No. 20-1791

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

GENERAL MOTORS LLC; GENERAL MOTORS COMPANY,

Plaintiffs-Appellants,

v.

FCA US LLC; FIAT CHRYSLER AUTOMOBILES N.V.; ALPHONS IACOBELLI; JEROME DURDEN; MICHAEL BROWN,

Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of Michigan,
No. 19-cv-13429

BRIEF FOR PLAINTIFFS-APPELLANTS

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1(a), General Motors LLC certifies that it is a wholly owned subsidiary of General Motors Holdings LLC, which is wholly owned by General Motors Company. General Motors Company certifies that it does not have a parent corporation and that no publicly held corporation owns more than ten percent of its stock.

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STATEMENT IN SUPPORT OF ORAL ARGUMENT

GM respectfully requests oral argument. This appeal presents important issues of RICO proximate cause in a matter involving admitted bribery that caused billions of dollars of harm. GM respectfully submits that oral argument would assist the Court in considering the years-long illicit scheme and legal questions at issue in this appeal.

INTRODUCTION

For nearly a decade, executives and employees of FCA US LLC and its parent company Fiat Chrysler Automobiles N.V. engaged in a classic pattern of racketeering, using bribes and other illicit acts to corrupt labor relations and pattern bargaining in the U.S. automotive industry. That is not up for serious debate. Not only has FCA disclosed in SEC filings that it remains in settlement discussions with the U.S. Department of Justice for its participation in and direction of that bribery scheme, but the individual defendants in this case have repeatedly admitted in federal criminal plea agreements that they funneled millions of dollars in prohibited payments to officers of the union that both FCA and GM share, the United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), with the knowledge and blessing of FCA's management.

This case is about whether the intended victim of that racketeering scheme can recover for the massive damage that FCA's racketeering activities inflicted. As the sordid details of that scheme began to unfold, it became increasingly clear that FCA used its corrupt relationship with UAW officers not just to illegally decrease FCA's labor costs, but as a vehicle to intentionally harm GM and raise GM's labor costs. Indeed, FCA was even willing to conspire with UAW officers to use pattern bargaining to raise some of FCA's own labor costs when doing so would cause disproportionate harm to GM. FCA had an unusually powerful incentive to exploit

its corrupt relationship with the UAW to harm GM: Not only would raising its rival's labor costs give FCA a competitive marketplace advantage, but FCA's CEO was determined to use every tool at his disposal—legal or illegal—to force GM into a merger in which GM's leadership had no interest. FCA's concerted scheme had its intended effect of harming GM even though the FCA-GM merger never materialized despite FCA's best efforts. GM accordingly filed this RICO suit seeking to recover its own damages and hold FCA accountable for its scheme of bribing UAW officials not only to secure labor benefits for FCA, but to raise GM's labor costs, and to weaponize the auto industry's "pattern bargaining" process to inflict maximum financial pressure on GM at the precise moment when FCA was engaged in a covert operation (complete with code name) to try to force a GM merger.

In the decision below, the district court held that the intended victim of FCA's scheme cannot recover for the billions of dollars in injuries it suffered at FCA's hands. According to the district court, even assuming everything in GM's complaint is true (as a court must at the motion to dismiss stage), GM's injuries are too "indirect" to satisfy RICO's proximate cause requirement because FCA's bribes were paid to UAW officials and its scheme may have injured rank-and-file UAW members as well as GM. For good measure, the court then derided GM's factual allegations as "implausible" based on speculation that has no proper role at the

motion to dismiss stage, such as the suggestion that FCA had no need to bribe UAW officials to harm GM because the UAW purportedly never would have made concessions to any company that was not willing to pay it bribes.

That decision is wrong at every turn—which is perhaps unsurprising given that, before issuing it, the court labeled this litigation a "huge legal distraction" and a "waste of time and resources" that could be better put to "this country's most pressing social justice and health issues." June 23 Order, RE74, PageID#2857-58. There is nothing indirect or implausible about a RICO claim in which the intended victim of a conceded bribery scheme seeks to recover for the very injuries the RICO enterprise intended to inflict. In fact, both the Supreme Court and this Court have made crystal clear that RICO's proximate cause standard is readily satisfied when, as alleged here, a defendant uses a third party as a vehicle for intentionally inflicting injury on the plaintiff. And it should go without saying that a court cannot dismiss a complaint that plausibly pleads a viable legal claim simply because it is more inclined to believe the defendant's story. In short, the district court's decision is patently wrong, and its refusal to grant GM leave to file an amended complaint to include allegations that further underscored FCA's intent to harm GM was plainly an abuse of discretion. This Court should reverse and allow GM to pursue this straightforward effort to ensure that FCA is held accountable for the very injuries it intended to inflict on GM.

JURISDICTIONAL STATEMENT

The district court granted Defendants' motions to dismiss GM's federal claims with prejudice on July 8, 2020, and entered final judgment on August 14, 2020, after denying GM's timely filed Rule 59 motion to alter or amend. GM timely appealed on August 17, 2020. The district court had jurisdiction over GM's federal claims pursuant to 28 U.S.C. §1331; this Court has jurisdiction pursuant to 28 U.S.C. §1291.

STATEMENT OF THE ISSUES

(1) Whether GM adequately pleaded that Defendants' RICO violations proximately caused GM's injuries.

(2) Whether the district court abused its discretion by dismissing GM's complaint with prejudice and denying GM's motion to alter or amend the judgment to give GM leave to file an amended complaint.

STATEMENT OF THE CASE

I. Factual Background

In 2008, the American automotive industry faced a major crisis. The collapse of the housing industry beset the United States with the worst recession since the Great Depression. At the same time, rising gas prices drove consumers away from trucks and SUVs, the biggest revenue-drivers of the American automotive industry. Moreover, foreign automakers, which enjoy lower labor costs from non-unionized labor, provided fierce competition for legacy American automakers, which saw sales

decline dramatically. Complaint, RE1, PageID#23 (¶44). Faced with those compounding economic pressures, American automakers turned to the government for assistance in late 2008. The U.S. Treasury injected emergency funds into General Motors Corporation (Old GM) and Chrysler through the Troubled Asset Relief Program (TARP). *Id*. (¶45). While those TARP funds were a stopgap measure, they did not stop the bleeding in Detroit. Chrysler filed for Chapter 11 bankruptcy on April 30, 2009, and two months later, Old GM followed suit. *Id*. PageID#24 (¶46).

Meanwhile, Italian automotive giant Fiat also faced falling sales and a deepening economic crisis in Europe. *Id*. PageID#12, 24 (¶¶17, 48). Then-CEO Sergio Marchionne was desperate for a company-saving swerve. He told his executive council, "Fiat needs to radically change its alliance strategy. We've done everything we can on our own. If we're going to survive this one, we need a partner." *Id*. PageID#14, 24 (¶¶21, 48). Marchionne saw in the Chrysler and Old GM bankruptcies a potential lifeline: a long-desired chance to partner with a U.S. automaker and gain entrée into the U.S. market. In Marchionne's view, the bankruptcies "were changing the game. All of the issues that had plagued the industry—its overcapacity, its poor use of capital, its inefficiency, the crushingly high cost of investment for new models—were now going to become unsustainable."

Id. PageID#24-25 (¶49). Fiat decided to pursue a strategic partnership with Chrysler.

Marchionne recognized that forging an alliance with union leadership would be critical to Fiat's bid to buy part of Chrysler. He homed in on General Holiefield, the head of the UAW's Chrysler Department. *Id*. PageID#15, 25 (¶¶23, 50). Soon, Marchionne and Holiefield were strategic partners and "true friend[s]." *Id*. PageID#25 (¶50). In early 2009, Marchionne, Holiefield, and former UAW President Ron Gettelfinger met and laid the groundwork for a UAW-Fiat alliance. *Id*. PageID#26 (¶51). As negotiations between Fiat and Chrysler intensified, Marchionne insisted that the UAW commit to support a manufacturing system called World Class Manufacturing (WCM). According to Marchionne, the WCM system "broke down the union's rigid job classification system with its strict hierarchy and boundaries about who could do what." *Id*. PageID#26-27 (¶53). Chrysler and the UAW agreed to implement WCM. *Id*.

Chrysler emerged from bankruptcy in June 2009. Fiat acquired 20% of Chrysler's equity, and Marchionne took the helm as CEO. *Id*. PageID#28, 31 (¶¶57, 60). The UAW emerged as the majority owner of Chrysler, with 55% equity. Almost immediately, a Marchionne-led Chrysler began paying the UAW back for its support of his takeover and paving the way for its continuing support—in the form of bribes. *Id*. PageID#28-32 (¶¶57-63). A mere month after Chrysler emerged

from bankruptcy, its executives began funneling hundreds of thousands of dollars of Chrysler funds to Holiefield, including through a charity he controlled. *Id*. PageID#28 (¶57). These payments kicked off a years-long, multimillion-dollar scheme to bribe UAW officers and keep them "fat, dumb, and happy." *Id*. PageID#31-33 (¶¶63-64). Defendants viewed these bribes as an "investment" designed to "grease the skids," so that FCA (the name Chrysler ultimately took on a few years later) could obtain "benefits, concessions, and advantages for FCA in its relationship with the UAW." *Id*.

