No. 22-642

In the Supreme Court of the United States

GENERAL MOTORS, LLC, ET AL., PETITIONERS,

v.

FCA US, LLC, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

FCA RESPONDENTS' BRIEF IN OPPOSITION

STEVEN L. HOLLEY
RICHARD C. PEPPERMAN II
MATTHEW J. PORPORA
JACOB E. COHEN
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004
(212) 558-4000

JEFFREY B. WALL
Counsel of Record
MORGAN L. RATNER
SULLIVAN & CROMWELL LLP
1700 New York Avenue, N.W.
Suite 700
Washington, DC 20006
(202) 956-7660
wallj@sullcrom.com

Counsel for Respondents FCA US LLC & Stellantis N.V. (formerly known as Fiat Chrysler Automobiles N.V.)

QUESTION PRESENTED

Whether the court of appeals correctly held that petitioners' alleged injuries occurred beyond the "first step" in a complex causal chain and thus were not proximately caused by respondents' alleged misconduct, as required in a civil suit under the Racketeer Influenced and Corrupt Organizations Act.

CORPORATE DISCLOSURE STATEMENT

Respondent FCA US LLC is a wholly-owned subsidiary of Stellantis N.V., formerly known as Fiat Chrysler Automobiles N.V., a publicly held company incorporated in the Netherlands. No other publicly held company owns 10% or more of FCA US LLC's stock.

Respondent Fiat Chrysler Automobiles N.V., now known as Stellantis N.V., has no parent company. Exor N.V. owns 10% or more of Stellantis N.V.'s stock.

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FCA RESPONDENTS' BRIEF IN OPPOSITION

INTRODUCTION

The civil-suit provision of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1964(c), allows "[a]ny person injured in his business or property by reason of a" violation of the Act to sue for treble damages. More than 30 years ago, this Court addressed RICO's "by reason of" requirement and concluded that a civil RICO plaintiff must establish both but-for cause and proximate cause. *Holmes* v. *Securities Inv. Protection Corp.*, 503 U.S. 258, 267-268 (1992). With regard to the proximate-cause requirement, the Court explained that only a "directly injured" victim of a pattern of racketeering activity can assert a civil RICO claim. *Id.* at 269-270. This proximate-cause requirement ensures that RICO does not open the doors of federal courthouses to every plaintiff seeking to convert state-law tort claims into a federal claim for treble damages, which would "'not only burden the courts, but would also undermine the effectiveness of treble-damages suits.'" *Id.* at 274 (alterations omitted).

The Court has since applied RICO's "directness" requirement to a suit between business competitors. In *Anza* v. *Ideal Steel Supply Corp.*, 547 U.S. 451 (2006), the Court concluded that a company could not sue its competitor, which allegedly had defrauded the State of New York by failing to charge New York sales tax. Under the plaintiff's theory, the defendant's failure to charge sales tax enabled it to undercut the plaintiff's

prices. *Id.* at 457-458. The Court held that the plaintiff failed to satisfy RICO's proximate-cause requirement because the alleged competitive harm was too "attenuat[ed]" from the RICO violation. *Id.* at 458. In *Hemi Group, LLC* v. *City of New York*, 559 U.S. 1 (2010), this Court reiterated that RICO has a "direct relationship requirement" and does not permit a civil suit if the plaintiff is positioned "beyond the first step" in a causal chain. *Id.* at 10.[1]

Petitioners General Motors LLC and General Motors Company (collectively, GM) seek to assert a RICO claim against FCA premised on the same kind of indirect competitive harm this Court rejected in *Anza*. GM alleges that former FCA employees "bribe[d]" the United Auto Workers (UAW) to obtain "special advantages" that purportedly enabled FCA to lower its labor costs. D. Ct. Doc. 1 ¶¶ 5-6, 71. Like the plaintiff in *Anza*, GM asserts that it suffered an indirect competitive injury because FCA "could more effectively compete and thrive against GM" as a result of FCA's lower labor costs. *Id.* ¶ 5. As the court of appeals explained in affirming the dismissal of GM's RICO claims, "[t]hat theory should sound familiar. It is precisely the one rejected in *Anza*." Pet. App. 19.

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[1] GM characterizes the lead opinion in *Hemi* as a "plurality." Pet. 7. Although that label ultimately makes no difference here, GM is incorrect. The Chief Justice's lead opinion is labeled the "opinion of the Court in part," and Justice Ginsburg's separate opinion is labeled both a "concurr[ence] in part and concurr[ence] in the judgment," without identifying any specific part of the lead opinion in which she did not concur. *Hemi*, 559 U.S. at 3. This Court has cited the lead opinion in *Hemi* on three occasions without describing it as a plurality opinion. See *Bank of Am. Corp.* v. *City of Miami*, 581 U.S. 189, 203 (2017); *Lexmark Int'l, Inc.* v. *Static Control Components, Inc.*, 572 U.S. 118, 133 (2014); *Staub* v. *Proctor Hosp.*, 562 U.S. 411, 419 (2011).

Relying on an even more complex alternative theory of causation, GM also contends that FCA later agreed to an *unfavorable* collective bargaining agreement with the UAW, in an effort to force a similar agreement on GM and thus weaken GM and somehow make GM more amenable to a merger with FCA. In rejecting this second causation theory, the court of appeals correctly concluded that GM's asserted harms rested well beyond the first step of a long causal chain and created the same "concerns central to the Court's decisions in *Anza* and *Holmes*." Pet. App. 26.

Notwithstanding *Anza* and *Holmes*, GM now asserts (Pet. 1-3) that the "intended victim of a racketeering scheme" necessarily satisfies RICO's proximate-cause requirement, based on a cherry-picked quotation from *Bridge* v. *Phoenix Bond & Indemnity Co.*, 553 U.S. 639 (2008). In *Bridge*, the Court addressed an entirely different issue: whether a plaintiff must allege that it "relied on the defendant's alleged misrepresentations" to plead mail fraud as a RICO predicate act. *Id.* at 641-642. In rejecting a "first-party reliance" rule, the Court quoted the Restatement (Second) of Torts for the proposition that, "as a 'general principle,'" one "'who intentionally causes injury to another is subject to liability to the other for that injury.'" *Id.* at 656-657 (alterations omitted). Taking that sentence out of context, GM incorrectly characterizes *Bridge* as holding that a plaintiff can satisfy RICO's proximate-cause requirement simply by alleging that the defendant intended to harm the plaintiff. As this Court later explained, however, that sentence in *Bridge* merely recites the "common-law principle[]" that "a plaintiff can be directly injured by a misrepre-

sentation even where 'a third party, and not the plaintiff, . . . relied on' it." *Lexmark*, 572 U.S. at 133 (quoting *Bridge*).

