No. 25-293

In the Supreme Court of the United States

GENERAL DYNAMICS CORP., ET AL.,

Petitioners,

v.

SUSAN SCHARPF.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF THE SHIPBUILDERS COUNCIL OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF THE *AMICUS CURIAE*

The Shipbuilders Council of America (SCA) is the national trade association representing the U.S. shipyard industry. It represents 37 companies that operate more than 80 shipyards nationwide, as well as 105 partner companies that provide goods and services to the shipyard industry.[1]

SCA's mission is to advocate on behalf of the industry in Washington, D.C., and around the country. It represents members before Congress, Executive Branch agencies and departments, public policy organizations and industry associations. It previously has filed *amicus* briefs in cases of importance to the shipbuilding industry. See, *e.g.*, *Huntington Ingalls Inc.* v. *Barrosse*, 144 S. Ct. 557 (2024) (No. 23-368).

This case concerns an alleged antitrust conspiracy in the shipbuilding industry. The question presented is whether the plaintiff adequately pleaded that the defendants engaged in fraudulent concealment that tolls the statute of limitations, simply by alleging that the defendants maintained an unwritten agreement not to recruit and hire each other's employees. In SCA's view, the answer is no. The simple allegation of an unwritten agreement does not plead the type of affirmative act necessary to plead fraudulent concealment.

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[1] Pursuant to Rule 37.6, *amicus* affirms that no counsel for a party authored this brief in whole or in part, and that no person other than *amicus* and its counsel made a monetary contribution to its preparation or submission. Counsel of record for all parties received notice at least 10 days before the due date of the intention of *amicus* to file this brief.

The Fourth Circuit's contrary ruling increases the risk that companies, including those in the shipbuilding industry, will be subject to non-meritorious but difficult-to-defend lawsuits based on potentially decades-old conduct. Those companies will be deprived of the security that the statute of limitations is designed to provide, and will be forced to live under the threat of potential treble damages liability based on stale claims.

Those effects will be particularly acute in the shipbuilding industry, where SCA's members are working hard to ensure that the United States has the facilities and personnel necessary to remain competitive in the global market and to meet the needs of the U.S. Navy. SCA submits this brief to provide its unique perspective on the issues in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

Statutes of limitations play an important role in providing confidence to businesses, so that businesses can accurately assess their liabilities and make plans for the future without fear of surprise liability from stale claims. This case concerns the statute of limitations for an alleged antitrust conspiracy in the shipbuilding industry. The plaintiff alleges that the defendants, companies that design and build the U.S. naval fleet, had an unwritten agreement not to recruit and hire each other's employees. She sued more than a decade after being harmed by that alleged conduct – well outside the applicable four-year statute of limitations. And the plaintiff seeks treble damages going back 25 years.

The Fourth Circuit allowed the plaintiff's stale claims to proceed under the fraudulent concealment

doctrine. In the Fourth Circuit's view, the mere fact that the plaintiff alleged an unwritten conspiracy is enough to establish the affirmative act necessary for fraudulent concealment and toll the statute of limitations. That holding is wrong.

For antitrust violations under the Sherman Act, Congress adopted a four-year statute of limitations that begins running at the time the plaintiff's claim accrues, meaning when the plaintiff suffers injury as a result of the defendant's alleged conduct, and not when the plaintiff discovers his or her claim. The statute reflects Congress's determination that, once a potential antitrust plaintiff suffers an injury, he or she is on notice of the potential claim and should not delay in investigating and potentially filing suit.