And that is not all FCA bought using its bribes. It also used its corruption of UAW officials to intentionally harm GM. *Id*. PageID#36-37 (¶71). These efforts began with bribing UAW leadership to ensure the UAW would deny to GM the benefits, concessions, and advantages that FCA had obtained through its bribes. That was no mean feat with respect to a joint union that was supposed to deal with manufacturers even-handedly. Indeed, the practice of "pattern bargaining"—*i.e.*, of designing collective bargaining agreements ("CBAs") between the UAW and each of the three Detroit-based automakers to expire simultaneously, so that every four years all three companies must negotiate a new CBA with the UAW at the same time—is designed to ensure rough parity among all three companies, as the UAW expects to be able to bargain for materially similar terms with each company. *Id*. PageID#55-56 (¶¶117-18). Concessions to one company thus will typically inure to

the benefit of the other two. Yet through its bribery, FCA was able to corrupt the UAW to impose disproportionate harm on GM.

For example, after securing the UAW's commitments to support its own WCM system, FCA bribed UAW leaders so they would refuse to similarly implement GM's comparable program, known as "Global Manufacturing System" (GMS), and would rebuff GM's repeated attempts to collaborate with UAW leaders on improvements to that system. *Id*. PageID#38-39 (¶75). FCA also bribed the UAW not to enforce CBA restrictions on FCA's use of temporary workers, or to zealously pursue grievances raised by FCA's employees, while rigorously enforcing comparable restrictions in GM's CBA and zealously pursuing employee grievances against GM. *Id*. PageID#40-41 (¶¶79-80). And FCA bribed the UAW to agree to a formulary that would significantly decrease FCA's healthcare costs and to deny GM's repeated requests for a comparable formulary. *Id*. PageID#42 (¶81). All told, by 2015, FCA had used its corruption of UAW officials to slash its labor costs to $47 per hour, making those costs nearly 15% below GM's costs and on par with those of non-unionized automakers in the United States, all while keeping GM's costs considerably higher. *Id*. PageID#42-43 (¶83).

This was in part a good old-fashioned corrupt effort to buy a leg up on the competition. But FCA was not content just to lower its own costs. Since pattern bargaining would normally produce a decrease in GM's costs too, FCA had to ensure

that the UAW would not pass those savings on to FCA's rivals. And FCA had an especially good reason to want to prevent any benefit to GM and to increase GM's costs in particular, for it had its sights set on a much bigger prize: forcing GM to merge with FCA. Marchionne had made a failed bid for Fiat to take over GM in 2005, and in the wake of the 2009 bankruptcies he saw an opportunity to revive the dream. As he put it, if after taking over Chrysler he could "take General Motors and merge them together," he could "creat[e] an American giant that also allows a long-term future for Fiat." *Id*. PageID#44 (¶85). The problem for Marchionne was that GM was not interested. Just as it had in 2005, it turned his 2012 overtures down flat. *Id*. (¶86).

Undeterred, Marchionne embarked on a multifaceted strategy to force a takeover, whether GM wanted it or not. He first used bought-and-paid-for UAW officials to help persuade the UAW to sell its remaining stake in Chrysler to Fiat, creating the combined FCA entity. *Id*. PageID#45 (¶90). Armed with complete control of FCA, as well as the ability to bribe UAW leadership to prevent the UAW from exercising its right to veto a merger, Marchionne launched a takeover plan code-named "Operation Cylinder." *Id*. PageID#49-50 (¶100). He approached GM once again in April 2015 and, after being rebuffed yet again, began using the media to make a very public full-court press for a merger. *Id*. PageID#50-52 (¶¶102-03, 108). He also enlisted the UAW's president and vice president, both of whom were

accepting bribes from FCA, to champion his merger strategy at a June 2015 meeting with GM's CEO and senior leadership, while he successfully lined up the financing to make a $60 billion cash offer. *Id*. PageID#51-52 (¶¶106-08).

Meanwhile, as industry-wide labor negotiations were scheduled to kick off the next month, FCA launched a parallel effort to weaponize the pattern bargaining process to impose maximum financial pressure on GM. As part of the pattern bargaining process, after months of simultaneous initial discussion with all three automakers, the UAW selects a "lead" or "target" automaker with which it will negotiate a CBA, with the goal of securing the best deal possible and then pressuring the other two (often with the threat of a strike) to treat the first CBA as a "pattern" for their own agreements. *Id*. PageID#56 (¶119). Just as those initial discussions were getting underway in late spring of 2015, Defendant Alphons Iacobelli, a longtime senior official at Chrysler and FCA who had been responsible for negotiating and implementing labor agreements with the UAW, abruptly resigned from FCA, and Marchionne stepped in and took over FCA's labor negotiations himself, thereby securing complete control over negotiations with the same UAW officials he and FCA had been bribing for years. *Id*. PageID#51 (¶105). Marchionne drew a connection between those negotiations and his merger hopes right from the start, bringing up the possibility of an FCA/GM "consolidation" at the FCA-UAW negotiations kickoff ceremony with the UAW's (corrupted) president. *Id*.

PageID#52-53 (¶110). Rather than use FCA's corrupt relationship with UAW officials to get the best deal for FCA out of those pattern negotiations (which typically would have benefited GM), Marchionne then proceeded to use it to impose the worst possible deal on GM (despite raising FCA's own costs), in an effort to increase the pressure on GM to capitulate to a merger.

Typically, the UAW selects the largest and best-performing automaker for the lead role in the pattern bargaining process, as it is more difficult to secure favorable terms with a less profitable automaker. *Id*. PageID#57-58 (¶124). In 2015, the UAW reversed that script. At the time, FCA was the smallest of the three Detroit-based automakers and had the lowest profit margins and highest percentage of lower-paid, entry-level workers seeking higher wages. So it came as quite a shock to industry experts when the UAW announced that it had selected FCA as the "target" for that year. *Id*. (¶¶124-26). Then, a mere two days later, FCA and the UAW announced that they had reached a "transformational deal." *Id*. PageID#59 (¶128). In Marchionne's words, the "economics of the deal [were] almost irrelevant" because the costs it imposed on FCA "pale[d] in comparison given the magnitude of the potential synergies and benefits" for which it paved the way. *Id*. (¶129). The UAW team, for its part, celebrated the sweetheart deal with a $7,000 dinner paid for by bribes from FCA. *Id*. PageID#60 (¶130).

A distrustful UAW workforce rejected the deal, but it was quickly replaced with a new tentative deal that then-UAW president Dennis Williams (who recently pled guilty to embezzling hundreds of thousands of dollars from the union) described as one of the "richest ever negotiated." *Id*. PageID#61-62 (¶¶131, 133). Indeed, as a pattern for a CBA with GM, the deal would impose on GM more than *twice* the costs of the nearly $1 billion-dollar demand that UAW had opened with in its negotiations with GM—a demand that GM had successfully negotiated down by 20% in a deal it was close to striking with the UAW mere days before the unexpected announcement that FCA would be leading pattern bargaining. *Id.* PageID#54, 61 (¶¶113-15, 132). Unsurprisingly, UAW's members ratified the modified FCA agreement. *Id.* PageID#61-62 (¶133). GM tried to resist using the agreement as a pattern in its own negotiations, but the economic force of pattern bargaining and the threat of a strike proved too great, just as FCA undoubtedly knew they would. *Id*. PageID#62-63 (¶135). GM ultimately capitulated to a CBA that cost it approximately $1.9 billion in incremental labor charges over four years—an amount more than *$1 billion* greater than the tentative deal GM had worked out with the UAW before FCA was chosen as the pattern bargaining lead, and almost $1 billion more even than the UAW's opening demand. *Id*. PageID#63 (¶137).

On top of that, FCA's corruption of the UAW's leadership ensured that even concessions made by UAW would benefit FCA to a far greater extent than GM. For

example, under the 2007 CBA, both FCA and GM were subject to a 25% cap on "Tier Two" workers, who have a lower wage structure and a different health plan and receive a 401(k) retirement plan instead of a defined pension. *Id*. PageID#27 (¶54). The cap was lifted in 2009, but both FCA and GM had publicly agreed to reinstate it in 2015. Anticipating that reinstatement, GM kept its proportion of less-expensive Tier Two workers around 20%. *Id*. PageID#39-40 (¶77). Unbeknownst to GM, however, corrupt UAW officials had secretly promised FCA that they would not insist on reinstating the cap in 2015. *Id*. PageID#40 (¶78). Armed with that covert assurance, FCA began increasing its number of Tier Two workers; by 2015, Tier Two workers constituted 42% of its UAW workforce. *Id*. Accordingly, when the UAW unexpectedly (at least to most in the industry) declined to insist on reinstating the Tier Two cap in 2015, that concession gave FCA a dramatic advantage over GM with respect to average labor costs—and did so as a direct result of FCA's bribery and racketeering activity.

