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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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HUMANA INC. ET AL. *v.* FORSYTH ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 97–303. Argued November 30, 1998– Decided January 20, 1999

Between 1985 and 1988, plaintiffs-respondents, beneficiaries of group health insurance policies issued by defendant-petitioner Humana Health Insurance of Nevada, Inc. (Humana Insurance), received medical care at a hospital owned by defendant-petitioner Humana Inc. Humana Insurance agreed to pay 80% of the beneficiaries' hospital charges over a designated deductible. The beneficiaries bore responsibility for payment of the remaining 20%. But pursuant to a concealed agreement, the complaint in this action alleged, the hospital gave Humana Insurance large discounts on the insurer's portion of the hospital's charges for care provided to the beneficiaries. As a result, Humana Insurance paid significantly less than 80% of the hospital's actual charges for the care that beneficiaries received, and the beneficiaries paid significantly more than 20%. The beneficiaries brought suit in Federal District Court, alleging that Humana Insurance and Humana Inc. had violated the federal Racketeer Influenced and Corrupt Organizations Act (RICO) through a pattern of racketeering activity consisting of mail, wire, radio, and television fraud. The Humana defendants moved for summary judgment, citing §2(b) of the McCarran-Ferguson Act, which provides: "No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance." RICO does not proscribe conduct that Nevada's laws governing insurance permit. But the federal and state remedial regimes differ. Both provide a private right of action. RICO authorizes treble damages; Nevada law permits recovery of compensatory and punitive damages. The District Court granted summary judgment for the Humana defen-

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dants. The Ninth Circuit reversed in relevant part. In its *Merchants Home* decision, handed down after the District Court rejected the beneficiaries' right to sue under RICO in this case, the Ninth Circuit adopted a "direct conflict" test for determining when a federal law "invalidate[s], impair[s], or supersede[s]" a state insurance law. As declared in *Merchants Home,* the McCarran-Ferguson Act does not preclude application of a federal statute prohibiting acts that are also prohibited under state insurance laws. Guided by *Merchants Home*, and assuming, inaccurately, that Nevada law provided for administrative remedies only, the Ninth Circuit held that the McCarran-Ferguson Act did not bar the policy beneficiaries' suit under RICO.

Held: Because RICO advances the State's interest in combating insurance fraud, and does not frustrate any articulated Nevada policy or disturb the State's administrative regime, the McCarran-Ferguson Act does not block the respondent policy beneficiaries' recourse to RICO in this case. Pp. 5–13.

(a) The McCarran-Ferguson Act precludes application of a federal statute in face of state law "enacted . . . for the purpose of regulating the business of insurance," if the federal measure does not "specifically relat[e] to the business of insurance," and would "invalidate, impair, or supersede" the State's law. RICO is not a law that "specifically relates to the business of insurance." This case therefore turns on the question whether RICO's application to the employee beneficiaries' claims would "invalidate, impair, or supersede" Nevada's laws regulating insurance. Under the standard definitions, RICO's application in this action would neither "invalidate"– *i.e.*, render ineffective without providing a replacement rule– nor "supersede"– *i.e.*, displace while providing a substitute rule– Nevada's insurance laws. The key question, then, is whether RICO's application here would "impair" Nevada's law. The Court rejects the Humana petitioners' suggestion that the word "impair," in the McCarran-Ferguson Act context, signals Congress' intent to cede the field of insurance regulation to the States, saving only instances in which Congress expressly orders otherwise. If Congress had meant generally to preempt the field for the States, Congress could have said either that "no federal statute [that does not say so explicitly] shall be construed to *apply* to the business of insurance" or that federal legislation generally, or RICO in particular, would be "applicable to the business of insurance [only] *to the extent that* such business *is not regulated* by state law." Moreover, §2(b)'s second prohibition, barring construction of federal statutes to "invalidate, impair, or supersede" "any [state] law . . . which imposes a fee or tax upon [the business of insurance]," belies any congressional intent to preclude federal regulation merely because the regulation imposes liability additional to, or greater

than, state law. Were this not so, federal law would "impair" state insurance laws imposing fees or taxes whenever federal law imposed additional fees or greater tax liability. Under the federal system of dual taxation, however, it is scarcely in doubt that generally applicable federal fees and taxes do not "invalidate, impair, or supersede" state insurance taxes and fees within the meaning of §2(b) where nothing precludes insurers from paying both. On the other hand, the Court is not persuaded that Congress intended a green light for federal regulation whenever the federal law does not collide head on with state regulation. The dictionary defines "impair" as to weaken, make worse, lessen in power, diminish, relax, or otherwise affect in an injurious manner. The following formulation seems to capture that meaning and to construe, most sensibly, the text of §2(b): When federal law does not directly conflict with state regulation, and when application of the federal law would not frustrate any declared state policy or interfere with a State's administrative regime, the McCarran-Ferguson Act does not preclude its application. *Shaw* v. *Delta Air Lines, Inc.*, 463 U. S. 85, 101–103, supports the view that to "impair" a law is to hinder its operation or "frustrate [a] goal" of that law. The Court's standard also accords with *SEC* v. *National Securities, Inc.*, 393 U. S. 453, 463, where, as here, federal law did not "directly conflict with state regulation," application of federal law did not "frustrate any declared state policy," nor did it "interfere with a State's administrative regime." Pp. 5–10.

(b) Applying the foregoing standard to the facts of this case, the Court concludes that suit under RICO by policy beneficiaries would not "impair" Nevada law and therefore is not precluded by the McCarran-Ferguson Act. Nevada provides both statutory and common-law remedies to check insurance fraud. The Nevada Unfair Insurance Practices Act is a comprehensive administrative scheme that prohibits various forms of insurance fraud and misrepresentation; gives Nevada's Insurance Commissioner the authority to issue charges if there is reason to believe the Act has been violated, to issue cease and desist orders, and to administer fees; and authorizes victims of insurance fraud to pursue private actions under Nevada law for violations of a number of unfair insurance practices, including misrepresentation of pertinent facts or insurance policy provisions relating to coverage. Moreover, the Act is not hermetically sealed; it does not exclude application of other state laws, statutory or decisional. Specifically, Nevada case law recognizes tort actions against insurers for breach of a common-law duty to negotiate with insureds in good faith and to deal with them fairly. Furthermore, aggrieved insureds may be awarded punitive damages if a jury finds clear and convincing evidence that the insurer is guilty of oppression, fraud, or

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malice, and those damages may exceed the treble damages available under RICO. In sum, there is no frustration of Nevada policy in the RICO litigation at issue. RICO's private right of action and treble damages provision appears to complement Nevada's statutory and common-law claims for relief. The Court notes both that Nevada filed no brief at any stage of this lawsuit urging that application of RICO would frustrate any state policy, or interfere with the State's administrative regime, and that insurers, too, have relied on RICO when they were the fraud victims. Pp. 10–13.

114 F. 3d 1467, affirmed.

GINSBURG, J., delivered the opinion for a unanimous Court.