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Appendix A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 20-1791

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.

Argued: Mar. 4, 2021
Decided and Filed: Aug. 11, 2022

Before: STRANCH, LARSEN, and NALBANDIAN, Circuit Judges.

OPINION

LARSEN, Circuit Judge. For almost a decade, executives at FCA US, LLC and its parent company, Fiat Chrysler Automobiles N.V.,[1] engaged in a pattern of racketeering, involving bribery and corrupt labor

[1] Fiat Chrysler changed its name to Stellantis N.V. on January 17, 2021, after merging with Peugeot S.A. Because the briefing and the lower court use Fiat and FCA, we do the same.

relations with the United Auto Workers (UAW). General Motors (GM) believes that it was the intended victim of the scheme and says it has suffered billions of dollars in damages because of it. GM accordingly sued FCA, Fiat, and various executives under the Racketeer Influenced and Corrupt Organizations Act (RICO). The district court granted defendants' motions to dismiss, concluding that GM had failed to establish that the alleged RICO violations proximately caused its injuries. For the reasons stated, we AFFIRM.

I.

Because the case is at the motion to dismiss stage, the factual allegations in the complaint are what matter, and we accept them as true. *See Ohio Pub. Emps. Ret. Sys. v. Fed. Home Loan Mortg. Corp.*, 830 F.3d 376, 382-83 (6th Cir. 2016).

In 2008, the country was facing a financial crisis. As losses mounted, some U.S. auto companies looked to the federal government for help. The government gave financial relief to General Motors Corporation (Old GM) and Chrysler through the Troubled Asset Relief Program. That did not work, and Chrysler and Old GM filed for Chapter 11 bankruptcy in 2009. In Europe, Fiat faced similar troubles. Fiat CEO Sergio Marchionne determined that Fiat had to secure a partnership with one of the U.S. auto companies to survive. Marchionne determined that "the UAW was Fiat's bridge to establish a domestic footprint given the UAW's significance in the U.S. automotive market." Complaint, R. 1, PageID 25.

Marchionne began to cultivate a relationship with the UAW, "quickly ma[king] the head of the union's

Chrysler Department, [General] Holiefield, a strategic partner and soon thereafter 'a true friend.'" *Id.* Marchionne sought to convince the UAW that a Fiat-Chrysler partnership would be good for the union, hoping that when it came time for Fiat to negotiate over a purchase of Chrysler, the UAW would "throw its weight behind Fiat." *Id.* at 25-26.

Fiat began to negotiate a partial purchase of Chrysler. As part of the purchase, Marchionne demanded that the UAW support World Class Manufacturing (WCM), a system that would make the Fiat/Chrysler facilities flexible, jettisoning "the union's rigid job classification system with its strict hierarchy and boundaries about who could do what." *Id.* at 26-27. Chrysler and the UAW agreed to Marchionne's request to implement WCM. Similarly, the UAW agreed to hire more temporary employees in place of hourly workers. And UAW leadership agreed that, until 2015, it would "lift any cap or restraint on Tier Two workers"—"a less expensive labor source," comprising less-senior employees with a lower wage structure and fewer benefits. *Id.* at 27. "Marchionne's goal overall was to have as few constraints as possible in his ability to operate Chrysler when it came out of bankruptcy." *Id.* GM alleges that "Marchionne implemented a bribery scheme to achieve this goal and help revive Chrysler and, relatedly, harm GM." *Id.*

Chrysler emerged from bankruptcy in June 2009 with Fiat owning 20 percent of its equity, and the UAW owning 55 percent. Fiat had the right to purchase 40 percent of the UAW's equity interest in

Chrysler.[2] GM also emerged from bankruptcy, with the UAW owning 17.5 percent equity in the new company, making it the largest shareholder.

GM says the scheme began the following month, in July 2009, with a series of bribes. Defendant Alphons Iacobelli, the former Vice President of Employee Relations at FCA, "and other FCA officials began to transfer hundreds of thousands of dollars of Chrysler funds to Holiefield." *Id.* at 28. FCA paid for Holiefield's wedding to Monica Morgan in Venice and showered Holiefield with gifts, including a "custom-made Terra Cielo Mare watch worth several thousand dollars." *Id.* at 29.

From there, "FCA began a long-running intentional scheme of improper payments to certain UAW officials, funneled primarily through the [UAW-FCA National Training Center (NTC)], made by FCA senior executives and agents (including with the knowledge and approval of Marchionne) to influence the collective bargaining process." *Id.* at 31. FCA used NTC's credit card and bank accounts to conceal payments and gifts to UAW officers and employees worth over $1.5 million. The goal was "to obtain benefits, concessions, and advantages for FCA in its relationship with the UAW." *Id.* at 32. Defendant

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[2] By 2013, Fiat had acquired a 58.5 percent stake in Chrysler, with the UAW owning the rest. In 2014, Fiat acquired the UAW's remaining stake in Chrysler. That is when the business entity officially became "FCA." GM's complaint, however, uses "FCA" instead of Fiat when discussing all events after Fiat first acquired an interest in Chrysler in 2009. We do the same for ease. And we use "FCA" to refer to all defendants, including the individual defendants, when discussing the arguments presented to this court, and differentiate only when necessary.

Michael Brown, FCA's Director of Employee Relations and NTC Co-Director, pleaded guilty to criminal charges for his role in the fraud. He explained that "it was the intent of FCA executives to 'grease the skids' in their relationship with UAW officials." *Id.*

FCA funneled money to Holiefield and his wife, Morgan, through charitable organizations and false front businesses, including Morgan's photography business. Defendant Jerome Durden, an FCA executive who served on the board of one of Holiefield's charities, assisted in these payments. The amounts were staggering. For example, FCA funneled $425,000 to one business; Holiefield and Morgan used the money for personal expenses, including closing costs on a house. The couple spent other payments made to these businesses— in amounts of $386,400; $350,000; and $200,000 and so-on—to finish an in-ground pool, buy clothes, and visit nightclubs and restaurants. On another occasion, the NTC directly paid off the mortgage on Holiefield's personal residence, sending a wire transfer for over $250,000.

FCA also encouraged UAW officials to use credit cards issued by the NTC. UAW officials happily complied, "charging, for example, $1,259.17 for luxury luggage; $2,182 for a[n] Italian-made Beretta shotgun; $2,130 for Disney World theme park tickets; over $1,000 for a pair of Christian Louboutin designer shoes; and thousands of dollars in electronics and many more such personal items." Id. at 35. Other UAW officials, including former President Dennis Williams, used FCA funds for lavish dinners and golf outings.

What did Chrysler get from the bribery scheme? GM says that because of FCA's bribes, "certain corrupt members of UAW's leadership began providing Chrysler with labor peace and competitive advantages to propel Chrysler's performance without regard to the interests of UAW membership." *Id.* at 36. The bribes "were made for this very purpose: to obtain 'benefits, concessions, and advantages' not only in labor negotiations but also the implementation and administration of at least the post-2009 CBAs, in 2011 and 2015." *Id.* at 36-37. Also, "through its bribery, FCA ensured that while these special advantages were conferred on FCA, the same or similar advantages were not provided to . . . GM despite it seeking similar programs and concessions." *Id.* at 37. This, says GM, inflicted "massive direct damage on GM in the form of higher costs." *Id.*

FCA's bribes secured the UAW's agreement to FCA's preferred WCM system. GM had a similar, but inferior, program of its own (the Global Manufacturing System [GMS]). But despite having "worked closely" with FCA to ensure the success of its system and to bring the program on par with WCM, UAW leaders rebuffed GM's "repeated efforts to collaborate . . . on improvements to" GMS. *Id.* at 38-39. Without "buy-in" from the Union, GMS could not be as successful as FCA's WCM. *Id.* at 39. So, GM says that because of the bribes, the UAW never "fully embraced" GM's efforts to implement GMS. *Id.*

FCA's bribes also secured it an advantage with respect to the hiring of lower cost workers. A prior agreement had limited both FCA and GM in terms of the number of lower-wage, Tier Two employees they

could hire. But in 2009, the UAW and the auto companies agreed to lift the cap, with an understanding that the cap would be reinstated in 2015. Because of the bribes, the UAW privately told FCA that it would not actually reinstate the cap for either auto company in 2015. Without this knowledge, GM stayed below the cap on Tier Two workers between 2009 and 2015, while "FCA hired Tier Two workers with abandon, possessing the incredibly valuable foreknowledge that it would not be penalized." *Id.* at 40. "This difference purchased through the bribery scheme provided FCA with a dramatic advantage with respect to average labor costs." *Id.* Similarly, because the UAW did not hold FCA to the contractual limits on temporary workers (who are entitled to substantially less compensation than unionized employees), FCA was able to lower its average hourly labor costs. GM received no such concession on temporary workers. In addition, bribed UAW officials oversaw the UAW's grievance process. "Instead of zealously pursuing union grievances and health and safety issues," corrupt UAW grievance officials, "effectively" gave FCA "control" of "potentially costly and disruptive labor grievances." *Id.* at 41. "GM was denied any such corresponding benefit." *Id.* Moreover, in 2014, through "'side letter' agreements" "outside of the traditional bargaining process," FCA obtained a favorable prescription drug agreement with the UAW, which significantly reduced FCA's healthcare costs. A similar prescription agreement would have saved GM up to $20 million per year, but the UAW refused to agree to terms with GM.

Add this all up and the bribes bought FCA "a wage advantage to take FCA from worst to first among the

Detroit-based automakers" in terms of its labor costs. *Id.* at 42. "By 2015, FCA [had] slashed its labor costs to $47 [per hour]—in the range of non-unionized foreign automakers operating in the U.S.—and $8 less on average per hour than GM ($55)." *Id.* According to GM, "FCA directed key UAW officials to deny similar labor advantages to GM, inflicting significant additional costs on GM." *Id.* at 43. The bribery continued when Dennis Williams took over as president of the UAW in 2014. "Williams specifically directed his lieutenants and other corrupt officials to accelerate their fraud, and use NTC funds and credit cards for travel, dining, and other illegal purposes to improve the UAW's budget." *Id.* at 48. Williams would be a willing participant in the rest of the scheme.

Marchionne also had long sought a merger with a U.S. auto company. "With Marchionne as the lead, FCA schemed that it could effectively take over GM through a merger (code-named 'Operation Cylinder'), have Marchionne remain CEO of the combined companies, and oversee the largest auto company in the world." *Id.* at 49. It was in part for this reason that Marchionne "had authorized the bribery of UAW leaders." *Id.* Their "support was essential to the success of Operation Cylinder" because "the UAW could effectively block a merger under certain terms in the CBA." *Id.* at 49-50. Marchionne approached GM about a merger in 2015, but GM rejected the offer, even after bribed UAW executives pressed GM to move forward.

Bargaining over the 2015 collective bargaining agreements began in July 2015. By early September, the UAW and GM had inched closer to a framework

for a new agreement. Though the UAW had initially demanded "nearly $1 billion" in total cost increases over the 2011 CBA, the "new potential deal" reduced those costs by more than 20 percent. *Id.* at 54. But that agreement never materialized.

The auto companies and the UAW use "pattern bargaining, a strategy in which unionized workers across an industry attempt to bargain uniform terms in their contracts." *Id.* at 55. "[T]he UAW selects one of the automakers as a 'lead' or 'target' company, with which the UAW negotiates a CBA. Then, the UAW exerts pressure on the other two companies to use the first agreement as a 'pattern' for negotiations." *Id.* at 56. The UAW usually chooses the largest and best performing automaker as the target because it allows the UAW to maximize its gains by locking in favorable wage increases and signing bonuses. GM thought it would be chosen as the target. Industry analysts agreed; they also believed FCA was not a viable target because it was the smallest and least profitable of the companies.

Nevertheless, in September 2015, the UAW unexpectedly chose FCA as the target, a position, according to GM, "secured through the years-long bribery scheme between FCA Group and UAW leaders." *Id.* at 58. Two days after selecting FCA as the target, "FCA and the UAW reported that an agreement had been reached that, in Marchionne's words, was a 'transformational deal.'" *Id.* at 59. The UAW bargaining team celebrated the deal with a $7,000 dinner in Detroit—paid for with NTC funds.

The UAW's FCA workforce rejected the agreement, however, sending the parties back to the

bargaining table. In early October, FCA and the UAW reached a new agreement. According to GM, the terms of this deal "were structured to force enormous costs on GM." *Id.* at 61. "[A]s a pattern for a GM agreement, it would be vastly more expensive than the agreement GM had negotiated prior to FCA's selection as lead." *Id.* In fact, it was twice as costly as the UAW's initial demands of GM, which GM had successfully negotiated down. FCA-UAW members ratified the revised deal.