In the end, GM was able to resist Marchionne's merger efforts. But FCA's illicit efforts did succeed in imposing on GM billions of dollars in corruptly inflated labor costs and lost investment initiatives, precisely as FCA had intended. *Id*. PageID#63 (¶¶138-39).

II. Procedural Background

1. FCA took great pains to conceal its bribery scheme, funneling cash through Holiefield's personal charity, *id*. PageID#33 (¶66), his wife's business, a fake hospice organization, myriad shell companies that acted as fronts, *id*. PageID#34 (¶67), and, as GM would later learn, offshore accounts, *see infra* p.22. Eventually, however, years of corrupt schemes started catching up with their perpetrators. In July 2017, the federal government began unsealing indictments showing a years-long pattern of corruption and racketeering activity conducted by FCA and certain UAW leaders. Complaint, RE1, PageID#65 (¶145). To date, more than a dozen FCA and UAW officials have been charged with various crimes. So far, every official charged in the corruption scheme has pleaded guilty. Officials have admitted to numerous racketeering acts, including millions of dollars in bribes designed to corrupt the negotiation, implementation, and administration of the collective bargaining process. *Id*. PageID#65-66 (¶¶146-48).[1]

As the sordid details of the scheme continued to unfold, it became increasingly clear that FCA's corrupt acts had benefitted FCA at the direct expense of GM, both by ensuring that GM would consistently be denied concessions that the UAW gave to FCA, and by corrupting the pattern bargaining process to force GM to shoulder

[1] Marchionne passed away before he could be held criminally responsible for his role in directing FCA's unlawful scheme.

more than $1 billion in labor costs. It became more and more apparent, moreover, that imposing these massive costs on GM was no accident, but rather the intended goal of FCA's scheme to use bribery and corruption to injure a rival and strong-arm GM into a merger. GM accordingly filed this lawsuit alleging five causes of action, including violations of the RICO Act, *see* 18 U.S.C. §§1962(b), 1962(c), 1962(d), and claims of unfair competition and civil conspiracy under Michigan law. Complaint, RE1, PageID#78-93 (¶¶156-98).

2. From the outset, the district court's treatment of the case was unusual, to say the least. The court first deviated from its default rules permitting initial discovery as a matter of course, and at FCA's urging stayed all of GM's discovery requests. Feb. 18 Order, RE55, PageID#1867-71. According to the court, its "practice requirements deal with ordinary civil cases," and "[t]his is not an ordinary civil case." *Id.* PageID#1868. While briefing on Defendants' motions to dismiss was underway, the Governor of Michigan declared a state of emergency due to the then-nascent but proliferating COVID-19 pandemic. The Chief Judge of the Eastern District of Michigan proceeded to enter several orders imposing extraordinary restrictions and accommodations intended to protect public health. But briefing on the motions to dismiss proceeded as scheduled, and the court scheduled a June 23 hearing by videoconference on the motions.

Just eight days before the scheduled hearing, the district court entered a two-page order declining to exercise supplemental jurisdiction over GM's state-law civil conspiracy and unfair competition claims. Order Declining to Exercise Supplemental Jurisdiction, RE71, PageID#2850-51. Although no party had argued that the court should decline to exercise jurisdiction over the state-law claims if the federal claims survived, the court summarily declared that "proceeding to trial on the three specific Federal RICO claims …, and also trying the two State law claims …, would create insurmountable, confusing, and prejudicial spillover-evidence issues, and also create jury confusion that instructions could not cure." *Id*. PageID#2851.[2]

The following week, the court held a nearly two-hour-long argument on the motions to dismiss GM's federal claims, during which it asked Defendants' counsel next to nothing while inundating GM's counsel with questions, some of which strayed far from anything relevant to the motions to dismiss. At the conclusion, the court announced that it was taking the motions under advisement, but proceeded to read an order addressing a different topic entirely—namely, its view that this litigation is "a waste of time and resources" that could be better put to "this country's

[2] Following the court's refusal to exercise jurisdiction over the state-law claims and its subsequent dismissal of GM's RICO claims, GM filed lawsuits asserting those (and other) state-law claims against FCA and others in state court. FCA has now twice tried to remove that state-court litigation *back* to federal court, each time identifying it as "related" to this presently-dismissed litigation.

most pressing social justice and health issues." June 23 Order, RE74, PageID#2857-58. The court then ordered the CEOs of GM and FCA to "meet in person (social distancing), to reach a sensible resolution of this huge legal distraction" within one week. *Id*. PageID#2858. According to the court, the "COVID-19 pandemic, and its impact on the health of this country, requires our attention here and now!" *Id*. PageID#2856. Furthermore, "the long-standing issues of racial discrimination, and social justice, [] require our attention and solution, here and now!" *Id*. The court accordingly ordered the CEOs to "resolve this huge legal diversion" and the "'legalities'" it would entail so that "you and your companies [can] also fully focus your talents on healing this country." *Id*. PageID#2857-58. In the court's view, "our country needs, and deserves, that these now-healthy great companies pay us back" for the TARP funds that the federal government provided more than a decade ago and GM repaid several years ago, "by also focusing on rescuing this country and its citizens from the plagues of COVID-19, racism, and injustice." *Id*. PageID#2857.

3. GM immediately petitioned this Court for a writ of mandamus, which the Court ultimately granted. Order Granting Mandamus, RE81, PageID#2940-44. A mere two days later—and barely two weeks after the hearing on the motions—the court dismissed GM's complaint in its entirety with prejudice. Without even addressing disputes about whether it had personal jurisdiction over all Defendants, the court dismissed the RICO claims on the ground that GM had failed to plead

sufficient facts to show that it was injured "by reason of" Defendants' RICO violations, as RICO's private cause of action requires, *see* 18 U.S.C. §1964. Opinion, RE82, PageID#2974; *see id.* PageID#2962 ("[a]ssuming without deciding that Defendants did commit" the alleged RICO violations).

In reaching that conclusion, the court relied on an idiosyncratic view of RICO doctrine that stands (to say the least) in stark contrast to this Court's precedent. The court first posited that the Supreme Court has imposed a "strict proximate cause requirement" that does not allow a plaintiff to recover any injury that did not occur "at the first step in the causal chain." *Id.* PageID#2963, 2966 (citing *Hemi Grp., LLC v. City of New York*, 559 U.S. 1, 10 (2010)). Although the court acknowledged that this Court has rejected that reading of Supreme Court precedent in cases like *Wallace v. Midwest Financial & Mortgage Services, Inc.*, 714 F.3d 414, 419 (6th Cir. 2013), it declined "to rely on the proximate cause analysis" set forth in this Court's binding precedent based on its view that "the Supreme Court has never adopted that proximate cause standard." Opinion, RE82, PageID#2964-65.

Having stopped (just) short of calling this Court's decisions wrong, the court proceeded to hold that GM's allegations were insufficient to satisfy its "strict" no-injury-beyond-the-first-step-of-the-causal-chain standard. The court first artificially bifurcated the allegations in GM's complaint—which describe a single, decade-long scheme to intentionally harm GM—into two analytically distinct "theories" of harm.

The first, which it dubbed the "pay-to-harm" theory, addressed in isolation bribes paid to UAW officials before the 2015 collective bargaining process to ensure that "unique competitive advantages" would be granted to FCA and denied to GM. *Id*. PageID#2968 (capitalization omitted); *see id.* PageID#2968-72 (referring to this set of allegations as a "pay-to-harm" theory). The court then treated all allegations relating to the 2015 CBA as an entirely distinct theory of injury. *Id.* PageID#2972-74.

Starting with the "pay-to-harm" allegations, the court first posited that the payment of bribes to secure massive labor advantages for FCA could not, standing alone, impose a recoverable injury on GM because "any loss of market share or other harm attributable to FCA's labor cost advantage is an indirect harm" that could not satisfy the court's demand for "direct harm." *Id.* PageID#2968. As for GM's allegations that FCA bribed UAW officials not only to grant advantages to FCA, but also to deny comparable advantages to GM and to distinctly disadvantage GM, the court simply refused to credit them. In its view, such bribes would have been unnecessary because "the UAW would not give most of the concessions at issue to any company that was not bribing its officials." *Id.* PageID#2968-69. That pay-to-play theory apparently followed from the court's instincts or experience; the court did not include any citations to support its view that GM's harm was attributable to its own unwillingness to engage in bribery, rather than the corrupt scheme alleged

in detail in the complaint. As for concessions that the court did not summarily declare so "obviously against union interests" that no non-corrupt company could ever secure them, it rejected as a matter of law the inference that FCA bribed the UAW to deny them to GM because some of the complaint's allegations "support the inference that Defendants' intent was to lower FCA's labor costs," not "to increase GM's labor costs by asking the UAW to deny GM concessions that it otherwise would have given." *Id*. PageID#2970-71.

Turning to the allegations regarding the 2015 CBA negotiations, the court again first posited that the theory failed its "direct" victim test as a matter of law. As the court described it, "GM alleges that FCA and Defendants used bribes to secure the position of lead company in the 2015 CBA negotiations (first step), which enabled FCA to negotiate its own very generous to UAW workers CBA with the UAW, (second step) that ensured, through 'the economic force of pattern bargaining and threat of strike,' that the 2015 GM-UAW CBA was 'vastly more expensive' then GM had planned (third step)." *Id.* PageID#2972. Because, in the court's view, this scheme took three "steps" to accomplish instead of one, the court concluded that it necessarily "'cannot satisfy RICO's direct relationship requirement.'" *Id.* (quoting *Hemi Grp.*, 559 U.S. at 10).

