski Area v. Graham*, 135 Cal. App. 4th 1367, 1369 (3d Dist. 2006) (reversing summary judgment and stating assumption of risk doctrine does not protect conduct outside scope of normal activities involved with sport). Reckless is defined as conduct that creates an unreasonable risk of harm to someone. See Restatement (Second) of Torts § 500 (AM. LAW INST., 1965) (detailing standard for cause of action). Even states that do not recognize the default assumption of the risk defense generally preclude all negligence claims in the sports realm unless a claimant, as a threshold matter, can show proof of intentional or reckless conduct. See, e.g., *Gauvin v. Clark*, 537 N.E.2d 94, 97 (Mass. 1989) (showing example of jurisdiction that does not recognize assumption of risk doctrine, but applies different standard for negligence liability in sports cases); see generally *In re Nat’l Football League Players Concussion Injury Litig.*, 821 F.3d at 441 (detailing argument that player cannot truly assume unknown risk in sports context); see also Mike Hughlett, *Lawsuit Against NHL Over Concussions Heating Up*, STAR TRIBUNE (Apr. 24, 2017, 4:34 PM), <http://www.startribune.com/lawsuit-against-nhl-over-concussions-heating-up/420199203/> [<https://perma.cc/9B58-6VZM>] (detailing arguments of inability to assume unknown risk).

6. See *Knight v. Jewett*, 3 Cal. 4th 296, 314 (1992) (explaining that assumption of risk, in states that recognize it, provides complete defense to tort of negligence in sports injury cases); see generally 18 U.S.C. §§ 1961–64 (2009) (detailing Racketeering and Organized Crime statute, including definitions, prohibited activities, and criminal and civil penalties); see also 114 AM. JUR. TRIALS § 269 (2009) (“[A]n advantage with intentional tort claims is that they expand the plaintiff’s remedies to include a potential punitive damages claim.”) (explaining *Overall v. Kadella*, 138 Mich. App. 351 (1984)).

ness enterprise.⁷ RICO and its subsections allow for civil and criminal penalties from persons receiving income as a result of racketeering activity that affects interstate commerce.⁸ With an increase in lawsuits alleging long-standing practices as being unethical and even criminal within the sports world, RICO provides a method for claimants to work outside the traditional doctrine of assumption of the risk.⁹ In *Evans v. Arizona Football Club*,¹⁰ claimants brought action under RICO for their current injuries which resulted from past over-consumption of prescription pain-killers under the direction of team officials.¹¹ Claimants alleged a ruinous “return to play” culture that manifested across all NFL teams and operated in direct contradiction to representations that the clubs placed the health and well-being of its players first.¹² In dismissing the RICO claim, the Northern District of California detailed how claimants did not have standing because claimants failed to show an

7. See generally 18 U.S.C. § 1962(a) (2009) (“It shall be unlawful for any person who has received an income derived, directly or indirectly, from a pattern of racketeering activity . . . to use or invest, directly or indirectly . . . in acquisition of any interest in . . . activities which affect interstate or foreign commerce.”); see also 18 U.S.C. § 1961(1) (detailing definition of “racketeering activity”); 18 U.S.C. § 1961(4) (2009) (defining “enterprise” as “includ[ing] any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.”); but see *U.S. v. Turkette*, 452 U.S. 576, 593 (1981) (“The language of the statute however—most reliable evidence of its intent—reveals that Congress opted for a far broader definition of the word ‘enterprise’”).

8. See 18 U.S.C. § 1963 (2009) (detailing plethora of criminal penalties available for those found in violation of RICO statute); see also 18 U.S.C. § 1964 (2009) (explaining civil remedies for claimants are successful in bringing RICO action). For a further discussion about the definition of “racketeering activity”, see *supra* note 7 and accompanying text.

9. See Scooby Axson, *Adidas Sued by Ex-Louisville Recruit Bowen Under RICO Act*, SPORTS ILLUSTRATED (Nov. 19, 2018), <https://www.si.com/college/2018/11/19/adidas-lawsuit-former-louisville-recruit-brian-bowen> [<https://perma.cc/MD42-QNMR>] (explaining former recruit suing Adidas under RICO statute); see also *Evans v. Ariz. Cardinals Football Club, LLC*, 231 F. Supp. 3d 342, 345 (N.D. Cal. 2017) (illustrating lead case where multiple plaintiffs filed RICO claims); see generally *In re National Football League Players Concussion Injury Litig.*, 821 F.3d at 420 (showing increase in highly publicized sports injury cases); *In re Nat’l Hockey League Players’ Concussion Injury Litig.*, 327 F.R.D. 245, 265 (D. Minn. 2018) (discussing same increase in highly publicized sports injury cases).

10. 231 F. Supp. 3d 342 (N.D. Cal. 2017).

11. See *id.* at 346 (stating claimants brought conspiracy and RICO charges as result of “return to play” mentality throughout NFL). For a further discussion detailing how the “return to play” mentality manifested in the lead case, see *infra* notes 60–67 and accompanying text.

12. See *id.* at 346 (detailing how overuse of prescription drugs in lieu of proper time off led to a multitude of long-term effects). For a further discussion of the actions by club officials taken in direct contradiction to team policies to place player safety first, see *infra* notes 66–69 and accompanying text.

injury to their business or property.¹³ Further, the court dismissed claims alleging conspiratorial behavior by all league teams for lack of supporting evidence.¹⁴ Unable to show evidence of a cognizable economic injury, claimants were only left with the claims of intentional misrepresentation and concealment.¹⁵

This Casenote will explore how the current method for establishing standing under RICO is contrary to the intent of legislature, and therefore, should be construed broadly to effectuate the purpose behind the act itself.¹⁶ Specifically, the statute should be read to include an injury to a person's livelihood or business practice.¹⁷ Section II will detail RICO's legislative, purpose, and evolution over time.¹⁸ Section III will explain the relevant facts of the lead case, *Evans*, as well as that court's analysis of the plaintiffs' claims.¹⁹ Next, Section IV will illustrate how expanding the standing elements of RICO claims would fulfill the purpose of the legislation

13. See *id.* at 349 (citing *Oscar v. Univ. Students Co-op Ass'n*, 965 F.2d 783, 785–88 (9th Cir. 1992)) (“Personal injuries, however, are not injuries to ‘business or property’ compensable under RICO Even if plaintiffs suggest they recently lost employment opportunities or earning capacity wholly as a result of recently discovered health problems, such losses, while economic, nonetheless derive from fundamentally personal injuries and thus cannot give rise to a RICO claim.”). For a further discussion regarding the court's rationale in dismissing plaintiffs' claims, see *infra* notes 83–102 and accompanying text.

14. See *id.* at 356 (“At best, the amended complaint alleged the NFL has a return-to-play *culture* driving individuals across the board—including trainers, doctors, and the players themselves—to prioritize game performance over players' health . . . describing the problem in the NFL as a permeative ‘business culture’ rather than a practice, policy, or conspiracy.”). For a further discussion about the court's rationale in dismissing these claims, see *infra* notes 101–111 and accompanying text.

15. See *generally Evans*, 231 F. Supp. 3d at 357 (showing defendant's motion to dismiss is denied as to intentional misrepresentation and concealment claims against Lions, Raiders, Broncos, Packers, Seahawks, Dolphins, Charges, and Vikings). For a further discussion about the court's dismissal of the plaintiffs' RICO claims, see *infra* notes 95–110 and accompanying text.

16. See 18 U.S.C. § 1964(c) (“Civil RICO plaintiff must show: (1) that alleged harm qualifies as injury to business or property; and (2) harm was proximately caused by RICO violation.”); see also *Oscar*, 965 F.2d at 785 (1992) (“[S]howing of ‘injury’ for RICO purposes requires proof of concrete financial loss, not merely ‘injury to a valuable intangible property interest.’” (quoting *Berg v. First State Ins. Co.*, 915 F.2d 460, 464 (9th Cir. 1990))).

17. For a further discussion about how the court in the lead case should have treated the standing issue with regards to RICO's legislative intent, see *infra* notes 147–155 and accompanying text.

18. For a further discussion about the background of RICO and the reason for its enactment, see *infra* notes 47–69 and accompanying text.

19. For a further discussion about the facts of the *Evans* case, see *infra* notes 70–88 and accompanying text.

without negatively impacting future litigants.²⁰ Further, Section V will analyze how the expansion of the standing element would have a positive effect on the societal shift towards evolving concepts of relief for sports injuries.²¹ As a result, this Article argues that the injuries alleged by claimants in *Evans* fulfilled the injury element and thus have standing under RICO because claimants felt long term effects on their property and business interests.²²

II. WHO GETS IN?: A HISTORY OF SPORTS INJURIES AND THE LAW

In a claim of negligence, defendants are afforded the opportunity to present an assumption of the risk defense.²³ This allows the defendant to undermine a claim of negligence by arguing that the plaintiff was aware of and consented to being exposed to the risk associated with a particular activity that eventually resulted in the injury.²⁴ Applying the assumption of the risk theory to sports, negligence defendants (usually sports teams or leagues) are equipped with an almost impenetrable shield from liability when athletes attempt to gather relief for the injuries they sustained on the field.²⁵ In other words, if it can be shown the claimant participated in the

20. For a further discussion about the legislative purpose of RICO, see *infra* notes 47–69 and accompanying text. For a further discussion about the analysis of the court’s use of the RICO statute, see *infra* notes 89–111 and accompanying text.

21. For a further discussion about how the expansion of RICO would have a positive effect on future litigants, see *infra* notes 147–155 and accompanying text.

22. For a further discussion regarding the facts of *Evans* and injuries alleged, see *infra* notes 88–105 and accompanying text.

23. See Restatement (Third) of Torts, §3 (2010) (explaining negligence requires showing of duty, breach, causation, and harm).

24. See 45 U.S.C. § 54 (explaining general “assumption of risks of employment”); see also *Muchhala v. U.S.*, 532 F. Supp. 2d 1215, 1228 (E.D. Cal. 2007) (“Doctrine of primary assumption of the risk, under which a plaintiff is completely barred from recovery if the defendant owed no legal duty to protect him from the particular risk that caused the injury, is a complete defense to a negligence claim.”). “In these types of activities, the integral conditions of the sport or the inherent risks of careless conduct by others render the possibility of injury obvious, and negate the duty of care usually owed by the defendant for those particular risks of harm.” *Id.* at 1229 (quoting *Saville v. Sierra College*, 36 Cal. Rptr. 3d 515, 522 (Cal. App. 3 Dist. 2005)).