By this time, FCA and UAW leaders knew that the government had become suspicious. GM says that "[t]hrough this 'rich' FCA-UAW labor contract, Williams and corrupt UAW leaders were able to claim to the public, UAW members, and government investigators that UAW leadership had obtained significant FCA concessions that could then be used in pattern negotiation." *Id.* at 62. "Marchionne, in turn, structured and agreed to these CBA terms to force unanticipated higher costs on GM, which had a higher degree of more costly Tier One workers, and further his takeover scheme." *Id.*

The UAW selected GM as the next target for negotiations, using "the fraudulently tainted FCA-UAW pattern." *Id.* "[T]he economic force of pattern bargaining and threat of strike forced GM to largely concede FCA's agreement as a pattern"; in November 2015, UAW workers ratified the new agreement with GM. *Id.* at 63. "[A]lthough GM was able to reduce the immediate cost impact of the FCA pattern by about $400 million, the final CBA between GM and the UAW cost approximately $1.9 billion in incremental labor charges over four years—over $1 billion more than the

deal GM believed it had reached with the UAW before the UAW's selection of FCA as the lead." *Id.* And "[a]lthough GM was able to successfully resist the FCAUAW leadership takeover scheme, substantial damage from the racketeering scheme had been inflicted: direct injuries to GM that continue to reverberate and compound to this day, including higher costs and lost investment initiatives." *Id.*

By 2017, the jig was up. The Department of Justice criminally charged numerous FCA executives and UAW officials for their roles in the conspiracy. "One by one, each of the FCA and UAW co-conspirators entered guilty pleas admitting to a brazen scheme to enrich themselves and corrupt the collective bargaining process through the FCA Control and FCA-NTC Enterprises." *Id.* at 66. That includes Iacobelli, Durden, and Brown, the three individual defendants in this case. FCA also pleaded guilty for its role in the corruption scandal and agreed to pay a $30 million fine. *See* David Shepardson, *Fiat Chrysler to plead guilty, pay $30 million to resolve U.S. criminal labor probe*, Reuters (Jan. 27, 2021, 10:45 AM), https://www.reuters.com/article/us-usa-autos-labor/fiat-chrysler-to-plead-guilty-pay-30-million-to-resolve-u-s-criminal-labor-probe-idUSKBN29W1ZA. For its part, the UAW agreed to a consent decree that would put the union under federal monitoring for six years; a judge approved the consent decree. *See* Breana Noble & Robert Snell, *Judge approves UAW consent decree; union has 30 days to propose monitors*, The Detroit News (Jan. 29, 2021, 7:35 PM), https://www.detroitnews.com/story/business/autos/2021/01/29/federaljudge- approved-united-auto-workers-consent-decree/4317725001/.

On November 20, 2019, GM sued FCA, Fiat, Iacobelli, Durden, and Brown, asserting three RICO claims against all defendants, one claim each under 18 U.S.C. § 1962(b), (c), and (d); a claim for unfair competition under Michigan law against FCA and Fiat; and a claim for civil conspiracy against all defendants. The district court declined to exercise supplemental jurisdiction over GM's state law claims.[3]

All defendants moved to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. The district court granted the motions. Assuming that FCA had committed the alleged RICO violations, the district court held that FCA's alleged RICO violations were either indirect or too remote to have proximately caused GM's alleged injuries. All of GM's RICO claims therefore failed. The district court dismissed GM's complaint with prejudice.

GM filed a motion to alter or amend the judgment pursuant to Federal Rule of Civil Procedure 59(e), arguing that newly discovered evidence showed that the scheme directly and intentionally targeted it. GM asked the court to vacate its order or, in the alternative, allow it to file an amended complaint. The court denied the motion, concluding that GM's new evidence was too speculative to warrant reopening the

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[3] A Michigan state court dismissed all of GM's claims against FCA. See David Shepardson, Michigan judge tosses GM lawsuit against Fiat Chrysler, Reuters (Oct. 18, 2021, 5:55 AM), https://www.reuters.com/business/autos-transportation/michigan-judge-tosses-gm-lawsuit-against-fiat-chrysler-2021-10-17/.

case and that there were no other clear legal errors. GM timely appealed.

II.

We must first assess whether this case is properly before us. FCA argues that the National Labor Relations Board (NLRB) has exclusive jurisdiction over GM's claims because they are based on conduct that arguably constitutes an unfair labor practice. FCA invokes the doctrine of *Garmon* preemption, which gets its name from the Supreme Court's decision in *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959).[4] Because FCA's *Garmon* argument potentially implicates the court's subject matter jurisdiction, we address it before proceeding to the merits. *See Trollinger v. Tyson Foods, Inc.*, 370 F.3d 602, 608 (6th Cir. 2004); *Int'l Longshoremen's Ass'n. v. Davis*, 476 U.S. 380, 393 (1986); *Pulte Homes, Inc. v. Laborers' Int'l Union of N. Am.*, 648 F.3d 295, 299 (6th Cir. 2011); *but see Baker v. IBP, Inc.*, 357 F.3d 685, 688 (7th Cir. 2004) (holding that, when "[a]pplied to claims in federal court, and arising under federal law," *Garmon* does not affect a court's subject-matter jurisdiction but is instead an abstention doctrine, "allocating to an administrative agency the first crack at certain matters").

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[4] As this court explained in *Trollinger v. Tyson Foods, Inc.*, the use of the word "preemption" to describe the doctrine is a bit of a misnomer. 370 F.3d 602, 608 (6th Cir. 2004). "*Garmon* is more than a traditional preemption doctrine . . . because when properly invoked it tells us not just what law applies (federal law, not state law) but who applies it (the National Labor Relations Board, not the state courts or federal district courts)." *Id.*

"Sections 7 and 8 of the National Labor Relations Act protect certain labor practices (such as organizing or joining a labor union, bargaining collectively, and engaging in concerted activity, or refraining from engaging in any of these activities) and prohibit certain others (such as interfering with a protected activity or coercing employees to join a union)." *Trollinger*, 370 F.3d at 608. Because Congress vested the NLRB "with primary jurisdiction to determine what is or is not an unfair labor practice" under the NLRA, *Kaiser Steel Corp. v. Mullins*, 455 U.S. 72, 83 (1982), federal courts generally may not resolve claims based on "activity which 'is arguably subject to § 7 or § 8 of the [NLRA],' and they 'must defer to the exclusive competence of the [NLRB],'" *id.* (quoting *Garmon*, 359 U.S. at 245).

But there are exceptions to the NLRB's primary jurisdiction. For example, "federal courts may decide labor law questions that emerge as collateral issues in suits brought under independent federal remedies" as "long as the statute does not conflict with §§ 7 or 8 of the NLRA and . . . litigants do not circumvent the primary jurisdiction of the NLRB simply by casting statutory claims [under §§ 7 or 8 of the NLRA] as violations of [an independent federal law]." *Trollinger*, 370 F.3d at 609-10 (citations omitted). And Congress may also "expressly carve[] out an exception to the [NLRB's] jurisdiction." *Brennan v. Chestnut*, 973 F.2d 644, 646 (8th Cir. 1992) (citing *Vaca v. Sipes*, 386 U.S. 171, 179-80 (1967) (citing cases)). Here, Congress has done just that.

GM's RICO claims are predicated on violations of a labor law—namely, 29 U.S.C. § 186 (also known as

Section 302 of the Labor Management Relations Act (LMRA)), which prohibits certain financial transactions between employers, employees and unions.[5] It is one of two labor laws listed as RICO predicates in 18 U.S.C. § 1961(1).[6] So the question is whether, by naming a labor law as a RICO predicate, Congress "expressly carved out an exception to" the NLRB's jurisdiction. We answer: yes.

No circuit court has authoritatively addressed whether the NLRB retains primary jurisdiction over RICO claims predicated on violations of § 186. Two have suggested in dictum, however, that it does not. *See Brennan*, 973 F.2d at 646 ("[A] claimed violation of 29 U.S.C. § 186 would not be preempted because RICO includes violations of § 186 within the definition of 'racketeering activity'"); *Tamburello v. Comm-Tract Corp.*, 67 F.3d 973, 977 (1st Cir. 1995) ("The specific exceptions carved out in §§ 186 and 501(c) support the conclusion that Congress intended that violations of labor laws other than § 186 [or § 501(c)] alleged as predicate acts are preempted." (alteration in original) (citation omitted)); *see also Teamsters Local 372 v. Detroit Newspapers*, 956 F. Supp. 753, 759 (E.D. Mich.

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[5] Section 186 of the LMRA is a criminal statute. *Ohlendorf v. United Food & Comm. Workers Int'l Union, Local 876*, 883 F.3d 636, 640 (6th Cir. 2018). It does not create a private right of action, and the Attorney General has the authority to enforce it. *See id.* at 640-43; *In re WKYC-TV, Inc.*, 359 N.L.R.B. 286, 289 n.13 (2012). The NLRB, however, has jurisdiction over unfair labor charges premised on a violation of § 186. *See WKYC-TV, Inc.*, 359 NLRB at 289 n.13; *see also Ohlendorf*, 883 F.3d at 643; *Swanigan v. FCA US LLC*, 938 F.3d 779, 785-86 (6th Cir. 2019).

[6] The other is 29 U.S.C. § 501(c), which pertains to the embezzlement of union funds.

1997) (stating that *Garmon* preemption does not apply when "Congress has expressly carved out an exception to the NLRB's jurisdiction," such as when it added § 186 as a RICO predicate). We agree.

Like our sister circuits, we are persuaded by a well-reasoned district court opinion that confronted this very issue—*Butchers' Union, Local No. 498 v. SDC Investment, Inc.*, 631 F. Supp. 1001 (E.D. Cal. 1986). *See Brennan*, 973 F.2d at 646 (calling *Butchers' Union* the "leading case" on whether federal courts may resolve RICO claims predicated on violations of § 186). Like the court in *Butchers' Union*, we find it "hard to imagine that Congress would have made § 186 a RICO predicate act without the intention of making violations of § 186, which necessarily arise in the labor context, the basis of a RICO action brought in the district court." 631 F. Supp. at 1007. Undoubtedly, a RICO claim predicated on § 186 violations will require the resolution of labor law questions, "but that is simply a consequence of Congress making § 186 violations predicate acts for RICO purposes." *Id.* at 1008. When it comes to the jurisdiction of the NLRB, "Congress gets to make the rules—and change them." *Id.* at 1006. Although Congress designated the NLRB as the exclusive forum for consideration of most labor law questions, it "can and does create exceptions to that exclusivity." *Id.* at 1006-07. This is one of them.

FCA focuses on this court's decision in *Trollinger*, which explained that "when a RICO action depends upon a federal-law predicate offense and a violation of that predicate law may be found only if the defendant's conduct violates the NLRA, the federal

district courts lack jurisdiction under *Garmon* because the NLRA issues in the case would be anything but collateral." 370 F.3d at 610-11. Because the labor law issues in this case are hardly "collateral," FCA argues that *Garmon* preemption applies. But *Trollinger* did not address the question here— whether, by expressly designating § 186 as a RICO predicate, Congress "has expressly carved out an exception to the" NLRB's jurisdiction. *Brennan*, 973 F.2d at 646. We hold that it has. Accordingly, GM's claims were properly before the district court.

III.

We turn to the merits. We review de novo the district court's order dismissing for failure to state a claim under Rule 12(b)(6). *Rossborough Mfg. Co. v. Trimble*, 301 F.3d 482, 489 (6th Cir. 2002). "We construe the complaint in the light most favorable to the plaintiff, accept all well-pleaded factual allegations as true, and examine whether the complaint contains 'sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" *Ohio Pub. Emps. Ret. Sys.*, 830 F.3d at 382-83 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

RICO provides a civil cause of action for treble damages to anyone injured "by reason of" certain racketeering activity. 18 U.S.C. §§ 1964(c), 1962. To state such a claim, the plaintiff must allege that the defendant's violation was both a factual and proximate cause of his injury. *Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 266-68 (1992). Factual cause is established "whenever a particular outcome would not have happened 'but-for' the purported cause." *Bostock v. Clayton County*, 140 S. Ct. 1731, 1739 (2020); *see*

also UFCW Local 1776 v. Eli Lilly & Co., 620 F.3d 121, 132 (2d Cir. 2010). And in the RICO context, proximate cause asks whether "the alleged violation led directly to the plaintiff's injuries." *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 461 (2006); *accord Holmes*, 503 U.S. at 268-69. The directness requirement rests on three premises: the difficulty of "ascertain[ing] the amount of a plaintiff's damages attributable to the violation, as distinct from other, independent, factors"; the risk of duplicative recoveries; and the availability of a more suitable plaintiff. *Anza*, 547 U.S. at 458-60 (quoting *Holmes*, 503 U.S. at 269); *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 654 (2008).

GM's allegations can be grouped into three distinct categories of injuries. First, GM alleges that from 2009-2015, FCA bribed the UAW to secure "unique competitive advantages." R.1, PageID 90. Second, GM alleges that, during the same period, FCA directed the UAW to withhold those same benefits from GM. Finally, GM alleges that, through its bribes, FCA weaponized the 2015 pattern-bargaining process to harm GM. We begin with the competitive-advantage injuries.