Returning to its tendency of viewing the facts in the light least favorable to GM, the court went on to identify purported "holes" in GM's "logic." *Id.* According

to the court, because "UAW and FCA officials knew that their labor agreements and the misuse of UAW funds were under investigation by the federal government" at the time, the better inference was that FCA made massive concessions to the UAW to try to cover up their crimes. *Id.* PageID#2973. The court further posited that because "GM admits, in the Complaint, that it 'was able to reduce the immediate cost impact of the FCA pattern by about $400 million,' … the economic force of pattern bargaining was not so strong that GM was unable to deviate, at least to some degree, from the pattern CBA." *Id.* Finally, the court concluded that "even though some of GM's unanticipated additional labor costs may have resulted from FCA's scheme to use 'weaponized' pattern bargaining to weaken GM," GM should not be able to recover for those injuries because it would be too difficult to calculate the difference between the labor costs GM incurred under the 2015 CBA and the costs it would have been required to pay in the "counterfactual world where it was selected as the lead." *Id.*

4. GM timely moved to alter or amend the judgment on the basis of newly discovered evidence that supported GM's claim that Defendants' racketeering scheme was directly and intentionally designed to, and did, harm GM. Motion to Alter or Amend Judgment, RE84, PageID#2976-3005. GM argued that the district court had applied an unduly strict proximate cause standard that could not be reconciled with this Court's binding caselaw. *Id.* PageID#2991. GM argued in the

alternative that the court should have allowed GM leave to amend under the rule that a plaintiff should be given at least one chance to amend to better tailor a complaint to the court's legal holdings. *Id*. PageID#2994-95 (citing *U.S. ex rel. Bledsoe v. Cmty. Health Sys., Inc.*, 342 F.3d 634, 644 (6th Cir. 2003)). GM further argued that newly discovered evidence not only strengthened its claims, but specifically spoke to the purported pleading defects the court had identified. In particular, ongoing investigations had revealed a network of hidden offshore accounts used to funnel millions of dollars in bribes—including accounts in the name of the UAW's designated member *on GM's own Board* and the official responsible for UAW's labor negotiations with GM, as well as Iacobelli, who succeeded in infiltrating GM shortly after he abruptly resigned from FCA. *Id*. PageID#2989-90, 2996-97. As GM explained, those direct connections between the bribery scheme and GM readily sufficed to support a plausible inference that FCA was seeking not just to benefit FCA, but also to inflict maximum harm on GM. *Id.*

The district court denied GM's motion in its entirety. Opinion re Motion to Alter or Amend Judgment, RE92, PageID#3374-3386. After deeming its decision not in serious tension with this Court's cases, the court concluded that GM should have sought leave to file its amended complaint at some point during the two weeks between the hearing on the motions and the issuance of the court's opinion because GM was on "clear notice by the June 23[] hearing that [the court] would adhere to"

its strict view of proximate cause. *Id.* PageID#3380-81. The court also dismissed out of hand the relevance of GM's newly discovered evidence. Characterizing that evidence as establishing only that "certain high-qualified, albeit unidentified, investigators have found reliable information that certain current and former FCA employees and UAW officials control foreign bank accounts," the court concluded that a hidden account in the name of the UAW's representative on GM's board did not suffice to "create a reasonable inference that FCA was bribing individuals to infiltrate GM as part of a scheme to directly harm GM." *Id*. PageID#3383-85.

STANDARD OF REVIEW

This Court reviews district court rulings on motions to dismiss *de novo*, *Trollinger v. Tyson Foods, Inc.*, 370 F.3d 602, 607 (6th Cir. 2004), and decisions to dismiss with prejudice for abuse of discretion, *Bledsoe*, 342 F.3d at 644. It reviews denials of Rule 59(e) motions for abuse of discretion. *Ventas, Inc. v. HCP, Inc.*, 647 F.3d 291, 328 (6th Cir. 2011). The Court uses a three-step process to evaluate the sufficiency of a complaint. First, a court must accept as true all of the plaintiff's factual allegations. Second, a court must draw all reasonable inferences from those allegations in the plaintiff's favor. Third, a court must determine whether, taken together, those facts and inferences "plausibly give rise to an entitlement to relief." *Doe v. Baum*, 903 F.3d 575, 581 (6th Cir. 2018). "If it is at all plausible (beyond a

wing and a prayer) that a plaintiff would succeed if he proved everything in his complaint, the case proceeds." *Id.*

SUMMARY OF ARGUMENT

The district court's decision dismissing GM's RICO claims rests on a fundamental misunderstanding of the law of proximate cause and pleading. Nothing in RICO, relevant precedent, or common sense allows a racketeer to escape liability for the harm inflicted on the intended victim of a corrupt scheme just because the scheme corrupts an intermediary, like a shared regulator or union. Put simply, the fact that FCA's scheme was to harm GM by corrupting the UAW does not immunize FCA for the harm it intentionally inflicted on GM. Under a proper application of the correct legal standards, GM's claims readily satisfy RICO's proximate cause test.

As the Supreme Court made clear in *Bridge v. Phoenix Bond & Indemnity Co.*, 553 U.S. 639 (2008), while the precise metes and bounds of proximate cause may be difficult to state, it plainly encompasses the long-settled principle that "[o]ne who intentionally causes injury to another is subject to liability to the other for that injury." *Id.* at 657. That is precisely what the complaint alleges here: FCA embarked on a scheme of bribing UAW officials not just to secure benefits, concessions, and advantages for FCA, but to intentionally injure GM by denying it comparable benefits, concessions, and advantages, and to help FCA distort and weaponize the 2015 pattern bargaining process to inflict massive costs on GM as

part of its dogged efforts to pressure GM into a merger. GM's injuries thus are not derivate of harms imposed on some other party, or the product of the independent actions of someone other than FCA. They are injuries that FCA bribed UAW to help FCA inflict on GM *and GM alone*. GM is not just an appropriate party to hold FCA accountable for those harms through a civil RICO suit; GM is the *only* party that can do so.

The district court nonetheless dismissed GM's claims, on the theory that no claim can satisfy RICO's proximate cause standard if there was any "step" between the defendant's conduct and the plaintiff's injury. Thus, in its view, because FCA used the UAW to help it inflict injury on GM, GM's injuries are too "remote" to survive. No other court has embraced that "strict," first-in-line view of the proximate cause standard. That is no surprise, for there is no RICO immunity for a scheme to corrupt X in order to injure Y; Y is entitled to bring suit to recover for the harm intentionally inflicted on it. The district court's contrary view is precisely the argument the Supreme Court rejected in *Bridge*, where it held that a plaintiff can bring a RICO claim against a defendant who used a third party to effectuate its scheme to intentionally harm the plaintiff. Indeed, if anything, this is a stronger case than *Bridge*, where the third party was an unwitting instrumentality of the defendant's racketeering scheme, rather than a co-conspirator. Here, GM has alleged that FCA bribed UAW officials to conspire with FCA to harm GM. That

may have deprived rank-and-file UAW members of the honest services of their leaders, just as an FCA scheme to bribe a government regulator to target GM and exempt FCA would deprive us all of the honest services of the government regulator. But in neither circumstance does that additional corruption immunize FCA for the intended harm inflicted on the intended victim. Despite the district court's strained reasoning, there is no two-for-the-price-of-one discount for racketeers.

The district court veered even further off course in refusing to take at face value the well-pled allegations in GM's complaint and in failing to accept any inferences in GM's favor. GM explicitly and repeatedly alleged that FCA bribed UAW officials to refuse GM benefits, concessions, or advantages that would reduce its labor costs. The court was not free to ignore those allegations simply because it apparently finds it more plausible that FCA had no qualms about bribing UAW officials to help itself, but stopped short of bribing UAW officials to harm a competitor. Nor was the court free to refuse to draw inferences about FCA's actions or motivations in GM's favor simply because the facts could *also* support alternative inferences. After all, it is black letter law that "[f]erreting out the most likely reason for the defendants' actions is not appropriate at the pleadings stage." *Watson Carpet & Floor Covering, Inc. v. Mohawk Indus., Inc.*, 648 F.3d 452, 458 (6th Cir. 2011).

Finally, the district court again displayed its unwillingness to give GM's claims a fair day in court when it refused to grant GM the customary leave to file an

amended complaint containing newly discovered evidence that spoke directly to the court's (misplaced) pleading concerns. Under a proper application of the correct legal standards, there was no need for GM to add anything, for the allegations in the complaint already suffice to plausibly plead the seemingly obvious point that GM was injured "by reason of" FCA's scheme to bribe UAW officials to inflict injury on GM. But to the extent there were any doubt about that, the amended complaint addressed it by adding allegations linking FCA's bribery scheme to the UAW official who managed the UAW's relationship *with GM*, and ultimately became the UAW's representative on GM's Board. If even those allegations failed to satisfy the district court's exceedingly demanding conception of "plausibility," then it is difficult to imagine what would, short of the kind of direct documentary evidence that FCA's scheme was carefully constructed to avoid creating.