Bridge did not *sub silentio* overturn *Holmes* and *Anza*. As this Court has repeatedly made clear, intent to harm is not the test for proximate cause under RICO; directness is. *Anza* squarely held that 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." 547 U.S. at 460. In *Hemi*, the Court reiterated that, just as an intent-to-harm test "did not carry the day" in *Anza*, it did not carry the day in *Hemi* either. 559 U.S. at 12.

There is also no circuit split on the question presented. RICO's proximate-cause requirement is well established, and no court of appeals has ever read *Bridge* to overturn *Holmes* and *Anza* or to cast doubt on the viability of RICO's "directness" test. GM tries to manufacture a circuit split by citing decisions with different facts, some of which found that the plaintiff had been directly injured at the "first step." None of those decisions adopts a legal rule that a plaintiff can satisfy RICO's proximate-cause requirement simply by alleging that it was an intended victim, and none alludes to the supposed circuit split posited by GM.

Finally, this case would be a poor vehicle for this Court to revisit RICO's proximate-cause requirement. To reach that issue, the Court first would need to resolve a threshold question of subject-matter jurisdiction that, until the decision below, "[n]o circuit court ha[d] authoritatively addressed." Pet. App. 15. In addition, resolving the question presented would not change the outcome in this case because GM's RICO claims fail for other independent reasons. And there is

no good reason for this Court to address proximate causation under RICO in the context of allegations that both the court of appeals and the district court agreed strain the bounds of plausibility and are contrary to economic reason.

At bottom, GM seeks this Court's review because it disagrees with the court of appeals' fact-bound application of well-settled legal principles articulated by this Court over the last three decades in multiple RICO decisions. Certiorari is not warranted to examine "the fact-based rule-application issue" raised by GM's petition. *Klehr* v. *A.O. Smith Corp.*, 521 U.S. 179, 193 (1997). The petition for a writ of certiorari should be denied.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-31) is reported at 44 F.4th 548.

The opinions of the district court granting FCA's motion to dismiss (Pet. App. 32-59) and denying GM's motion to alter or amend the judgment (Pet. App. 60-72) are not reported but are available at 2020 WL 3833058 and 2020 WL 4726941, respectively.

JURISDICTION

The court of appeals' decision was entered on August 11, 2022. On October 27 and November 28, 2022, Justice Kavanaugh extended the time within which GM was permitted to file a petition for a writ of certiorari to December 9, 2022 and to Sunday, January 8, 2023,

respectively. GM filed the petition on Monday, January 9, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).[2]

STATUTORY PROVISION INVOLVED

The relevant provision of RICO, 18 U.S.C. § 1964, is reprinted in the appendix to the petition. Pet. App. 73-74.

STATEMENT

A. Legal Background

To state a civil RICO claim, a plaintiff must plausibly allege that the defendant committed "predicate offense[s]" that are "part of a 'pattern of racketeering activity'—a series of related predicates that together demonstrate the existence or threat of continued criminal activity." *RJR Nabisco, Inc.* v. *European Cmty.*, 579 U.S. 325, 330 (2016). A civil RICO plaintiff also must plead that it was "injured in [its] business or property by reason of a violation." 18 U.S.C. § 1964(c). As this Court has explained, the only "compensable in-

[2] Under 28 U.S.C. § 2101(c), a petition for a writ of certiorari in a civil case must be filed "within ninety days" after the entry of judgment below, which may be extended "for a period not exceeding sixty days." That 150-day period is "mandatory and jurisdictional," and not capable of being extended "except as Congress permits." *Missouri* v. *Jenkins*, 495 U.S. 33, 45 (1990). Here, the petition was filed on Monday, January 9, 2023—151 days after the court of appeals entered its decision. Rule 30.1 of this Court's Rules provides that, "[i]n the computation of any period of time prescribed . . . by an applicable statute," the 150-day period is extended if the last day of the period falls on a Sunday. As far as FCA is aware, this Court has never addressed whether Rule 30.1 can extend the statutory time limit in Section 2101(c). Given the jurisdictional nature of that question, the Court would need to resolve it before proceeding to the merits of GM's claims.

jury" is the "harm caused by predicate acts," as opposed to "other conduct" or some generalized scheme. *Sedima, S.P.R.L.* v. *Imrex Co.*, 473 U.S. 479, 497 (1985). A successful RICO plaintiff is entitled to treble damages for those compensable injuries. See 18 U.S.C. § 1964(c).

RICO's causation requirement—*i.e.*, that a plaintiff must suffer an injury "by reason of" an alleged predicate offense—requires the plaintiff to show that a RICO predicate offense "not only was a 'but for' cause of his injury, but was the proximate cause as well." *Anza*, 547 U.S. at 464 (internal quotations omitted). To plead proximate causation, the plaintiff must plausibly allege a "'direct causal connection' between the predicate offense and the alleged harm." *Hemi*, 559 U.S. at 10-11. In applying RICO's proximate-cause requirement, the critical question is whether the plaintiff's alleged injury falls within "the first step" of the causal chain. *Id.* at 10. As this Court has held, "[a] link that is too remote, purely contingent, or indirect is insufficient." *Id.* at 9 (internal quotations and alteration omitted).

In *Holmes*, this Court offered three practical reasons for requiring a direct causal connection to satisfy RICO's proximate-cause requirement. 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, "complicated" analyses may be needed to "apportion[] damages among plaintiffs removed at different levels of injury . . . to obviate the risk of multiple recoveries." *Ibid.* Third, those complicated analyses may be unnecessary because more "directly injured victims can generally be counted on to vindicate the law." *Ibid.*

In short, "[t]he element of proximate causation . . . is meant to prevent . . . intricate, uncertain inquiries from overrunning RICO litigation." *Anza*, 547 U.S. at 460. "It has particular resonance when applied to claims brought by economic competitors, which, if left unchecked, could blur the line between RICO and the antitrust laws." *Ibid.*

B. Factual and Procedural Background

1. Beginning in July 2017, the federal government unsealed indictments against certain former FCA employees—including the three individuals GM named as defendants here—and UAW officers, alleging that the UAW officers misappropriated goods and services with assistance from the former FCA employees (most of whom also misappropriated funds themselves). The misappropriated goods and services constituted "prohibited payments" under Section 302 of the Labor Management Relations Act (LMRA), 29 U.S.C. § 186. Numerous former FCA employees and UAW officers ultimately pleaded guilty as a result of the government's investigation. Not one of the indictments, plea agreements, or sentencing memoranda, however, even mentions GM, let alone suggests that GM was the target or victim of the prohibited payments. See Pet. App. 55-56.