A.

The Supreme Court's opinion in *Anza* illustrates how to apply the directness requirement to competitive-advantage injuries. In *Anza*, the Court considered a RICO claim brought by Ideal Steel Supply against its competitor, National Steel Supply. 547 U.S. at 453-55. Ideal alleged that National had cheated the State of New York by failing to charge sales taxes on some of its transactions; that enabled

National to unfairly lower its prices, which in turn cost Ideal sales. *Id.* Those allegations, the Court held, were insufficient to establish proximate cause under RICO. *Id.* at 461. "The cause of Ideal's asserted harms . . . is a set of actions (offering lower prices) entirely distinct from the alleged RICO violation (defrauding the State)." *Id.* at 458. Ideal's theory of causation, the Court explained, raised two of the concerns underlying the directness requirement. First, delineating the extent to which the fraud, rather than other factors, caused Ideal's lost sales would be particularly complex; and second, there was a more directly injured plaintiff, the State. *Id.* at 458-60.

Most of GM's injuries are, like Ideal's, assertions of an unfair competitive advantage. According to GM, FCA's bribes allowed it to commandeer the union grievance process, and to secure the more efficient WCM system, a higher proportion of low-cost workers, and a cheaper prescription-benefits program. In short, GM alleges that FCA's corruption "helped buy a wage advantage to take FCA from worst to first among the Detroit-based automakers" in terms of its labor costs. R. 1, PageID 42. GM does not say how FCA spent its wage savings: Did it slash its prices, pay off debt, or invest in research and development? Nor does GM say what specific harm resulted: Did it lose sales? Was it forced to cut profit margins? But the necessary inference is that FCA's unfair labor advantage hurt GM in the marketplace. That theory should sound familiar. It is precisely the one rejected in *Anza*. *See Anza*, 547 U.S. at 458-61. As in *Anza*, GM's theory raises complex apportionment problems: What share of GM's (unspecified) marketplace injuries are attributable to FCA's unfair labor advantage, rather

than to "other, independent[] factors"? *Id.* at 458 (quoting *Holmes*, 503 U.S. at 269). Thus, it is impossible to "trace a straight line" from FCA's conduct in violation of RICO to these injuries, precluding a finding of proximate cause. *See Wallace v. Midwest Fin. & Mortg. Servs., Inc.*, 714 F.3d 414, 420 (6th Cir. 2013). And, of course, there is a more "immediate" victim: FCA workers. *Anza*, 547 U.S. at 460. What didn't work in *Anza* can't work here.

Nor does it work under *Hemi Group, LLC v. City of New York*, 559 U.S. 1 (2010) (plurality opinion). There, the City of New York taxed cigarette possession. *Id.* at 4. Hemi, an out-of-state supplier, sold cigarettes online to residents of the City. *Id.* Hemi was not required to collect the City tax, but the federal Jenkins Act required Hemi to submit its customer information to the State of New York. *Id.* at 5. Hemi didn't comply. *Id.* at 6. The City then sued Hemi under RICO, arguing that "[w]ithout the reports from Hemi, the State could not pass on the information to the City." *Id.* at 9. Lacking customer information, the City could not collect the tax from its residents. *Id.* The plurality found proximate cause lacking because the City's harm did not flow directly from the RICO predicate act (the failure to file Jenkins Act reports) but rather from "the customers' failure to pay their taxes." *Id.* at 11. And there was a more immediate victim (the State). *Id.* at 12. GM's competitive-advantage theory of proximate cause fails under *Hemi Group* for the same reasons that it fails under *Anza*.

GM argues that this case is different because FCA intended to harm GM. Whatever purchase that formulation of proximate cause had at common law,

see Restatement (Second) of Torts § 435A; *Hemi Grp.*, 559 U.S. at 23-25 (Breyer, J., dissenting), the Supreme Court has squarely rejected it in this context. "A RICO plaintiff cannot circumvent the proximate-cause requirement simply by claiming that the defendant's aim was to increase market share at a competitor's expense." *Anza*, 547 U.S. at 460; *Hemi Grp.*, 559 U.S. at 13. That is true notwithstanding the Court's statement in *Bridge v. Phoenix Bond & Indemnity Co.* that "one who intentionally causes injury to another is subject to liability to the other for that injury." 553 U.S. at 657 (alteration omitted) (quoting Restatement (Second) of Torts § 870). While a later portion of Bridge addressed RICO's directness requirement, *see id.* at 657-58; *Hemi Grp.*, 559 U.S. at 14, the Court discussed intent only in explaining that common law liability for fraud extended beyond the party who relied on the defendant's misrepresentation. *See Bridge*, 553 U.S. at 656-57. We are highly skeptical that the unanimous Court in *Bridge* was silently overruling a key holding of Anza in its discussion of traditional fraud principles. And if there were any room to question our skepticism, the plurality opinion in *Hemi Group* erased it. *See* 559 U.S. at 12-13 (noting that, although the dissent in *Anza* thought proximate cause should turn on intent, "the dissent there did not carry the day"); *see also Empire Merchs., LLC v. Reliable Churchill LLLP*, 902 F.3d 132, 145 (2d Cir. 2018) (after *Anza* and *Hemi Group*, "foreseeability and intention have little to no import for RICO's proximate cause test"); *Slay's Restoration, LLC v. Wright Nat'l Flood Ins. Co.*, 884 F.3d 489, 493 (4th Cir. 2018) (focus of RICO inquiry is "directness," not "on whether the harm to the RICO plaintiff was a foreseeable result of

the defendant's conduct or even whether it was 'the intended consequence[] of [the defendant's] behavior'" (first alteration in original) (quoting *Hemi Grp.*, 559 U.S. at 12)).[7]

Still, GM is right in at least one respect: Using an intermediary in a RICO scheme does not alone preclude liability. *Bridge* held that the directness requirement was satisfied where a bidder in a county auction sued a rival bidder, even though the rival's scheme depended on first duping the county. 553 U.S. at 657-58. The same was true when a mortgage company enlisted the help of a crooked home appraiser to perpetuate lending fraud, *Wallace*, 714 F.3d at 416, and when a political donor bribed a state's governor to sign favorable legislation into law, *Empress Casino Joliet Corp. v. Johnston*, 763 F.3d 723, 725 (7th Cir. 2014). These schemes, like many at the heart of RICO conspiracies, use a middleman to accomplish their goals. *See* 18 U.S.C. § 1961(1) (bribery, extortion, money laundering, murder-for-hire). That fact alone does not foreclose relief. What makes this case different, however, is the presence of an intermediate *victim*. Despite falling prey to the defendant's trickery, the county in *Bridge* was not injured in any tangible,

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[7] Nothing in *Wallace v. Midwest Financial and Mortgage Services. Inc.*, 714 F.3d at 416, suggests that an injury that is foreseeable could satisfy RICO proximate cause even if the injury were indirect. Instead, *Wallace* is best read consistently with *Trollinger*, which recognized that even if an injury is direct, "the causal link between the injury and the conduct may still be too weak to constitute proximate cause—because it is insubstantial, unforeseeable, speculative, or illogical, or because of intervening causes." *Trollinger*, 370 F.3d at 614. In other words, foreseeability may be necessary, but it is not sufficient.

compensable way. 553 U.S. at 658 (recognizing that any reputational injury to the county was too "speculative and remote"). The FCA workers, by contrast, are "more immediate victim[s]" who are "better situated to sue." *Id.* We join our sister circuits in recognizing this critical distinction. *Compare Empress Casino*, 763 F.3d at 734 (finding proximate cause where "[t]here was no more directly injured party standing between the [plaintiffs] and the alleged wrongdoer") *with Empire Merchs.*, 902 F.3d at 144 (finding lack of proximate cause where "New York State was a more direct victim of the smuggling operation"). GM's theory, therefore, is insufficient to establish RICO proximate cause.

B.

Perhaps sensing that its 2009-2015 injuries were doomed under *Anza* and *Hemi Group*, GM alleges that FCA bribed union executives not only to give FCA certain concessions but also to "deny similar labor advantages to GM." R. 1, PageID 43. That theory suffers from a different flaw—a lack of but-for causation.

FCA allegedly bribed the union to deny labor advantages to GM, but GM never asserts that it would have received those advantages absent FCA's bribes or that it was in any way entitled to the benefits FCA received. *Contra Bostock*, 140 S. Ct. at 1739 ("[A] but-for test directs us to change one thing at a time and see if the outcome changes. If it does, we have found a but-for cause."). Nor does GM allege that pattern bargaining was at play with respect to these pre-2015 benefits. So even accepting as true GM's allegation that FCA officials directed UAW leaders to deny

comparable benefits to GM, that fact doesn't change the causation analysis. GM has not alleged that it would have received such benefits absent the corruption. So FCA's bribes were not a but-for cause of the harm.

This may seem harsh to GM. While GM cleanly fought its way out of a once-in-a-generation economic downturn, FCA bribed its way out. But GM's inability to recover for the alleged denial of benefits follows from a straightforward application of elementary causation principles. And its inability to recover for FCA's illicit competitive advantage follows from binding Supreme Court precedent. *See Anza*, 547 U.S. at 460; *cf. id.* at 474-75 (Thomas, J., concurring in part and dissenting in part) (criticizing the majority's "restrictive proximate-cause test" for foreclosing relief on competitive injuries that are "the principal concern of RICO").

C.

That leaves GM's allegations of injury stemming from the 2015 CBA negotiations. Recall that, according to GM, FCA bought its way into the coveted "target" position for pattern bargaining and negotiated two deals with the Union. The FCA workers rejected the first and ratified the second. Then, using the second FCA deal as a template, GM and its workers reached an agreement with GM that cost the company far more than its prior negotiations would have predicted.

There are two ways to look at these facts. On one view, FCA, recognizing its relatively weak financial position, wanted to be the target so that it could lock in a deal that kept its labor costs low. That would

sensibly explain why FCA workers rejected the first deal; it was not labor-friendly enough. But if that is GM's theory, it fails to satisfy proximate cause for the same reasons as the other competitive-advantage injuries. *Anza* forecloses relief.

On the other hand, GM's complaint seems to put forward a different theory regarding the 2015 CBA. According to GM, Marchionne spent more than a decade fixated on the idea of merging with GM. In pursuit of that goal, FCA made several overtures to GM, used bought-and-paid-for Union executives to influence GM's Board, and amped up the pressure through the press and private-capital campaigns. And the 2015 CBA negotiations were to be Marchionne's coup de grâce: FCA would purchase the first seat at the bargaining table so that it could give away the farm, saddling GM with crippling labor costs and leaving it ripe for a takeover. Sure, the deal would hurt FCA in the short-term, but Marchionne would get his prize.

Color us skeptical. But for the purposes of a motion to dismiss, we are satisfied that GM's factual allegations, taken as true, are plausible. *Iqbal*, 556 U.S. at 678. For one thing, Marchionne's overwhelming desire for an FCA-GM merger takes an otherwise irrational course of action "across the line from conceivable to plausible." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). For another, these CBAs are undoubtedly quite complex, making it plausible that FCA could have structured the deal to hurt GM far worse than it hurt itself. Indeed, that seems like a reasonable inference from GM's allegation that FCA "structured and agreed to

[concessions] to force unanticipated higher costs on GM, which had a higher degree of more costly Tier One workers." R. 1, PageID 62. The upshot is that while the competitive-advantage interpretation of these facts seems more likely, we are not convinced that it is such "an obvious alternative explanation," that GM's alternate theory cannot clear the plausibility bar. *Twombly*, 550 U.S. at 567.

But GM isn't out of the woods yet. Even accepting GM's theory as true, the chain of causation between FCA's bribes and GM's injury is still too attenuated. *See Hemi Grp.*, 559 U.S. at 9. Consider what had to occur before the consequences of FCA's bribe could have reached GM: FCA had to buy the first seat at the bargaining table (that's the RICO predicate); but FCA workers rejected the first negotiated contract, so the UAW and FCA had to renegotiate a more worker-friendly contract; then FCA workers had to ratify the renegotiated deal; the UAW and GM then bargained on the basis of the renegotiated deal (GM admits it was able to partially lessen the burden of the FCA contract); GM had to agree to a sufficiently attractive contract for its workers, knowing that it was in a better financial position than FCA and could presumably offer *more* than FCA did; and GM workers had to ratify the new contract. The chain leading from FCA's bribe to GM's increased labor costs had to pass through the independent actions of at least two independent parties—the FCA and GM workforces. So GM's alleged harm rests on "separate actions carried out by separate parties." *Id.* at 11 (emphasis omitted). And that gives rise to difficulties in assessing and apportioning fault, concerns central to the Court's decisions in *Anza* and *Holmes*. Would GM's

independent workforce have ratified the pre-negotiated deal if GM had been first to the table? How much did the FCA workers' rejection of the initial deal contribute to GM's alleged damages? Difficult questions like these distinguish GM's theory from the "straightforward" one in *Bridge*, where there were no "independent factors that account[ed] for [the plaintiff's] injury." 553 U.S. at 658. At bottom, the directness requirement "is meant to prevent these types of intricate, uncertain inquiries from overrunning RICO litigation" and has "particular resonance when applied to claims brought by economic competitors." *Anza*, 547 U.S. at 460. GM has failed to show that the predicate acts directly caused its 2015 pattern-bargaining injuries. The district court did not err by dismissing GM's complaint on causation grounds.

