

No. 25-3854

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FRANK BIEDERMAN, et al.,
Plaintiffs-Appellants,

v.

FCA US LLC, et al.,
Defendants-Appellees.

*On Appeal from the United States District Court
for the Northern District of California
Hon. Jacqueline Scott Corley, Case No. 23-cv-06640-JSC*

**BRIEF OF NATIONAL CONSUMERS LEAGUE, CONSUMER
FEDERATION OF CALIFORNIA, AND CENTER FOR AUTO
SAFETY AS AMICI CURIAE IN SUPPORT OF PLAINTIFFS-
APPELLANTS**

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I. IDENTITY AND INTEREST OF AMICI CURIAE

The National Consumers League, Center for Auto Safety, and Consumer Federation of California are nonprofit organizations dedicated to protecting and advancing consumer rights. They advocate for fair business practices, truthful marketing, and accountability for corporate misconduct. Amici have a strong interest in ensuring that consumers, who are the direct victims of fraudulent schemes like the one at issue here, retain the ability to vindicate their rights under the Racketeer Influenced and Corrupt Organizations Act (RICO).

Founded in 1899, the National Consumers League is the nation's oldest consumer and worker advocacy organization. NCL works to protect consumers against fraudulent and deceptive practices of all kinds, including in the automotive industry.

The Center for Auto Safety is the nation's premier independent, member driven, non-profit consumer advocacy organization dedicated to improving vehicle safety, quality, and fuel economy on behalf of all drivers, passengers, and pedestrians.

The Consumer Federation of California (CFC) has been one of California's foremost organizations addressing issues in the automobile

industry. Its work has included advancing in-vehicle data and privacy protections, promoting accountability for auto industry misconduct through consumer education on auto recalls, sponsoring legislation to promote affordability, transparency, and truthful marketing in the industry, strengthening price transparency in the rental car industry, and bolstering California's lemon law. In 2025, the Consumer Federation of California has been one of the main organizations working on the California Auto Retail Scams (CARS) Act, which increases consumer protections for vehicle purchases through price transparency, preventing unnecessary add-ons, prohibiting dealers from making false or deceptive claims, and establishing a first-in-the-nation cooling-off period when a consumer purchases a used car.

Pursuant to Rule 29(a)(4)(E) of the Federal Rules of Appellate Procedure, Amici Curiae state that no party to the appeal or their counsel (i) authored the brief in whole or in part, or (ii) contributed money intended to fund preparing or submitting the brief, and (iii) no person contributed money intended to fund preparing or submitting the brief, other than counsel for amici.

Counsel for Amici Curiae conferred with counsel for all parties to this appeal, and each consented to this filing.

II. SUMMARY OF ARGUMENT OF AMICI CURIAE

RICO's plain text authorizes "any person" injured by a violation of § 1962 to sue. 18 U.S.C. § 1964(c). That broad grant reflects Congress's intent that victims of racketeering—including ordinary consumers—be able to seek redress. Nothing in the statute suggests that only direct purchasers may recover, and both the Supreme Court and this Court have consistently held that RICO standing is governed by proximate cause, not by bright-line direct purchaser rules borrowed from antitrust law.

Imposing the *Illinois Brick* rule, which bars indirect purchasers from recovery under federal antitrust law in this context, would distort RICO beyond recognition. *Ill. Brick Co. v. Ill.*, 431 U.S. 720 (1977). That doctrine was designed for overcharge cases in antitrust law, where direct purchasers can reliably enforce the law. By contrast, RICO encompasses a broad range of fraudulent schemes that target end-user consumers as the true victims. In fraud cases, such as the defeat-device scheme here, damages fall directly on consumers who relied on misrepresentations and overpaid for defective vehicles.

From a policy standpoint, excluding consumers would create a dangerous enforcement gap. Automobile dealers — financially dependent on manufacturers — cannot be expected to sue the very entities that supply their inventory and sustain their businesses. If consumers are barred, no one will bring these cases, leaving fraudulent conduct unchecked. The result would be to reward manufacturers for structuring their sales through intermediaries and to deprive consumers of meaningful remedies.

Other circuits have refused to let the presence of intermediaries bar recovery under RICO, recognizing that consumers are the intended victims of deceptive schemes. Denying consumers the ability to sue here would not only contradict RICO's text and precedent, but also undermine its purpose of deterrence, accountability, and consumer protection. This Court should reaffirm that proximate cause — not artificial privity rules — governs RICO standing and reject the district court's application of the indirect purchaser bar.

III. ARGUMENT

A. RICO's Text and Structure Do Not Support Importing Antitrust's Indirect Purchaser Rule

RICO's civil enforcement provision could not be clearer: "[a]ny person injured in his business or property by reason of a violation of section 1962" may bring suit. 18 U.S.C. § 1964(c). Nothing in that text suggests that only "direct purchasers" may sue, or that privity with the defendant is required. When Congress wanted to limit recovery in other statutes, it did so explicitly. By contrast, RICO is deliberately broad, designed to reach a wide array of fraudulent and racketeering conduct. As the Supreme Court explained in *Bridge v. Phoenix Bond & Indem. Co.*, courts are "not at liberty to rewrite RICO" by adding limitations that Congress did not include. 553 U.S. 639, 660 (2008).