2. GM nevertheless filed this suit, asserting both federal RICO claims and state-law claims for unfair competition and civil conspiracy. The complaint alleges that the prohibited payments to the UAW resulted in labor concessions from the union that harmed FCA's employees and caused the government to lose tax revenues. See D. Ct. Doc. 1 ¶¶ 71-83, 151, 176(c). Beyond these direct injuries, the complaint also alleges that GM was saddled with higher labor costs relative

to FCA because GM did not receive the same labor concessions from the UAW. *Id.* ¶ 71. GM offers two theories for how the prohibited payments injured it.

First, GM alleges that FCA "illegally purchased" "benefits, concessions, and advantages" from the UAW to the detriment "of UAW membership." D. Ct. Doc. 1 ¶¶ 6, 71. Those advantages supposedly included the UAW's agreement to (i) support FCA's "World Class Manufacturing" program, (ii) allow FCA to use more lower-paid and temporary workers, and (iii) handle worker grievances in a non-zealous manner. *Id.* ¶¶ 53, 72, 77-80. GM asserts, without elaboration, that "FCA ensured that while these special advantages were conferred on FCA, the same or similar advantages were not provided to at least GM despite it seeking similar programs and concessions." *Id.* ¶ 71.

Second, GM alleges that FCA agreed to a CBA in 2015 that harmed both GM and FCA, on the theory that FCA was willing to harm itself if it could also harm GM. Every four years, the UAW negotiates new CBAs with each of the three Detroit-based automakers: FCA, Ford, and GM. D. Ct. Doc. 1 ¶ 118. In negotiating the new CBAs, the UAW typically selects one of the automakers as the "lead." *Id.* ¶ 119. After the UAW executes a CBA with the lead automaker, the UAW "exerts pressure on the other two companies to use the first agreement as a 'pattern' for negotiations." *Ibid.* GM alleges that it expected to be the lead in negotiating the 2015 CBA but that the UAW "unexpectedly" chose FCA instead as a result of FCA's prohibited payments to the union. *Id.* ¶¶ 124-125.

According to GM, FCA then made significant concessions to the UAW in negotiating its 2015 CBA, ultimately agreeing to the "richest" (*i.e.*, most economi-

cally advantageous to the UAW) CBA "ever negotiated." D. Ct. Doc. 1 ¶ 133. GM asserts that FCA agreed to an unfavorable CBA because FCA understood that the UAW would extract similar terms from GM via "pattern bargaining," thereby "forc[ing] unanticipated higher costs on GM" and furthering FCA's goal to force GM to merge with it. *Id.* ¶¶ 134-135. GM contends that FCA's "insidious fraud" had positive effects on tens of thousands of autoworkers: "UAW-represented workers" of all three Detroit-based automakers "greatly benefited from th[e] rich contract" negotiated by FCA. D. Ct. Doc. 84-2 ¶¶ 167-168.

GM's complaint never says (i) why FCA would need to resort to "bribes" to entice the UAW to accept the most union-friendly CBA ever negotiated, (ii) why higher labor costs would make GM more amenable to a merger with FCA, or (iii) why FCA would want to saddle both GM and FCA with unfavorable CBAs if its ultimate goal was to run the merged company profitably.

3. The district court—which was also overseeing all of the related criminal cases—dismissed GM's complaint with prejudice for failure to state a claim. Applying this Court's precedents, the court held that "GM's alleged injuries were not proximately caused by Defendants' alleged violations of the RICO Act." Pet. App. 33. The court concluded that "any loss of market share or other harm attributable to FCA's labor cost advantage is an indirect harm," "just like" the "loss of market share" and loss of "competitive advantage" that the plaintiff alleged, and this Court rejected, in *Anza*. *Id.* at 53-54.

The district court also rejected GM's "vague and conclusory" allegation that FCA "directed the UAW to deny" similar advantages to GM. Pet. App. 54-57. As

the court explained, GM had alleged no facts to plausibly support that inference. To the contrary, the plea agreements and sentencing memoranda cited by GM at most support the inference that FCA sought to lower its own labor costs, "not the inference that Defendants wanted to increase GM's labor costs." *Id.* at 55-56. The court further concluded that GM had failed to plead that it "would have gotten [the same advantages that FCA allegedly received] if not for Defendants' bribes." *Id.* at 55.

Lastly, the court rejected GM's causation theory based on FCA's unsuccessful efforts to merge with GM, holding that this theory was "based on an even-more-remote injury" and had myriad "holes in its logic." Pet. App. 57.

4. GM responded to the dismissal of its claims by seeking leave to file an amended complaint. In an attempt to plead proximate cause, the proposed amended complaint alleges that FCA paid two "mole[s]" with money "stashed" in a "broad network" of "secret overseas [bank] accounts" to "infiltrate[]" GM and funnel inside information to FCA. D. Ct. Doc. 84 at 2, 5-8, 20-21. GM's new "corporate espionage" allegations rest entirely on GM's assertion that Alphons Iacobelli (a former FCA employee whom GM hired in 2016) and Joseph Ashton (a former UAW official who served on GM's Board of Directors) held or controlled overseas bank accounts. D. Ct. Doc. 84-2 ¶¶ 5-8, 35, 43. Based on those allegations, GM leaps to the conclusion that, on "information and belief," FCA must have paid Iacobelli and Ashton to spy on GM. *Ibid.* The district court rejected GM's "corporate espionage" theory on the ground that the alleged "existence of foreign bank accounts" alone does not give rise to a plausible inference

that FCA paid spies to "infiltrate GM" to steal its secrets. Pet. App. 70-71. The court thus denied leave to amend.