The Fourth Circuit's holding displaces Congress's judgment for a broad swath of antitrust cases, giving plaintiffs a "free pass on time-[]barred claims" when they allege an unwritten antitrust conspiracy. Pet. App. 34a (Diaz, C.J., dissenting). It also distorts the law of fraudulent concealment, which generally requires a defendant to take active steps to conceal the basis for the claim; "mere silence" is not enough. *Wood* v. *Carpenter*, 101 U.S. 135, 143 (1879). Fraudulent concealment is a narrow exception to the rule that a potential antitrust plaintiff must sue within four years of the claim's accrual, and it should only apply when the defendant actively and intentionally takes action – beyond the alleged conspiracy itself – to prevent the plaintiff from uncovering the facts. The Fourth Circuit was wrong to hold that a mere allegation that a conspiracy was unwritten meets the high bar to demonstrate fraudulent concealment.

This Court should grant certiorari now because of the potentially enormous effects of the Fourth

Circuit's decision on the shipbuilding industry and on other industries. If left uncorrected, the Fourth Circuit's decision could subject a broad range of companies to significant liability for stale claims based on decades-old conduct. If those stale claims are allowed to proceed past the pleading stage, companies could face extensive discovery, which creates significant settlement pressure. That pressure is exacerbated by the possibility of treble damages for antitrust violations. Those pressures are not limited to antitrust cases; a plaintiff could plead fraudulent concealment based merely on an unwritten agreement for other types of claims as well, such as civil RICO violations.

This case starkly illustrates the effect of the Fourth Circuit's rule. The plaintiff brings a putative class action seeking treble damages for alleged violations over a 25-year period, and none of the allegedly unlawful conduct that assertedly harmed the plaintiff in this case occurred within the Sherman Act's four-year statute of limitations. That outcome cannot be squared with Congress's judgment to require potential plaintiffs to bring Sherman Act claims within four years and with this Court's judgment that the fraudulent concealment doctrine apply only in exceptional cases.

That risk of looming liability is particularly acute for the U.S. shipbuilding industry, where the federal government and private companies are making significant investments to strengthen the industry to ensure military readiness and to remain competitive in the global marketplace. Those investments could be seriously undermined if the industry faces the risk of massive liability based on stale antitrust claims. This Court should correct the Fourth Circuit's erroneous view of fraudulent concealment because of the

outsized effect that decision will have on the U.S. shipbuilding industry.

Finally, although this case arises in the context of the shipbuilding industry, the Fourth Circuit's rule applies to all antitrust claims, and indeed all claims where the plaintiff alleges an unwritten unlawful agreement. The result is that a large number of companies could be exposed to litigation and settlement pressure – and potentially even treble damages – based on decades-old claims. This Court should grant certiorari to prevent that unwarranted result.

ARGUMENT

I. The Fourth Circuit's Fraudulent Concealment Holding Is Wrong

A. The Sherman Act Requires A Plaintiff To Bring A Claim Within Four Years Of Accrual

In this putative class action, the plaintiff alleges an antitrust conspiracy in violation of Section 1 of the Sherman Act. Pet. App. 38a; see 15 U.S.C. 1. In the Clayton Act, Congress imposed a four-year statute of limitations for private lawsuits alleging Sherman Act violations. 15 U.S.C. 15b. Under that statute of limitations, a claim "shall be forever barred unless commenced within four years after the cause of action accrued." *Ibid.*

That provision reflects Congress's judgment that defendants generally should enjoy repose from Sherman Act claims four years after the acts in question, meaning that they can have confidence that claims not brought within that period will not be asserted at some future date. As this Court has recognized, the "basic objective" underlying statutes of limitations is

"repose." *Klehr* v. *A.O. Smith Corp.*, 521 U.S. 179, 187 (1997). Having a limited time period in which to sue ensures that potential plaintiffs do not "sleep[] on their rights" and then "bring[] suit only long after the memories of witnesses have faded or evidence is lost." *Ibid.* Statutes of limitations reflect a judgment that "there comes a point at which the delay of a plaintiff in asserting a claim" could "impair the accuracy of the fact-finding process." *Board of Regents of the Univ. of State of N.Y.* v. *Tomanio*, 446 U.S. 478, 487 (1980).