25. See Michael McCann, *Analyzing Dustin Fowler’s Lawsuit Against the Chicago White Sox*, SPORTS ILLUSTRATED (Jan. 13, 2018), <https://www.si.com/mlb/2018/01/13/dustin-fowler-injury-white-sox-lawsuit-analysis> [<https://perma.cc/YF36-88G6>] (“When a professional athlete is injured in a game, hardly anyone asks whether the injury could lead to a lawsuit . . . [i]njuries are part of every sport. Athletes, especially at the professional level, assume the risk of danger on every play.”); see also *Bukowski v. Clarkson Univ.*, 19 N.Y.3d 353, 356 (Ct. App. N.Y. 2012) (holding that pitcher on college baseball team who was injured during practice assumed the risk of participation in baseball). Further, the court stated the assumption of the risk doctrine “applies where a consenting participant in sporting and amusement activities is aware of the risks; has an appreciation of the nature of the risks; and volun-

sport with awareness of the possibility of injury, then the claimant will not be able to meet their burden.²⁶ Current pending lawsuits and recent court decisions have sought to undermine this defense and break through this unbreakable barrier.²⁷ Other recent sports injury lawsuits involved claims under the purview of different statutes in order to avoid facing this assumption of the risk defense.²⁸

A. The Economic Interest of Professional Athletes

The economic value of a professional athlete's sporting career can potentially result in earnings that greatly exceed the specific numerical value guaranteed in their playing contracts.²⁹ In addition to their contracted salaries, professional athletes generate supplemental revenue due to their skill, expertise, and general public recognition, examples include team incentives like training camps, brand endorsements, future coaching jobs, sports broadcasting and reporting positions, and even public appearances.³⁰ Some of the world's highest paid athletes earn exponentially more revenue from endorsement deals than from their professional athletic contracts.³¹ In fact, the only NFL player featured on the international

tarily assumes the risks." *Id.* (internal quotation marks omitted) (reasoning assumption of risk defense failed to apply).

26. See McCann, *supra* note 25 (explaining assumption of risk in sports).

27. See *id.* ("Could some [injuries] occur not because 'that's just the way the game is played' but rather because other people were negligent in designing how the game would be played?"); see also *Dent v. NFL*, 902 F.3d 1109 (9th Cir. 2018) (explaining class of former NFL players brought suit alleging their respective teams had negligently overprescribed painkillers).

28. See Alexander J. Drago, *Assumption of Risk: An Age-Old Defense Still Viable in Sports and Recreation Cases*, 12 *FORD. INTELL. PROP., MEDIA AND ENT. L.J.* 583, 608 (2002) (summarizing multiple methods with which claimants are barred and aided by old negligence law).

29. See Kurt Badenhausen, *The 25 Highest-Paid Athletes of All Time*, *FORBES* (Dec. 3, 2017), <https://www.forbes.com/sites/kurtbadenhausen/2017/12/13/the-25-highest-paid-athletes-of-all-time/#65a0faf54b64> [<https://perma.cc/LQ9Z-F5PD>] (detailing revenue gained through endorsements and other contracts, all resulting from professional careers).

30. See Chris Smith, *The Highest-Paid Coaches in U.S. Sports*, *FORBES* (May 22, 2013, 10:04 AM), <https://www.forbes.com/sites/chrissmith/2013/05/22/the-highest-paid-coaches-in-us-sports/#7f68162b7f61> [<https://perma.cc/Y5ES-DQYY>] (illustrating connection between successful professional career and lucrative coaching jobs); see also Fred Brown, *Why Do Some Athletes Make Millions? Because Fans Support Them*, *WASH. POST* (Jul. 26, 2017), https://www.washingtonpost.com/lifestyle/kidspost/why-do-some-athletes-make-millions-because-fans-support-them/2017/07/26/f743ae7e-70b6-11e7-8f39-ebb7d3a2d304_story.html?utm_term=.2184d4f69721 [<https://perma.cc/332E-KFXG>] (stating reason for inflated athlete salaries is because of fan engagement, endorsements, and TV deals).

31. See Brown, *supra* note 30 (listing revenue sources for each of twenty-five highest paid athletes); see also Chelena Goldman, *These Star Athletes Earned More Money from Endorsements in 2018*, *CHEATSHEET* (June 26, 2018), <https://www.cheat>

list of the top twenty-five highest paid athletes of all time is Peyton Manning, who regularly partakes in numerous endorsement deals and speaking engagements even in his retirement.³² During Manning's career, which began with the Indianapolis Colts in 1998, until his retirement at the end of the 2015 season, Manning earned a total of \$249 million from his contracts with NFL teams.³³ In addition, Manning is estimated to have earned roughly an additional \$150 million from off-the-field endeavors.³⁴ Even in retirement, Manning continues to profit from his NFL career through these peripheral deals.³⁵

While these supplemental incomes have the potential to more than double a player's revenue, endorsement deals are not available to each player who signs a professional contract.³⁶ Companies seeking professional athletes to sell their products look for two simple characteristics: the person must be a famous and well-known professional athlete.³⁷ Hallmarks of this status usually encompass factors such as length of career, success in championships, and overall presence on a professional team.³⁸ Researchers have found

sheet.com/sports/these-star-athletes-earned-more-money-from-endorsements-in-2018.html/ [https://perma.cc/2NAV-NEK8] (listing prominent professional athletes internationally who made more money from endorsement deals than their specific playing contracts).

32. See Kurt Badenhausen, *Peyton Manning Retires With Record \$400 Million in Career Earnings*, FORBES (Mar. 7, 2016, 11:01 AM), <https://www.forbes.com/sites/kurtbadenhausen/2016/03/07/peyton-manning-retires-with-record-400-million-in-career-earnings/#7da0b5c6488f> [https://perma.cc/88VQ-Z9G9] (explaining Peyton Manning's net worth as \$480 million and detailing his current endorsement deals).

33. See *id.* (detailing breakdown of Manning's career earnings as roughly fifty-eight million dollars on his first contract, one hundred and thirty-three million dollars on his second, and nineteen million dollars on his final contract).

34. See *id.* (explaining Manning's involvement with Nike, DirecTV, Buick, Papa John's, Nationwide, and Fanatics).

35. See *id.* (describing how Manning earned roughly twelve million dollars in 2016 based on endorsement and brand deals).

36. See *7 Athletes Who Make Insane Money Off Endorsement Deals*, STACK, <https://www.stack.com/a/7-athletes-who-make-insane-money-off-endorsement-deals> [https://perma.cc/72LZ-C76M] (last updated Aug. 10, 2018) (explaining why companies are drawn to particular players from each sport).

37. See *id.* (explaining how companies are willing to pay large sums of money for endorsement deal, especially when the athlete is one of the biggest names in their sport).

38. See Badenhausen, *supra* note 32 (describing success of athletes' supplemental income depending on their particular sport); *but cf.* Brett Hershman, *Are Athletic Endorsements Worth It Anymore?*, BENZINGA (Aug. 25, 2017, 2:47 PM), <https://www.benzinga.com/news/17/08/9978297/are-athletic-endorsements-worth-it-anymore> [https://perma.cc/MBK9-CL85] (detailing decline in endorsement deals, but reaffirming idea that successful leagues and players are granted more endorsement deals).

that an athlete's likability and popularity within a sport can provide a powerful tool to predict endorsement or sponsorship potential.³⁹ Thus, an athlete not only has an interest in the success of their playing career for on-the-field reasons, but also for future off-the-field purposes.⁴⁰

Endorsement deals are not the only stream of revenue for current professional athletes off-the-field.⁴¹ Coaching positions provide another path for players to pursue at the conclusion of their professional careers.⁴² Specifically, coaching allows an athlete the opportunity to transform the skills and lessons learned in their playing careers into a lucrative coaching career.⁴³ Legendary athletes such as Mike Ditka and Tom Flores were able to make their way into the NFL history books as players on the field, but even more so as coaches due to their accomplishments and career on the side-

39. See Daniel Rascher et al., *What Drives Endorsement Earnings for Superstar Athletes*, SPORT MGMT. (2017) available at <https://repository.usfca.edu/cgi/viewcontent.cgi?article=1009&context=SM> [<https://perma.cc/7ABR-L2WM>] (researching potential effect likability and familiarity have on endorsement offers received).

40. See Badenhansen, *supra* note 32 (explaining history, expertise, and qualifications of each highly paid athlete); see generally Brown, *supra* note 30 (explaining reason why professional athletes make large sums of money is because “[m]edia companies pay the league and teams billions of dollars for the rights to show [games] on television” and “[t]hese businesses pay the money because they know millions of fans will watch the games . . . [and] networks then sell ads for cars, pizza, and lots of other stuff”).

41. See Kenneth Kiewnowski, *The Top 10 Former Athletes Who Earned the Most in Retirement*, CNBC (Feb. 19, 2017, 2:00 PM), <https://www.cnbc.com/2017/02/16/the-top-10-former-athletes-who-earned-the-most-in-retirement.html> [<https://perma.cc/WD8Q-5ZX6>] (detailing athletes who earned money through fashion brands, golf-course design, coaching, investment deals, and other methods apart from strict endorsement deals).

42. See Doug Sibor, *A Definitive Ranking of the Best Athletes Turned Coaches*, COMPLEX (Sept. 16, 2014), <https://www.complex.com/sports/2014/09/a-definitive-ranking-of-the-best-athletes-turned-coaches/> [<https://perma.cc/JZL3-R5DX>] (explaining that coaching is not feasible for every former player, but “[t]hat’s not to say, however, that it is impossible to enjoy a long, fruitful careers as both a pro athlete and pro coach”).

43. See *id.* (detailing top twenty highest paid coaches who were former athletes).

lines.⁴⁴ Unlike athletes, coaches do not need to have a successful athletic career in order to receive an endorsement deal.⁴⁵

While players primarily receive deals based on their talents in a respective sport, a coach may receive an endorsement deal based on the performance or notoriety of the team they coach.⁴⁶ Coaching still provides players an opportunity to evolve and apply their knowledge of the sport they undoubtedly spent most of their lives playing into a long-lasting career, one that doesn't expire because of age.⁴⁷

A professional athlete's "body of work" is, quite literally, their physique and the opportunities their athleticism provides for successful performance in their respective sports.⁴⁸ Because an athlete's body is so important, interests in athlete health, well-being, and longevity during and after participation are at the forefront of athlete concerns.⁴⁹ Injuries, no matter how small or large, can have a severe financial impact on a player's future earnings.⁵⁰ Although determining the potential earnings for an athlete is nearly impossible to calculate, it is easy to identify that such earning potential, whether through playing contracts or future revenue-generating

44. See *id.* ("[Tom Flores] was a trailblazer in several different areas during his NFL career Mike Ditka is still regarded as one of the greatest tight ends in NFL history, revolutionizing the position."); *c.f.* John Portch, *Can Former Athletes Be Taught How to Coach?*, LEADERS IN SPORT (Sept. 1, 2018), <https://leadersinsport.com/performance/can-former-athletes-taught-coach/> [<https://perma.cc/E83E-ZP7V>] (discussing traits typically possessed by those players who turn professional careers into coaching opportunities and how qualities of each position often are contrary to one another).

45. See Sibor, *supra* note 42 (explaining how players are able to transform their athletic careers into coaching careers).

46. See Smith, *supra* note 30 (explaining various athletic backgrounds of high-paid coaches).

47. See Portch, *supra* note 44 ("There is a place for those who haven't played at the highest level and the coaching experience they bring to the table"); see also Sibor, *supra* note 42 (explaining longevity of some legendary coaches and their playing careers).

48. See Twila Keim, *Physicians for Professional Sports Teams: Health Care Under the Pressure of Economic and Commercial Interests*, 9 SETON HALL J. SPORT L. 196, 212–15 (1999) (illustrating conflicting economic and health interests for professionals associated with sports).

49. See *id.* at 222–23 (describing self-interest factors that allow athletes to become so successful in long run). For a further discussion about the opportunities available to professional athletes turned coaches, see *supra* notes 37–40 and accompanying text.