In short, the district court's decision misreads the law, misreads the facts, and evinces a remarkable hostility toward GM's claims. This Court should reverse and reinstate this case so GM can finally move forward with its efforts to hold FCA accountable for the harms that it intentionally inflicted on GM.

ARGUMENT

I. GM Adequately Pleaded That Its Injuries Arose "By Reason Of" Defendants' RICO Violations.

A. A Scheme That Intentionally and Purposefully Targets Another for Harm Proximately Causes That Harm.

In addition to proving a substantive violation of the statute, a civil RICO plaintiff must establish that he was "injured in his business or property *by reason of* a violation of section 1962 of this chapter." 18 U.S.C. §1964(c) (emphasis added). To make that showing, a plaintiff must prove that the defendant's violation was both a "but for" and a proximate cause of his injuries. *Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 268 (1992). The concept of proximate cause, the Supreme Court has explained, refers to "the judicial tools used to limit a person's responsibility for the consequences of that person's own acts." *Id.* As one might expect of such a doctrine, proximate cause "is a flexible concept that does not lend itself to a 'black-letter rule that will dictate the result in every case.'" *Bridge*, 553 U.S. at 654. Instead, the Court has "read RICO as incorporating the many traditional proximate-cause considerations found at common law." *Wallace*, 714 F.3d at 419. Among those are "whether there exists some direct relation between the injury asserted and the injurious conduct alleged," "whether the plaintiff's injury was a foreseeable consequence of the conduct alleged," and whether "the causal connection between the injury and the conduct is logical and not speculative." *Id.*

The Supreme Court has placed particular emphasis in the RICO context on "the 'demand for some direct relation between the injury asserted and the injurious conduct alleged,'" *Bridge*, 553 U.S. at 654, and it has cautioned against employing a conception of proximate cause so capacious as to encompass every consequence of conduct that could be viewed as foreseeable, *see Hemi Grp.*, 559 U.S. at 12. At the same time, the Court has made clear that proximate cause in this context encompasses the long-standing principle that "one who intentionally causes injury to another is subject to liability to the other for that injury," even if he uses an intervening actor to accomplish it, such as "where the defendant 'defrauds another for the purpose of causing pecuniary harm to a third person.'" *Bridge*, 553 U.S. at 657.

That principle makes good sense, particularly in the RICO context, where there is a distinct concern with criminal conspiracies that corrupt seemingly legitimate enterprises in order to harm third parties. After all, corrupting an otherwise-legitimate entity to inflict injury on a different intended victim is hardly a novel or far-fetched means of mulcting the victim. An archetypal racketeering practice is a "bust out" involving the corruption of a seemingly legitimate business to intentionally defraud its creditors. *See, e.g.*, *United States v. Hewes*, 729 F.2d 1302, 1307-08, 1310-12 (11th Cir. 1984). The fact that equity-holders and employees of the business are necessarily injured in the process hardly precludes

liability for the intentional infliction of harm on the entity's creditors. Another classic racketeering practice is the corruption of public officials, whether police officers or regulators, to inflict harms on rivals. Such schemes necessarily deprive the public of honest services, but that does not deprive the intended victims of a remedy. The vehicles for inflicting harm in all these schemes could be said to be victims of (or, if they knowingly participated, co-conspirators in) the defendant's illicit conduct. But it would make no sense to preclude the intended victim on whom the most direct and tangible injury fell from bringing suit against the orchestrator of that harm just because it used an intermediary to help effectuate its scheme.

Consistent with those principles, courts have not hesitated to find proximate cause satisfied when the RICO defendant used a third party for the intended purpose of inflicting injury on the plaintiff, whether the third party was an innocent bystander or a corrupted co-conspirator. *See, e.g.*, *Bridge*, 553 U.S. at 659-60 (concluding that competitor could bring RICO claim against defendant who used fraudulent misrepresentations to third party to deprive competitors of business opportunities); *Wallace*, 714 F.3d at 419-20 (concluding that victim of fraudulent mortgage-financing scheme could bring claims against lender who schemed with appraiser to provide misleading appraisals); *Empress Casino Joliet Corp. v. Johnston*, 763 F.3d 723, 733-34 (7th Cir. 2014) (concluding that casino could sue horse-racing club that bribed governor to sign legislation imposing special tax burdens on casinos). As

those cases reflect, the direct relationship test does not require a RICO plaintiff to prove that the means through which the defendant inflicted injury operated "directly" on the plaintiff. Instead, a plaintiff "need only show that the defendants' wrongful conduct was 'a substantial and foreseeable cause' of the injury and the relationship between the wrongful conduct and the injury is 'logical and not speculative.'" *In re ClassicStar Mare Lease Litig.*, 727 F.3d 473, 487 (6th Cir. 2013) (quoting *Trollinger*, 370 F.3d at 615); *accord, e.g.*, *Wallace*, 714 F.3d at 419.

B. GM's RICO Claims Readily Satisfy Proximate Cause.

Applying these principles, the allegations here are plainly sufficient. GM has alleged that FCA corrupted the UAW to inflict injuries on GM. FCA did so both by bribing UAW officials to deny GM benefits, concessions, and advantages that would reduce GM's labor costs, and by corrupting the 2015 pattern bargaining process to foist on GM massive labor costs that the UAW would not have demanded (indeed, had not demanded) in an uncorrupted bargaining process. *See, e.g.*, Complaint, RE1, PageID#27, 31-32, 36-37, 38-39, 40-43, 44, 47, 49-50, 53-54, 55-56, 59-60, 62-63 (¶¶55, 63, 71-72, 75, 79-81, 83, 85-86, 94, 99-100, 111, 116-17, 129, 134-35, 137-38). There is nothing "attenuated," "contingent," or "remote" about those claims, *Hemi Grp.*, 559 U.S. at 9; to the contrary, "the link between [FCA's] scheme and the type of injury [GM] suffered is plain to see." *Wallace*, 714 F.3d at 420. When a company bribes someone with the capacity to inflict injury on one of its competitors

with the express intent of harming its rival, the injury to the competitor is as direct as it gets, and the intended victim of the scheme plainly is entitled to sue.

The district court's contrary conclusion rests on a fundamental misconception of what the direct relationship inquiry concerns and requires. Seizing on language from *Hemi Group* expressing the general reluctance of courts to go "beyond the first step" of injury that a defendant's illegal conduct caused, 559 U.S. at 2, the district court posited that "[a] 'direct relation' means that the injury occurred at the first step in the causal chain," Opinion, RE82, PageID#2963. From there, the court reasoned that no injury can possibly satisfy the "direct relationship" test if it requires more than one "step" to inflict. *Id.* PageID#2972. Accordingly, because FCA's scheme required it to enlist corrupt UAW officials at the "first" and "second" steps to help it impose massive and asymmetric labor costs on GM, the court concluded that GM's theory fails as a matter of law because it "requires the Court to move well beyond the first step." *Id.*

Far from finding support in Supreme Court precedent, that is precisely the reasoning that the Court *rejected* in *Bridge*. There too, the defendant argued that the plaintiff should not be able to pursue its RICO claim because the defendant's scheme to deprive its competitors of business opportunities depended on a "first step" of making a misrepresentation to a third party to enlist that party's assistance. *Bridge*, 553 U.S. at 653-54. The Court unanimously rejected that argument. In doing so,

the Court explained that the direct relationship test is not concerned with whether the plaintiff was the direct *object* of the defendant's illegal actions (*e.g.*, the party to whom the misrepresentation was made). It is concerned with whether the plaintiff's "alleged injury … is the direct result of [the defendant's] fraud." *Id.* at 658. That test was satisfied in *Bridge* and in numerous lower court cases that allow the intended victims of racketeering schemes to sue even though the "first step" in the scheme involved corrupting or defrauding a third party.

For example, this Court recognized, three years *after Hemi Group*, that borrowers were injured as a direct result of a lender's scheme to enlist a corrupt appraiser to provide misleading appraisals. *See Wallace*, 714 F.3d at 419. The Seventh Circuit likewise recognized that casinos were injured as a direct result of their competitor's scheme to bribe a governor to sign anti-casino legislation. *See Empress Casino*, 763 F.3d at 733. In similar fashion, GM was injured as a direct result of FCA's scheme to bribe their shared union to inflict higher labor costs on GM. Indeed, this case is *a fortiori* from *Bridge* and *Wallace*, as the (il)logic of the district court's reasoning would limit the universe of RICO plaintiffs to the bribee and immunize racketeers from the very harm their scheme was designed to visit on its intended victim.