A statute of limitations also provides "certainty about a plaintiff's opportunity for recovery and a defendant's potential liabilities." *Gabelli* v. *SEC*, 568 U.S. 442, 448 (2013) (internal quotation marks omitted). That is, it provides a fixed date when exposure to potential liability ends, thus providing "security and stability to human affairs." *Ibid.*; see *Tomanio*, 446 U.S. at 487 (noting that a plaintiff's delay in bringing suit may be sufficiently likely "to upset settled expectations that a substantive claim will be barred without respect to whether it is meritorious").

For antitrust cases in particular, that certainty is important, because "treble damages" could continue to "accumulate" if a plaintiff were allowed to delay bringing suit. *Klehr*, 521 U.S. at 187. Courts consequently have recognized a "strong congressional policy in favor of repose in antitrust suits." *Pinney Dock & Transp. Co.* v. *Penn Cent. Corp.*, 838 F.2d 1445, 1469 (6th Cir. 1988) (internal quotation marks omitted).

The statute of limitations for Sherman Act claims begins to run when the plaintiff's claim accrues. See *Zenith Radio Corp.* v. *Hazeltine Rsch., Inc.*, 401 U.S. 321, 338 (1971); see also 15 U.S.C. 15b. "Generally, a cause of action accrues and the statute begins to run when a defendant commits an act that injures a

plaintiff's business." *Zenith Radio*, 401 U.S. at 338. Or, more generally, "a claim accrues when the plaintiff has a complete and present cause of action." *Gabelli*, 568 U.S. at 448 (internal quotation marks omitted).

That accrual rule stands in contrast to a discovery rule, where the limitations period starts to run when the plaintiff discovers his or her cause of action. *Gabelli*, 568 U.S. at 449. A discovery rule is an "exception to the standard rule," because "[u]sually when a private party is injured, he is immediately aware of that injury and put on notice that his time to sue is running." *Id.* at 449, 450 (internal quotation marks omitted).

Congress chose to adopt the standard accrual rule for Sherman Act claims, rather than a discovery rule, even though the facts underlying an antitrust claim may not be immediately apparent. Section 1 of the Sherman Act prohibits unreasonable restraints of trade that are "effected by a contract, combination, or conspiracy," and the agreement underlying a violation can be "tacit or express." *Bell Atl. Corp.* v. *Twombly*, 550 U.S. 544, 553 (2007). When the agreement underlying an antitrust violation is tacit, rather than express, there may be little or no direct evidence of an antitrust violation, and the plaintiff may have to argue that an "inference of conspiracy is reasonable in light of the competing inferences of independent action." *Matsushita Elec. Indus. Co.* v. *Zenith Radio Corp.*, 475 U.S. 574, 588 (1986).

Nonetheless, Congress chose a statute of limitations for antitrust claims that uses an accrual rule, rather than a discovery rule. That is, Congress made the judgment that once a potential plaintiff is injured by an antitrust conspiracy, he or she is on notice of a

potential claim, and has four years within which to investigate the claim and (potentially) sue. If the potential plaintiff does not file a claim within four years of that injury, the statute of limitations bars the claim.

B. Fraudulent Concealment Requires That The Defendant Actively And Wrongfully Conceal Its Conduct

Although statutes of limitations embody "strong policies of repose," courts have permitted exceptions in certain limited circumstances. *Tomanio*, 446 U.S. at 487. One such exception is the doctrine of fraudulent concealment, where the statute of limitations is tolled because of the defendant's intentional actions in concealing the underlying unlawful conduct, which prevent the plaintiff from timely asserting a claim. *Klehr*, 521 U.S. at 194; see *Credit Suisse Secs. (USA) LLC* v. *Simmonds*, 566 U.S. 221, 227 (2012).