50. See Stephen Smith, *What is the Real Cost of Injuries in Professional Sport?*, MEDIUM (May 16, 2016), https://medium.com/@stephensmith_ie/what-is-the-real-cost-of-injuries-in-professional-sport-fee1d66a7502 [<https://perma.cc/T6P9-EQ3Q>] (arguing that injuries result in loss of chance to win championships and other great sporting feats); see also Badenhausen, *supra* note 32 (detailing pay cut Peyton Manning took from Broncos due to neck injury).

opportunities, may severely diminish as a result of suffering an injury.⁵¹

B. The “Return to Play” Mentality

The variety of factors that encompass an athlete’s economic interest in their performance and health while playing a professional sport often manifest in a “return to play” mentality which pushes athletes to compete above all else.⁵² This mentality is colloquially defined as an invisible hand, either monetary or goal driven, that creates pressure for players to compete regardless of their physical ability to do so.⁵³ The mentality places the health and safety of athletes in the backseat as the professional and monetary goals take the steering wheel.⁵⁴ This mentality results in players returning from injuries too quickly or, in the extreme, players never sitting out of the game at all.⁵⁵

51. See Smith, *supra* note 50 (“When we think about salaries paid to elite athletes today it’s pretty easy to understand that it’s a huge waste of money and financial drain on an organisation when an athlete is injured and teams have millions of dollars sitting on the bench . . .”). In 2015, reports show NFL teams paid injured athletes a sum in excess of \$450 million. See *id.* (reporting estimated total salaries paid).

52. See Tim Fitzgerald, *Today’s Coaches and Trainers are Promoting Safety, Strength, and Conditioning to Protect Players from Disabling Injuries*, HEALTHDAY, <https://consumer.healthday.com/encyclopedia/work-and-health-41/occupational-health-news-507/professional-athletes-648171.html> [<https://perma.cc/X28V-HPSS>] (last updated Jan. 1, 2020) (explaining return to play mentality as being detrimental to athletes because “[w]hen a player is on the field injured, neither he, nor his team benefits”); see also NBA Twitter and Media Reports, *Kevin Durant Confirms He Suffered Raptured Right Achilles*, NBA (Jun. 13, 2019, 7:40 AM), <https://www.nba.com/article/2019/06/12/warriors-durant-achilles-injury-update> [<https://perma.cc/75P3-849U>] (detailing disastrous effects of Kevin Durant’s injury when he returned to help his team win NBA Finals).

53. See Fitzgerald, *supra* note 52 (explaining “playing through pain” mentality that is present throughout all teams, especially amongst younger players). However, athletes are often seen as embodying a “competitive fire” that presents the ability to cloud their judgment when it comes to returning to the game prior to full rehabilitation. See *id.*

54. See *id.* (expressing how veteran players often are more cognizant of limits of their body with regards to injuries, while younger players do not acknowledge long-term implications of improperly treated injuries).

55. See Dan Pompei, *Inside the NFL’s Secret World of Injuries*, BLEACHER REPORT (Dec. 14, 2017), <https://bleacherreport.com/articles/2749101-inside-the-nfls-secret-world-of-injuries> [<https://perma.cc/KW38-5U8V>] (detailing that players would return to football games even though they were hurt, simply to make sure there were enough players on the field). Players and team officials often times would not want opposing teams, fans, or anyone else to know about athlete injuries. See *id.* Therefore, athletes sometimes taped both ankles, or knees, in order to disguise the look of injury. See *id.* (explaining how players would shield their injuries). Further, even injuries that are thoroughly treated by team medical staff are often treated less sensitively in the press. See *id.* (detailing public perception of professional sports injuries).

Although the return to play mentality has always been a by-product of competition, the effects should be viewed with a specific eye towards the current culture of injury and professional sport as a whole.⁵⁶ The drastic increase in the abuse of opioid drugs, commonly referred to as the “opioid crisis”, transcends all geographic, economic, and cultural barriers.⁵⁷ The term “opioid” refers to pain suppressing drugs such as oxycodone, hydrocodone, morphine, and others.⁵⁸ In recent years, the rise of opioid use has been dealt with via intervention from the legislature as well as growing societal knowledge.⁵⁹ Communities have shifted towards a path of education, awareness, and prevention.⁶⁰ However, the intersection of the byproduct of these drugs and the return to play mentality, presents

56. See *Opioid Epidemic*, DISA, <https://disa.com/drug-alcohol-testing/opioid-epidemic> [<https://perma.cc/NH5Z-7ZFA>] (last visited Jan. 28, 2020) (reporting that Opioid Crisis has cost the nation millions of dollars since its inception in 2001, and drastic increase in 2015); see also Doug Curriuan & Wayne Mascarella, *Understanding, Preventing, and Treating Opioid Abuse*, RTI, <https://www.rti.org/emerging-issue/understanding-preventing-and-treating-opioid-abuse> [<https://perma.cc/ZZ4L-KBDC>] (last visited Jan. 28, 2020) (explaining that leading experts are “studying prevention and public communication tactics, strategies to reach out to at-risk and vulnerable populations”). Many experts agree that the most effective way to deal with the vast number of citizens impacted by the opioid crisis is a “coordinated response from every angle.” See *id.* (describing general consensus of field’s experts on how to proceed comprehensively).

57. See Scott Higham et al., *76 Billion Opioid Pills: Newly Released Federal Data Unmasks the Epidemic*, WASH. POST (Jul. 16, 2019, 8:19 PM), https://www.washingtonpost.com/investigations/76-billion-opioid-pills-newly-released-federal-data-unmasks-the-epidemic/2019/07/16/5f29fd62-a73e-11e9-86dd-d7f0e60391e9_story.html?utm_term=.5c0edbcfc3b [<https://perma.cc/WDD4-E4MN>] (explaining sheer amount of pain pills present throughout United States between 2006 and 2012). The article suggests that the data collected by the Drug Enforcement Administration estimates these opioids to be responsible for nearly 100,000 deaths during the same period. See *id.* (referencing six years of data from DEA database).

58. See *Opioids*, NAT’L INST. DRUG ABUSE, <https://www.drugabuse.gov/drugs-abuse/opioids> [<https://perma.cc/DD4K-GZT7>] (last visited Jan. 28, 2020) (detailing multiple generic and specific names of common opioid drugs at issue throughout opioid crisis).

59. See *id.* (explaining that “[opioids] are generally safe when taken for a short time and as prescribed by a doctor, but because they produce euphoria in addition to pain relief, they can misused”); see generally *National Take Back Day*, DRUG ENF’T ADMIN., <https://takebackday.dea.gov> [<https://perma.cc/26A5-URAM>] (last visited Jan. 28, 2020) (illustrating country-wide procedures for returning and disposing opioid drugs).

60. See Higham, *supra* note 57 (illustrating data that “provides statistical insights that help pinpoint the origins and spread of the opioid epidemic – an epidemic that thousands of communities across the country argue was both sparked and inflamed by opioid manufacturers, distributors, and pharmacies”).

the ability for the very disease society is trying to prevent, addiction.⁶¹

C. The Racketeering Influenced and Corrupt Organizations Act (RICO)

Professional sports organizations, like many business enterprises, fall under the purview of economic regulations and laws.⁶² Antitrust law, originally drafted to forbid restrictions on interstate trade, has been applied to lawsuits amongst all five major professional sports leagues, the NFL, NBA, NHL, MLB and MLS.⁶³ The financial interests of each league require teams to carefully balance the economic aspect of their sports with the best interests of their players.⁶⁴ Contrary to the standard structure of corporate business organizations, leagues are uniquely organized.⁶⁵ Rather than the normal organizational structure of a business, a league is composed of many parts, or teams, that create a single unit with a common goal.⁶⁶ Before analyzing the applicability of the RICO statute in *Ev-*

61. For a further discussion pertaining to the return to play mentality, see *supra* notes 47–55 and accompanying text. For a further discussion regarding the long-term effects of opioid use, see *infra* notes 200–209 and accompanying text.

62. For a further discussion pertaining to certain laws applying broadly to sports, see *infra* note 20 and accompanying text.

63. See 15 U.S.C. § 1 (2004) (detailing Sherman Antitrust Act and illegality of restraints of trade); see also Nathaniel Grow, *There's No "I" in "League": Professional Sport Leagues and the Entity Defense*, 105 MICH. L. REV. 183, 184 (2006) (“Section 1 of the Sherman Act prohibits ‘[e]very contract, combination . . . or conspiracy[] in restraint of trade’”); see generally Howard Bartee, Jr., *The Role of Antitrust Laws in the Professional Sports Industry From a Financial Perspective*, SPORT JOURNAL, (Mar. 2, 2005), <http://thesportjournal.org/article/the-role-of-antitrust-laws-in-the-professional-sports-industry-from-a-financial-perspective/#post/0> [<https://perma.cc/S3XJ-P9UZ>] (“The [professional sports industry] controls both activities and attitudes, solicits action and reactions, and demands the immediate attention of fans, arbitrators, mediators, lawyers, judges, players, television networks and management. However, as an entity, it is regulated as a business activity with and without exemptions from the federal government.”).

64. See Grow, *supra* note 63, at 184 (citing James Quirk & Rodney D. Fort, *Pay Dirt: The Business of Professional Team Sports*, at 3 (1992)) (“With high salaries, ticket prices, and profits, professional sports are no longer just a game, but a big business worth billions of dollars.”); see also Bartee, *supra* note 63 (citing Jeffrey S. Moorad, *Major League Baseball's Labor Turmoil: The Failure of the Counter-Revolution*, 4 VILL. SPORTS & ENT. L. J. 53 (1997)) (detailing baseball’s long and rocky history with antitrust law).

65. See *League Governance*, NFL, <https://operations.nfl.com/football-ops/league-governance/> [<https://perma.cc/V6MM-9URW>] (last visited Dec. 19, 2019) (describing hierarchy of league management and structure overall).

66. See Grow, *supra* note 63, at 186 (citing Franklin M. Fisher et. al., *The Economic of Sports Leagues—The Chicago Bulls Case*, 10 MARQ. SPORTS L. J. 1, 5 (1999)) (explaining how “single entity” of professional team franchise is made up of many independent parts).

ans, it is important to consider the principle reason for the statute's enactment in the first place.⁶⁷

In 1970, Congress sought to combat the problem of organized crime by passing the Organized Crime Control Act ("OCCA"), a portion of which included RICO.⁶⁸ The primary focus of the OCCA was the prevention and punishment of organized crime affecting financial aspects of interstate commerce.⁶⁹ Going largely unnoticed throughout the 1970s, RICO itself created a civil cause of action for a person claiming damage to a property or business.⁷⁰ In *Sedima, S.P.R.L. v. Imvrex Co.*,⁷¹ the US Supreme Court suggested other courts should pay special attention to the statutory requirement of engaging in a "pattern of racketeering of activity."⁷² The petitioner in *Sedima*, a Belgian corporation, brought suit against its joint business partner, an American corporation, alleging that they engaged in actions of mail and wire fraud, which effectively limited the profits gained by the petitioner corporation.⁷³ Arguing against the lower court's holding that the injury in question did not amount to a pattern of racketeering, the Court detailed that "[w]here the plaintiff alleges each element of the [RICO] violation, the compensable injury necessarily is the harm caused by predicate acts sufficiently related to constitute a pattern, for the essence of the [RICO] violation is the commission of those acts in connection with the conduct of an enterprise."⁷⁴ Ultimately, the Court remanded the case for further factual findings on the requisite predicate acts, with the newly determined outcome that the injury pled

67. For a further discussion about the history of RICO, see *infra* notes 68–83 and accompanying text.

68. See 18 U.S.C. § 1960–1964 (explaining Organized Crime Control Act and different sections of codified RICO legislation).