IV.

Finally, GM argues that the district court erred by denying its motion to alter or amend the judgment under Federal Rule of Civil Procedure 59(e). We review an order denying such a motion for an abuse of discretion. *Clark v. United States*, 764 F.3d 653, 661 (6th Cir. 2014). "Under Rule 59, a court may alter the judgment based on: (1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law; or (4) a need to prevent manifest injustice." *Id.* (quotation marks omitted) (quoting *Leisure Caviar, LLC v. U.S. Fish & Wildlife Serv.*, 616 F.3d 612, 615 (6th Cir. 2010)).

GM argues that the district court erred by not allowing GM to amend its complaint based on newly discovered offshore bank accounts in the names of

various individuals involved in the scheme. "To constitute 'newly discovered evidence,' the evidence must have been previously unavailable." *GenCorp, Inc. v. Am. Int'l Underwriters*, 178 F.3d 804, 834 (6th Cir. 1999).

GM says that the district court erred because leave to amend should be freely given and that, generally, a plaintiff must be given one chance to amend the complaint when a court dismisses based on purported pleading defects. But those conventions apply to pre-judgment motions under Federal Rule of Civil Procedure 15. GM's motion came after entry of the judgment, and that makes a difference. *Leisure Caviar*, 616 F.3d at 615-16. "If a permissive amendment policy applied after adverse judgments, plaintiffs could use the court as a sounding board to discover holes in their arguments, then reopen the case by amending their complaint to take account of the court's decision." *Id.* at 616 (citation omitted). So, "[w]hen a party seeks to amend a complaint after an adverse judgment, it . . . must shoulder a heavier burden." *Id.* "Instead of meeting only the modest requirements of Rule 15, the claimant must meet the requirements for reopening a case established by Rules 59 or 60." *Id.*

GM argued before the district court that it was unable to obtain the evidence it now offers due to the district court's order denying limited discovery. We think that a fair point, and FCA does not challenge it. But, regardless, GM has not met its burden of showing that the district court abused its discretion in denying the motion. The purported new evidence does not move the needle. It confirms what we already knew—

FCA was bribing UAW officials. The new information? UAW officials might have been hiding large sums in foreign bank accounts. So maybe the amounts of the bribes were more than originally thought. But that does not change the nature of the scheme, only its size.

One name bears mention. GM uncovered an offshore bank account in former UAW Vice President Joseph Ashton's name, and from there infers that FCA bribed Ashton to harm GM. Ashton was selected by former UAW President Dennis Williams and appointed by the UAW to serve on GM's Board from 2014 to 2017. GM characterizes the existence of the Ashton account as "reveal[ing] that from 2010 to 2014, FCA and FCA NV *likely* made substantial payments to Ashton." Motion to Amend or Alter Judgment, R. 84, PageID 3000 (emphasis added). GM alleges two separate theories of how Ashton harmed GM. First, GM says that Ashton, as lead negotiator with GM from 2010 to 2014, was crucial in withholding the competitive-advantage benefits from GM per FCA's instructions. Second, GM says that FCA bribed Ashton to infiltrate GM as a member of its Board and funnel GM's secrets to FCA.

It is worth noting that GM does not say how Ashton's account was funded, that there is any connection between the various offshore accounts it has uncovered, or that it has evidence that FCA bribed Ashton. Meanwhile, the Department of Justice has convicted Ashton for fraud unrelated to FCA. *See Former UAW Vice President Sentenced to 30 Months for Taking $250,000 in Bribes and Kickbacks*, U.S. Dep't of Justice (Nov. 17, 2020), https://www.justice.gov/usao-edmi/pr/former-uaw-vice-president-

sentenced-30-months-taking-250000-bribes-and-kickbacks.

Regardless, as for the allegations that Ashton harmed GM by withholding benefits from 2010 to 2014, at FCA's instruction, that theory is not new, only the name of the actor is. As for GM's allegations that Ashton harmed GM once he joined GM's Board, GM alleges only that FCA bribed Ashton from 2010 to 2014 when he was with the UAW. *See* Motion to Amend or Alter Judgment, R. 84, PageID 3000. GM does not say that it has evidence that FCA continued to bribe Ashton once he renounced his UAW affiliation and joined GM's Board. Any suggestion then that Ashton *infiltrated* GM and funneled its secrets to FCA is mere conjecture and not supported by GM's newly discovered evidence.

One last thing warrants attention. Above, we concluded that GM could not satisfy RICO proximate cause for its competitive-advantage injuries because it failed to allege that it had any right to, or legitimate expectation of, those benefits. GM's proposed amended complaint, when discussing Ashton's role in the scheme and throughout, now contains conclusory allegations that the UAW would have bestowed on a corruption-free GM the same competitive-advantage benefits that it alleges FCA obtained only through bribery, although it fails to explain why the UAW would have done so. So does this save GM? No, given the posture. These allegations seem to be a direct response to the district court's conclusion (like ours) that the complaint failed to allege that GM had any entitlement to the competitive-advantage benefits that the UAW withheld. As the district court

explained, "[t]he allegations show that the 'unique competitive advantages' at issue would not have been available to a company unwilling to bribe UAW officials." R. 82, PageID 2969-71. Rule 59(e) does not allow a plaintiff to use the district court opinion "as a sounding board to discover holes in their arguments, then reopen the case by amending their complaint to take account of the court's decision." *Leisure Caviar*, 616 F.3d at 616 (citation omitted). That is exactly what GM tries do here. Accordingly, the district court did not abuse its discretion by denying GM's Rule 59(e) motion.

* * *

We AFFIRM.

Appendix B

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

No. 19-cv-13429

GENERAL MOTORS, LLC; GENERAL MOTORS COMPANY,

Plaintiffs,

v.

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

Defendants.

Filed: July 8, 2020

OPINION AND ORDER

I. INTRODUCTION

On November 20, 2019, General Motors LLC and its ultimate parent company, General Motors Company, (together "GM") filed a 94-page, 198-paragraph complaint alleging three violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-1968, against FCA US LLC ("FCA US"), Fiat Chrysler Automobiles N.V. ("FCA NV"), Alphons Iacobelli, Jerome Durden, and Michael Brown. (ECF No.1.) In the Complaint, GM alleges that FCA US LLC, its parent company, FCA NV, and its predecessor companies, Chrysler LLC,

Chrysler Group LLC, and Fiat S.p.A., bribed officials of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW") for years, "starting no later than July 2009." (ECF No. 1, Complaint, PgID 4-5, ¶¶ 2-3.) In return for these bribes, FCA US received benefits and concessions in the negotiation, implementation, and administration of the collective bargaining agreements ("CBAs") that govern FCA US's labor practices in the United States. (*Id.* at PgID 5, ¶ 3.) According to the Complaint, this bribery scheme was also intended to damage FCA US's rival, GM, in order to weaken it and force a merger between the two giants. (*Id.* at PgID 6-7, ¶¶ 4-5.) GM also brought two claims under Michigan law—unfair competition, and civil conspiracy—but, on June 15, 2020 this Court declined to exercise supplemental jurisdiction over them, pursuant to 28 U.S.C. § 1367. (ECF No. 71, Order, PgID 2851-52.)

FCA US, FCA NV, and Alphons Iacobelli each separately moved to dismiss GM's Complaint under Federal Rule of Civil Procedure 12(b)(6). (ECF No. 41, FCA US MTD; ECF No. 42, FCA NV MTD; ECF No. 50, Iacobelli MTD.) Defendants Michael Brown and Jerome Durden joined in FCA US's Motion to Dismiss. (ECF No. 43, Brown Joinder; ECF No. 44, Durden Joinder.)

Although each Motion to Dismiss contains several separate grounds for dismissal, the Court discusses only one of those grounds, because it finds that GM's alleged injuries were not proximately caused by Defendants' alleged violations of the RICO Act. (ECF Nos. 41, 42, 50.) Therefore, GM has not stated a claim

for relief that can be granted and its Complaint must be dismissed.

II. FACTS

The parties to the suit are as follows: Plaintiff GM, which includes both General Motors LLC and its ultimate parent company, General Motors Company; Defendant FCA US, the United States-based subsidiary of FCA NV and successor corporation of the merger of Fiat and Chrysler; Defendant FCA NV, the Londonbased parent company of FCA US; Defendant Alphons Iacobelli, the former Vice President of Employee Relations at FCA US and Co-Chairman of the UAW-FCA US National Training Center ("NTC") until June 9, 2015; Defendant Jerome Durden, a former FCA US employee who was the Controller of the NTC and Secretary of the NTC Joint Activities Board from 2008 to 2015; and Defendant Michael Brown, the former Director for Employee Relations at FCA US and a Co- Director of the NTC from 2009 to 2016. (ECF No. 1, Complaint, PgID 10-14, ¶¶ 13-20.)

Many of the allegations in the complaint refer to "FCA Group," GM's generic term for FCA US, FCA NV, and predecessor corporations Chrysler Group LLC and Chrysler LLC. (*Id.* at PgID 11-12, ¶¶ 16-17.) There is no specific entity called "FCA Group," so where possible, based on the allegations, this account of the facts identifies the specific entity that took the action alleged. Where it is not possible, the generic "FCA" is used.

GM's narrative begins in 2008, when the United States automotive industry— including and especially General Motors Corporation ("Old GM") and Chrysler, both of which filed for Chapter 11 bankruptcy in the

spring of 2009—was in crisis. (*Id.* at PgID 23-24, ¶¶ 44-46.) European auto-makers, including Fiat, were also hit by the global financial crisis, and Fiat, like GM and Chrysler, was figuring out how to survive. (*Id.* at PgID 24, ¶ 48.) Fiat's Chief Executive Officer ("CEO"), Sergio Marchionne, determined that Fiat's survival required a partner in the U.S., and he decided to target Chrysler. (*Id.* at PgID 14, 24-25, ¶¶ 21, 48-49.)

Initially, Marchionne and Fiat set out to acquire a controlling stake of Chrysler's stock. (*Id.* at PgID 25, ¶ 49 (citing Jeff Israely, *Fiat to Take 35% Stake in Chrysler*, TIME (Jan. 20, 2009), http://content.time.com/time/business/article/0,8599,1872719,00.html).) Marchionne's plans, however, were complicated by the involvement of the U.S. government, which had given both GM and FCA emergency loans in 2008 on the condition that each company restructure according to a plan approved by the government. The White House, *Remarks by the President on the American Automotive Industry* (Mar. 30, 2009), https://obamawhitehouse.archives.gov/the-pressoffice/remarks-president-american-automotive-industry-33009 (cited in ECF No. 1, Complaint, PgID 26, ¶ 52). Further, reaching a deal approved by the U. S. government would secure additional government loans up to $6 billion. *Id.*

Marchionne enlisted the help of UAW leadership to generate support for a Fiat-Chrysler partnership before negotiations with the government began. (ECF No. 1, Complaint, PgID 25-26, ¶¶ 50-51.) He befriended General Holiefield, the Vice President in charge of the UAW's Chrysler Department and a

member of the UAW's Executive Board from 2007 to 2014, and met with the then-UAW President Ron Gettelfinger in early 2009, before the government negotiations. (*Id.* at PgID 15, 25- 26, ¶¶ 23, 50-51.)

After the government imposed a thirty-day deadline for Chrysler to reach a partnership deal with Fiat on March 30, 2009, in order to qualify for government loans, a Fiat-Chrysler deal was finalized. (*Id.* at PgID 26, ¶ 52.) Under the deal, Fiat was not required to provide any financing. (*Id.* at PgID 4, ¶ 2.) Fiat recieved control of Chrysler in June 2009, receiving a 20 percent stake and the right to purchase 40 percent of the 55 percent stake that the UAW owned in Chrysler after it emerged from bankruptcy. (*Id.* at PgID 31, ¶¶ 60-61.) Fiat, for its part, gave the UAW's trust a $4.6 billion note with nine percent interest, and gave the UAW the right to appoint a director to Chrysler's Board. (*Id.* at PgID 31, ¶ 61.) Marchionne became the CEO of Chrysler. (*Id.* at PgID 31, ¶ 60.)