These schemes to corrupt an intermediary in order to injure a competitor are readily distinguishable from cases like *Anza* and *Hemi Group*, where the defendants

did not corrupt government officials in order to injure rivals, and where the alleged injuries invoked attenuated causal chains. In *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451 (1991), for instance, the defendant fraudulently failed to charge sales taxes to cash-paying customers. *Id.* at 454. The intended victim of that scheme was the state, and the alleged injury to the plaintiff/business rival did not stem from that fraud at all, but rather stemmed from the lower prices that resulted from the defendant's decision to pass along the tax savings to its customers. If the defendant had purported to charge customers sales tax and simply pocketed the sales tax, the state would still have been defrauded and the plaintiff/business rival would not have suffered any harm. *Id.* at 458. The proximate cause of the plaintiff's harms thus was "entirely distinct from the alleged RICO violation." *Id.* Certainly nothing in *Anza* remotely suggests that a scheme to bribe tax officials to audit a rival would not be actionable.

The claimed link between the RICO violation and the plaintiff's injuries was even more attenuated in *Hemi Group*, where it was clear that the "wrong government" was suing for injuries inflicted by someone other than the defendant. There, the plaintiff, New York *City*, alleged that an online cigarette seller committed mail and wire fraud by failing to file required customer information with New York *State*. The City's theory was that the *seller's* fraudulent failure to file with the state precluded the state from relaying information to the city that would have made it

easier to track down *purchasers* who failed to pay the requisite city taxes. *Hemi Grp.*, 559 U.S. at 4. The Court declined to "stretch[] the causal chain of a RICO violation so far" as to reach "situations where the defendant's fraud on the third party (the State) has made it easier for a fourth party (the [purchaser]) to cause harm to the plaintiff (the City)." *Id.* at 11. As in *Anza*, there was a complete disconnect between the conduct that injured the plaintiff (the purchasers' failure to pay city taxes) and the alleged RICO violation (the seller's failure to file forms with the state).

Here, by contrast, "the conduct giving rise to the" RICO violation and "the conduct directly causing the harm," *id.*, are one and the same. Under GM's first claim, FCA used racketeering activity to gain control over the UAW, *see* 18 U.S.C. §1962(b), then used that control to cause the UAW to inflict injury on GM. Under GM's second claim, FCA used racketeering activity to inflict injury on GM. *Id.* §1962(c). In both claims, the racketeering activity *is* the conduct that caused the harm. In that situation, there can be no serious dispute that the plaintiff's "alleged injury … is the direct result of [the defendant's] fraud." *Bridge*, 553 U.S. at 658. Indeed, if anything, cases like *Empress Casino* and this one are *a fortiori* from *Bridge*, where the middleman used to inflict the injury on the ultimate victim was an *unwitting* accomplice in the defendant's RICO scheme. The county to whom the misrepresentations were made in *Bridge* was itself plainly a victim of the defendants' illegal acts, but that did not stop the Court from allowing the victims on whom the

pecuniary harm fell (*i.e.*, their competitors) from bringing RICO claims to recover their damages. *Id.* at 647-48. The utilization of an intermediary to effectuate a RICO scheme should have even less bearing when, as here, that intermediary is a corrupted co-conspirator, rather than an additional (and arguably more direct) victim of the scheme. It cannot be the case that enlisting the aid of an accomplice gets the mastermind behind the scheme off scot-free.

That result not only would defy common sense, but would be directly contrary to the text and core prohibitions of RICO. RICO specifically prohibits the use of racketeering activity to gain control over an otherwise-legitimate enterprise, *see* 18 U.S.C. §1962(b), as well as more general efforts to use an otherwise-legitimate enterprise to conduct racketeering activity, *see id.* §1962(c). Here, GM has alleged that Defendants violated both those prohibitions, using racketeering activities to gain control of the UAW in violation of §1962(b), and using the UAW to conduct racketeering activities in violation of §1962(c). Gaining control over an otherwise-legitimate enterprise will injure both legitimate inside stakeholders in the controlled enterprise and third parties that deal with the infiltrated enterprise. But there is absolutely no indication that Congress was concerned only with the former, especially when a principal objective of taking control is to inflict injuries on third

parties that deal with the enterprise.[3] That would seem beyond obvious when the whole point of corrupting a legitimate business is to defraud third-party creditors, and it should be no less obvious when a union or government regulator is corrupted to harm a rival.

To the extent the district court viewed FCA's UAW members, not GM, as the *sole* "direct victims of Defendants' alleged bribery scheme," Opinion, RE82, PageID#2971, that ignores both the allegations in the complaint and reality. To be sure, rank-and-file UAW members were also victims of FCA's RICO violations, as FCA used its corruption of UAW officials to deprive the rank-and-file of the honest services of their officers and may have also caused them pecuniary injuries. But those injuries came principally from the benefits, concessions, and advantages that FCA bribed UAW officials *to give to FCA*. As to the benefits, concessions, and advantages that FCA bribed UAW officials *to deny to GM*, it is far from clear that UAW members were injured at all since the additional GM costs (at least in the short-term) likely inured to their financial benefit. That is even more true of the allegations that FCA distorted the pattern bargaining process to impose additional

[3] That makes the district court's failure to distinctly analyze GM's §1962(b) claim particularly egregious, for a third party is often both the intended and the direct victim of an effort to gain control over an otherwise-legitimate entity. Indeed, GM was the "first in line" victim of the controlled entity under §1962(b) even on the district court's crabbed view of proximate cause, for FCA used its (purchased) control of the UAW to inflict harm directly on GM.

costs on FCA and GM in order to impose disproportionate costs on GM. If the rank-and-file UAW members were injured by the aspects of the scheme that targeted GM for higher costs at all, it was only in a more abstract (denial of honest services) or indirect (the imposition of additional labor costs on GM may have made the scheme more difficult to detect) manner. The direct victim was the intended victim, *i.e.*, GM. In short, "no more immediate victim is better situated to sue" for the damages for which GM seeks redress, and there is "no risk of duplicative recoveries by plaintiffs removed at different levels of injury," *Bridge*, 553 U.S. at 658, for the injuries GM seeks to redress were suffered by GM alone. And there is, of course, no rule that only one victim may bring RICO claims against a defendant whose racketeering activities directly injured more than one party.

Nor is the fact that FCA benefited from some aspects of the scheme an obstacle to recovery. Most classic racketeering schemes involve efforts to benefit by inflicting costs on others, whether they be creditors of infiltrated businesses or victims of the corrupted officials. Certainly civil RICO actions are not limited to the rare racketeer who inflicts injury purely for the sake of inflicting injury, rather than for pecuniary gain. Again, *Bridge* makes this clear, for the defendants there deprived their competitors of business by fraudulently securing that same business for themselves. Because the particular opportunities for which they were competing were in a universe so small as to be effectively a zero-sum game, the Court had little

trouble finding the direct relationship requirement satisfied, for "[i]t was a foreseeable and natural consequence of [defendants'] scheme to obtain more liens for themselves that other bidders would obtain fewer liens." *Id.* at 658. Here too, even apart from FCA's efforts to bribe UAW officials to impose harm directly on GM, unlawful efforts to secure unique advantages for FCA could not help but increase labor costs for its rival given the zero-sum nature of labor negotiations in the automobile industry. But in all events, the injury to GM was not just unavoidable, but fully intentional, and bribing UAW officials to *deny* GM fair treatment and to corrupt the pattern bargaining process to inflict maximum costs on GM plainly satisfies the direct relationship standard.

In short, this is not a case in which "the conduct directly causing the harm was distinct from the conduct giving rise to the fraud." *Hemi Grp.*, 559 U.S. at 11. The harm GM suffered—*i.e.*, higher labor costs—was the direct (and intended) result of the fraud—*i.e.*, FCA's corruption of the labor relationship between the UAW and GM. Nor is this a case in which the plaintiff's injuries derive "from the misfortunes visited upon a third person," *Holmes*, 503 U.S. at 268-70, or are injuries for which some more "immediate victim is better situated to sue" to recover, *Anza*, 547 U.S. at 460. Nobody else *could* sue to recover for GM's injuries because FCA inflicted those injuries on GM alone. GM's injuries were not an unavoidable or foreseeable byproduct of a scheme to injure someone else; GM's injuries were fully intended.

GM's claims thus fit comfortably within the principle that "one who intentionally causes injury to another is subject to liability to the other for that injury." *Bridge*, 553 U.S. at 657.

C. GM's Allegations Easily Clear the Plausibility Bar.

The district court not only applied the wrong legal standard, but also simply refused to credit GM's allegations despite the well-settled principle that on a motion to dismiss, "the court must accept all of the plaintiff's factual allegations as true" and "draw all reasonable inferences in the plaintiff's favor." *Doe*, 903 F.3d at 581. The requirement that allegations must be plausible does not repeal that well-established standard, and there is nothing remotely implausible about GM's well-pleaded allegations that a criminal bribery scheme to which more than a dozen former FCA and UAW officials have already pled guilty was designed not just to benefit FCA, but to injure GM. The district court's contrary conclusion betrays the same impermissible prejudgment of the ultimate merits that led it to openly deride this litigation as a "waste of time and resources" and a "huge legal distraction" in committing mandamusable error. June 23 Order, RE74, PageID#2858.