69. See § 1962 (detailing prohibited activities under RICO and defining an enterprise for purposes of RICO).

70. See § 1964(c) (detailing civil remedies for violations of RICO); see also Catherine M. DiDomenico, *Civil RICO: The Propriety of Concurrent State Court Subject Matter Jurisdiction*, 57 *FORDHAM L. REV.* 271, 274 (1988) (declaring "[c]ivil RICO went largely unnoticed for almost a decade").

71. 473 U.S. 479 (1985).

72. See *id.* at 495–96 ("There is no room in the statutory language for an additional, amorphous 'racketeering injury' requirement . . . [V]iolation . . . requires (1) conduct (2) of an enterprise (3) through a *pattern* (4) of racketeering activity.") (emphasis added). "The 'extraordinary' uses to which civil RICO has been put appear to be primarily the result of the breadth of the predicate offenses . . . and the failure of Congress and the courts to develop a meaningful concept of 'pattern.'" *Id.* at 500.

73. See *id.* (alleging each party entered into joint business venture together, resulting in allegations that respondent corporation was stealing profits from petitioner corporation).

74. *Id.* at 497 (supporting Court's reasoning).

was sufficient under the statute.⁷⁵ However, due to the booming increase of fraud claims resting their claims under the RICO umbrella, federal courts continue to struggle with the length to which the statute should reach in the civil context.⁷⁶ Specifically, courts began to take notice of the potential created by RICO, allowing for quick access to the federal court system.⁷⁷

Despite the controversy surrounding what type of specific actions count for the purposes of RICO, the standing requirement pertaining to the type of injury covered has remained relatively similar.⁷⁸ Prior to 2016, statutory standing for RICO claims were simply viewed under the constitutional precedent of proving (1) injury, (2) causation, and (3) proof that juridical review would remedy the injury.⁷⁹ Currently, courts adhere to a five prong test derived from that a combination of both statutory and common law to determine whether a claimant meets the threshold for a RICO claim.⁸⁰ “To establish a civil RICO claim against a club, plaintiffs must show the club (1) conducted or conspired to conduct (2) an enterprise (3) through a pattern (4) of racketeering activity (known as “predicate acts”) (5) causing injury to plaintiffs’ “business or property.”⁸¹ Synonymous with the statute enacted in 1980, courts today continue to require claimants to begin by establishing evidence of harm, proximately caused by a violation of RICO, to a business or prop-

75. *See id.* at 500 (detailing procedural history of case).

76. *See* Lisa A. Huestis, *RICO: The Meaning of ‘Pattern’ Since Sedima*, 54 BROOK. L. REV. 621, 622 (Apr. 1988) (“Despite the clear congressional intent to reach organized crime, the federal courts witnessed a rapid increase in the use of civil RICO against legitimate businesses and commercial enterprises.”); *see also* *Sedima*, 473 U.S. at 494 (“The court [] is not alone in struggling to define ‘racketeering injury’ . . .”).

77. *See* Huestis, *supra* note 76 (explaining that “[i]n response to this expensive use of RICO, courts attempted to limit judicially the reach of civil RICO”).

78. *See* *Canyon County v. Syngenta Seeds, Inc.*, 519 U.S. 969 (9th Cir. 2008) (“[C]ivil RICO plaintiff[s] must show: (1) that [their] alleged harm qualifies as injury to [their] business or property; and (2) that [their] harm was “by reason of” the RICO violation.”); *see also* *Oscar v. Univ. Students Co-op Ass’n*, 965 F.2d 783, 785 (9th Cir. 1992) (“Showing of ‘injury’ for RICO purposes requires proof of concrete financial loss, and not mere ‘injury to a valuable intangible property interest.’” (citing *Berg v. First State Ins. Co.*, 915 F.2d. 460, 464 (9th Cir. 1990))).

79. *See* *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992) (detailing constitutional threshold for establishing standing under specific cause of action).

80. *See* *Evans v. Ariz. Cardinals Football Club, LLC*, 231 F. Supp. 3d 342, 346 (N.D. Cal. 2017) (citing 18 U.S.C. § 1962(c)–(d), 1964(c) and *Living Designs, Inc. v. E.I. Dupont de Nemours & Co.*, 431 F.3d 353, 361 (9th Cir. 2005)) (explaining five-step test to determine if RICO claim exists).

81. *Id.* at 346 (providing five prong test).

erty interest.⁸² The multi-pronged standing requirement of RICO has been narrowly construed and, as a result, bars application of the requirement to those whose injuries do not qualify as pertaining to property or economic interest.⁸³

The RICO statute garnered increased attention in recent years.⁸⁴ Attractive for its ability to apply to a pattern of conduct, as illustrated by its congressional intent, the RICO statute has provided many claimants hope that it may provide a clever way to maneuver around deadlocked negligence-based law within professional sports.⁸⁵ However, the recent adjudication in *Evans* curtailed that sense of hope.⁸⁶ In the wake of changes to knowledge surrounding athletic injuries, many of which were unbeknownst to the athletes at the time they were sustained and whose effects manifested throughout the athlete's life, the RICO statute should be construed broadly, and its standing should be interpreted to recognize personal injury as encompassed in an injury to a person's "business interest and personal property."⁸⁷

82. See *Sedima, S.P.R.L. v. Imrex, Co.*, 741 F.2d 482, 475 (2d Cir. 1984), *rev'd*, 473 U.S. 479 (1985) (holding standing required suffering "injury of the type RICO was designed to prevent").

83. See *Keller v. Strauss*, 480 Fed. Appx. 552, 554 (11th Cir. 2012) (detailing how claimant who experienced adverse side effects resulting from medical care did not have cognizable RICO claim since he could only assert personal injury damages); see also *Moore v. Eli Lilly & Co.*, 626 F. Supp. 365, 367–68 (D. Mass. 1986) (showing how loss of consortium claim, resulting from ingestion of medication, did not constitute claims for injury to property, solely personal injuries).

84. See *Drago*, *supra* note 28, at 606 (detailing how some courts believe assumption of risk defense should only be applied in regards to contributory negligence issues and some believe defense should be regarded as complete defense); see also *Ward v. Chanana*, No. C 07-06290 JW, 2008 WL 5383582, at *3–5 (N.D. Cal. Dec. 23, 2008) (explaining when statute of limitations begins to toll for RICO purposes).

85. For a further discussion about the text of the statute itself as well as the intent for enactment, see *infra* notes 62–83 and accompanying text; see also *Ward*, 2008 WL 5383582 (explaining how plaintiff suffered financial loss resulting from selling company to another business).

86. See *Evans v. Ariz. Cardinals Football Club, LLC*, 231 F. Supp. 3d 342, 347–48 (N.D. Cal. 2017) (holding that plaintiffs were unable to establish standing for their RICO claims).

87. For a further discussion about how the RICO statute should change and how this would have aided claimants in the *Evans* case, see *infra* notes 143–151 and accompanying text.

III. *EVANS V. ARIZONA CARDINAL FOOTBALL CLUB, LLC*

Twelve retired NFL players, and the estate of one deceased player, initiated suit in *Evans*.⁸⁸ Together, they each brought claims against thirty-two defendant clubs claiming a violations of the RICO statute, as well as concealment, intentional misrepresentation, and conspiracy under applicable state law.⁸⁹ Alleging ongoing practices stemming from the 1960s, claimants argued each of these practices operated in a manner that effectively subordinated each plaintiffs' health and wellbeing in the name of the return to play mentality.⁹⁰ Plaintiffs asserted the implementation of this league-wide "return to play" mentality manifested in a variety of methods.⁹¹ Specifically, plaintiffs claimed that the clubs faced an inherent conflict between increasing profits from game viewership and decreasing revenue due to injured players sitting out games.⁹² The complaint alleges that rather than following the precedent of intercollegiate athletics by increasing player numbers and rest time, the NFL and its members instead prioritized their economic goals over the safety of their

88. See *Evans*, 231 F. Supp. 3d at 345 (defining claimants in lawsuit); see also Compl. at ¶¶ 7–13, *Evans*, 231 F. Supp. 3d 342 (Dckt. No. 136) (detailing each claimant's name, length of time playing in NFL, and current symptoms).

89. See *Evans*, 231 F. Supp. 3d at 346 (explaining original and amended claims brought against each club affiliated with NFL). "[T]he alleged 'misrepresentation' [was] failing to inform players that club trainers violated the Controlled Substances Act by giving them medications." *Id.* at 352 (alleging "return to play" culture operated in conspiratorial way between all thirty-two member clubs).

90. See Compl. at ¶¶ 2–4, *Evans*, 231 F. Supp. 3d 342 (Dckt. No. 136) ("Beginning in the 1960s, professional football began to rival baseball at the country's national sport. Football is far-better suited for television—a veritable match made in heaven."). For a further discussion of the specific allegations of disregard for health and well-being of players, see *infra* notes 73–74 and accompanying text.

91. See *Evans*, 231 F. Supp. 3d at 345 ("First, [team officials] pressured players to return to play as soon as possible despite injury or pain. Second, [clubs] pressured players pressured players to return to play through non-guaranteed contracts that could be terminated at any time . . . Third, club doctors and trainers allegedly provided injured players with prescription medications in lieu of adequate rest to return them to play as soon as possible.") (emphasis omitted) (citing Sec. Am. Compl. at ¶ 19, *Evans v. Ariz. Cardinals Football Club*, Case No. 3:16-cv-01030-WHA); see also *Evans v. Ariz. Cardinals Football Club, LLC*, 3:16-cv-02324 (N.D. Cal. 2014) (Dckt. No. 1) ¶¶ 2–4 ("[I]ndividuals running the Clubs began to realize the necessity of keeping their best players on the field to ensure not only attendance at games but also the best possible TV ratings. That realization resulted in the creation of a return to play practice or policy by the Clubs that prioritized profit over players' health and safety.").

92. See Sec. Am. Compl. at ¶ 102, *Evans v. Ariz. Cardinals Football Club, LLC*, Case No. 3:16-cv-01030-WHA ("The Clubs have recognized the appeal of violence associated with football since the inception of the sport . . . [T]o give the public the best product possible, marquee players need to play, even if they are injured or in pain.").

players.⁹³ This resulted in an attitude engulfed by “profit, media, non-guaranteed contracts, and drugs” that pushed players to robotically compete, regardless of their health, or risk losing their jobs.⁹⁴ Thus, injured players who miraculously “returned to play” were praised for their courageous attitude and team officials did not question the long term health effects of the players’ decision.⁹⁵

These players argued that the pervasive nature of this damaging mentality led to violations of the standards for player safety and well-being, contrary to the clubs’ representations that the players’ health and well-being would be a priority.⁹⁶ The players argued that although they technically chose to play through their injuries, the staff associated with the team neglected their duty to put the athletes’ health and long-term well-being first.⁹⁷ The complaint showed that contrary to the defendants’ representations, teams administered prescription drugs to injured athletes in a manner that harmed their health and well-being.⁹⁸ These prescription drugs were often given to players in excessive amounts and without any proper information about long term effects.⁹⁹ Instead of allowing

93. *See id.* (explaining how NCAA resolves issues with player rest, health, and well-being and showing how NFL’s model vastly differs); *see also id.* at ¶ 103 (detailing how “[c]lubs have resolved [the] inherent conflict [of interest] in favor of profit over safety with more games, less rest (*e.g.* Thursday night football), and smaller rosters that save payroll expenses”).