The District Court's decision effectively rewrote the statute by importing the *Illinois Brick* direct purchaser rule from antitrust law. That rule, developed for a narrow set of circumstances in antitrust litigation, has no textual basis in RICO. The Supreme Court in *Sedima v. Imrex Co.* rejected a similar attempt to graft the "antitrust injury" requirement onto RICO, holding that RICO must "be liberally construed to effectuate its remedial

purposes.” 473 U.S. 479, 498–99 (1985) (quoting Pub. L. No. 91-452, § 904(a), 84 Stat. 947). The same principle applies here: the judicially-created indirect purchaser bar is an atextual hurdle with no place in RICO. *See Med. Marijuana, Inc. v. Horn*, 145 S. Ct. 931, 946 (2025) (Jackson, concurring) (concurring that RICO should be liberally construed, stating “[w]hen Congress speaks, courts should listen,” and rejecting “attempts to add atextual hurdles”).

B. Proximate Cause, Not Formalistic Privity, Defines Who May Sue Under RICO

The Supreme Court has consistently held that RICO standing hinges on proximate cause, rather than privity. In *Holmes v. Sec. Investor Prot. Corp.*, the Court explained that “proximate cause” requires “some direct relation between the injury asserted and the injurious conduct alleged.” 503 U.S. 258, 268 (1992). *See also Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 461 (2006) (noting that the “central question” is whether the alleged violation “led directly to the plaintiff’s injuries”). This Court has embraced the same test, emphasizing that the proximate cause analysis is flexible and fact-specific. *Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163, 1169 (9th Cir. 2002).

Unlike the rigid antitrust rule, the proximate cause standard accommodates the wide variety of claims RICO was designed to cover. As the Supreme Court explained in *Bridge*, proximate cause “is a flexible concept that does not lend itself to a black-letter rule that will dictate the result in every case.” *Bridge*, 553 U.S. at 654 (quoting *Holmes*, 503 U.S. at 272, n.20 (internal quotations omitted)). Instead, this Circuit examines whether there are more direct victims better suited to sue, whether damages can be reasonably ascertained, and whether multiple recoveries are likely to occur. *Mendoza*, 301 F.3d at 1169. This pragmatic inquiry balances fairness to defendants with the need to ensure that victims of racketeering have meaningful remedies.

In the context of fraud involving consumer products – in this case vehicles, the proximate cause test is not just sufficient—it is essential. Consumers are the ones who receive misrepresentations, make purchasing decisions based on them, and suffer the resulting financial harm. Dealers are not harmed in the same way. They profit from sales, and their ongoing relationship with manufacturers provides them with no incentive to bring suit or seek remedies for the benefit of vehicle owners. From a policy perspective, if consumers cannot sue for the harm caused to or by their cars,

there is no one else who will realistically do so. That means fraud goes unchecked.

The Ninth Circuit's reasoning in *Mendoza* for the application of a traditional proximate cause analysis applies here. In *Mendoza*, farmworkers alleged that their wages were suppressed because growers hired undocumented workers in violation of RICO. This Court rejected any bright-line bar based on the farmworkers' "indirect" status and instead applied the common-law proximate cause test. *Mendoza*, 301 F.3d at 1169-70. Importantly, the Court explained that the inquiry turns on whether there are "more direct victims" who can be counted on to vindicate the law; because the potentially more direct victims (undocumented workers) were unlikely to sue, proximate causation was satisfied. *Id.* That reasoning resonates here.

Here, automobile dealers cannot be counted on to vindicate RICO violations against their manufacturers. Their dependence on manufacturers for inventory and financing makes them structurally disinclined to sue. Consumers are thus the only realistic enforcers. Reading *Mendoza* in tandem with the Supreme Court's guidance in *Bridge* and *Horn*, the Ninth Circuit has already rejected the logic of a categorical indirect purchaser bar and embraced a flexible, policy-sensitive proximate cause analysis that supports

consumer standing in this case. *See also Canyon Cnty. v. Syngenta Seeds, Inc.*, 519 F.3d 969, 972 (9th Cir. 2008) (explaining that RICO standing requires only injury to “business or property” and proximate cause, and rejecting any additional privity or purchaser requirement).

Finally, proximate cause is fully capable of screening out remote or speculative claims. Consumers in this case alleged direct, measurable economic losses: they paid inflated prices for vehicles with concealed defects and incurred increased costs after the recall. These harms are not passed-on or derivative; they flow directly from the racketeering conduct. A flexible proximate cause standard permits those claims while guarding against excessive or duplicative liability. A rigid indirect purchaser rule, by contrast, would bar all claims categorically, even those where the injury is plainly direct. That blunt approach is incompatible with RICO.

C. The Exclusion of Consumer Remedies Undermines RICO’s Remedial Purpose and Public Policy

Congress enacted RICO to provide “a major new tool” against racketeering, empowering both prosecutors and private litigants to enforce the law. *Sedima*, 473 U.S. at 488. Not only would the application of the

indirect purchaser rule frustrate RICO's core purpose, but policy considerations also reinforce the textual analysis.