Fraudulent concealment generally requires the plaintiff to allege that (1) the defendant wrongfully concealed the conduct forming the basis for the claim; (2) the plaintiff failed to discover the facts forming the basis of the claim within the statutory period; and (3) the plaintiff exercised due diligence. See*, e.g.*, *Supermarket of Marlinton, Inc.* v. *Meadow Gold Dairies, Inc.*, 71 F.3d 119, 122 (4th Cir. 1995); *Carrier Corp.* v. *Outokumpu Oyj*, 673 F.3d 430, 446-447 (6th Cir. 2012); see also *Klehr*, 521 U.S. at 194.

Importantly, with respect to the first requirement, courts have required the plaintiff to plead "affirmative acts of concealment" by the defendant. *Supermarket of Marlinton*, *Inc.*, 71 F.3d at 126; see Pet. App. 8a-9a (citing cases). Indeed, this Court has recognized that "[c]oncealment by mere silence is not enough" and that "[t]here must be some trick or contrivance

intended to exclude suspicion and prevent inquiry." *Wood* v. *Carpenter*, 101 U.S. 135, 143 (1879).

In the antitrust context in particular, courts consistently have required a plaintiff seeking to establish fraudulent concealment "to prove affirmative acts of concealment, particularly in light of the strong policy in favor of statutes of limitations." *Pinney Dock*, 838 F.2d at 1472; see also, *e.g.*, *Rx.com* v. *Medco Health Sols., Inc.*, 322 F. App'x 394, 397 (5th Cir. 2009) (unpublished); *Thorman* v. *American Seafoods Co.*, 421 F.3d 1090, 1095 (9th Cir. 2005); *Berkson* v. *Del Monte Corp.*, 743 F.2d 53, 56 (1st Cir. 1984).

That fraudulent concealment requires some affirmative action by the defendant makes sense. The "gist" of the doctrine is that the defendant "fraudulently produc[ed] a false impression upon the mind of the other party." *Stewart* v. *Wyoming Cattle Ranche Co.*, 128 U.S. 383, 388 (1888). Producing that false impression generally requires an active misrepresentation or "contrivance" on the defendant's part. *Wood*, 101 U.S. at 143. Thus, while "hiding evidence" can, for example, represent affirmative concealment, simply declining to divulge assertedly wrongful conduct would not. *Carrier Corp.*, 673 F.3d at 447.

The requirement of an affirmative act also ensures that the fraudulent concealment doctrine remains appropriately narrow. As this Court has recognized, "[e]quitable tolling is a rare remedy to be applied in unusual circumstances, not a cure-all for an entirely common state of affairs." *Wallace* v. *Kato*, 549 U.S. 384, 396 (2007); see *Rotella* v. *Wood*, 528 U.S. 549, 561 (2000) ("The virtue of relying on" an equitable tolling doctrine "lies in the very nature of such tolling as the exception, not the rule."). Permitting use of the fraudulent concealment doctrine without an

affirmative act of concealment would create an exception that swallows the statute of limitations rule.

C. The Fourth Circuit Erred In Finding Fraudulent Concealment Here

The plaintiff in this case alleged that the defendants had an unwritten agreement not to actively recruit or hire each other's naval engineers, in violation of Section 1 of the Sherman Act. Pet. App. 3a, 41a. She brought claims based on decades-old conduct. *Id.* at 3a-4a. To escape the four-year statute of limitations, she alleged fraudulent concealment, based in significant part on the allegation that the defendants' alleged conspiracy was unwritten and that they only communicated by phone. *Id.* at 5a, 43a-44a.

The Fourth Circuit concluded that the plaintiff sufficiently pleaded fraudulent concealment based simply on the alleged "secret, non-ink-to-paper" nature of the asserted conspiracy. Pet. App. 11a. The court held that defendants who "are *careful not to write down* evidence of their antitrust violations in the first place" could be found to have engaged in fraudulent concealment. *Id.* at 12a. The court explained that the fraudulent concealment doctrine "is designed to prevent conspirators who take steps to avoid detection from hiding behind the statute of limitations," and so it should be extended to "conspirators who cunningly avoid creating evidence of their conspiracy." *Id.* at 15a-16a.