As Fiat secured control of Chrysler, Marchionne and Fiat began negotiations, on behalf of Chrysler, with the UAW on a post-bankruptcy UAW-Chrysler collective bargaining agreement ("CBA"). (*Id.* at PgID 26, ¶ 53.) Fiat's first demand was support for World Class Manufacturing ("WCM"), a program that broke down the rigid union job classification system and gave Chrysler more flexibility in assigning jobs to different workers, which made its overall labor cost structure more efficient and less costly. (*Id.* at PgID 26-27, ¶ 53.) Fiat's second ask of the UAW was permission for Chrysler to hire more temporary employees, and to lift the hiring cap of less-senior and

lower-cost Tier Two workers. (*Id.* at PgID 27, ¶ 54.) The UAW agreed. (*Id.* at PgID 27, ¶ 53.)

The Complaint alleges that, as Fiat took control of Chrysler, the bribery scheme at issue began. (*Id.* at PgID 27, ¶ 55.) It started with gifts to General Holiefield—in July 2009, FCA[1] and Iacobelli began transferring "hundreds of thousands of dollars of Chrysler funds" to Holiefield and to his Leave the Light on Foundation, which he and his girlfriend (later his wife), Monica Morgan, used as personal bank account (*Id.* at PgID 28, 33 ¶¶ 57, 66), and, in February 2010, Marchionne gave Holiefield a several-thousand dollar watch. (*Id.* at PgID 29-30, ¶ 58.) FCA, with Marchionne's approval, also paid for Holiefield's wedding to Morgan in Venice. (*Id.* at PgID 30, ¶ 59.)

The Complaint further alleges that the bribery scheme expanded and took on a specific form. The Fiat/Chrysler/FCA and UAW officials involved in the scheme used their joint National Training Center ("NTC"), a corporation formed pursuant to UAW-Chrysler CBAs to provide for the education, training, and retraining of UAW workers employed by Chrysler, and later FCA, as the entity to distribute funds under the scheme. (*Id.* at PgID 14-15, ¶ 22.) The relevant CBAs required Fiat, and later, FCA, to fund the NTC. The Complaint alleges that senior Fiat/Chrysler/FCA officials, with the knowledge and approval of Marchionne, provided funds to the NTC and then encouraged officers and employees of the UAW, such as Holiefield, to use NTC bank accounts and their

[1] Although FCA had not yet been formed, the term "FCA" is used to refer to the Fiat-Chrysler partnership that existed at that time.

NTC credit cards for personal expenses. (*Id.* at PgID 20, 31-32, ¶¶ 36, 63.) The Complaint alleges that FCA used the NTC to conceal over $1.5 million in payments and gifts to UAW officials. (*Id.* at PgID 32, ¶ 63.)

Some of the payments funneled through the NTC between July 2009 and 2014 included: more than $386,400 transferred to Holiefield's Leave the Light on Foundation that was used by Holiefield and Morgan for personal expenses such clothes and trips to restaurants and night clubs; $13,500 paid to Morgan's photography company that she and Holiefield used to pay off a recently-installed pool at their house; $425,000 paid to Wilson's Diversified Products, Morgan's LLC, which she and Holiefield used, in part, for the closing costs for the purchase of a house; $200,000 to another one of Morgan's shell companies; $262,219.71 to pay off Holiefield's mortgage; and thousands charged by UAW officials' on their NTC credit cards for, among other things, luxury luggage worth $1,259.17, a Beretta shotgun worth $2,182, Disney World tickets worth $2,130, Louboutin shoes worth $1,000, and other expensive electronics and personal items. (*Id.* at PgID 33-35, ¶¶ 66-69.) Other NTC payments occurred during trips that UAW officials, including then-President Dennis Williams, took to California for the UAW Region 5 Conference in the 2014-2015 winter and the 2015-2016 winter. (*Id.* at PgID 35-36, ¶ 70.) During those trips, UAW officials used their NTC credit cards, which, again, were funded by FCA US, to spend $36,809.42 on dinners and golf outings. (*Id.*)

GM contends that documents in subsequent federal criminal proceedings allege that FCA officials

made these payments in order to "buy labor peace," to "buy good relationships with UAW officials," and to "obtain benefits, concessions, and advantages for FCA in its relationship with the UAW." (*Id.* at PgID 33, ¶ 64.) The bribes facilitated advantages for FCA in labor negotiations as well as the subsequent implementation and administration of the CBAs. (*Id.* at PgID 37, ¶ 71.)

GM lists five specific concessions or advantages that, over the years, FCA secured through bribery. The first involved the 25-percent-of-the-workforce limit on cheaper Tier Two employees that was lifted during the crisis in 2009 with the understanding that it would be reinstated in 2015. (*Id.* at PgID 39-40, ¶ 77.) GM acted according to the belief that the UAW would insist on reinstating the cap in the 2015 CBA, so it kept its proportion of Tier Two workers at 20 percent. (*Id.*) FCA, however, through bribery, obtained assurance that the UAW would not insist that the cap be reinstated, so FCA US hired many Tier Two workers. (*Id.* at PgID 40, ¶ 78.) By 2015 approximately 42 percent of the UAW member-employees of FCA US were Tier Two workers. (*Id.*) The cap was not reinstated in the 2015 CBA for either FCA US or GM. (*Id.*)

Second, the UAW leadership did not enforce against FCA US the limits on hiring temporary workers, who are paid less than Tier Two workers, but did enforce those limits against GM. (*Id.* at PgID 40-41, ¶ 79.) Third, Holiefield and Norwood Jewell, the UAW executives who oversaw the UAW's labor grievance process, pursued grievances against FCA US less zealously because of bribes from Iacobelli, who

oversaw grievance procedures at FCA US. (*Id.* at PgID 41, ¶ 80.) Fourth, in 2014, FCA US and the UAW agreed, outside the traditional bargaining process, to a prescription drug formulary that would increase the use of more widely-available prescriptions, thereby reducing health care costs. (*Id.* at PgID 42, ¶ 81.)

Fifth, and finally, the UAW committed to support FCA's WCM labor efficiency program. (*Id.* at PgID 37, ¶ 73.) This commitment went deep—in 2014 the UAW and FCA entered into an enforceable memorandum of understanding ("MOU"), negotiated outside of the standard collective bargaining process, in which the UAW promised to actively assist FCA to achieve its long-term business plan by, in part, using its best efforts to support FCA's WCM programs. (*Id.* at PgID 37, 46, ¶¶ 73, 91.)

GM sought some of these same advantages but did not receive them. GM sought a closer partnership with the UAW on its Global Manufacturing System ("GMS"), an efficiency program similar to FCA's WCM, and UAW officials acknowledged that GM would need more union support and buy-in to make GMS on par with WCM, but the UAW did not "fully embrace[]" GM's efforts to develop GMS. (*Id.* at PgID 38-39, ¶ 75.) The UAW also denied all of GM's requests to adopt a prescription drug formulary like FCA's, which GM estimated would save it up to $20 million a year. (*Id.* at PgID 42, ¶ 81.) The UAW did not enter a similar agreement with GM. (*Id.* at PgID 46-47, ¶ 92.) GM alleges that it was denied these advantages as a result of FCA's bribery scheme. (*Id.* at PgID 37, ¶ 71.)

GM alleges that the labor concessions secured by FCA's bribes resulted, in 2015, in average labor costs for FCA US of $47 an hour, $29 less than in 2006. (*Id.* at PgID 42, ¶¶ 82-83.) GM's labor costs in 2015 were $55 an hour, only $16 less than in 2006. (*Id.*) GM attributes this difference to its belief that "FCA directed key UAW officials to deny similar labor advantages to GM, inflicting significant additional costs on GM." (*Id.* at PgID 42-43, ¶ 83.)

According to GM, the bribes were not just about obtaining a competitive advantage on labor costs, but were also directed toward Marchionne's long-term goal of merging Fiat, Chrysler, and GM. (*Id.* at PgID 44, ¶¶ 85-86.) He had proposed such a merger to GM in October 2012, but after it was rejected he focused on completing the Fiat-Chrysler merger. (*Id.* at PgID 44-45, ¶¶ 86-90.) He used his influence with Holiefield and other UAW officials to convince the UAW to sell its entire stake in Chrysler to Fiat-Chrysler, which was the 41.5 percent of the company that Fiat did not already own. (*Id.* at PgID 44-45, ¶¶ 87-89.) The merger became official on October 12, 2014. (*Id.* at PgID 47, ¶ 93.) Marchionne became the CEO of the resulting company, FCA, and shifted his focus back to merging with GM. (*Id.* at PgID 47, ¶¶ 93-94.)

In early 2015, Marchionne launched a "merger-forcing" project called "Operation Cylinder." (*Id.* at PgID 49, ¶¶ 99-100.) FCA formally proposed a merger of GM and FCA NV to GM's Board and management in March 2015, which vetted the offer but ultimately rejected it on April 14, 2015. (*Id.* at PgID 50, ¶ 101.) Marchionne responded with a major publicity effort. For instance, two weeks after the rejection

Marchionne published a PowerPoint that, among other things, promoted the benefits of consolidating FCA and GM and promised nearly $5 billion in savings. (*Id.* at PgID 50, ¶¶ 103-104.) He also used his influence with the UAW, gained, at least in part, through bribery, to secure the UAW's support for the merger. (*Id.* at PgID 49-50, ¶ 100.) This support was useful because the UAW needed to approve any potential merger, and because UAW officials could, and did, pressure GM to merge with FCA during labor negotiations. (*Id.* at PgID 49-51, ¶¶ 100, 106.)

The Complaint further alleges that Marchionne used the labor negotiation process to weaken, and thereby pressure, GM. The UAW uses a practice called "pattern bargaining" in its collective bargaining with the three Detroit-based automakers, GM, FCA, and Ford. (*Id.* at PgID 55, ¶ 95.) Every four years, a few months before each automaker's CBA with the UAW is set to expire, UAW subcommittees begin preliminary negotiations with each of the companies. (*Id.* at PgID 56, ¶ 118.) As the CBA expiration date nears, the UAW selects one of the three to be the "lead," and finalizes a deal with that company. (*Id.* at PgID 56, ¶ 119.) That deal becomes the pattern on which the other two companies' CBAs are based, because it gives the UAW strong leverage to force the terms of the first adopted CBA on the other two companies. (*Id.*) The Complaint contends that the UAW usually selects the largest and most profitable company as the "lead," because it usually has the ability to provide the most concessions to UAW workers in terms of wages and signing bonuses. (*Id.* at PgID 57, ¶ 123.)

Preliminary negotiations of the 2015 CBAs for all three Detroit-based automakers began officially on July 13, 2015. (*Id.* at PgID 52, ¶ 109.) UAW President Williams and other UAW officials celebrated the start of negotiations with a dinner that cost FCA, through its funded NTC, over $8,000. (*Id.* at PgID 52-53, ¶ 110.) Marchionne took the lead for FCA in the negotiations, because Iacobelli, who normally would have been in charge of the process, had resigned in June 2015. (*Id.* at PgID 51, ¶ 105.)

After preliminary negotiations, in mid-September 2015, GM and the UAW sub-committee with which it was negotiating reached a tentative deal. (*Id.* at PgID 54, 56, ¶¶ 112-15.) GM believed that it would be selected as the lead company because it was the largest and best performing automaker, so it thought that its tentative deal would become the pattern 2015 CBA. (*Id.* at PgID 57, ¶ 124.) GM and industry analysts did not expect FCA, the smallest of the three, to be selected as the lead. (*Id.* at PgID 57-58, ¶ 124.) Nevertheless, on September 13, 2015, the UAW announced that it had chosen FCA as the "lead." (*Id.* at PgID 58, ¶ 125.) GM alleges that FCA was selected because of the past six years of bribes. (*Id.*)

Two days later, FCA and the UAW announced that they reached an agreement. (*Id.* at PgID 59, ¶ 128.) Marchionne touted the new CBA as transformational, and said that the economics of the deal were almost irrelevant because the potential synergies and benefits, which GM understood as the potential benefits of a combination between FCA and GM, would significantly outweigh the increased costs contained in the CBA. (*Id.* at PgID 59, ¶ 129.) The

UAW bargaining team celebrated with a $6,912.81 dinner provided by FCA funding through the NTC. (*Id.* at PgID 60, ¶ 130.)

Despite the "transformational" nature of the deal, the UAW members working at FCA rejected the deal, forcing FCA and the UAW back to the negotiating table. (*Id.* at PgID 61, ¶ 131.) Press reports indicated that FCA's UAW workers rejected the deal because they distrusted the union's leaders. (*Id.*) A new deal was announced on October 8, and it was ratified on October 22. (*Id.* at PgID 61, ¶¶ 132-33.) UAW President Williams called it one of the "richest" deals for UAW workers ever negotiated. (*Id.* at PgID 61, ¶ 133.) The deal was certainly much richer for UAW workers than the one GM thought it was going to have—GM's analysis of the deal showed that, as a pattern for GM's CBA, the FCA-UAW CBA would cost GM around $1 billion more than GM's tentative deal. (*Id.* at PgID 61, ¶ 132.) It was especially expensive for GM because GM had many more Tier One workers than FCA. (*Id.* at PgID 62, ¶ 134.)