94. *See id.* at ¶ 103 (“[T]hey achieve their ends through a business plan in which every Club employee – general managers, coaches, doctors, trainers and players – has a financial interest in returning players to the game as soon as possible Everyone’s job and salary depend[ed] on [the] simple fact As professional football took off, these bedrock concepts would become the driving force behind every business decision made by the Clubs.”).

95. *See id.* at ¶ 105 (“Dramatic collisions between players were highlighted in slow motion. Players who returned to the game with severe injuries were lauded as courageous heroes. These same themes were repeated by the broadcast networks.”).

96. *See id.* (“[T]he clubs represented ‘that their medical professionals prioritize[d] the players’ health, and that the plaintiffs believed ‘that doctors . . . and other medical personnel prioritize [their] best interests and would not intentionally advise a procedure or prescribe or distribute a medication that would injure their health.’” (citing Compl. at ¶ 21)).

97. *See* Compl. at ¶ 22, *Evans v. Ariz. Cardinals Football Club*, 231 F. Supp. 3d 342 (N.D. CA. 2017) (explaining “[t]he health interests of the players were increasingly subordinated and forgotten as the Clubs evolved into multi-billion dollar businesses.”).

98. *See Evans*, 231 F. Supp. 3d at 345 (“Club doctors and trainers frequently gave plaintiffs medications without writing prescriptions, revealing the names of the drugs used, informing plaintiffs of the ‘long-term health effects of taking controlled substances and prescription medications in the amounts given,’ or counseling plaintiffs that ‘inadequate rest [would] result in permanent harm to joints and muscles.’” (citing Compl. at ¶ 20, *Evans*, 231 F. Supp. 3d 342 (Dckt. No. 136))).

99. For a further discussion about the specific allegations relating to the use of prescription drugs, see *supra* note 80 and accompanying text.

players' time to heal from injury or stress, all members of the club were engaged in the return to play mentality by pushing the players to return to the playing field as soon as possible, regardless of the potential harm it presented.¹⁰⁰ By subordinating player's long-term health and injury recovery, the longevity and success of the plaintiff players' careers were ultimately negatively impacted.¹⁰¹

The players' complaint describes the nature of the injuries sustained as a result of their respective clubs' disregard for their health as solely in the name of entertainment.¹⁰² In defense of the athletes neglecting their own health choices in returning to play without proper supervision, acquiesce to return to play plaintiffs emphasized the average length of an NFL career being 3.3 years as yet another inescapable incentive to return to play as soon as possible.¹⁰³ Moreover, plaintiffs highlighted the existence of non-guaranteed contracts, which effectively operated in such a way that further pushed them to return to the sport.¹⁰⁴ Ultimately, the plaintiffs accused the league and its thirty-two club members of *coordinating* with one another in the utilization this return to play mentality.¹⁰⁵ The clubs moved to dismiss the plaintiffs' complaint, arguing that both of the newly added RICO claims, that defendants violated RICO and concealed the violations, should be dismissed

100. For a discussion about how the "return to play" mentality manifested amongst the team, see *supra* notes 52–61 and accompanying text.

101. See *Evans v. Ariz. Cardinals Football Club, LLC*, No. 3:16-cv-02324 (N.D. Cal. 2014), (Dckt. No. 1) ¶¶ 65–80 (detailing specific plaintiff allegations of how their injuries were a direct result of NFL's conduct and had an effect on playing career); see also *Evans*, 231 F. Supp. 3d at 347 ("Turning, first, to plaintiffs' allegations 'that their playing careers were unnecessarily shortened'").

102. See Compl. at ¶ 6, *Evans v. Ariz. Cardinals Football Club, LLC*, No. 3:16-CV-01030-WHA, 2017 WL 3046921 at *7 (N.D. Cal. Mar. 31, 2017) (Trial Motion, Memorandum and Affidavit) ("Plaintiffs suffer from two discrete sets of injuries directly caused by Defendants' omissions and concealment: (1) internal organ injuries; and (2) muscular/skeletal injuries exacerbated by the Clubs' administration of Medications to keep players on the field or in practice.").

103. See *Evans*, 231 F. Supp. 3d at 346 (citing Compl. at ¶¶ 51, 89 (Dckt. No. 136)) (describing average length of NFL career as incentive to return to play without proper recovery).

104. See *Evans*, 3:16-cv-02324 (N.D. Cal. 2014), (Dckt. No. 1) ¶¶ 89, 99 (summarizing how non-guaranteed contracts created environment heavily influenced by economic pressures and possibility of being replaced).

105. See *Evans*, 231 F. Supp. 3d at 346 ("First, members of each club made up the NFL executive committee, which met on at least an annual basis. General Managers, trainers, and doctors also met at regular functions. Second, the clubs equally shared revenue from their television deals. Third, the clubs jointly mandated certain procedures to control drug storage and distribution, including via the NFL Security Office. The clubs also created the NFL Prescription Drug Advisory Committee to oversee administration of controlled substances and prescription drugs to players.").

with prejudice, “because (1) plaintiffs cannot state a RICO claim, (2) plaintiffs’ conspiracy claim fails as a matter of law, and (3) plaintiffs’ intentional misrepresentation and concealment claims are not pled with the requisite particularity.”¹⁰⁶

IV. THE PLAYERS V. THE NORTHERN DISTRICT OF CALIFORNIA DISTRICT COURT

In its review of *Evans*, the Northern District of California District Court began with a decision to bypass the threshold matter of the statute of limitations issue and entertain plaintiffs’ RICO claims.¹⁰⁷ Before doing so, the court stated that the last “unnecessarily shortened” NFL career in question would have ended well over ten years ago.¹⁰⁸ In its criticism of the plaintiffs’ claim, the court asserted that all the factors alleged in the complaint were factors well known to the plaintiffs and their teammates during the period in question.¹⁰⁹ Although the court conceded the fact that the plaintiffs were not fully knowledgeable about the extent their injuries at the time, the court reasoned that the players had full constructive knowledge of the fact that those injuries could pose problems to their post-career endeavors.¹¹⁰ As a result, the court identified that plaintiffs had, at minimum, well-established constructive knowledge, and therefore, the statute of limitations had run.¹¹¹ However, the court continued to go through the entirety of the analysis for a RICO claim, despite this threshold issue.¹¹²

106. *Id.* (explaining multiple holdings announced by court); *see also* *Evans v. Ariz. Cardinals Football Club, LLC*, No. 3:16-CV-01030-WHA, 2017 WL 3046921 at *3–7 (N.D. Cal.) (Trial Motion, Memorandum and Affidavit) (No. 3:16-CV-01030-WHA) (explaining defendant’s response to each claim detailed in plaintiffs’ amended complaint).

107. *See Evans*, 231 F. Supp. 3d at 347 (“Assuming for present purposes that such injuries even qualify as injuries to ‘business or property’ within the meaning of RICO, plaintiffs’ claim is plainly barred by the statute of limitations.”).

108. *See id.* (“[T]he NFL careers of the seven RICO plaintiffs ended in 1985 (Harris), 1991 (Carreker), 1993 (Goode), 1999 (Lofton), 2000 (Evans), 2001 (Ashmore), and 2004 (Wunsche) . . . [T]hus end[ing] over a decade prior to the filing of this action.”).

109. *See id.* (explaining how actions resulted in players being pressured to play and consume medications instead of fully healing from injuries).

110. *See id.* (“[P]articularly true since, based on plaintiffs’ own allegations, the brevity of NFL careers . . . and even the widespread practice of substance abuse . . . were well-known realities of the profession.” (citing Dkt. No. 136 at 51–56)).

111. *See id.* at 347–48 (citing *Pincay v. Andrews*, 238 F.3d 1106, 1110 (9th Cir. 2001)) (explaining players “had enough information to warrant an investigation which, if reasonably diligent, would have led to discovery of the [injury]”).

112. *See id.* at 349 (“[P]laintiff’s position boils down to arguing that the limitations period could not start running until they not only discovered that they had suffered injuries to business or property due to the clubs’ alleged conduct, but also

The court began its analysis to determine if a cognizable injury was present and did this by assessing the five prongs: “(1) conducted or conspired to conduct (2) an enterprise (3) through a pattern (4) of racketeering activity (known as ‘predicate acts’) (5) causing injury to plaintiffs’ ‘business or property.’”¹¹³ Relying on established precedent in *Pincay v. Andrews*,¹¹⁴ the court adopted the “injury discovery” rule.¹¹⁵ This rule details that the clock begins to run on a plaintiff’s statute of limitations the moment they have reason to know of their injury.¹¹⁶ In its application of this rule, the court explained the applicable statute of limitations began to toll for each plaintiff four years from the moment the each specific plaintiff should have reasonably known about their underlying injuries.¹¹⁷

In opposition to the court’s opinion that the claimants were unable to show injury, plaintiffs cited *Ward v. Chanana*.¹¹⁸ In *Ward*, the extent of damage caused by an undisclosed and unknown economic injury did not manifest until years down the road.¹¹⁹ Claimants in *Evans* used the *Ward* precedent to argue around the stringent limitations period.¹²⁰ However, the *Evans* court rejected the claimants’ reliance on *Ward* for two reasons.¹²¹ First, the court

stumbled onto a legal theory fitting those facts . . . plaintiffs’ argument is rejected as contrary to controlling law.”).

113. *Id.* at 346 (citing 18 U.S.C. §1962(c)–(d), §1964(c)).

114. 238 F.3d 1106 (9th Cir. 2001).

115. *See id.* at 1109 (“The ‘injury discovery’ rule creates a disjunctive two-prong test of actual or constructive notice, under which the statute begins running under either prong.”).

116. *See Evans*, 231 F. Supp. 3d at 347 (“The limitations period for civil RICO claims is four years [I]t begins to run when a plaintiff knows or should know of their underlying injury.” (citing *Agency Holding Corp. v. Malley-Duff & Assocs., Inc.*, 483 U.S. 143, 156 (1987) and *Rotella v. Wood*, 528 U.S. 549, 553–55 (2000))).

117. *See id.* (“[P]laintiffs knew or should have known that both shortened NFL careers and career-ending injuries would diminish their post-NFL prospects.”); *see also id.* (“The ‘injury discovery’ rule is a ‘disjunctive two-prong test of actual or constructive notice, under which the statute begins running under either prong.’” (citing *Pincay v. Andrews*, 238 F.3d 1106, 1109 (9th Cir. 2001))); *see also* Compl. at ¶¶ 51–56, *Evans*, 231 F. Supp. 3d 342 (Dckt. No. 136) (“Brevity of NFL careers, the importance of post-NFL career trajectories, and even the widespread practice of substance abuse to the detriment of players’ health in the NFL were well-known realities of the profession.”).

118. No. C 07-06290 JW, 2008 WL 5383582 (N.D. Cal. Dec. 23, 2008).

119. *See Evans*, 231 F. Supp. 3d at 348 (explaining plaintiffs in *Ward* suffered financial loss when defendants sold company to another business and plaintiffs did not learn until 2006, seven years later, of plans to take business public).

120. *See id.* (citing plaintiffs’ argument that limitations period should have started when they discovered who caused their injuries).