That holding is wrong. An allegation that a conspiracy was not committed to writing or was communicated in private phone calls is not sufficient to allege an affirmative act for purposes of the fraudulent concealment doctrine. Those acts simply do not establish

that the defendant took any affirmative steps of fraudulent concealment.

"[C]onspiracies are often tacit or unwritten in an effort to escape detection." *Robertson* v. *Sea Pines Real Estate Cos.*, 679 F.3d 278, 289-290 (4th Cir. 2012); see also, *e.g.*, *Anderson News, L.L.C.* v. *American Media, Inc.*, 680 F.3d 162, 183 (2d Cir. 2012) ("[C]onspiracies are rarely evidenced by explicit agreements."). If alleging that a conspiracy was unwritten was enough to trigger the fraudulent concealment doctrine, then the doctrine would be triggered in many, if not most, conspiracy cases. That would not make sense, because fraudulent concealment is a narrow exception to the four-year limitations period, designed for situations where the defendant not only acted unlawfully, but also took the additional step of concealing its unlawful conduct.

The Fourth Circuit's holding allows application of that doctrine in cases where no additional act of concealment was pleaded. It confuses the mere allegation of the conspiracy itself with an allegation of an affirmative act to hide the conspiracy from potential plaintiffs. The result is to expand the fraudulent concealment doctrine far beyond its intended use, effectively giving plaintiffs alleging an antitrust conspiracy "a free pass on time-[]barred claims." Pet. App. 34a (Diaz, C.J., dissenting).

As this case demonstrates, as long as the plaintiff alleges that the antitrust conspiracy was unwritten, she can evade the statute of limitations and bring suit based on long-stale claims. This case highlights just how extreme the results can be: The plaintiff sued for alleged conduct more than a decade old, and she seeks treble damages going back 25 years. Pet. App. 3a. Permitting that claim to proceed cannot be squared

with the congressional decision to impose a four-year statute of limitations based on an accrual rule. See *Klehr*, 521 U.S. at 187 (rejecting interpretation of the Clayton Act's accrual rule that "lengthens the limitations period dramatically" beyond what Congress contemplated).

Although the Fourth Circuit stated that "mere silence" is not enough to establish fraudulent concealment, Pet. App. 18a, it never explained what more was present here. And it never explained how an agreement not to recruit or hire employees of a competitor *also* constitutes an affirmative act meant to prevent a potential plaintiff from uncovering that agreement.

The Fourth Circuit concluded that the plaintiff had alleged fraudulent intent, but that does not supply the missing affirmative act of concealment. See Pet. App. 18a (discussing the requirement that more than "mere silence" be alleged to establish fraudulent concealment in the context of whether the plaintiff had alleged fraudulent intent). Absent a duty to disclose, silence does not constitute a misrepresentation that could give rise to fraudulent concealment. See, *e.g.*, *Thorman*, 421 F.3d at 1096; see also *Stewart*, 128 U.S. at 388 ("[I[f, with intent to deceive, either party to a contract of sale conceals or suppresses a material fact *which he is in good faith bound to disclose*, this is evidence of and equivalent to a false representation." (emphasis added)). Anyway, the intent requirement as interpreted by the Fourth Circuit does not meaningfully constrain the scope of its fraudulent concealment holding, since the court of appeals concluded that intent had been sufficiently alleged based simply on the asserted duration and scope of the conspiracy, together with its alleged "well-defined rules" and the

assertedly "obvious" nature of the legal violation. See Pet. App. 19a-20a.

Given the longstanding recognition that an affirmative act of concealment is required to establish fraudulent concealment, it is no surprise that three other courts of appeals have rejected the Fourth Circuit's permissive view of fraudulent concealment. The Fifth and Ninth Circuits both have recognized that simply being silent as to an alleged conspiracy or communicating privately about it does not show fraudulent concealment. See *Rx.com*, 322 F. App'x at 397-398 (rejecting as insufficient allegations of "secret communications" between defendants); *Thorman*, 421 F.3d at 1095 (rejecting as insufficient allegations that the defendant did not describe how it set its posted prices and kept its actual sales prices and costs secret and noting that "[m]erely keeping someone in the dark is not the same as affirmatively misleading him").