For instance, the district court simply refused to accept as true GM's allegations that FCA bribed UAW officials to deny benefits, concessions, and advantages to GM, even though GM alleged repeatedly and in specific detail throughout its complaint both the bribes FCA paid and the precise benefits,

concessions, and advantages GM was denied. *See, e.g.*, Complaint, RE1, PageID#7-8, 36-37, 42-43, 61-62, 90 (¶¶7, 71, 82-83, 132, 134, 178). Contrary to the court's contentions, there is nothing "conclusory" about those allegations, Opinion, RE82, PageID#2968-69; they are allegations of *fact*, not "formulaic recitation[s] of the elements of a cause of action" or "unadorned" claims of "the-defendant-unlawfully-harmed-me" type. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Nor is there anything implausible about them. After all, it is not as if GM manufactured some wild conspiracy theory that FCA and UAW leadership were involved in a bribery scheme. More than a dozen former FCA and UAW officials have pled guilty to federal criminal charges arising out of those very same allegations. Given the nature of the industry and the UAW's role in supplying labor to three major manufacturers through terms negotiated by a lead employer, it hardly takes a leap of imagination to appreciate why this admitted bribery scheme would have GM as its intended target, especially when FCA was openly trying to force a merger with GM at any cost.[4]

[4] FCA's desire to force a merger with GM was not simply driven by Marchionne's vanity; according to Marchionne, the economic benefits of consolidation *to FCA* were simply "too large to ignore." Complaint, RE1, PageID#50 (¶103) (quoting FCA, *Confessions of a Capital Junkie: An Insider Perspective on the Cure for the Industry's Value-Destroying Addiction to Capital* (Apr. 29, 2015), available at https://www.autonews.com/assets/PDF/CA99316430.PDF).

The district court's reasons for concluding otherwise just underscore how radically it departed from the settled law concerning pleading standards at the motion to dismiss stage. The court insisted that the only reasonable inference from "the facts alleged" (by which it apparently meant the subset of factual allegations it was willing to accept as true) was that FCA had no need to bribe UAW officials to deny concessions to GM because "the UAW would not give most of the concessions at issue to any company that was not bribing its officials." Opinion, RE82, PageID#2968-69. But that is nothing more than sheer speculation on the court's part. Not surprisingly, the court did not cite a single allegation in the complaint, or even anything outside the complaint, to substantiate its supposition that the union was so obviously corrupt that FCA could rest assured that it would skew the labor process against any employer who did not pay-to-play, and thus that it was implausible that FCA would include disadvantaging GM among its demands in an admitted bribery scheme. At best, the court's speculation suggests that FCA may have had a willing co-conspirator who did not need to be paid much to be induced to harm GM or that there are other nefarious explanations for the bribes admittedly paid. But it is well settled that even the "existence of more likely alternative explanations does not automatically entitle a defendant to dismissal." *16630 Southfield Ltd. P'ship v. Flagstar Bank, F.S.B.*, 727 F.3d 502, 505 (6th Cir. 2013).

Moreover, even the district court acknowledged that its speculation could not readily explain why the UAW would commit to FCA's World Class Manufacturing program but not GM's comparable Global Manufacturing System, or would agree to FCA's prescription drug formulary proposal but not GM's. Opinion, RE82, PageID#2970. Instead, the court just refused to accept the reasonable inference that this asymmetric treatment was part of what FCA's bribes purchased because the facts *also* "support the inference that Defendants' intent was to lower FCA's labor costs." *Id.* PageID#2971. But a desire to lower its own labor costs and a desire to raise GM's labor costs are hardly mutually exclusive. Even if they were, moreover, "alternative explanations are not fatal to [the] ability to survive a Rule 12(b)(6) motion to dismiss," for deciding which of two competing inferences the facts best support is the job of a jury presented with a complete record, not the job of a district court resolving a motion to dismiss. *Doe*, 903 F.3d at 587. That the court apparently found FCA's narrative more persuasive than GM's was a patently improper ground to preclude GM from even trying to prove its case.

The district court's analysis of GM's allegations with respect to the 2015 pattern bargaining proceedings was, if possible, even more flawed. For one thing, the court literally ignored one of the most critical facts that makes GM's allegations not just reasonable, but eminently probable—namely, the fact that FCA's CEO was at the very same time publicly agitating to force a merger with GM at any and all

costs. *See supra* pp.9-13. The court made no effort to explain how that uncontested allegation could not support an inference that FCA set out to deliberately weaken GM, even at the price of raising FCA's own labor costs. Instead, the court once more reasoned that because there *could* be another explanation for FCA's actions (*i.e.*, an effort to throw federal investigators off its scent), that *must* be the only explanation. Opinion, RE82, PageID#2972-73. Again, "[f]erreting out the most likely reason for the defendants' actions is not appropriate at the pleadings stage." *Watson Carpet*, 648 F.3d at 458.

The district court closed by suggesting that GM should not be able to recover even if FCA *did* "use 'weaponized' pattern bargaining to weaken GM" because it would be to "difficult[]" to calculate the damages GM suffered as a result. Opinion, RE82, PageID#2973. That is wrong as a matter of law. To be sure, the Supreme Court has identified the difficulty of calculating damages as a reason why RICO does not allow plaintiffs to recover for injuries *that are not direct*. *See, e.g.*, *Holmes*, 503 U.S. at 269. But the Court has never suggested that plaintiffs who *are* directly injured should not be able to recover damages just because there could be some difficulty in assessing the full extent of the harm. As long as proximate cause is satisfied, the general rules for proving the fact and amount of damages govern, and those rules do not allow a defendant who injures another to escape responsibility because the precise quantum of damages is less certain than the fact of damage. *Cf.*

Story Parchment Co. v. Paterson Parchment Paper Co., 282 U.S. 555, 562-66 (1931); *BCS Servs., Inc. v. Heartwood 88, LLC*, 637 F.3d 750, 759-60 (7th Cir. 2011). For all the reasons already discussed, *see supra* Part I.A, the relationship between the alleged racketeering scheme and the harms inflicted on the scheme's intended victim is direct. The damages caused by that scheme do not involve pass-throughs to downstream purchasers or any other complexity that reflects attenuation; they simply involve calculating the increased labor costs inflicted on GM by the scheme. Accordingly, accepting GM's well-pled allegations as true, as this Court must do at this stage, the district court's dismissal of GM's complaint cannot stand.

II. The District Court Erred By Dismissing GM's Complaint With Prejudice And Denying Leave To Amend.

While the well-pled allegations in GM's complaint are more than sufficient, the district court abused its discretion by denying GM leave to amend its complaint to add allegations that provide additional detail concerning the targeting of GM that would satisfy even a heightened pleading standard for proximate cause. By instead dismissing *with prejudice*, the district court abused its discretion and reinforced the conclusion that it was applying impermissibly demanding standards of both proximate cause and pleading.

Setting aside the court's mistaken only-the-first-step/no-intermediaries theory of proximate cause, *see supra* Part I.B, the principal defect it identified in GM's complaint was a purported lack of "specific facts supporting the allegation that a

condition of Defendants' payments to the UAW officials was denial of concessions and benefits to GM." Opinion, RE82, PageID#2971. GM sought to rectify that purported defect in a proposed amended complaint by adding allegations based on newly discovered facts that spoke directly to that concern—in particular, numerous foreign bank accounts that linked Defendants to UAW officials who not only received bribes, but worked *inside GM*. Motion to Alter or Amend Judgment, RE84, PageID#2997-98. Most notably, the newly discovered accounts indicate that, between 2010 and 2014, FCA and FCA NV made substantial payments to the then-UAW Vice President for the GM Department, who effectively controlled labor relations between the UAW and GM and later became UAW's designated member on GM's Board. *Id*. PageID#3000-02.[5] Those accounts and payments readily substantiate the inference that FCA sought to use its corrupt activities not just to reduce FCA's costs but to injure GM, as payments to keep the head of the UAW's relationship *with GM* on FCA's payroll strongly support an intent to raise GM's costs, rather than just reducing FCA's own labor costs. It is the equivalent of finding that FCA bribed the NHTSA official responsible for GM products, rather than the NHTSA official responsible for FCA products. The resulting inference that the

[5] GM also uncovered an account in the name of Iacobelli, the former FCA senior official who infiltrated GM after having spent years orchestrating the bribery scheme from his post at FCA. Motion to Alter or Amend Judgment, RE84, PageID#2989, 2998.

bribes were designed not just to induce NHTSA to go easy on FCA, but to fly-speck GM, would be inescapable.

The district court's insistence that GM do more to substantiate the plausibility of its allegations that FCA paid for harsher treatment of GM and more lenient treatment of FCA, while refusing to accept GM's amended complaint providing further substantiation of those allegations, was a patent abuse of discretion. At the outset, GM's complaint should not have been dismissed with prejudice in the first place, for it is well settled that district courts "should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a); *see also Moore v. City of Harriman*, 272 F.3d 769, 793 n.14 (6th Cir. 2001) ("The Rules are also liberal in allowing a party to amend his pleading."). Accordingly, when a complaint is dismissed for purported pleading defects, generally "a plaintiff must be given at least one chance to amend the complaint before the district court dismisses the action with prejudice." *EEOC v. Ohio Edison Co.*, 7 F.3d 541, 546 (6th Cir. 1993). That is particularly true when, as here, the district court settles a disagreement about the legal standards applicable to a complaint by choosing the more demanding standard. For instance, in *Bledsoe*, this Court held that a district court abused its discretion by dismissing with prejudice when the plaintiff "was not definitively on notice that he had to state his allegations with the specificity required by Rule 9(b)." 342 F.3d at 644. Here too, GM should have been entitled to an opportunity to amend its complaint to

conform to the district court's (unduly) strict pleading standards even without the powerful new evidence that GM set forth.