121. *See id.* (“First . . . their RICO claim contains no allegations of any deception comparable to that in *Ward* Second, . . . ‘discovery of the injury, not

explained the plaintiffs could not successfully argue the teams concealed the facts surrounding their injuries because both types of conduct alleged in the complaint, pressuring players to play and giving them medication, would have been readily known to the plaintiffs.¹²² Second, in support of their rejection, the court cited *Rotella v. Wood*,¹²³ a case in which the court compared RICO claims to medical malpractice claims.¹²⁴ However, using language from the *Rotella* court regarding notice of injury for purposes of tolling the statute of limitations, the court here quite blatantly explained that plaintiffs should have known both the critical facts of their injury, as well as who the injury was inflicted by at the time it happened.¹²⁵

In an attempt to dissuade the court from its reluctance to find injury, the plaintiffs argued the clubs' concealment of certain information resulted in plaintiffs being unaware about the extent of their suffered injuries for quite some time.¹²⁶ The court again was unable to identify a rationale connection between the clubs' concealment and the harmful return to play culture that the plaintiffs claim led to their injuries.¹²⁷ In their final attempt to evade the statute of limitations bar, plaintiffs contended that it was impossible for them to know the extent of their economic damages stemming from their injuries based on their post-NFL career opportunities until the filing of the case.¹²⁸ However, the court treated plaintiffs' present day injuries to as separate from those suffered during their NFL careers.¹²⁹ In doing so, the court considered plaintiffs' pre-

discovery of the other elements of a claim, is what starts the clock' for RICO claims." (citing *Rotella v. Wood*, 528 U.S. 549, 555 (2000)).

122. *See id.* (“(1) [P]ressuring plaintiffs to keep playing and (2) giving them medications so they could do so despite unhealed injuries.”).

123. 528 U.S. 549 (2000).

124. *See Evans*, 231 F. Supp. 3d at 348–49 (“[P]laintiff’s ignorance of his legal rights and his ignorance of the fact of his injury or of its cause should receive identical treatment.” (quoting *U.S. v. Kubrick*, 444 U.S. 111, 122 (1979))).

125. *See id.* at 349 (explaining “limitations period required nothing more to start running”.); *see also Rotella*, 528 U.S. at 555 (2000) (relying on *Kubrick*, 444 U.S. at 122 and ignorance of legal rights and injury).

126. *See Evans*, 231 F. Supp. 3d at 348 (arguing plaintiffs’ lack of knowledge is entirely traceable to efforts by defendant clubs to conceal information surrounding use of prescription medication).

127. *See id.* at 349 (“The amended complaint does not explain how, for example, concealment of a medication’s side effects could possibly prevent a player from knowing that their club was pressuring them to play and giving them medications to do so.”).

128. *See id.* (citing Dkt. No. 89 at ¶¶ 3, 7) (arguing statute of limitations should not bar their RICO claims because “at least some of the alleged underlying injuries were ‘latent and slow in developing’ and ‘discovered as recently as 2014’”).

129. *See id.* at 349 (explaining allegations of newly discovered injuries).

sent day injuries to be solely personal injuries and not injuries to claimants' business or property.¹³⁰ In regards to plaintiffs' past injuries, the court again noted that the claimants should have had some constructive knowledge about the diminished damages resulting from the teams' actions as they were happening and not solely within the last few years.¹³¹ As a result, the court ruled that the plaintiffs' RICO claims were foremost dismissed by the tolling of the statute of limitations, as well as by failure to accurately state an injury to business or property.¹³²

In addition to the RICO allegations, plaintiffs asserted state law claims of intentional misrepresentation, concealment, and conspiracy against the defendant clubs.¹³³ All parties agreed the intentional misrepresentation and concealment claims were grounded in fraudulent activity.¹³⁴ Despite the defendants' best efforts, the court found the complaint evidenced no proof of "affirmative action" to fulfill the requirements for fraudulent concealment and thus, dismissed the concealment claims altogether.¹³⁵ Rather, the court deemed two of the plaintiffs' claims to be in need of further analysis: intentional misrepresentation and concealment.¹³⁶ The misrepresentation alleged by Plaintiffs' counsel was the failure to inform players that the trainers were violating the Controlled Substances Act ("CSA").¹³⁷ However, the court notes that even if the plaintiffs did have knowledge their trainers were violating the CSA,

130. *See id.* ("Even if plaintiffs suggest that they recently lost employment opportunities or earning capacity wholly as a result of recently discovered health problems, such losses, while *economic*, nonetheless derive from fundamentally personal injuries and thus cannot give rise to a RICO claim." (emphasis added) (citing *Oscar v. Univ. Students Co-op. Ass'n*, 965 F.2d 783, 785 (9th Cir. 1992) and *Berg v. First State Ins. Co.*, 915 F.2d 460, 464 (9th Cir. 1990))).

131. *See id.* at 350–51 ("The amended complaint, however, does not allege that any damages from plaintiffs' diminished post-NFL prospects materialized *only* in the four years preceding this action.").

132. *See id.* at 351 (explaining how plaintiffs' RICO claim was barred by the statute of limitations).

133. *See id.* (detailing plaintiffs' state law claims against teams).

134. *See id.* at 351–52 ("In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake." (quoting Fed. R. Civ. P. 9(b))).

135. *See id.* at 350 (explaining argument that plaintiffs should have known their clubs were pressuring them to return to play, regardless of whether they understood side effects of medication).

136. *See id.* at 351 (detailing both arguments put forward by plaintiffs' counsel with regard to misrepresentation and concealment when administering prescription drugs).

137. *See id.* at 352 (showing how plaintiffs' counsel at oral argument presented argument plaintiffs were not informed that club trainers were violating CSA by giving them medications).

this would not have directly led to plaintiffs' injuries being unknown.¹³⁸ Moving to the intentional misrepresentation issue, the court detailed these allegations were specifically in regards to falsely stating clubs cared about the health and safety of their players, in spite of their actions illustrating otherwise.¹³⁹ However, the court again stated plaintiffs' complaints with regards to eight of the teams were sufficient to show certain plaintiffs were coerced to return to play at the expense of their safety and health.¹⁴⁰ Building on this, the court granted the defendants' motions to dismiss in regards to the other teams.¹⁴¹

Lastly, plaintiffs attempted to plead their conspiracy claims against the teams by pointing towards the return to play culture and how it manifested across multiple teams.¹⁴² However, the court likened the alleged conspiratorial actions to be more akin to a normal business practice.¹⁴³ The court sided with the defendant clubs in agreeing that the business culture of the NFL does not meet the requisite elements of a conspiracy claim.¹⁴⁴ Ultimately, the court granted the defendants' motions to dismiss with regard to the state law conspiracy claims.¹⁴⁵

138. *See id.* (explaining how no specific instances of CSA violations are found within the complaint and the "suggestion that plaintiffs suffered all their alleged injuries because no one told them their trainers were technically violating the CSA strains credulity"); *c.f.* Compl. ¶ at 4 (alleging clubs violated CSA by failing to abide by state laws and federal regulations when administering prescriptions).

139. *See id.* (alleging intentional misrepresentation with regards to "the medical risks, side effects, and proper usage of medications").

140. *See id.* (detailing relevant clubs as Lions, Raiders, Broncos, Packers, Seahawks, Dolphins, Charges, and Vikings); *see also id.* at 352–55 (illustrating details around each plaintiff's claim against each defendant club).

141. *See id.* at 355–56 ("We must remember that a defendant club should only have to defend against claims pled properly against it.").

142. *See id.* at 356 (explaining how this phrase also referenced "return to play practice or policy"). For a further discussion regarding the return to play mentality, see *supra* notes 52–61 and accompanying text.

143. *See id.* ("At best, [the] amended complaint alleges the NFL has a return-to-play *culture* driving individuals across the board—including trainers, doctors, and the other players themselves—to prioritize game performance over players' health."); *c.f.* Compl. ¶¶ at 22–36, *Evans*, 231 F. Supp. 3d 342 (describing how return to play mentality directly manifested in failing to allow players to fully recover from their injuries).

144. *See Evans*, 231 F. Supp. 3d at 356 ("Agreeing to form the NFL does not translate to further agreeing to subordinate plaintiffs' health and safety to returning them to play at all costs.").

145. *See id.* at 357 (summarizing court's holding for each claim).

V. GIVING ATHLETES A CHANCE: AN ANALYSIS

The claims of the plaintiffs in *Evans* for loss of opportunities affiliated with their past and future athletic careers should be categorized as a loss of property interest or business interest, in accordance with the required standing of RICO.¹⁴⁶ While the court dismissed the RICO claims for being outside the statute of limitations and non-economic injuries, claimants were only left with the ability to file individual state law claims of intentional misrepresentation and concealment against eight clubs.¹⁴⁷ Each claimant partook in a professional football career, which entails a requisite level of physicality.¹⁴⁸ In doing so, each had a business interest in their skill level and how it was displayed over the course of their career, which each assumed would have lasted at least until the minimally expected average career length in the NFL.¹⁴⁹ However, contrary to their expectations, they were unable to participate in the sport professionally for that long as a result of the practices each club employed during their careers.¹⁵⁰

Claimants' expectations represented their business interests for both their present and future opportunities that would result from their playing careers.¹⁵¹ While it is impossible to accurately predict the amount of money each player would have received if their careers had not been plagued by their injuries, plaintiffs' claims should not be barred from having the opportunity to submit

146. For a discussion about the standing requirements for RICO, see *supra* notes 59–69 and accompanying text. For a discussion about a player's economic interest in their body, see *supra* notes 12–14 and accompanying text.

147. See Compl. ¶ at 61–105, *Evans*, 231 F. Supp. 3d 342 (detailing all intentional misrepresentation claims initially made against each team). For a further discussion about the court's ultimate holding and the reason for dismissing the RICO claims, see *supra* notes 91–112, 118–121 and accompanying text.

148. See *Evans*, 231 F. Supp. 3d at 345–46 (explaining each claimant's history of playing in NFL); see also Compl. at ¶¶ 2–3, *Evans*, 231 F. Supp. 3d 342 (Dckt. No. 136) (detailing specific teams, trainers, and organizations involved).

149. For a further discussion about the business interests resulting from NFL careers, see *supra* note 30–51 and accompanying text. For a further discussion about the prospective opportunities available as a result of a successful playing career, see generally *supra* notes 36–47 and accompanying text.

150. See Compl. ¶¶ at 5–9, *Evans*, 231 F. Supp. 3d 342 (alleging connection between side effects of prescriptions and future medical problems). For a further discussion pertaining to plaintiffs' inability to have successful careers as a result of their injuries, see *supra* notes 88–106 and accompanying text.

151. See Compl. ¶¶ at 22–36, *Evans*, 231 F. Supp. 3d 342 (detailing alleged loss of future monetary opportunities). For a further discussion about plaintiffs' wish to have a lengthy career and gain opportunities as a result, see *supra* note 30–51 and accompanying text.

this question to a jury.¹⁵² The two primary reasons for the court’s incorrect holding are: (1) the inappropriate application of precedent to the plaintiffs’ claims; and, (2) a narrow reading of the standing requirements of RICO that contravened congressional intent.¹⁵³

A. Incorrect Application of Precedent

Before outright dismissing the plaintiffs’ RICO claims, the *Evans* court examined each case used to support the plaintiffs’ positions.¹⁵⁴ First, the court distinguished plaintiffs’ use of *Ward v. Chanana*.¹⁵⁵ However, in doing so, the court misconstrued the reach of the *Ward* court’s rationale and instead attempted to fill in the holes using its own analysis with a factually different outcome represented in *Pinckney v. Andrews*.¹⁵⁶ In *Pinckney*, a two-prong test for determining whether a plaintiff has a readily discoverable injury was announced and is commonly referred to as the “injury discovery rule.”¹⁵⁷ The *Evans* court cited to *Pinckney* to support the argument that the alleged injury should have been easily recognizable at the time it occurred.¹⁵⁸ When the court applied the injury discovery

152. For a further discussion about potential earnings for NFL players and beyond, see *supra* notes 36–47 and accompanying text.