The Sixth Circuit took the same view. It recognized that, although "taking active steps to hide evidence" like establishing security rules to prevent a paper trail and using a coding system to hide information in documents can demonstrate fraudulent concealment, "simply meeting in secret" does not. See *Carrier Corp.*, 673 F.3d at 446-447.

Those three courts of appeals sensibly required more than a mere unwritten agreement to plead fraudulent concealment of an antitrust conspiracy. The Fourth Circuit erred in finding fraudulent concealment on the sparse allegations here.

II. This Court's Review Is Warranted Now

If left uncorrected, the Fourth Circuit's decision could subject a broad range of companies to significant

liability for stale claims based on decades-old conduct. That risk of looming liability would be particularly bad for the U.S. shipbuilding industry, where the federal government and private companies are making significant investments to strengthen the industry to ensure military readiness and to remain competitive in the global marketplace.

A. The Fourth Circuit's Decision Allows Plaintiffs To Easily Bring Stale Claims And Increase Settlement Pressure

Applying a permissive fraudulent concealment standard has the potential to dramatically extend the period for which a defendant could be liable for alleged antitrust violations. This case highlights that risk: The plaintiff brings a putative class action seeking treble damages for alleged violations over a 25-year period, and none of the allegedly unlawful conduct occurred within the Sherman Act's four-year statute of limitations. See Pet. App. 3a (noting that the plaintiff brought suit in 2023 based on injuries allegedly suffered from 2007 to 2013 and in connection with a putative class period from 2000 to the present).

If the Fourth Circuit's rule is left uncorrected, companies like the defendants here will face exactly the sort of surprise liability associated with stale claims that the statute of limitations is designed to foreclose. See, *e.g.*, *Gabelli*, 568 U.S. at 448. If stale claims are allowed to proceed, companies could face expensive discovery, which creates significant settlement pressure. See *Twombly*, 550 U.S. at 546.

Further, the availability of treble damages under the antitrust laws increases the scope of potential liability dramatically, which will exacerbate the pressure to settle even non-meritorious suits. As this

Court has explained, when "[f]aced with even a small chance of a devastating loss, defendants will be pressured into settling questionable claims." *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 350 (2011).

Those dynamics are like the dynamics that led this Court to reject an unduly permissive pleading standard in antitrust cases in *Bell Atlantic* v. *Twombly*, 550 U.S. 544 (2007). There, this Court recognized a plausibility standard for pleading so that "a plaintiff with a largely groundless claim" could not "take up the time of a number of other people" and expose defendants to expansive discovery that would place unwarranted pressure on them to settle. *Id.* at 558 (internal quotation marks omitted). The Court also recognized that a plausibility standard was needed in order to "avoid the potentially enormous expense of discovery in cases with no reasonably founded hope that the discovery process will reveal relevant evidence to support" a Sherman Act claim. *Id.* at 559 (alteration and internal quotation marks omitted).

Those concerns apply here, because the Fourth Circuit's rule has the potential to expand liability far beyond what Congress intended with the four-year statute of limitations. Indeed, those concerns should apply with even greater force here, because a potential treble damages award places even greater settlement pressure on defendants.

The effects of the Fourth Circuit's holding in this case will not be limited to antitrust cases. Although the exposure to treble damages may make settlement pressures especially strong in this context, the fraudulent concealment doctrine "is read into every federal statute of limitation." *Holmberg* v. *Armbrecht*, 327 U.S. 392, 397 (1946); see Pet. App. 8a. Many federal

statutory conspiracy or other claims could involve the sort of allegations of secret meetings or agreements found sufficient to establish fraudulent concealment in this case, including alleged violations of Section 2 of the Sherman Act concerning monopolization conspiracies and civil RICO claims. See, *e.g.*, *Berkson*, 743 F.2d at 54 (Sections 1 and 2 of the Sherman Act); *Bausch* v. *Philatelic Leasing, Ltd.*, 34 F.3d 1066, 1994 WL 446758, at *1 (4th Cir. 1994) (table) (civil RICO).