5. In the unanimous opinion by Judge Larsen, the court of appeals affirmed the district court's two orders.

a. In affirming the dismissal of GM's complaint, the court of appeals first addressed whether GM's claims are subject to the exclusive jurisdiction of the National Labor Relations Board (NLRB), an issue that "implicates the court's subject matter jurisdiction." Pet. App. 13. The court acknowledged that this issue is a question of first impression: "No circuit court has authoritatively addressed whether the NLRB retains primary jurisdiction over RICO claims predicated on violations of § 186," the LMRA's prohibited-payments provision. *Id.* at 15. The court concluded that it had subject-matter jurisdiction because, "by naming a labor law as a RICO predicate, Congress 'expressly carved out an exception to' the NLRB's jurisdiction." *Ibid.*

After concluding that it had subject-matter jurisdiction, the court of appeals went on to reject both of GM's causation theories.

First, the court considered GM's causation theory that the prohibited payments to the UAW resulted in an improper "wage advantage" for FCA relative to its competitors. The court held that this theory does not satisfy RICO's proximate-cause requirement under *Anza*. For one thing, the "theory raises complex apportionment problems," such as "[w]hat share of GM's (unspecified) marketplace injuries are attributable to FCA's unfair labor advantage, rather than to 'other, independent[] factors'?" Pet. App. 19-20 (quoting *Anza*,

547 U.S. at 458). Such difficult questions make it "impossible to 'trace a straight line' from FCA's conduct in violation of RICO to these injuries." *Id.* at 20. For another, "there is a more 'immediate' victim: FCA workers," "who are 'better situated to sue.'" *Id.* at 20, 23 (quoting *Anza*, 547 U.S. at 460, and *Bridge*, 553 U.S. at 658).

In so ruling, the court of appeals rejected GM's contention that "this case is different because FCA intended to harm GM," noting that "the Supreme Court has squarely rejected" that argument. Pet. App. 20-21 (citing *Anza*, 547 U.S. at 460; *Hemi Grp.*, 559 U.S. at 13). In particular, the court rejected GM's reliance on *Bridge*, explaining that *Bridge* "discussed intent only in explaining that common law liability for fraud extend[s] beyond the party who relied on the defendant's misrepresentation." *Id.* at 21. The court was "highly skeptical that the unanimous Court in *Bridge* was silently overruling a key holding of *Anza* in its discussion of traditional fraud principles." *Ibid.*

The court of appeals further rejected an embellishment that GM added to its first theory—namely, GM's conclusory allegation that FCA "bribed union executives not only to give FCA certain concessions[,] but also to 'deny similar labor advantages to GM.'" Pet. App. 23. As the court explained, because "GM never asserts that it would have received [the same labor] advantages absent FCA's bribes or that it was in any way entitled to the benefits FCA received, . . . FCA's bribes were not a but-for cause of the harm." *Id.* at 23-24.

Second, the court of appeals rejected GM's causation theory "stemming from the 2015 CBA negotiations." Pet. App. 24. The court did not address FCA's argument that FCA would not need to "bribe" the

UAW to accept the most union-friendly CBA ever negotiated, which meant that FCA's prohibited payments were not the but-for cause of GM's alleged injury. Instead, the court concluded that, "[e]ven accepting GM's theory as true, the chain of causation between FCA's bribes and GM's injury is still too attenuated" to satisfy RICO's proximate-cause requirement. *Id.* at 26. As the court explained, there were several steps between the prohibited payments and GM's alleged injuries: "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." *Ibid.* The court found that such an attenuated causation theory would give "rise to difficulties in assessing and apportioning fault, concerns central to the Court's decisions in *Anza* and *Holmes*." *Ibid.* For example, "[w]ould GM's independent workforce have ratified the pre-negotiated deal if GM had been first to the table?" *Id.* at 26-27. And "[h]ow much did the FCA workers' rejection of the initial deal contribute to GM's alleged damages?" *Id.* at 27.

b. The court of appeals also affirmed the district court's rejection of GM's proposed amended complaint, which had been submitted after the district court dismissed GM's claims. In rejecting GM's new corporate-espionage theory, the court of appeals held that GM's

contention that FCA paid people to "infiltrate[] GM and funnel[] its secrets to FCA is mere conjecture and not supported by GM's newly discovered evidence." Pet. App. 29. The court thus agreed that GM's proposed amendments did not remedy its pleading failures.

ARGUMENT

The court of appeals' unanimous and thoughtful decision does not warrant review.

First, the decision below is correct and does not conflict with any decision of this Court. The court of appeals carefully analyzed and applied this Court's precedents, and correctly determined that GM's causation theories are too attenuated to satisfy RICO's well-established proximate-cause requirement. GM's disagreement with the court of appeals' fact-bound application of this Court's decisions, and its attempts to relitigate those decisions without requesting that they be overturned, do not warrant this Court's review.

Second, the decision below does not conflict with any decision of any other court of appeals. In attempting to manufacture a circuit split, GM relies on decisions from other circuits that likewise apply this Court's settled proximate-cause precedents to readily distinguishable facts.

Third, this case would be a poor vehicle for the Court to address once again RICO's proximate-cause requirement. For starters, the Court would need to resolve a threshold question of subject-matter jurisdiction before even reaching the question presented. Moreover, even if GM could plead proximate cause based on its conclusory allegation that FCA intentionally targeted GM, GM's claims still would fail for the additional reason that GM does not adequately plead but-for causation. And even if the Court were inclined

to revisit its precedents discussing proximate cause under RICO, it should await a case in which the plaintiff's causation theories do not depend on implausible allegations that defy economic reason.

A. The decision below is correct and does not conflict with any decision of this Court.

GM argues (Pet. 26-33) that the court of appeals contravened this Court's precedents by focusing on the directness of GM's purported injury, rather than on GM's allegation that FCA intended to harm GM. That is wrong. This Court has repeatedly made clear that RICO's proximate-cause requirement focuses on the directness of alleged injury to the plaintiff, not on foreseeability or intent to harm. In rejecting GM's two attenuated causation theories, the court of appeals faithfully applied this Court's precedents to the facts of this case. Because this Court already has addressed the contours of RICO's proximate-cause requirement—including in the specific context of two competing businesses—no further guidance from this Court is needed. The Court should decline GM's invitation to review the court of appeals' fact-bound application of settled legal principles.