GM, however, was under the pressure of pattern bargaining and the expiration of the "no-strike" rule imposed in 2009. (*Id.* at PgID 56-57, ¶¶ 118-19, 122.) So, it agreed, on October 25, to a tentative CBA patterned on the new, rich FCA CBA, though GM was "able to reduce the immediate cost impact of the FCA pattern by about $400 million." (*Id.* at PgID 62-63, ¶¶ 135, 137.) GM UAW members ratified the CBA on November 20, 2015 and it became effective on November 23rd. (*Id.* at PgID 63, ¶¶ 136-37.)

According to GM, FCA had two insidious motives for making so many concessions to the UAW. First,

FCA and Marchionne wanted to pressure GM to agree to a merger by weakening it with unexpected labor costs. (*Id.* at PgID 55-56, 59, ¶¶ 116-17, 129.) Second, the participants in the bribery scheme knew that they were under federal investigation during the negotiations, so the UAW leadership needed to show that they were extracting concessions from FCA to throw investigators off of the scent. (*Id.* at PgID 62, ¶ 134.) FCA and the UAW officials participating in the scheme did not achieve either goal—GM resisted the forced merger, and federal investigators uncovered the bribery scheme, leading to criminal charges against thirteen former FCA/NTC, and UAW officials. (*Id.* at PgID 5, 63, ¶¶ 3, 138.)

The government began unsealing the criminal indictments related to this scheme in July 2017. (*Id.* at PgID 65, ¶ 145.) Most of the FCA and UAW officials charged have pled guilty, admitting to a "brazen scheme to enrich themselves and corrupt the collective bargaining process" by using illegal payments to get benefits, concessions, and advantages for FCA in the negotiation, implementation, and administration of the FCA-UAW CBAs. (*Id.* at PgID 66, ¶¶ 147-48.) These officials covered up their participation in the scheme through misstatements, false testimony, tax fraud, the use of shell companies, the use of purported charitable organizations, and more. (*Id.* at PgID 68-72. ¶ 151.)

GM alleges that it "diligently monitored the criminal proceedings" relating to the scheme to determine whether it was injured and whether it had a cause of action, but it relied on false statements by Marchionne, FCA, and Williams that the bribes had

nothing to do with the collective bargaining process. (*Id.* at PgID 72-76, ¶¶ 152- 53.) Thus, as alleged in the Complaint, GM did not know, until Iacobelli pled guilty to crimes relating to his part in the scheme, on January 22, 2018, that the scheme had impacted the CBA negotiation process and injured GM. (*Id.* at PgID 76-77, ¶ 154.) After "substantial" additional research, GM filed its Complaint in this case on November 20, 2019. (*Id.* at PgID 77, ¶ 154.)

III. STANDARD OF REVIEW

Federal Rule of Civil Procedure 12(b)(6) allows for the dismissal of a case where the complaint fails to state a claim upon which relief can be granted. When reviewing a motion to dismiss under Rule 12(b)(6), a court must "construe the complaint in the light most favorable to the plaintiff, accept its allegations as true, and draw all reasonable inferences in favor of the plaintiff." *Handy-Clay v. City of Memphis*, 695 F.3d 531, 538 (6th Cir. 2012). Sixth Circuit "precedent instructs that, for a complaint to survive such motions, it must contain 'either direct or inferential allegations respecting all material elements necessary for recovery under a viable legal theory.'" *Buck v. City of Highland Park, Michigan*, 733 F. App'x 248, 251 (6th Cir. 2018) (quoting *Philadelphia Indem. Ins. Co. v. Youth Alive, Inc.*, 732 F.3d 645, 649 (6th Cir. 2013)).

"[T]he complaint 'does not need detailed factual allegations' but should identify 'more than labels and conclusions.'" *Casias v. Wal-Mart Stores, Inc.*, 695 F.3d 428, 435 (6th Cir. 2012) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). The court "need not accept as true a legal conclusion couched as a factual allegation, or an unwarranted factual

inference." *Handy-Clay*, 695 F.3d at 539 (internal citations and quotation marks omitted). In other words, a plaintiff must provide more than "formulaic recitation of the elements of a cause of action" and his or her "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555-56. The Sixth Circuit has reiterated that, "[t]o survive a motion to dismiss, a litigant must allege enough facts to make it plausible that the defendant bears legal liability. The facts cannot make it merely possible that the defendant is liable; they must make it plausible." *Agema v. City of Allegan*, 826 F.3d 326, 331 (6th Cir. 2016) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

In ruling on a motion to dismiss, the Court may consider the complaint as well as (1) documents that are referenced in the plaintiff's complaint and that are central to plaintiff's claims, (2) matters of which a court may take judicial notice (3) documents that are a matter of public record, and (4) letters that constitute decisions of a governmental agency. *Thomas v. Noder-Love*, 621 F. App'x 825, 829 (6th Cir. 2015); *Armengau v. Cline*, 7 F. App'x 336, 344 (6th Cir. 2001) ("We have taken a liberal view of what matters fall within the pleadings for purposes of Rule 12(b)(6). If referred to in a complaint and central to the claim, documents attached to a motion to dismiss form part of the pleadings.").

IV. ANALYSIS

GM brings its three federal claims under RICO, a criminal statute that also provides, in 18 U.S.C. § 1964(c), for a civil private right of action for "[a]ny person injured in his business or property by reason of

a violation of section 1962 of this chapter." Section 1962, entitled "Prohibited activities," outlaws (a) the investment of income derived from a pattern of racketeering activity, in an enterprise engaged in interstate commerce, (b) the use of a pattern of racketeering activity to acquire or maintain control of any enterprise engaged in interstate commerce, (c) conducting an enterprise's affairs through a pattern of racketeering activity, and (d) conspiring to violate subsections (a), (b), or (c). 18 U.S.C. § 1962. GM alleges that Defendants violated subsections (b), (c), and (d). (ECF No. 1, Complaint, PgID 78-92, ¶¶ 156- 89.) Assuming without deciding that Defendants did commit those violations, the question before the Court is whether GM's alleged injuries occurred "by reason of" Defendants' violations of § 1962. 18 U.S.C. § 1964(c).

The phrase "by reason of," in RICO's private right of action provision, requires proof that the defendant's violation of § 1962 was both the "but for" and the "proximate cause" of the plaintiff's injury. *Holmes v. Sec. Inv'r Prot. Corp. (SIPC)*, 503 U.S. 258, 265-268 (1992). In other words, a plaintiff must allege facts that support its claim that its injury would not have occurred absent the § 1962 violation ("but for" cause), as well as facts that show a "direct relation between the injury asserted and the injurious conduct alleged" (proximate cause).[2] *Holmes*, 503 U.S. at 268

[2] The requirement that a civil RICO plaintiff allege facts showing both but for and proximate cause is derived from the language of § 1964(c), which says "by reason of a violation of section 1962," so this requirement applies to alleged violations of all subsections of § 1962. The only difference between the subsections is the type of conduct that must directly harm the

("Proximate cause is thus required."). A "direct relation" means that the injury occurred at the first step in the causal chain. *See Hemi Group, LLC v. City of New York*, 559 U.S. 1, 10 (2010) (rejecting theory of causation that required moving "well beyond the first step").

Foreseeability of the injury alone cannot satisfy the RICO proximate cause inquiry. In *Holmes*, the Supreme Court used the term "proximate cause" as a generic label for "the judicial tools used to limit a person's responsibility for consequences of that person's own acts," 503 U.S. at 268, but subsequent Supreme Court decisions clarified that traditional proximate-cause inquiries, such as whether the injury was a foreseeable consequence of the conduct, are not the focus of the RICO proximate cause test. In *Hemi Group*, the Supreme Court was explicit that, while "[t]he concepts of direct relationship and foreseeability are of course two of the 'many shapes [proximate cause] took at common law,' [its] precedents make clear that in the RICO context, the focus is only on the directness of the relationship between the conduct and the harm." 559 U.S. at 12. The Supreme Court also noted, in *Hemi Group*, that its decisions in *Holmes* and *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451 (2006), "never even mention the concept of foreseeability." *Hemi Group*, 559 U.S. at 12. So, the fact that an injury was foreseeable, or even intended by the defendant, cannot create proximate cause if the injury was not

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plaintiff—under (b) it is the acquisition or maintenance of control over an enterprise, under (c) it is conducting the affairs of the enterprise through racketeering, and under (d) it is the conspiracy.

direct. *See, e.g.*, *Anza*, 547 U.S. at 460 ("A RICO plaintiff cannot circumvent the proximate-cause requirement simply by claiming that the defendant's aim was to increase market share at a competitor's expense.")

GM, in its briefing and at oral argument, urged the Court to rely on the proximate cause analysis in the Sixth Circuit's decision in *Wallace v. Midwest Fin. & Mortg. Servs., Inc.*, 714 F.3d 414 (6th Cir. 2013). (ECF No. 65, Response to FCA US, PgID 2590; ECF No. 75, Transcript, PgID 2899-2900.) There, the Sixth Circuit began its RICO analysis citing *Holmes*: "The Supreme Court has held in no uncertain terms that under each provision a plaintiff must show that the predicate acts alleged 'not only [were] a 'but for' causes of his injury, but [were] the *proximate cause* as well.'" *Wallace*, 714 F.3d at 419 (emphasis in original). The Sixth Circuit further recognized that "[i]t is well-settled that proximate cause is an essential ingredient of any civil RICO claim." *Id.* However, the Sixth Circuit then proceeded to discuss "the many traditional proximate-cause considerations found at common law" and described the direct injury rule from *Holmes* and its progeny as one consideration among several different proximate cause standards, including foreseeability. *Id.* at 419-20. The *Wallace* court analyzed the defendants' alleged conduct and found that it directly caused the plaintiff's injury. *Id.* at 420. It accepted that the plaintiff was "an intended target of the defendants' alleged scheme to induce borrowers to agree to loans with high interest rates and other unfavorable terms," and that allowed it to draw a direct line from the violation—provision of a falsified appraisal—to the harm—being saddled with

an unfavorable loan. *Id.* It did not find that the foreseeable and intended nature of the injury transformed it from indirect to direct. *Id.* And, though the *Wallace* court did analyze foreseeability as an alternative theory of proximate cause, the Supreme Court has never adopted that proximate cause standard. Indeed, the Supreme Court has made clear, time and again, that the RICO proximate cause requirement does not turn on foreseeability. *See Hemi Group*, 559 U.S. at 12 (criticizing dissent for "hav[ing] RICO's proximate cause requirement turn on foreseeability, rather than on the existence of a sufficiently 'direct relationship' between the fraud and the harm").

The Supreme Court created the direct-injury rule based on three primary concerns. First, "the less direct an injury is, the more difficult it becomes to ascertain the amount of a plaintiff's damages attributable to the violation, as distinct from other, independent, factors." *Holmes*, 503 U.S. at 269. Second, if plaintiffs are "removed at different levels of injury from the violative acts," courts would be forced to "adopt complicated rules apportioning damages . . . to obviate the risk of multiple recoveries." *Id.* Third, the directly-injured victims of a racketeering scheme, where they exist, "can generally be counted on to vindicate the law as private attorneys general, without any of the problems attendant upon suits by plaintiffs injured more remotely." *Id.* at 269-70. This is not so different than the traditional, common law proximate cause requirement, which "limit[s] the right to relief to the initial victims of the wrong," in order to avoid evidentiary and apportionment

problems. *BCS Servs., Inc. v. Heartwood 88, LLC*, 637 F.3d 750, 755 (7th Cir. 2011).

One example of the application of this strict proximate cause requirement is *Anza*. 457 U.S. 451. In that case, Ideal Steel Supply Corp. ("Ideal"), a steel-product retailer, alleged that its primary competitor, National Steel Supply, Inc. ("National"), failed to charge state sales taxes to cash-paying customers. *Id.* at 454. This enabled it to lower prices and attract customers away from Ideal. *Id.* at 454, 457-58. The Supreme Court found that proximate cause was not established, because Ideal was not the direct victim—the state tax authority, which was defrauded and lost tax revenue, was the direct victim. *Id.* at 458. The connection between Ideal's harm—loss of market share—and the § 1962(c) violation—defrauding the tax authority—was too attenuated because National could have lowered its prices for reasons other than omitting the sales tax and Ideal could have lost customers and sales for reasons other than National's lower prices. *Id.* at 458-59.

The *Anza* court further found that the attenuation between the alleged § 1962(c) violation and the injury to the plaintiff implicated two of the three concerns animating the proximate cause requirement—the difficulty in calculating damages attributable to the racketeering activity, and the presence of a directly-harmed victim better suited to vindicate the law. *Id.* at 459-60. Finally, the Court stressed that the fact that National embarked on the scheme to avoid sales taxes with the intent of increasing its market share at Ideal's expense did not create proximate cause where the scheme did not directly injure Ideal. *Id.* at 460-61.