153. For a discussion about the court’s incorrect application of prior precedent, see *infra* notes 154–185 and accompanying text. For a discussion about the court’s application of the standing requirements of the statute and how it contrasted Congress’s intent, see also *infra* notes 172–184 and accompanying text.

154. For a further discussion about the court’s analysis of plaintiff’s claims and how it distinguished cases, see *infra* notes 163– 171 and accompanying text.

155. See *Evans*, 231 F. Supp. 3d at 348 (citing *Ward v. Chanana*, No. C 07-06290 JW, 2008 WL 5383582, at *4 (N.D. Cal. Dec. 23, 2008) (stating in regards to plaintiffs’ amended complaint “*Ward* is unhelpful to plaintiffs’ position for two reasons. *First* . . . their RICO claim contains no allegations of any deception comparable to that in *Ward*. *Second* . . . ‘discovery of the injury, not discovery of the other elements of a claim, is what starts the clock’ for RICO claims.”).

156. See *Pinckney v. Andrews*, 238 F.3d 1106, 1109 (9th Cir. 2001) (explaining statute of limitations begins to run when plaintiff knows or should have reason to know of underlying injury); see also *Evans*, 231 F. Supp. 3d at 347–48 (explaining plaintiffs “had enough information to warrant an investigation which, if reasonably diligent, would have led to discovery of the [injury]” (quoting *Pinckney*, 283 F.3d at 1106)); *c.f.* *Pinckney*, 238 F.3d at 1110 (explaining equitable tolling doctrines as allowing plaintiffs to establish concealment and conduct that would have led reasonable person not to believe they possessed RICO claim).

157. See *Evans*, 231 F. Supp. 3d at 346–47 (citing *Pinckney*, 283 F.3d at 1109) (explaining test as whether claimants knew or should have known about their injury).

158. See *id.* at 347–48 (explaining rationale for using *Pinckney*, 283 F.3d at 1109 for statute of limitations purposes).

rule in *Evans*, the court found the plaintiffs' possessed knowledge had placed them on constructive notice of the injury.¹⁵⁹

In turn, *Ward* presented the notion that the limitations period on a RICO claim cannot start running until claimants are able to identify the source of their injury.¹⁶⁰ Interestingly, in *Evans*, the court rationalized the outcome in *Ward* as the respective judge grants plaintiffs time to develop further factual development.¹⁶¹ However, the same rationale for refusal to dismiss could be used in the present case in order not to penalize plaintiffs for failing to distinguish their injury.¹⁶²

Pincay and *Ward* were not meant to be read in opposition to one another, but should be read in conjunction with one another in order to provide a guide for how to move through the process of identifying whether a claimant possesses a valid cause of action.¹⁶³ Consistent with the congressional intent of a broad application of RICO, the injury discovery rule in *Pincay* should be used to first, identify if the injury in question was known or readily known to those involved.¹⁶⁴ Then, under certain factual circumstances, *Ward* should be used as an exception if claimants allege they were unable to truly know the extent and origin of their injuries until after the statute of limitations period.¹⁶⁵ Reading each precedent in this

159. See *Pincay*, 238 F.3d at 1109 (arguing that statute of limitations could not have begun to run because fiduciary relationship existed between plaintiff and defendant which would have barred them from finding out about injury).

160. See *Ward v. Chanana*, No. C 07-06290 JW, 2008 WL 5383582, at *1–2 (N.D. Cal. Dec. 23, 2008) (explaining factual situation of claimant's alleged economic injury).

161. See *id.* (explaining "further factual development was required to conclusively determine that the plaintiff's RICO claim . . .").

162. See *id.* (explaining why judge in *Ward* did not want to dismiss plaintiff's claim before further factual development transpired).

163. See *Ward*, 2008 WL 5383582 at *3 (citing dual prong test from *Pincay* before ultimately holding for claimants in case). For a further discussion about the relevant portions of *Ward* and *Pincay* used in the court's analysis, see *supra* notes 97–105 and accompanying text. For a further discussion about the meaning and definitions involved in RICO statute, see *generally supra* notes 6–10 and accompanying text.

164. See *U.S. v. Turkette*, 452 U.S. 576, 593 (1981) ("The language of the statute however—the most reliable evidence of its intent—reveals that Congress opted for a far broader definition of the word 'enterprise,' . . ."); see also *Pincay*, 238 F.3d at 1109 (defining "injury discovery rule" requires plaintiff to have direct or arguable constructive knowledge of injury in question).

165. See *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 461 (2006) (noting "when a court evaluates a RICO claim proximate causation, the central question it must ask is whether the alleged violation led directly to the plaintiff's injuries"); see also *Potomac Elec. Power Co. v. Elec. Motor & Supply, Inc.*, 262 F.3d 260, 264 (4th Cir. 2001) (detailing Fourth Circuit's standing requirement that "plaintiff only has standing to bring suit if he can show damage to 'business or property' proximately

fashion would result in the increased applicability of RICO to a variety of claims while still allowing further standing elements to respectively limit claims.¹⁶⁶

The court also relied on *Oscar v. Univ. Students Co-op Ass'n*¹⁶⁷ to assert the distinction between an individual's personal injuries and injuries to an individual's economic or property interest.¹⁶⁸ The *Oscar* court cited language from prior decisions stating the congressional purpose behind the statute was to "thwart the organized criminal invasion and acquisition of legitimate business enterprises and property."¹⁶⁹ However, subsequent courts have refused to apply this analysis in such a strict manner, as *Oscar* did, if they even apply it at all.¹⁷⁰ This evolution shows the breadth in the application of the RICO statute and how different courts have departed from its initial 1992 understanding.¹⁷¹

caused by [a] defendant's RICO violation"); *cf.* *North Cypress Med. Ctr. Operating Co. v. Cigna Healthcare*, 781 F.3d 182 (5th Cir. 2015) (dismissing RICO claim because plaintiff did not explain how defendant's use of racketeering income caused injury); *Peterson v. Shanks*, 149 F.3d 1140 (10th Cir. 1998) (detailing need for injury to result from investment of finances resulting from racketeering actions); *Vemco, Inc. v. Camardella*, 23 F.3d 129 (6th Cir. 1994) (showing dismissal of claim for lack of causation between investment of racketeering funds and plaintiff's injury). For a further discussion about the congressional intent of RICO, see *supra* notes 28–38 and accompanying text.

166. For a further discussion regarding different Circuit Court's application of the standing requirement of RICO, see *supra* note 165. See also Compl. at ¶¶ 3–5, *Evans v. Ariz. Cardinals Football Club, LLC*, 231 F. Supp. 3d 342 (N.D. Cal. 2017) Dckt. (No. 136) (explaining racketeering behavior of member teams); *Dent v. NFL*, 902 F.3d 1109 (9th Cir. 2018) (illustrating claims made by former players alleging similar claims to those in *Evans*). For a further discussion about the broad purposes of the RICO statute, see *supra* notes 23–34 and accompanying text.

167. 965 F.2d 783 (9th Cir. 1992).

168. See *Evans*, 231 F. Supp. 3d at 349 (citing *Oscar*, 965 F.2d at 785) (explaining qualifying injuries under RICO as injuries to finance or property); see also *id.* (detailing injury in case as discomfort and annoyance with neighbor).

169. See *Oscar*, 965 F.2d at 786 (explaining holding of court in *Gentry v. Resolution Trust Corp.*, 937 F.2d 899, 918–19 (3d Cir. 1991) in regard to purpose of RICO statute).

170. See *id.* at 785 (showing RICO requires injury to property or business); *cf.* *Nat'l Asbestos Workers Medical Fund v. Philip Morris, Inc.*, 74 F. Supp. 2d 213 (E.D.N.Y. 1999) (refusing to embrace other circuit's holding regarding losses in RICO context and allowing claimant smokers to state RICO claim against tobacco companies).

171. See *Oscar*, 965 F.2d at 785 (detailing Ninth Circuit's view of what qualified as injury for purposes of RICO claim in 1992); see also *Philip Morris*, 74 F. Supp. 2d at 213 (showing court expanding definition of injury within RICO statute). For a further discussion about the initial purpose of the RICO statute, see *supra* notes 42–63 and accompanying text. For a further discussion about how some courts have departed from initial application, see *supra* notes 130–138 and accompanying text.

B. The True Standing Requirements of RICO

The *Evans* court and cases subsequent to it should read the standing requirement as being an injury to an individual's business or property interests.¹⁷² While taking historical context into consideration, RICO's text provides an intended meaning: to encompass a pattern or enterprise of racketeering activity.¹⁷³ Changing the application of RICO's standing requirement would not be contrary to congressional intent.¹⁷⁴ While it might be unlikely that Congress initially imagined the statute would apply in a sports context, the broad rationale for its enactment would not preclude this application.¹⁷⁵ Courts have consistently adapted old precedent to new standards when reviewing complaints, and in this case, the same should occur.¹⁷⁶ When reviewing RICO violations, courts should be consistently adding to their body of knowledge and understanding as to what a business interest truly is.¹⁷⁷ Allowing an athlete to fulfill the threshold standing requirements of the statute by alleging injury to their business, would comport with previous RICO precedent.¹⁷⁸

Legislatures should also take notice of the expansive nature with which the RICO statute is being utilized by litigants who are barred by the state law of their respective jurisdiction.¹⁷⁹ In doing

172. For a further discussion about the broad intent of the RICO statute, see *supra* notes 7–9 and accompanying text. For a further discussion about a player's economic interests in regards to professional sports, see *supra* notes 26–41 and accompanying text.

173. For a further discussion regarding the text and purpose of the RICO statute, see *supra* notes 41–61 and accompanying text.

174. See *Oscar*, 965 F.2d at 786 (citing *Gentry*, 937 F.2d at 918–19) (explaining § 1964(c)'s language as being clear and only applicable to harm to business and property only).

175. For a further discussion about the congressional intent behind RICO and cases interpreting the standing its elements, see *supra* notes 7–9 and accompanying text. For a further discussion regarding the evolution of sports injuries and their treatment by the law, see *supra* notes 24–28 and accompanying text.

176. For a further discussion regarding the reason for creating the RICO statute, see *supra* notes 68–77.

177. For a further discussion about the court's holding that claimants' injuries were not economic or property interests, see *supra* 78–88 and accompanying text.

178. For a further discussion regarding the standing requirements of RICO, see *supra* notes 72–84 and accompanying text.