1. Congress "modeled" civil RICO "on the civil-action provision of the federal antitrust laws, § 4 of the Clayton Act." *Holmes*, 503 U.S. at 267. Because Congress "used the same words," this Court carried over to civil RICO the direct-causation requirement that is a "central element[]" of the Clayton Act. *Id.* at 268-269. Accordingly, RICO's proximate-cause requirement mandates a "direct relation between the injury asserted and the injurious conduct alleged." *Id.* at 268. This Court has "underscor[ed]" that the "direct-injury limitation" rests on "'[t]he general tendency of the law,

in regard to damages at least, . . . not to go beyond the first step'" of the causal chain. *Id.* at 271-272.

In *Anza*, this Court applied the direct-causation standard articulated in *Holmes* to RICO claims brought by a company alleging that its competitor unlawfully obtained a cost advantage. The Court reiterated that the "central question" in assessing proximate cause under RICO "is whether the alleged [predicate acts] led directly to the plaintiff's injuries." *Anza*, 547 U.S. at 461. And the Court squarely rejected the plaintiff's contrary argument that RICO's proximate-cause requirement turns on whether the defendant intended to harm the plaintiff. *Id.* at 460. As the Court explained, that argument "does not accord with *Holmes*," and contravenes this Court's precedents construing Section 4 of the Clayton Act (on which civil RICO is based). *Ibid.* In applying the Clayton Act, this Court long has held that "an allegation of intent to harm" the plaintiff is "not a panacea that will enable any complaint to withstand a motion to dismiss." *Associated Gen. Contractors of Cal., Inc.* v. *California State Council of Carpenters*, 459 U.S. 519, 537, 545 (1983); see, *e.g.*, *Blue Shield of Va.* v. *McCready*, 457 U.S. 465, 479 (1982) ("The availability of the § 4 remedy to some person who claims its benefit is not a question of the specific intent of the conspirators.").

2. GM incorrectly contends (Pet. 2-3) that this Court overruled all of those decisions *sub silentio* in *Bridge*, reducing the proximate-cause analysis under RICO to the simple question of whether the defendant intended to harm the plaintiff. The question before the Court in *Bridge*, however, was different: "whether a plaintiff asserting a RICO claim predicated on mail fraud must plead and prove that it relied on the defendant's alleged misrepresentations." 553 U.S. at 641-642.

The Court answered that question in the negative, explaining that a "long line of cases" has "permitted a plaintiff *directly injured* by a fraudulent misrepresentation to recover even though it was a third party, and not the plaintiff, that relied on the defendant's misrepresentation." *Id.* at 656 (emphasis added). To drive the point home, the Court stated that "so well established is the defendant's liability in such circumstances that the Restatement (Second) of Torts sets forth as a '[g]eneral [p]rinciple' that '[o]ne who intentionally causes injury to another is subject to liability to the other for that injury, if his conduct is generally culpable and not justifiable under the circumstances.'" *Id.* at 656-657 (quoting Restatement (Second) of Torts § 870).

According to GM, *Bridge*'s quotation of the Restatement *sub silentio* overruled *Holmes* and *Anza*, resulting in a sea change for pleading proximate cause under RICO. See Pet. 27-29, 34. GM asserts that, following *Bridge*, "what matters is whether" the plaintiff alleges that it was "the intended victim" of the defendant's misconduct. Pet. 27. If this Court had meant to overrule *Holmes* and *Anza* in *Bridge*, it would have said so expressly. Instead, the Court reaffirmed that RICO's proximate-cause requirement mandates a "direct relation between the injury asserted and the injurious conduct alleged," and that the three justifications discussed in *Holmes* guide that directness analysis. *Bridge*, 553 U.S. at 654-655. In *Bridge*, the Court simply applied that directness test to the particular mail-fraud context, and held that a plaintiff directly injured by mail fraud can bring a RICO claim even if it did not rely on the misrepresentations. *Id.* at 657-58.

If there were any doubt about whether intent to harm the plaintiff is dispositive of RICO's proximate-

cause inquiry, this Court's opinion in *Hemi* erased it. See Pet. App. 21. In response to the dissent's contention that "RICO's proximate cause requirement turn[s] on" whether the harm to plaintiff was "a consequence that [defendant] intended, indeed desired," the Court explained that the *Anza* dissent had made the same argument and "did not carry the day." *Hemi*, 559 U.S. at 12. GM repurposes the same basic argument here, but does not ask this Court to overrule *Anza*.

Consistent with *Holmes* and *Anza*, *Hemi* reiterated that proximate cause under RICO turns on the "directness of the relationship between the conduct and the harm," and that a theory of injury that goes "beyond the first step" in the causal chain is too remote for proximate cause to exist. 559 U.S. at 10, 12. Although GM contends (Pet. 7) that *Hemi* is a plurality decision entitled to no weight, this Court has not agreed. This Court more recently explained that, under the "directness principles" articulated in *Hemi*, proximate causation does not "go beyond the first step" in the causal chain. *Bank of Am.*, 581 U.S. at 203 (quoting *Hemi*, 559 U.S. at 10); see p. 2 n.1, *supra*.

3. Beyond its reliance on a single sentence from *Bridge*, GM raises several other arguments in support of an intent-focused application of RICO's proximate-cause requirement. This Court has rejected every one of those arguments in previous decisions.

First, GM contends (Pet. 5) that RICO's provision calling for a liberal construction of the statute mandates a less demanding proximate-cause requirement. But this Court emphasized in *Holmes* that there is "nothing illiberal" about the "directness" component of RICO's proximate-cause requirement. 503 U.S. at 274. As the Court explained, "RICO's remedial purposes would more probably be hobbled than helped by

[the plaintiff's] version of liberal construction: Allowing suits by those injured only indirectly would open the door to 'massive and complex damages litigation, which would not only burden the courts, but would also undermine the effectiveness of treble-damages suits.'" *Ibid.* (quoting *Associated Gen. Contractors*, 459 U.S. at 545) (alterations omitted).

Second, GM argues (Pet. 27) that whether a plaintiff is harmed "via the most direct route" is inconsequential. But this Court held in *Anza* that RICO's proximate-cause requirement is not satisfied if the defendants "took an indirect route to accomplish their goal." 547 U.S. at 460. That is what GM alleges here.