Here, GM alleges two separate injuries, supported by two separate theories of causation. First, it alleges that Defendants' bribes to UAW officials secured "unique competitive advantages [for] FCA but denied [those advantages to] GM from July 2009 through 2015, including in connection with [FCA's] WCM, the grievance process, the proportion of Tier Two workers, and [the] limits on temporary workers." (ECF No. 1, Complaint, PgID 90, ¶ 178; *see also id.* at PgID 79, ¶ 162.) These "unique competitive advantages," specifically denied to GM, lowered FCA's labor costs in relation to GM's, causing GM harm. Second, GM alleges that Defendants' bribes secured FCA's position as the lead company for the 2015 CBA negotiations, which enabled FCA to use concessions and pattern bargaining to impose "over $1 billion" in unanticipated labor costs on GM. (*Id.*) Neither theory succeeds.

A. GM's Unique Competitive Advantages Theory

Initially, GM's first causation theory, that Defendants engaged in a "pay-toharm" GM scheme, has some appeal, but it fails on a closer look. (ECF No. 75, Transcript, PgID 2888-89.) Here, GM alleges that FCA and its officials bribed the UAW to obtain certain concessions for FCA in the negotiation and implementation of its CBA. (ECF No. 1, Complaint, PgID 90, ¶ 178.) These concessions cut down on FCA's labor costs, resulting in FCA having lower average per-hour labor costs than GM. (*Id.* at PgID 42, ¶¶ 82-83.) FCA's lower labor costs may have given it a competitive advantage against GM, just as National's lower prices gave it a competitive advantage against Ideal in *Anza*, but any loss of market share or other

harm attributable to FCA's labor cost advantage is an indirect harm, just like Ideal's loss of market share in *Anza*. 457 U.S. 457-61.

GM also alleges, in a conclusory fashion, that Defendants directed the UAW to deny these concessions to GM, but, as illustrated below, the facts alleged indicate that the UAW would not give most of the concessions at issue to any company that was not bribing its officials. So, GM would never have had access to the same "unique competitive advantages" unless it also bribed the UAW. Accordingly, GM's labor costs were not any higher than they would have been absent FCA's bribes, FCA's labor costs were just lower than they would have been. In other words, FCA's UAW workers were the direct victims of the bribes because they were paid less, and GM suffered only an indirect competitive harm.

The allegations show that the "unique competitive advantages" at issue would not have been available to a company unwilling to bribe UAW officials. First, two out of the five specific advantages that FCA allegedly obtained through bribery were concessions and advantages that a labor union would never give in the absence of bribes. Specifically, nonenforcement of the hiring cap on temporary workers and less-than-zealous advocacy for workers in the grievance process are advantages that would never be available from an uncorrupted union. (ECF No. 1, Complaint, PgID 40-41, ¶¶ 79-80.)

A third advantage, the assurance that the UAW would not insist on reinstating the Tier Two workers cap, is similar—an uncorrupted union would not tip off a company that the union would not insist on terms

that protect its members' Tier One jobs. (*Id.* at PgID 40, ¶ 78). So, because these three advantages—(1) nonenforcement of the hiring cap on temporary workers, (2) poor advocacy for workers in the grievance process, and (3) assurance regarding the Tier Two workers cap—were unavailable in the absence of bribes, GM cannot argue that it was entitled to them or that it would have gotten them if not for Defendants' bribes. Therefore, any labor costs that GM paid as a result of adhering to the terms of its CBA with the UAW regarding temporary workers, the grievance process, and the anticipated Tier Two cap, cannot be described as harm proximately caused by Defendants' bribes.

Second, while the other two advantages, UAW commitment to WCM, and the cheaper prescription drug formulary, are not as obviously against union interests, the facts, as alleged by GM, show that Defendants' intent in making the bribes was to secure advantages for FCA that would not otherwise be available. (*Id.* at PgID 37- 39, 42, ¶¶ 72-75, 81.) In paragraph 64 of the Complaint, GM quotes the criminal indictment of Defendant Iacobelli, which said that the payments to the UAW officials were made to keep them "fat, dumb, and happy." (*Id.* at PgID 32, ¶ 64.) GM also quotes the Government's Sentencing Memorandum in the criminal case against Defendant Durden and Defendant Brown's Plea Agreement, which, respectively, characterized the payments as an effort to "buy labor peace," and said that "it was the intent of FCA executives to 'grease the skids' in their relationship with UAW officials." (*Id.*) Finally, GM continually refers to a section of the Government's Sentencing Memorandum in the case against Iacobelli

which said that the payments were "an effort to obtain benefits, concessions, and advantages for FCA in the negotiation, implementation, and administration of the collective bargaining agreements between FCA and the UAW." (*Id.*; *see also id.* at PgID 37, 66, 77, ¶¶ 71, 148, 154.) These allegations support the inference that Defendants' intent was to lower FCA's labor costs by inducing UAW officials to act against the interests of workers, not the inference that Defendants wanted to increase GM's labor costs by asking the UAW to deny GM concessions that it otherwise would have given.

Further, the few paragraphs of the Complaint that even mention an intent to harm GM are vague and conclusory. (*See, e.g.*, *id.*, at PgID 7, ¶ 6 ("As part of th[e] bribery scheme . . . GM was denied similar union commitments and support."); *see also id.* at PgID 37-39, 40-43, 46-47, 90, ¶¶ 71-72, 75, 78-81, 83, 98, 172.) Paragraph 83 says "[a]s alleged herein, FCA directed key UAW officials to deny similar labor advantages to GM." (*Id.* at PgID 43, ¶ 83.) Notably absent from the Complaint, however, are any specific facts supporting the allegation that a condition of Defendants' payments to the UAW officials was denial of concessions and benefits to GM.

So, the only credible inference from the facts alleged in GM's complaint is that Defendants' bribes were intended to secure advantages and concessions for FCA from the UAW that would not otherwise be available to it. Accordingly, the direct victims of Defendants' alleged bribery scheme are FCA's workers. GM's high labor costs were not an injury proximately caused by FCA's bribes, and any

competitive injury that GM suffered as a result of FCA's advantage in labor costs is an indirect injury, like Ideal's loss of market share in *Anza*. 547 U.S. 451. GM's first causation theory—that Defendants' bribes to UAW officials secured unique competitive advantages for FCA but denied those advantages to GM—fails, so, to the extent that its RICO claims are based on this theory, those claims cannot go forward.

B. GM's 2015 CBA and Unanticipated Labor Costs Theory

GM's second theory of causation is based on an even-more-remote injury and therefore fares no better than the first. To state the theory is to show that the injury alleged is far beyond the first step in the causal chain—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). (ECF No. 1, Complaint, PgID 58, 59, 61-63, ¶¶ 125, 128, 132-35.) This theory, which "requires [the Court] to move well beyond the first step, . . . cannot satisfy RICO's direct relationship requirement." *Hemi Group*, 559 U.S. at 10.

Further scrutiny of this theory reveals additional holes in its logic. First, factors other than FCA's desire to impose significant labor costs on GM could explain FCA's motive to negotiate an overly "rich" CBA. As alleged in the Complaint, UAW and FCA officials knew that their labor agreements and the misuse of

UAW funds were under investigation by the federal government, so both sides had incentives to prove to the government that they were engaging in good faith negotiations. (ECF No. 1, Complaint, PgID 62, ¶ 134.) Adding to the pressure on FCA to make concessions to the UAW was the fact that FCA's UAW workforce rejected the first tentative deal struck between FCA and UAW negotiators. (*Id.* at PgID 61, ¶ 131.) Second, GM admits, in the Complaint, that it "was able to reduce the immediate cost impact of the FCA pattern by about $400 million," which shows that 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.* at PgID 63, ¶ 137.)

Finally, 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, the difficulty of calculating the difference between the labor costs GM had to pay under its ultimate 2015 CBA and the costs it would have had to pay in the counterfactual world where it was selected as the lead is exactly the difficulty that animated the *Holmes* Court's announcement of the direct-injury rule. 503 U.S. at 269 ("[T]he less direct an injury is, the more difficult it becomes to ascertain the amount of a plaintiff's damages attributable to the violation, as distinct from other, independent, factors.") Accordingly, GM's second causation theory fails.

GM's failure to plead sufficient facts showing that it was proximately harmed "by reason of" Defendants' alleged § 1962 violations means that it did not state a cognizable civil RICO claim. 18 U.S.C. § 1964.

V. CONCLUSION

For those reasons, the Court GRANTS all three Motions to Dismiss (ECF Nos. 41, 42, 50) and dismisses GM's Complaint with prejudice.

IT IS SO ORDERED.

Dated: July 8, 2020

s/Paul D. Borman
Paul D. Borman
United States District Judge

Appendix C

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

No. 19-cv-13429

GENERAL MOTORS, LLC; GENERAL MOTORS COMPANY,

Plaintiffs,

v.

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

Defendants.

Filed: Aug. 14, 2020

OPINION AND ORDER

I. INTRODUCTION

On July 8, 2020, this Court dismissed General Motors LLC's and General Motors Company's, (together "GM") Complaint against FCA US LLC ("FCA US"), Fiat Chrysler Automobiles N.V. ("FCA NV"), Alphons Iacobelli, Jerome Durden, and Michael Brown. (ECF No. 82.) The Court found that GM failed to state a claim under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-1968, because GM's injuries, as alleged in its Complaint, were not proximately caused by Defendants' alleged violations of the RICO Act. (*Id.*)

Accordingly, the Court granted Defendants' Motions to Dismiss and dismissed GM's Complaint with prejudice. (*Id.*)

On August 3, 2020, GM filed its Motion to Alter or Amend Judgment pursuant to Federal Rule of Civil Procedure 59(e). (ECF No. 84.) In it, GM argues that the Court committed two clear errors of law—applying a strict proximate cause requirement and dismissing the Complaint with prejudice—and says that newly available evidence addresses the concerns raised by the Court and therefore requires the Court to amend the judgment, reopen the case, and allow GM to file an amended complaint. (*Id.* at PgID 2982.) The newly discovered evidence upon which GM relies is alleged "reliable information indicating the existence of foreign [bank] accounts potentially connected to the scheme alleged in GM's Complaint." (ECF No. 84-3, Karis Dec., PgID 3141.)

The Court requested a response to GM's Motion from Defendants. (ECF No. 85.) Iacobelli filed his Response on August 8, (ECF No. 87), and Durden joined in Iacobelli's Response (ECF No. 88). FCA US and FCA NV filed their Response on August 10 (ECF No. 90), and Durden also joined in FCA's Response (ECF No. 91).

The Court disagrees with GM. Neither the application of the strict proximate cause standard nor the decision to dismiss with prejudice, rather than without prejudice, was a clear legal error, and GM's newly discovered evidence is too speculative to warrant reopening this case. Therefore, the Court denies GM's Motion to Alter or Amend Judgment. (ECF No. 84.)

II. STANDARD OF REVIEW

"A court may grant a Rule 59(e) motion to alter or amend if there is: (1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law; or (4) a need to prevent manifest injustice." *Intera Corp. v. Henderson*, 428 F.3d 605, 620 (6th Cir. 2005) (citing *GenCorp, Inc. v. Am. Int'l Underwriters*, 178 F.3d 804, 834 (6th Cir. 1999)). "The purpose of Rule 59(e) is 'to allow the district court to correct its own errors, sparing the parties and appellate courts the burden of unnecessary appellate proceedings.'" *Howard v. United States*, 533 F.3d 472, 475 (6th Cir. 2008) (citation omitted). The Sixth Circuit has "repeatedly" held that "Rule 59(e) motions cannot be used to present new arguments that could have been raised prior to judgment" and that while Rule 59(e) allows "for reconsideration; it does not permit parties to effectively 're-argue a case.'" *Id.* (citation omitted); *see also Sault Ste. Marie Tribe of Chippewa Indians v. Engler*, 146 F.3d 367, 374 (6th Cir. 1998) ("A motion under Rule 59(e) is not an opportunity to re-argue a case.")

This standard of review applies with equal force "when a party seeks to amend a complaint after an adverse judgment," even though requests to amend a complaint under Rule 15 are, in the usual case, freely granted. *Leisure Caviar, LLC v. U.S. Fish & Wildlife Serv.*, 616 F.3d 612, 616 (6th Cir. 2010). As the Sixth Circuit noted in *Leisure Caviar*, Rule 15 requests after an adverse judgment are different:

> [T]his is not a traditional motion to amend the complaint. Rule 15 requests to amend the complaint are frequently filed and, generally

> speaking, "freely" allowed. But when a Rule 15 motion comes *after* a judgment against the plaintiff, that is a different story. Courts in that setting must "consider[ ] the competing interest of protecting the finality of judgments and the expeditious termination of litigation." *Morse* [*v. McWhorter*], 290 F.3d [795,] 800 [(6th Cir. 2002)]. If a permissive amendment policy applied after adverse judgments, plaintiffs could use the court as a sounding board to discover holes in their arguments, then "reopen the case by amending their complaint to take account of the court's decision." *James v. Watt*, 716 F.2d 71, 78 (1st Cir.1983) (Breyer, J.). That would sidestep the narrow grounds for obtaining post-judgment relief under Rules 59 and 60, make the finality of judgments an interim concept and risk turning Rules 59 and 60 into nullities. *See* 6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1489 (3d ed. 2010).