Thus, if the Fourth Circuit's rule is allowed to stand, defendants in a variety of cases could face potential liability based on claims associated with conduct well outside the applicable statute of limitations.

B. The Fourth Circuit's Decision Is Particularly Bad For The Shipbuilding Industry

The potential for significant litigation exposure based on decades-old conduct is especially problematic for the U.S. shipbuilding industry.

1. Shipyards directly employ over one hundred thousand people at facilities across the United States. See Maritime Admin., Dep't of Transp., *The Economic Importance of the U.S. Private Shipbuilding and Repairing Industry* 7 (Mar. 30, 2021) (Maritime Admin. Report), https://perma.cc/7Z9W-8FDY. These facilities require significant capital investments, such as for the cranes, drydocks and assembly and fabrication halls, and advanced welding and other equipment used to build ships. See *id.* at 10 (estimating that the private shipyard industry incurred approximately $900 million in capital expenditures in 2019). This work also requires a highly skilled workforce. See Government Accountability Office, *Shipbuilding and Repair: Navy Needs A Strategic Approach For Private*

Sector Industrial Base Investments 19-20 (Feb. 27, 2025) (GAO Report), https://perma.cc/TV53-YB22.

Further, profit margins in the industry are thin, and there has been significant contraction in recent years as companies have left the industry. See *Assessing and Strengthening the Manufacturing and Defense Industrial Base and Supply Chain Resiliency of the United States: Report to President Donald J. Trump by the Interagency Task Force in Fulfillment of Executive Order 13806*, at 31 (Sept. 2018), https://perma.cc/F63Q-NNNL (noting shipbuilding industries experienced a decline of 20,500 establishments in the United States since 2000).

The U.S. shipbuilding industry is at a critical point. The industry faces significant foreign competition as companies work hard to meet demands from the U.S. military and from commercial fleets. The industry is responsible for building and maintaining the most powerful and most sophisticated military fleet in the world, which includes the fleets of the U.S. Navy, the Coast Guard, and other government agencies. At the same time, the industry must continue to be competitive in the global market for building commercial ships. See, *e.g.*, GAO Report 19 (noting challenges and need for long-term revitalization in the commercial shipbuilding industry). To meet these challenges, shipyards across the Nation are making significant long-term investments in both facilities and the industry's skilled workers.

Recently, there has been a bipartisan recognition that greater investment is needed to ensure that the shipbuilding industrial base is prepared to meet these new and ongoing challenges. This recognition has resulted, for example, in Congress directing significant funds to foster the United States' long-term maritime

resilience through investments to boost domestic shipbuilding and expand shipyard capabilities. See One Big Beautiful Bill Act, Pub. L. No. 119-21, §§ 20002-20003, 40001(a) 139 Stat. 72, 113-115, 127-128 (2025) (appropriating over $40 billion in funds for various shipbuilding initiatives). The point is that this is a critical moment for the U.S. shipbuilding industry, where the public and private sectors are joining forces to ensure that this capital- and labor-intensive industry can continue to thrive.

2. Although shipyards and government officials are stepping up to meet this moment, the potential for significant litigation exposure based on decades-old conduct could significantly harm the industry. If companies have to spend substantial amounts of money defending against stale claims, they will not be able to use that money to make the capital investments needed in their shipyards and to recruit the people with the expertise needed to keep this industry competitive. The chilling effect of the Fourth Circuit's rule could make companies hesitate before making needed investments.