Third, GM asserts (Pet. 30-31) that concerns about "complicated damages calculations" apply only when "multiple recoveries" are possible. But GM conflates two distinct concerns articulated in *Holmes*—one about the difficulty of assessing damages for attenuated harms, and the other about the possibility of duplicative recoveries. See 503 U.S. at 269, 272-273. Indeed, this Court held in *Anza* that indirect, remote injuries are not cognizable under RICO, "[n]otwithstanding the lack of any appreciable risk of duplicative recoveries." 547 U.S. at 459-460.

Fourth, GM maintains (Pet. 21) that its alleged injuries are sufficiently direct because they "are distinct from any injuries anyone else may have suffered." But this Court held in *Anza* that it is irrelevant that the plaintiff "asserts it suffered its own harms," distinct from the harms to the more directly affected entity—there, the State of New York, which had been deprived of tax revenue. 547 U.S. at 458.

If anything, GM's arguments—which largely track points made by the dissenters in *Anza* and *Hemi*—un-

derscore that this Court already has defined the contours of RICO's proximate-cause requirement. It is hard to imagine what additional guidance this Court could provide in this case, particularly given this Court's acknowledgement that "proximate cause is generally not amenable to bright-line rules." *Bridge*, 553 U.S. at 659.

4. The court of appeals faithfully followed this Court's decisions in rejecting GM's two causation theories.

a. GM's first theory—that the prohibited payments enabled FCA to lower its labor costs, at the direct expense of FCA's workers, and thus allowed FCA to compete more effectively against GM—is the exact kind of competitive-harm theory that this Court rejected in *Anza*. See 547 U.S. at 459-460. GM alleges that FCA unlawfully lowered its labor costs, thus harming FCA's workers directly in the first step of the causal chain and harming GM (and other competitors) indirectly because GM was at a labor-cost disadvantage to FCA. Pet. App. 18-20; see *Anza*, 547 U.S. at 458 (The "direct victim of this conduct was the State of New York, not [plaintiff].").

As the court of appeals correctly held, the three factors that motivated the adoption of a "directness" requirement in *Holmes* similarly apply here. See Pet. App. 18-23. First, ascertaining the amount of harm that FCA's alleged conduct purportedly inflicted on GM would be not only difficult, but inherently speculative. Teasing out the harm to GM attributable to the prohibited payments (as opposed to other factors in the marketplace) would require the same kind of "intricate, uncertain inquiries" that this Court stated should not be allowed to "overrun[] RICO litigation." *Anza*, 547 U.S. at 459-460. Second, GM's claims potentially

raise complex issues related to the apportionment of damages because GM alleges that "all stakeholders in the U.S. auto industry, including manufacturers, suppliers, the UAW, and employees" were purportedly victims of the prohibited payments. D. Ct. Doc. 1 ¶ 12. Third, under GM's theory, FCA's workers were more immediate victims of the prohibited payments with an incentive to sue—and they have already done so. See, *e.g.*, *Slight* v. *UAW*, No. 20-cv-01590 (N.D. Ohio); *Ristovski* v. *UAW*, No. 21-cv-10452 (E.D. Mich.).

The court of appeals further held that GM's first theory could not be saved by its embellishment that FCA supposedly "bribed" the UAW not only to secure advantages for FCA, but also to "deny similar labor advantages to GM." Pet. App. 23. This argument fails for "lack of but-for causation." *Id.* at 23-24. "GM never asserts that it would have received [the same labor] advantages [that FCA received] absent FCA's bribes." *Ibid.* Because GM does not challenge the court of appeals' ruling on but-for causation, a decision adopting GM's intentional-targeting theory of proximate-cause would not disturb the court's reasoning with respect to GM's first theory.

b. GM's second theory—that FCA agreed to unfavorable terms in its 2015 CBA in an effort to force GM to merge with it—is even more attenuated. At the outset, the court of appeals was rightly "skeptical" (Pet. App. 25) of GM's theory that FCA was so fixated on a merger that it was willing to saddle itself (and any eventual merged company) with crippling labor costs in an effort to soften up the merger target.

Looking past the implausibility of GM's theory, the court of appeals correctly held that, even if the prohibited payments induced the UAW to select FCA as the lead in the 2015 CBA negotiations, that action was

many steps removed from any purported injury to GM. Pet. App. 26-27. The court counted at least a six-link "chain leading from FCA's bribe to GM's increased labor costs," which "had to pass through the independent actions of at least two independent parties": FCA's workers (who rejected the initial CBA negotiated by FCA and the UAW) and GM's workers (who threatened a strike). *Id.* at 26. Calculating GM's damages under this theory also would require highly speculative inquiries into whether "FCA workers' rejection of the initial deal contribute[d] to GM's alleged damages" and whether "GM's independent workforce [would] have ratified" the deal that GM thinks it could have negotiated had the UAW selected GM as the lead company in 2015 CBA negotiations. *Id.* at 26-27. All of those complexities make this case a far cry from the "straightforward" claim in *Bridge*, where there were "no independent factors that account for [plaintiffs'] injury." 553 U.S. at 647, 658. And those complexities place GM squarely beyond the "first step" in the causal chain. *Holmes*, 503 U.S. at 271.

B. The decision below does not conflict with any decision of any other court of appeals.

GM's strained efforts to gin up a circuit split (Pet. 21-26) fall short. All courts of appeals agree on the general rule that RICO's proximate-cause requirement focuses on the directness of the alleged injury to the plaintiff, guided by the three factors discussed in *Holmes*, *Anza*, and *Hemi*. GM nonetheless contends (Pet. 20, 22) that four courts of appeals—the First, Third, Seventh, and Ninth Circuits—have adopted a legal rule that RICO's proximate-cause requirement can be satisfied by an alleged intent to harm the plaintiff, regardless of the directness of the plaintiff's alleged injury. There is no such rule. No court has reached

the improbable conclusion that *Bridge* silently overruled *Holmes* and *Anza*, and this Court somehow failed to notice in *Hemi* that that had happened. And there is likewise no conflict in how the courts of appeals have applied this Court's precedents to allegations like those at issue here.