The district court resisted that proposition, insisting that GM should have filed an amended complaint before the court issued its ruling on the motions to dismiss because GM "was on clear notice by the June 23[] hearing that the Court would adhere to" a "strict" application of its so-called "direct proximate cause requirement." Opinion re Motion to Alter or Amend Judgment, RE92, PageID#3380-81. But there is no support for the notion that a plaintiff must read the proverbial tea leaves at oral argument and seek leave to refile before the court rules. To the contrary, this Court has squarely rejected the proposition that plaintiffs forfeit their right to file an amended complaint by failing to do so before a court decides a motion to dismiss. *See, e.g.*, *Bledsoe*, 342 F.3d at 644-45. And with good reason, as forcing parties to race to beat the clock on anticipated rulings on pending motions based on comments at the hearing has nothing to recommend it either as a general matter or on the facts of this case.

For one thing, the district court seemed to forget its on-the-record insistence at the conclusion of a two-hour hearing that it was merely taking the motions under advisement. June 23 Order, RE74, PageID#2856. That statement was critical to the court's ill-fated efforts to force the CEOs to settle the case. Even more remarkable, the district court seemed to forget that only two weeks elapsed between the June 23

hearing and its order dismissing the complaint, Opinion, RE82, PageID#2945, and that almost all of that interval was consumed by GM's successful effort to have the court's extraordinary CEO-level settlement conference reversed via mandamus. The notion that GM had to use or lose its right to file an amended complaint during the same brief window that it needed to obtain relief from this Court to vitiate the district court's order that its CEO personally settle this "huge legal distraction," June 23 Order, RE74, PageID#2858, borders on absurd.

In all events, even if GM were not otherwise entitled to leave to amend, its newly discovered evidence certainly entitled it to file an amended complaint. The district court did not appear to dispute that this evidence was previously unavailable; instead, it once again refused to take it at face value. Without even attempting to offer an explanation for why FCA would be paying bribes to the UAW official directly responsible for the UAW's relationship *with GM*, the court simply declared that "GM's newly discovered evidence does not create a reasonable inference that FCA was bribing individuals to infiltrate GM as part of a scheme to directly harm GM." Opinion re Motion to Alter or Amend Judgment, RE92, PageID#3385.

In fact, the newly discovered evidence does just that, and reinforces what was already clearly and plausibly alleged on the face of the original complaint: FCA did not merely pay bribes to improve its own labor costs, but also paid officials of their shared union to increase GM's labor costs. There is nothing implausible about the

allegation that an admitted briber in a highly concentrated industry would pay the corrupted officials of a shared union not just to make the briber's life better but to make its rival's life worse. That is particularly true when the admitted briber has openly targeted its rival for acquisition and thus would uniquely benefit from the rival's weakened condition. But at the point that evidence emerges that one of the bribed officials was the union official principally responsible for the rival's labor conditions, the point of plausibility has been surpassed by several orders of magnitude. The only explanation for dismissing the complaint in those circumstances is a failure to apply the proper standards of proximate cause and pleading. Accordingly, the decision below should be reversed and this case should be reinstated with instructions to grant GM leave to file an amended complaint as it sees fit based on whatever additional guidance this Court's decision may offer.

CONCLUSION

This case involves an admitted bribery scheme spanning nearly a decade and involving millions of dollars in illicit payments. Yet when the target of that scheme filed suit, the district court dismissed the case at the threshold based on the very reasoning the Supreme Court rejected in *Bridge*. That decision badly distorts the law of proximate cause and pleading and sets a dangerous precedent for denying relief to the intended targets of racketeering schemes. For all the reasons set forth above, this Court should reverse.

Respectfully submitted,

s/Paul D. Clement

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 12,421 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and 6th Cir. R. 32(b).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 with 14-point Times New Roman font.

Date: October 13, 2020

s/Paul D. Clement
Paul D. Clement

CERTIFICATE OF SERVICE

I hereby certify that on October 13, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/Paul D. Clement
Paul D. Clement

ADDENDUM

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Petitioner-Appellant's Designation of Relevant District Court Documents

Petitioner-Appellants General Motors LLC and General Motors Company, pursuant to 6th Circuit Rules 28(a) and 30(g), designate the following relevant documents in the electronic record:

Record Entry	Description of Document	Page ID #
1	Complaint and Request for Jury Trial (Nov. 20, 2019)	1-95
41	FCA USA's Motion to Dismiss the Complaint (Jan. 24, 2020)	764-830
42	Fiat Chrysler Automobiles N.V.'s Motion to Dismiss the Complaint (Jan. 24, 2020),	1325-1348
43	Notice of Joinder by Michael Brown in FCA USA's Motion to Dismiss the Complaint (Jan. 24, 2020)	1420-1421
44	Notice of Joinder by Jerome Durden in FCA USA's Motion to Dismiss the Complaint (Jan. 27, 2020)	1422-1423
50	Alphons Iacobelli's Motion to Dismiss the Complaint (Feb. 3, 2020)	1601-1636
64	Plaintiffs' Opposition to FCA US LLC's Motion to Dismiss the Complaint (Mar. 12, 2020)	2304-2364
67	Reply of Alphons Iacobelli In Support of Motion to Dismiss Complaint (Apr. 6, 2020)	2719-2730
68	Reply Memorandum of Law In Support of FCA US LLC's Motion to Dismiss the Complaint (Apr. 8, 2020)	2731-2753
71	Order Declining to Exercise Supplemental Jurisdiction Over Two State Law Claims, Pursuant to 28 U.S.C. §1367 (June 15, 2020)	2850-2851
74	Order (June 23, 2020)	2856-2859
75	Transcript of Remote Motion Hearing on Defendants' Motions to Dismiss, held June 23, 2020 (June 25, 2020)	2860-2928
78	Order Amending June 23 Order (June 27, 2020)	2934
79	Order Responding to Plaintiff General Motors' June 27, 2020 Letter to the U.S. Court of Appeals for the Sixth Circuit (June 29, 2020)	2935

Record Entry	Description of Document	Page ID #
80	Order of the U.S. Court of Appeals for the Sixth Circuit Staying June 23, 2020 Order (June 29, 2020)	2936-2939
81	Order of the U.S. Court of Appeals for the Sixth Circuit Granting Petition for Writ of Mandamus and Denying Request for Reassignment (July 6, 2020)	2940-2944
82	Opinion and Order Dismissing Complaint (July 8, 2020)	2945-2974
83	Judgment (July 8, 2020)	2975
84	Motion to Alter or Amend Judgment (Aug. 3, 2020)	2976-3005
84-2	Exhibit A to Docket 84, Motion to Alter or Amend Judgment (Amended Complaint) (Aug. 3, 2020)	3008-3136
87	Defendant Alphons Iacobelli's Response in Opposition to Motion to Alter or Amend Judgement (Aug. 8, 2020)	3208-3228
88	Notice of Joinder by Jerome Durden in Alphons Iacobelli's Response in Opposition to Motion to Alter or Amend Judgment (Aug. 8, 2020)	3229-3230
90	FCA Defendants' Opposition to Motion to Alter or Amend Judgment (Aug. 10, 2020)	3232-3371
91	Notice of Joinder by Jerome Durden in FCA Defendants' Opposition to Motion to Alter or Amend Judgment (Aug. 10, 2020)	3372-3373
92	Opinion and Order Denying Motion to Alter or Amend Judgment (Aug. 14, 2020)	3374-3386
93	Notice of Appeal to U.S. Court of Appeals for the Sixth Circuit (Aug. 17, 2020)	3387-3433

18 U.S.C. §1961 Definitions

As used in this chapter—

1) "racketeering activity" means

(A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year;

(B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1351(relating to fraud in foreign labor contracting), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510(relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512(relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581-1592 (relating to peonage, slavery, and trafficking in persons).,[6] sections 1831 and 1832 (relating to economic espionage and theft of trade secrets), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952(relating to racketeering), section 1953 (relating to

[6] So in original.

interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), section 1960 (relating to illegal money transmitters), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A(relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances), section 2320(relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), sections 175-178 (relating to biological weapons), sections 229-229F (relating to chemical weapons), section 831 (relating to nuclear materials),

(C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds),

(D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States,

(E) any act which is indictable under the Currency and Foreign Transactions Reporting Act,

(F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain, or

(G) any act that is indictable under any provision listed in section 2332b(g)(5)(B);

2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, any Assistant Attorney General of the United States, or any employee

of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

18 U.S.C. §1962 Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

18 U.S.C. §1964 Civil remedies

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.