179. See Rick Maese, *NFL Abuse of Painkillers and Other Drugs Described in Court Filings*, WASH. POST (Mar. 9, 2017), https://www.washingtonpost.com/sports/red-skins/nfl-abuse-of-painkillers-and-other-drugs-described-in-court-filings/2017/03/09/be1a71d8-035a-11e7-ad5b-d22680e18d10_story.html?utm_term=.c2d67784eaf2 [<https://perma.cc/Y58S-RT7Z>] (explaining NFL's over consumption problem); see Axson, *supra* note 9 (explaining other cases filed under RICO statute).

so, legislatures should amend their statutes to require injury to a person's personal interests, as opposed to solely their business or property.¹⁸⁰ The elements currently required in order to successfully establish standing for a RICO claim operate in a manner which prematurely bars a claim of injury to a person's business or property interest as a result of an organized pattern of activity.¹⁸¹ While this addition may increase the amount of litigants able to establish standing under RICO, the revision would not contravene the true purpose of the statute.¹⁸² Further, doing so would not result in RICO becoming applicable to persons solely with personal injuries, which would be in contradiction to RICO's purpose.¹⁸³ Implementing these changes would carve out an area for the courts to determine when a claim, which on its face looks to be a personal injury, actually affects a claimant's business or property interests in a negative way.¹⁸⁴

VI. WHERE DO WE GO FROM HERE?

If the standing requirements for the RICO statute remain the same, both in application and wording, former professional athletes will continue to be unable to successfully establish standing for their injuries.¹⁸⁵ Currently, RICO does not allow current or former athletes who have suffered from a pattern of organized activity to recover for their injuries.¹⁸⁶ The overlap with personal injuries versus injuries to a person's business or economic interest is a blurred line not only walked by the legislature, but by the courts as well.¹⁸⁷

180. For a further discussion on the current standing requirements for RICO claims, see *supra* notes 32–37 and accompanying text.

181. For a further discussion about the implications of the current RICO standing elements, see *supra* notes 68–73 and accompanying text.

182. For a further discussion about the intent behind the RICO statute, see *supra* notes 38–50 and accompanying text.

183. For further discussion regarding Congress's purpose when enacting RICO statute, see *supra* notes 38–50 and accompanying text.

184. For a discussion about the current application of the standing requirement for RICO, see *supra* notes 23–34 and accompanying text. For a discussion about how the RICO standing requirements should be read, see *supra* notes 142–149 and accompanying text.

185. See *Evans v. Ariz. Cardinals Football Club, LLC*, 231 F. Supp. 3d 342, 349 (N.D. Cal. 2017) (illustrating plethora of claimants unable to file claims because their injuries were deemed to be personal injuries and not economic or property injuries).

186. For a further discussion about the requirements for RICO standing and how the court in *Evans* precluded plaintiffs from establishing standing, see *supra* notes 77–88 and accompanying text.

187. For a further discussion about the economic interests of athletes and how their business interests involve keeping their bodies in pristine shape, see *supra* notes 35–46 and accompanying text.

While the landscape for knowledge of player injuries is consistently expanding, the law should adapt to accommodate this growth, as well.¹⁸⁸ Further, societies' knowledge about patterns of activity that increasingly qualify as criminal or conspiratorial activity is growing as well.¹⁸⁹ Under this set of circumstances, the RICO statute represents an opportunity to fill the gap for those suffering from long-standing injuries that resulted from a pattern of conduct.¹⁹⁰ The only thing missing is the legislative change.¹⁹¹

A change in the wording of the statute itself could potentially result in less claims being filed altogether or more claims being out rightly dismissed by clarifying the purpose of the statute.¹⁹² The existing framework for standing bars an influx of litigants from facially stating a RICO claim solely for the purposes of utilizing the federal court system.¹⁹³ Adapting the way the RICO standing prongs are applied would not run contrary to this purpose because the statute was enacted to provide relief for those suffering from a pattern of misconduct.¹⁹⁴ Opponents are likely to argue that expanding the statute will unnecessarily increase litigation and place a

188. See *Oscar v. Univ. Students Co-op, Ass'n*, 965 F.2d 783 (9th Cir. 1992) (giving example of what ninth circuit believed to be qualifying injuries for RICO in 1992). For a further discussion about the increase in player injury knowledge, see *supra* notes 2–18 and accompanying text. For a further discussion on increased knowledge about overuse of painkillers as a result of bad rehabilitation methods in sport, see *supra* notes 55–59, 136–141 and accompanying text.

189. See *Nat'l Asbestos Workers Medical Fund v. Phillip Morris, Inc.*, 74 F. Supp. 2d 213 (E.D.N.Y. 1999) (illustrating example of court expanding definition of injury within RICO statute to allow smokers opportunity to sue tobacco companies). For a further discussion of recent athlete injuries cases dealing with long standing periods of activity, see *supra* notes 3–5 and accompanying text.

190. See generally *Smith*, *supra* note 50 (explaining how injuries have both short term and long term effects on athletes). For a further discussion about recent lawsuits involving groups of athletes suing on behalf of former injuries or treatment, see *supra* notes 1–6 and accompanying text. For a further discussion about the purpose of RICO, see *supra* notes 89–104 and accompanying text.

191. For a further discussion about how the current standing requirements for RICO contravene legislative intent, see *supra* notes 7–9 and accompanying text. For a further discussion about the impact of reading the standing requirements in a different manner, see *supra* notes 142–150 and accompanying text.

192. For a further discussion about how the RICO requirements operated in general and to this case specifically, see *supra* notes 108–145, 167–188 and accompanying text.

193. See Peter J. Henning, *RICO Lawsuits Are Tempting, But Tread Lightly*, N.Y. TIMES (Jan. 16, 2018), <https://www.nytimes.com/2018/01/16/business/dealbook/harvey-weinstein-rico.html> [<https://perma.cc/TSR7-DFV5>] (illustrating how two RICO cases in particular are utilized its broad applicability). For a further discussion about how some litigants utilize RICO to gain access to the federal court system, see *supra* notes 76–84 and accompanying text.

194. For a further discussion regarding the legislature's purpose for creating the RICO statute, see *supra* notes 62–87 and accompanying text.

burden on courts to apply the RICO umbrella to an increasing amount of plaintiffs.¹⁹⁵ However, the current standing requirements for RICO already operate in a manner that arbitrarily allows for a broad range of plaintiffs to establish standing.¹⁹⁶ The difference here, however, is that while professional athletes should fall under this umbrella, they are left out in the rain.¹⁹⁷ Although speculative, it is probable that the outcome of a change to the legislation itself would be claimants choosing not to file claims under the RICO statute knowing they do not have standing.¹⁹⁸ Doing so would not contradict the legislature's intent in its enactment of the RICO statute because the statute sought to apply to situations where a person acquired money as a result of engaging in a pattern of racketeering activity.¹⁹⁹

While the court in *Evans* focused its analysis on the end product—the harm alleged as a result of past actions—it ought to have analyzed the totality of actions, including current knowledge, in comparison to the time of the claims.²⁰⁰ The “return to play” mentality, combined with the hazardous over prescription of painkillers, should have been viewed by the court in conjunction with current societal knowledge about the drugs at issue.²⁰¹ In the past five years, the use of prescription drugs, commonly referenced as opioids, have increased dramatically and caused irrefutable dam-

195. See *Evans v. Ariz. Cardinals Football Club, LLC*, 231 F. Supp. 3d 342, 348–50 (N.D. Cal. 2017) (explaining need to apply RICO to solely injuries to business or property and not personal injuries). For a further discussion regarding the conflicting manner in which Circuit courts apply RICO standing requirements, see *supra* note 165 and accompanying text.

196. See *Sedima, S.P.R.L v. Imrex Co*, 473 U.S. 479 (1985) (holding Second Circuit's interpretation of RICO was inconsistent with Congress's intent to apply statute broadly). For a further discussion about the influx of RICO claims in recent years based on the statute's broad wording, see *supra* notes 51–54 and accompanying text.

197. For a further discussion regarding athletes' inability to meet standing requirements of RICO because personal injuries do not qualify as financial injuries, see *supra* 107–135 and accompanying text.

198. For a further discussion about the possible outcome of changing the interpretation, application, or wording of the RICO statute, see *supra* notes 112–126 and accompanying text.

199. See 18 U.S.C. § 1962 (a)–(d) (explaining activity that is outlawed by RICO as “enterprises” engaged in “pattern of racketeering”). For a further discussion about RICO, see *supra* notes 6–18 and accompanying text.

200. See *Evans*, 231 F. Supp. 3d at 349–50 (showing why plaintiffs should have known about injuries as they were happening, even though knowledge about long-term effects of opioid use was minimal).

201. For a further discussion regarding the “return to play” mentality, see *supra* notes 52–72 and accompanying text.

age to the United States.²⁰² Common effects of these drugs include both short term effects, such as drowsiness or confusion, and long term effects, such as brain damage, liver damage, and death by overdose.²⁰³ The overuse of opioids has been a direct result of under-regulation, over-prescriptions, and a lack of consumer knowledge about the long term effects of this brand of drugs.²⁰⁴ One of the gripping characteristics of the epidemic is its widespread effect on persons from every walk of life, profession, and age.²⁰⁵ Representing the present societal underpinnings at work when claimants filed their case, claims of over-prescription and lack of knowledge should be heard by the courts with the utmost of importance.²⁰⁶

Given this backdrop of previously unknown knowledge about the long-term effects of habitual opioid use, the courts should take this into account when deciding the issue of standing.²⁰⁷ Claimants repeatedly voiced their lack of knowledge about the hazards of over-consumption of team prescribed painkillers, only to be met with apathy at best.²⁰⁸ While society is only recently learning about the detrimental effects of over-prescription and addiction in regards to opioids, the court presumes plaintiffs possess a predis-

202. See *Opioid Overdose Crisis*, NAT'L INST. DRUG ABUSE (last updated Jan. 2019), <https://www.drugabuse.gov/drugs-abuse/opioids/opioid-overdose-crisis> [<https://perma.cc/4BZL-U4TK>] (explaining different time periods that caused increase in opioid overdoses and over prescriptions).

203. See *What are Prescription Opioids*, NAT'L INST. DRUG ABUSE (last updated June 2019), <https://www.drugabuse.gov/publications/drugfacts/prescription-opioids> [<https://perma.cc/7HHJ-2277>] (detailing common side effects from over-consumption and over prescription of opioid drugs).

204. See *What is the U.S. Opioid Epidemic?*, HHS <https://www.hhs.gov/opioids/about-the-epidemic/index.html> [<https://perma.cc/36NJ-PUFB>] (last updated Sept. 4, 2019) (explaining statistics for causes and sources of opioid overuse and addiction).

205. See *Opioid Crisis Data*, AM. ASS'N OF NURSE ANESTHETISTS, <https://www.aana.com/practice/clinical-practice-resources/opioid-crisis-resources/opioid-crisis-data> [<https://perma.cc/WPS6-G9K5>] (last visited Jan., 28, 2020) (detailing different factors for addictions such as age and prior drug use).

206. For a further discussion about how the standing requirement for RICO should be changed by the legislature or interpreted differently by the courts, see *supra* 167–199 notes and accompanying text.

207. For a further discussion about the current opioid epidemic and research pertaining to that, see *supra* notes 54–59 and accompanying text.

208. See Sec. Am. Compl., pg. 31–34, *Evans v. Ariz. Cardinals Football Club, LLC*, 231 F. Supp. 342 (N.D. Cal. 2017) (detailing methods with which teams distributed painkiller medications in lieu of proper rest and rehabilitation).

posed knowledge and complacency with the painkillers they overused throughout their professional careers.²⁰⁹

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209. See *Evans*, 231 F. Supp. 3d at 349–50 (detailing court’s explanation as to why plaintiffs should have possessed knowledge about their injuries). For a further discussion about the increase in knowledge about long-term opioid use, see *supra* notes 56–61 and accompanying text.

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