1. GM first relies on the Ninth Circuit's decision in *Harmoni International Spice, Inc.* v. *Hume*, 914 F.3d 648 (9th Cir. 2019). In *Harmoni*, a garlic importer alleged that rival importers sought to injure it by engaging in unlawful conduct. The court did not hold that *Bridge* overruled *Anza*, nor did it adopt an intent-to-injure causation rule. To the contrary, the court held that the complaint did *not* adequately allege proximate cause with respect to the plaintiff's primary theory of harm—that the defendants illegally funneled imported garlic into the United States. *Id.* at 651. Notwithstanding the allegation that the defendants intended to "decrease . . . [the plaintiff's] sales" by evading import duties and selling their garlic at "less than fair value," the court held that "the relationship between the defendants' unlawful conduct and [the plaintiff's] alleged injury is too attenuated to support a finding of proximate cause for the same reasons given in *Anza*." *Ibid.* GM never mentions this holding, which fatally undermines its claimed circuit split.

GM instead focuses on the Ninth Circuit's analysis of the plaintiff's other causation theory—that the defendants caused the plaintiff to lose sales by making "false accusations about [the plaintiff's] business practices" in "public filings submitted to the Department of Commerce." 914 F.3d at 652-653. According to GM (Pet. 23), the court found proximate cause because "'defendants knew their public filings would be reviewed by [plaintiff's] customers' and 'made the false

statements with the specific intent of harming [plaintiff's] business reputation.'" In fact, the court held the exact opposite: that the plaintiff did not plausibly allege that its "lost sales" were the "direct result of the defendants' wrongful acts." *Harmoni*, 914 F.3d at 653-654. Thus, far from adopting an intent-to-harm causation rule—even in a factual circumstance plainly distinguishable from this one—the court rejected the plaintiff's claim for lack of proximate cause. *Ibid.* Although the court granted the plaintiff leave to amend, the plaintiff abandoned its lost-sales theory on remand. See *Harmoni Int'l Spice, Inc.* v. *Wenxuan Bai*, 2019 WL 4194306, at *8 (C.D. Cal. July 2, 2019).

2. GM next asserts (Pet. 23-24) that a pair of Seventh Circuit decisions adopted an intent-to-harm causation rule. That is incorrect. In the first case, the district court on remand from *Bridge* defied this Court's ruling by granting summary judgment to the defendants on the same grounds this Court had rejected. The Seventh Circuit had no trouble reversing, explaining that this Court "characterized the plaintiffs' theory of causation as 'straightforward' . . . and after discovery straightforward it remains." *BCS Servs., Inc.* v. *Heartwood 88, LLC*, 637 F.3d 750, 757 (7th Cir. 2011). The Seventh Circuit did not adopt or endorse GM's intent-to-harm causation rule.

In the second case, casinos sued various horse-track owners for bribing the Illinois legislature to impose a tax on casinos, with the proceeds placed "into a trust for the benefit of the horseracing industry." *Empress Casino Joliet Corp.* v. *Johnston*, 763 F.3d 723, 725 (7th Cir. 2014). GM incorrectly asserts (Pet. 22) that the Seventh Circuit held that the "proximate-cause analysis should focus on what the racketeer set out to accom-

plish." In fact, the Seventh Circuit properly recognized that, under *Anza* and *Hemi*, the "focus of the inquiry is the directness of the injury resulting from the defendants' conduct." 763 F.3d at 733. Applying the directness factors discussed in *Anza* and *Hemi*, the court held that the plaintiffs' injury was sufficiently direct under the facts alleged in that case. The court mentioned *Bridge* only once, noting in passing that this Court had "rejected a rule of first-party reliance." *Id.* at 734. The court also observed that, unlike here, there were no more immediate victims of the alleged misconduct, and the casinos' harm was direct, non-speculative, and "easily measured." *Id.* at 733-734.

GM argues in a footnote (Pet. 24 n.3) that the decision below wrongly characterized the Seventh Circuit's decision as involving an unharmed middleman (the Illinois legislature). See Pet. App. 22-23. According to GM, the most immediate victims were the legislators' "constituents" who were deprived of "the honest services of their representatives." Pet. 24 n.3. The Seventh Circuit saw things differently, however, stating that "[t]here was no more directly injured party standing between the Casinos and the alleged wrongdoer." *Empress Casino*, 763 F.3d at 734. That is presumably because the "deprivation of honest services" is not a "concrete financial loss" under RICO. *Ove* v. *Gwinn*, 264 F.3d 817, 825 (9th Cir. 2001).

3. GM's other cases—from the First, Third, and Ninth Circuits—involve what is, at most, a shallow circuit split unique to a narrow and technical issue in RICO cases brought by insurance companies against pharmaceutical manufacturers that fraudulently market prescription medication paid for by the insurers. See *Painters & Allied Trades Dist. Council 82 Health Care Fund* v. *Takeda Pharm. Co.*, 943 F.3d 1243, 1252-

1257 (9th Cir. 2019) (discussing cases); *In re Avandia Mktg., Sales Practices & Prod. Liab. Litig.*, 804 F.3d 633 (3d Cir. 2015); *In re Neurontin Mktg. & Sales Practices Litig.*, 712 F.3d 21 (1st Cir. 2013). In those cases, the proximate-cause question is how to apply *Holmes*'s directness test where uninjured doctors (who prescribed the pharmaceuticals) stand between the defendant-manufacturers (who made misrepresentations to the doctors) and the plaintiff-insurers (who pay for the prescriptions). None of those courts has adopted a rule that an intent to harm the plaintiff is determinative of proximate cause under RICO, and none has reasoned that *Bridge* overruled *Anza*. Instead, their disagreement relates to application of this Court's RICO precedents to issues arising from the unique "structur[al] [aspects] of the American health care system." *Painters*, 943 F.3d at 1257. Those issues are particular to pharmaceutical fraud and are not implicated here.

Decisions of the First, Third, and Ninth Circuits in RICO cases *outside* the pharmaceutical-fraud context make clear that those courts' disagreement is narrow. Those courts have not held that proximate cause under RICO focuses on whether the defendant intended to harm the plaintiff, as GM contends (Pet. 22). Instead, like the decision below, those courts have held that the "'central question' in evaluating proximate cause in the RICO context 'is whether the alleged violation led directly to the plaintiff's injuries,'" guided by the "three functional factors" discussed in *Holmes*, *Anza*, and *Hemi*. *Sterling Suffolk Racecourse, LLC* v. *Wynn Resorts, Ltd.*, 990 F.3d 31, 35-36 (1st Cir. 2021) (quoting *Anza*, 547 U.S. at 461); see *Devon Drive Lionville, LP* v. *Parke Bancorp, Inc.*, 791 Fed. Appx. 301, 307 (3d Cir. 2019); *Rezner* v. *Bayerische Hypo-Und Vereinsbank*

AG, 630 F.3d 866, 874 (9th Cir. 2010); *Harmoni*, 914 F.3d at 651-654.