The Fourth Circuit's decision is likely to have an outsized nationwide impact on the shipbuilding industry, given the liberal venue and personal jurisdiction rules applicable to antitrust suits. Courts have concluded that venue and personal jurisdiction in antitrust cases may be established in every district in which a defendant "inhabits," is "found," or "transacts business." *KM Enters., Inc.* v. *Global Traffic Techs., Inc.*, 725 F.3d 718, 724-725 (7th Cir. 2013).

The shipbuilding industry is a national industry in which shipyards do business nationwide, such that companies throughout the country could find themselves in the Fourth Circuit. The broad geographic

scope of the defendants in this case proves the point; the plaintiff sued defendants based in Connecticut, Maine, Mississippi, Virginia, and Wisconsin. As a result, even though the sort of allegations at issue in this case would be insufficient in several other circuits, see *Carrier Corp.*, 673 F.3d at 446-447; *Thorman*, 421 F.3d at 1095; *Rx.com*, 322 F. App'x at 397-398, shipbuilders across the country could find themselves subject to the Fourth Circuit's capacious understanding of fraudulent concealment if a plaintiff decides to sue there.

Even if the effects of this decision were limited to companies physically located in the Fourth Circuit, those effects still would be significant. As of 2019, an estimated 31,430 people were directly employed by the shipbuilding and ship repair industry in the Fourth Circuit. See Maritime Admin. Report 19. One defendant in this case, Newport News Shipbuilding & Drydock, is the largest shipbuilding facility in the country. The facility employs over 26,000 people alone and is a critical facility for producing the Nation's aircraft carriers, submarines, other vessels, and performing maintenance on the existing fleet. See Huntington Ingalls Industries, *Newport News Shipbuilding*, https://perma.cc/W2FZ-6BMQ. Other companies operate additional shipyards, including shipbuilding and ship repair facilities, within the Fourth Circuit, and provide goods and services to naval and other facilities located within the Fourth Circuit.

Thus, this Court should grant review so that the Fourth Circuit's outlier rule does not create massive uncertainty for the shipbuilding industry.

C. The Fourth Circuit's Holding Will Have Severe Negative Impacts For Other Industries

Although this case arises in the context of the shipbuilding industry, the Fourth Circuit's rule applies to all antitrust claims, and indeed to all claims where the plaintiff alleges an unwritten unlawful agreement. Further, in light of the relaxed venue and personal jurisdiction rules applicable in antitrust cases, see *KM Enters.*, 725 F.3d at 724-725, other companies that do business nationwide could be subject to the Fourth Circuit's fraudulent concealment rule.

The result is that a large number of companies could be exposed to litigation and settlement pressure when faced with antitrust conspiracy claims. They could face the prospect of treble damages over a duration that far exceeds the Sherman Act's four-year statute of limitations, on top of the extensive discovery costs that ordinarily accompany an antitrust suit. See, *e.g.*, *Twombly*, 550 U.S. at 546 (noting the "obvious" expense associated with discovery in large class action involving claims of alleged antitrust violations over seven-year period).

The costs would be borne both by the companies themselves and by consumers as litigation and settlement expenses are reflected in higher prices. Cf. *Cent. Bank of Denv., N.A.* v. *First Interstate Bank of Denv., N.A.*, 511 U.S. 164, 189 (1994) (noting, in securities law context, that investors may ultimately pay for "litigation and settlement costs" passed on to companies). And even if the risks of this litigation are never realized, companies will have to account for the possibility of potentially significant liability in their business planning.

There is no reason to think that these harms to other businesses are limited to the antitrust context. Fraudulent concealment may be pleaded with respect to any given statute of limitations, and any number of other statutory claims under statutes like the civil RICO statute could involve allegations of secret agreements of the type found sufficient to establish fraudulent concealment in this case.

The result is that the Fourth Circuit's holding exposes companies throughout the country to a risk of significant liability and deprives them of the certainty and ability to make future business decisions with confidence regarding their legal exposure that statutes of limitations are designed to provide.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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