Id. at 615-16 (emphasis in original). District Courts have "considerable discretion in deciding whether to grant" a Rule 59(e) motion in which a party seeks to reopen the case and file an amended complaint. *Id.* at 615.

III. ANALYSIS

GM advances three grounds upon which to grant its Motion to Alter or Amend. First, GM argues that the Court committed a clear error of law when it required a direct relationship between the alleged RICO violation and the alleged harm to satisfy the

proximate cause requirement. (ECF No. 84, Motion, PgID 2991- 94.) This argument is a complete repeat of GM's opposition to Defendants' Motions to Dismiss and is therefore a prohibited attempt to have a second bite at the apple. *See Michigan Dep't of Envtl. Quality v. City of Flint*, 296 F. Supp. 3d 842, 847 (E.D. Mich. 2017) (identifying "common denominator" among rules for post-judgment relief as "a party that has had a fair chance to present its arguments ought not have a second bite at the apple").

In its Motion, GM cites, among other cases, *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 654 (2008) and *Wallace v. Midwest Fin. & Mortg. Servs., Inc.*, 714 F.3d 414, 419 (6th Cir. 2013), to argue that proximate cause is a flexible concept that cannot be applied according to any strict, black-letter rule. (ECF No. 84, Motion, PgID 2991.) These are the same cases that GM cited to make the same argument in Response to FCA's Motion to Dismiss, (*see* ECF No. 64, Response to FCA US, PgID 2326, 2329-36), and are the same cases that the Court read, considered, and distinguished in ruling on the Motions to Dismiss. (*See, e.g.*, ECF No. 82, O&O, PgID 2964-66 (distinguishing *Wallace*).) There is no need for the Court to reconsider this argument and re-explain its clear conclusion that controlling Supreme Court precedent requires a direct causal relationship between the alleged RICO violation and the alleged harm because "[a] motion under Rule 59(e) is not an opportunity to re-argue a case." *Sault Ste. Marie Tribe*, 146 F.3d at 374. Thus, GM's first argument in support of its Motion to Alter or Amend fails.

GM's second argument is that the Court committed a clear legal error when it dismissed the Complaint with prejudice, instead of *sua sponte* granting GM leave to amend. (ECF No. 84, Motion, PgID 2994-96.) In general, an order of dismissal for failure to state a claim upon which relief can be granted is an adjudication on the merits, which means that the dismissal has prejudicial effect. *See* Fed. R. Civ. P. 41(b) ("[A]ny dismissal not under this rule—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.); *Bartsch v. Chamberlin Co. of Am.*, 266 F.2d 357, 358 (6th Cir. 1959) (confirming that dismissal for reasons other than lack of jurisdiction or improper venue was an adjudication on the merits unless otherwise stated). Thus, in the Sixth Circuit, the "default rule is that 'if a party does not file a motion to amend or a proposed amended complaint' in the district court, 'it is not an abuse of discretion for the district court to dismiss the claims with prejudice.'" *Ohio Police & Fire Pension Fund v. Standard & Poor's Fin. Servs. LLC*, 700 F.3d 829, 844 (6th Cir. 2012) (quoting *CNH Am. LLC v. UAW*, 645 F.3d 785, 795 (6th Cir. 2011)). In this case, the plaintiffs did not file a motion to amend or propose an amended complaint prior to the court entering judgment.

It may be an abuse of discretion for a district court to dismiss claims with prejudice when "a more carefully drafted complaint might state a claim" and the drafter of the complaint lacked notice that its complaint was deficient until it was too late to cure the deficiencies. *See U.S. ex rel. Bledsoe v. Cmty. Health Sys., Inc.*, 342 F.3d 634, 644 (6th Cir. 2003) (inquiring

whether plaintiff had notice and opportunity to cure deficiencies in the complaint before it was dismissed with prejudice). In that case, the court found that the party lacked notice that its complaint was deficient because the law was unsettled on whether Rule 9(b)'s heightened pleading standard applied to the party's claims and the court found, for the first time, that it did. *Id.* at 644-45. That is not the case here. If a party has simply failed to satisfy established pleading standards, the district court is well within its discretion to dismiss the complaint with prejudice. *See Ohio Police*, 700 F.3d at 844 ("The Funds' claims fail as a matter of law under established pleading standards. Accordingly, the district court did not abuse its discretion in dismissing the complaint with prejudice.")

Here, GM argues that the Court abused its discretion in dismissing its claims with prejudice when it applied a strict proximate cause standard that is in "serious tension" with "the foreseeability and logical relationship standard set forth in *Wallace* and other Sixth Circuit cases." (ECF No. 84, Motion, PgID 2996.) According to GM, the "serious tension" between *Wallace* and the Supreme Court cases that establish a direct-injury requirement for RICO claims means that, like the plaintiff in *Bledsoe*, GM was not "definitively on notice" that it had to satisfy a heightened pleading standard, so the claims should have been dismissed without prejudice. *Bledsoe*, 342 F.3d at 645. That is not this case. GM, at the latest, was on clear notice by the June 23, 2020 hearing that the Court would adhere to the controlling Supreme Court precedent in *Hemi Group, LLC v. City of New*

York, 559 U.S. 1 (2010), that the direct proximate cause requirement would apply.

Further, the law on what is required to establish proximate cause in the RICO context is not unsettled. The Supreme Court first required a "direct relation between the injury asserted and the injurious conduct alleged" in 1992. *Holmes v. Sec. Inv'r Prot. Corp.*, 503 U.S. 258, 268 (1992). It applied this narrow standard in several subsequent cases, most recently in 2010, in *Hemi Group*, where it explicitly rejected the notion that a foreseeable, but indirect, injury could satisfy the proximate cause standard. In the *Bridge* case upon which GM relies, the Supreme Court did call proximate cause "a flexible concept that does not lend itself to 'a black-letter rule that will dictate the result in every case," but it also referred to proximate cause as "[t]he direct-relation requirement," and only found that proximate cause existed because the alleged injury was "the direct result of petitioners' fraud." 553 U.S. at 654, 658. Finally, even the *Wallace* court analyzed proximate cause using "the directness standard." 714 F.3d at 420.

Thus, GM, a sophisticated corporation represented by experienced counsel, was certainly on notice that it had to satisfy a direct-injury requirement to state a claim under the RICO Act. The Court did not abuse its discretion in dismissing GM's Complaint with prejudice when GM had never attempted to amend the complaint prior to judgment. *Cf. Ohio Police*, 700 F.3d at 845 ("[T]here are no extenuating circumstances justifying a departure from the principle that 'it is not the district court's role to initiate amendments.'") (citation omitted). The

Court did not commit a clear error of law, so GM's second argument to amend the judgment fails.

GM's third argument is that newly discovered evidence requires the Court to set aside the judgment and allow GM to file its amended Complaint because the new evidence is of a nature that would probably produce a different result. (ECF No. 84, Motion, PgID 2996-03.) The new evidence upon which GM relies are affidavits from its attorneys, in which the attorneys say that unidentified third-party investigators "recently discovered reliable information indicating the existence of foreign accounts potentially connected to the scheme." (ECF No. 84-3, Karis Dec., PgID 3141, *accord.* ECF No. 84-4, Willian Dec., PgID 3147.) The foreign accounts are "potentially connected to the scheme" because the accounts are owned or controlled by "various individuals previously and currently employed by FCA and former UAW Presidents and officers." (ECF No. 84-3, Karis Dec., PgID 3141-42.) These attorneys also indicate that they were unable to discover this evidence earlier, despite reasonable diligence, because the Court did not permit formal discovery to proceed during the pendency of Defendants' Motions to Dismiss. (ECF No. 84-3, Karis Dec., PgID 3142, *accord.* ECF No. 84-4, Willian Dec., PgID 3148.)

The standard for granting a motion under Rule 59(e) on the basis of newly discovered evidence is "essentially the same" as the standard for granting a motion under Rule 60(b). *Michigan Dep't of Envtl. Quality*, 296 F. Supp. 3d at 846. In order to qualify as "newly discovered," the evidence must have been previously unavailable. *GenCorp, Inc. v. Am. Int'l*

Underwriters, 178 F.3d 804, 834 (6th Cir. 1999). To justify setting aside a judgment, the new evidence "must be of such a nature as would probably produce a different result." *Michigan Dep't of Envtl. Quality*, 296 F. Supp. 3d at 846; *see also HDC, LLC v. City of Ann Arbor*, 675 F.3d 608, 615 (6th Cir. 2012) ("To prevail [on a Rule 60(b)(2) motion], a 'movant must demonstrate (1) that it exercised due diligence in obtaining the information and (2) that] the evidence is material and controlling and clearly would have produced a different result if presented before the original judgment.'").

GM's newly discovered evidence is insufficient to warrant altering the judgment. In *Leisure Caviar*, the Sixth Circuit held that "[a] district court does not abuse its discretion by rejecting an unsupported theory for amending a complaint" and affirmed the district court's refusal to amend its judgment when the plaintiffs "offered no deposition testimony, no affidavit, no identifying details—no evidence at all—to corroborate" their new claim. 616 F.3d at 616-17. The affidavits offered by GM in support of their theory—that Defendants used "a broad network of foreign bank accounts containing millions of dollars" to facilitate a bribery scheme that included two "paid mole[s]" inside GM—do very little to corroborate this theory. (ECF No. 84, Motion, PgID 2986-88.) At best, they establish 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. (ECF No. 84-3, Karis Dec., 3142, *accord.* ECF No. 84-4, Willian Dec., PgID 3147.) Yet, even that

conclusion is unsupported by "identifying details" in the affidavits. *Cf. Leisure Caviar*, 616 F.3d at 617.

Even if the affidavits establish that these foreign bank accounts exist, that fact does not rise to the inference advanced by GM, that FCA was more-than-likely using the bank accounts to bribe UAW officials. GM argues, for instance, that because former UAW Vice President Joseph Ashton maintained a bank account in the Cayman Islands "at the same time that Defendants were making unlawful payments to try to grease the skids with the UAW," he "operated as a paid mole inside GM's Boardroom during 2015 collective bargaining negotiations." (ECF No. 84, Motion, PgID 2987-88.) GM also argues that the existence of foreign accounts in the names of former UAW President Dennis Williams and former FCA Vice President Alphons Iacobelli mean that FCA "likely provided funds" to these men "in furtherance of Defendants' RICO activities." (*Id.* at PgID 2988-89.) GM attempts to bolster these claims by informing the Court that, in the early 1990's, FCA's predecessor corporation, Fiat S.p.A., used foreign bank accounts to "illicitly pay politicians to obtain commercial contracts." (ECF No. 84-3, Karis Dec., PgID 3140-41, *accord.* ECF No. 84-4, Willian Dec., PgID 3146-47); Alan Cowell, *Kickback Scandal Convulses Italy*, N.Y. Times (May 10, 1992), https://www.nytimes.com/1992/05/10/world/kickback-scandal-convulses-italy.html. The existence of foreign bank accounts, and an almost-thirty-year-old scandal do not, however, move GM's claims over the line from speculative or conceivable to plausible. As the Sixth Circuit wrote in *Ohio Police*:

> We must construe the complaint in the light most favorable to the plaintiff, accept its allegations as true, and draw all reasonable inferences in favor of the plaintiff. Despite this liberal pleading standard, we may no longer accept conclusory legal allegations that do not include specific facts necessary to establish the cause of action. Rather, the complaint has to plead factual content that allows the court to draw the reasonable inference that the defendants are liable for the misconduct alleged. If the [plaintiffs] do not nudge their claims across the line from conceivable to plausible, their complaint must be dismissed.

Ohio Police, 700 F.3d at 845 (internal quotations and citations omitted).

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, and, therefore, does not change the Court's conclusion that GM's alleged injuries were not proximately caused by FCA's alleged RICO violations. (See ECF No. 82, O&O, PgID 2971-74.) GM's newly discovered evidence is not of such a nature as would probably produce a different result. It does not support amending or altering the judgment issued in this case.

IV. CONCLUSION

For the reasons described above, the Court DENIES Plaintiffs' Motion to Alter or Amend Judgment. (ECF No. 84.)

IT IS SO ORDERED.

Dated: August 14, 2020

s/Paul D. Borman
Paul D. Borman
United States District Judge

Appendix D

RELEVANT STATUTORY PROVISION
18 U.S.C. §1964

(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.