In any event, this Court has previously declined to grant certiorari in pharmaceutical-fraud cases squarely presenting the narrow issue on which there is some disagreement. See *Painters & Allied Trades Dist. Council 82 Health Care Fund* v. *Takeda Pharm. Co.*, 943 F.3d 1243 (9th Cir. 2019), cert. denied, 141 S. Ct. 86 (2020); *In re Avandia Mktg., Sales Practices & Prod. Liab. Litig.*, 804 F.3d 633 (3d Cir. 2015), cert. denied, 578 U.S. 1022 (2016); *In re Neurontin Mktg. & Sales Practices Litig.*, 712 F.3d 21 (1st Cir.), cert. denied, 571 U.S. 1094 (2013); *UFCW Local 1776* v. *Eli Lilly & Co.*, 620 F.3d 121 (2d Cir. 2010), cert. denied, 564 U.S. 1046 (2011). This case is not the proper vehicle to resolve that narrow issue, even if the Court were now inclined to do so.

C. The decision below is a poor vehicle for addressing RICO's proximate-cause requirement.

For three additional reasons, this case would be a poor vehicle for this Court to revisit once again RICO's proximate-cause requirement.

1. Before reaching the proximate-cause issue, the Court would need to resolve a threshold question of subject-matter jurisdiction: whether GM's claims are subject to the NLRB's exclusive jurisdiction under *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236 (1959). Pet. App. 13. Until the decision below, "[n]o circuit court ha[d] authoritatively addressed" whether Congress created an exception to the NLRB's exclusive jurisdiction by including prohibited payments under the LMRA as a RICO predicate offense. *Id.* at 15. That jurisdictional issue—which has not percolated in the lower courts—does not independently warrant this Court's review. The need to resolve this

threshold jurisdictional issue is thus reason enough to deny review.[3]

2. In addition, resolving the question presented would have no effect on the outcome of this case.

The primary version of GM's first causation theory—that FCA lowered its own labor costs as a result of the prohibited payments—is squarely foreclosed by *Anza* (which GM does not ask this Court to overrule) and does not even implicate GM's proposed intentional-targeting rule.

Below, GM embellished on that first theory by adding a conclusory allegation of targeting: that FCA also bribed the UAW to deny comparable labor advantages to GM. The court of appeals rejected that version of the theory for lack of *but-for* causation. Pet. App. 23-24. It reasoned that "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." *Id.* at 23. That is consistent with common sense: if FCA needed to bribe the UAW for certain labor advantages, there is no reason to believe that UAW would have freely offered those same advantages to GM. GM does not seek this Court's review of the court of appeals' determination on but-for cause, which forecloses its first theory no matter what proximate-cause rule applies. See Pet. 18.

With respect to GM's second causation theory—that FCA bribed the UAW to select FCA as the lead in the 2015 CBA negotiations—GM never explains why

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[3] The *Garmon* question here has no overlap with *Glacier Northwest, Inc.* v. *International Brotherhood of Teamsters*, No. 21-1449, which concerns whether the *Garmon* doctrine applies to a state-law claim for intentional destruction of property. GM thus correctly does not request that the Court hold consideration of this petition pending the Court's decision in *Glacier*.

"bribes" would have been necessary to entice the UAW to select FCA as the lead if the UAW believed FCA would agree to the most union-friendly CBA in history. If, as GM alleges, the UAW believed it could negotiate the best deal with FCA, the UAW had every reason—and likely a legal duty—to select FCA as the lead in the 2015 CBA negotiations, without regard to any prohibited payments. See *Air Line Pilots Ass'n* v. *O'Neill*, 499 U.S. 65, 74-75 (1991) (discussing union's "duty of fair representation"). Because the UAW would have selected FCA as the lead company for the 2015 CBA negotiations irrespective of any prohibited payments, the supposed "bribes" were not a but-for cause of GM's alleged injury. Although the court of appeals did not reach the question of but-for causation because it found dismissal straightforward for lack of proximate cause, that obvious alternative ground for affirmance should weigh against this Court's review.

3. Even if the Court were inclined to revisit RICO's proximate-cause requirement yet again, it should do so in a case where the causation allegations are more plausible. Here, the court of appeals was highly "skeptical" of GM's allegations that FCA targeted GM at all. Pet. App. 25. Although the court concluded that allegations that FCA targeted GM could just "clear the plausibility bar," it acknowledged that the "more likely" explanation was that FCA simply sought to benefit itself. *Id.* at 26. The district court was not even that generous. In its view, "the few paragraphs of the Complaint that even mention an intent to harm GM are vague and conclusory" and show obvious "holes in [GM's] logic." *Id.* at 56-57.

Both courts were skeptical for good reason. Any resolution in GM's favor would require a court to accept two implausible allegations that defy economic

reason: first, that FCA negotiated an unfavorable CBA in 2015 in the hopes of forcing a merger with GM, even though the merged company then would be saddled with two unfavorable CBAs; and second, that the UAW required "bribes" to accept a pro-union CBA with higher pay for its members, which it then could use as a pattern for negotiations with GM and Ford. See *Bell Atl. Corp.* v. *Twombly*, 550 U.S. 544, 566 (2007) (allegations "fail[] to answer the point that there was just no need for joint encouragement to resist the 1996 Act"). A case where the Court must suspend common sense in applying the law to the facts is a poor vehicle for revisiting RICO's proximate-cause requirement.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

STEVEN L. HOLLEY
RICHARD C. PEPPERMAN II
MATTHEW J. PORPORA
JACOB E. COHEN
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004
(212) 558-4000

JEFFREY B. WALL
Counsel of Record
MORGAN L. RATNER
SULLIVAN & CROMWELL LLP
1700 New York Avenue, N.W.
Suite 700
Washington, DC 20006
(202) 956-7660
wallj@sullcrom.com

Counsel for Respondents FCA US LLC & Stellantis N.V. (formerly known as Fiat Chrysler Automobiles N.V.)

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