The antitrust indirect purchaser rule makes sense in the context of price-fixing cartels, where the direct purchaser always suffers an overcharge and is therefore well-positioned to sue. But RICO is not antitrust. Its predicates include fraud, bribery, and extortion, where the intended victims are often end users. In fraud cases, as here, damages are not derivative—they fall directly on consumers who relied on misrepresentations, overpaid for defective products, and bore the costs associated with fixing the defect. Applying *Illinois Brick* in this context would bar the very individuals whom Congress intended to protect.

The policy consequences of the indirect purchaser bar are stark. Consumers are often the only true victims of racketeering schemes. If they cannot sue, then no one will. Dealers will not bite the hand that feeds them; public enforcement resources are limited; and the economic harm to individual consumers, though devastating in aggregate, may not prompt government intervention (and even when it does, consumers may still be left empty-handed). RICO's private cause of action exists precisely to close this

enforcement gap. Stripping consumers of that tool would leave them defenseless.

Moreover, applying a rigid indirect purchaser bar would open a dangerous loophole. Manufacturers could insulate themselves from RICO liability simply by structuring their distribution through dealers. By inserting a single contractual layer between themselves and consumers, they could shield themselves from accountability. Such a result is not only contrary to the statute's text, but would actively encourage corporate defendants to manipulate distribution chains to avoid liability. In industries such as automobiles, pharmaceuticals, and consumer goods, this loophole could become the norm, effectively eroding RICO's deterrent effect. That is precisely the kind of evasive tactic RICO was designed to prevent.

Beyond deterrence, consumer trust is at stake. Cars are among the most significant purchases households make, and buyers rely heavily on manufacturers' representations about safety, emissions, and performance. When those representations are false, consumers suffer financial loss, safety risks, and environmental harms. If consumers are denied a federal remedy under RICO, they will lose confidence not only in manufacturers but in the

legal system's ability to protect them. That erosion of trust undermines both consumer markets and the legitimacy of the courts.

Other circuits have emphasized that RICO's proximate cause standard must ensure remedies for those directly deceived in the marketplace—consumers. See *In re Celexa & Lexapro Mktg. & Sales Pracs. Litig.*, 915 F.3d 1, 9 (1st Cir. 2019) (rejecting the argument that the presence of physicians in the chain of distribution broke the link between drug makers' misrepresentations and the consumers who paid for ineffective prescriptions, holding that the patients remained the "primary and intended victims."); *In re Avandia Mktg.*, 804 F.3d 633, 645 (3d Cir. 2015) (recognizing that patients and payors harmed by deceptive marketing were not too "indirect" to recover under RICO); *In re Neurontin Mktg. & Sales Pracs. Litig.*, 712 F.3d 21, 39 (1st Cir. 2013) (explaining that proximate cause exists to "protect the ability of primary victims of wrongful conduct to obtain compensation"). These decisions emphasize that RICO should be applied to protect the end users who were targeted and defrauded, not to absolve wrongdoers because their products passed through intermediaries.

The same reasoning applies even more forcefully here. Consumers—not dealers—are the ones who relied on the manufacturers' representations

about vehicle performance, paid inflated prices, and suffered the costs of diminished value and excessive emissions. Dealers cannot be expected to challenge the manufacturers who control their inventory and financing, just as doctors or pharmacy benefit managers were not expected to vindicate patient rights in the pharmaceutical cases. If consumers are denied redress under RICO, their injuries will never be remedied, and manufacturers will be emboldened to conceal defects knowing their fraud is insulated by the dealer network. Other circuits have refused to let intermediaries stand between consumers and their remedies. This Court should follow the same course to ensure that RICO fulfills its purpose of protecting those who bear the brunt of fraud.

Further, insulating manufacturers from consumer RICO suits shifts the costs of fraud to the public. Consumers bear inflated purchase prices and higher operating costs; communities suffer from excessive pollution; and taxpayers fund regulatory enforcement efforts that private suits could supplement. Consumers would be left bearing the full cost of fraudulent schemes without any federal right to recourse. Meanwhile, the wrongdoers—having already paid fines to regulators—would escape civil accountability to the people they defrauded. Congress intended RICO to

harness private enforcement as a complement to limited public resources. Removing consumers from the enforcement equation undermines the design and burdens the public with costs that wrongdoers should bear.

Finally, allowing consumers to proceed under RICO also advances deterrence. Manufacturers are sophisticated actors. If they know that routing sales through dealers can help them avoid RICO liability, they will have every incentive to exploit that loophole. Fraudulent conduct will likely proliferate, particularly in industries—such as the automobile industry—where products are routinely distributed through intermediaries. A proximate cause test that examines the directness of injury, rather than the contractual chain, ensures that RICO liability attaches where it belongs.

IV. CONCLUSION

The RICO statute empowers private parties to litigate claims based on a wide array of violative predicate acts. No single answer to the who-can-sue question can meet those needs, and the real-world circumstances of the industry, claim, and setting must inform the proximate cause analysis. Antitrust law's indirect purchaser rule is unneeded in, and unfit for, RICO cases, and the Court should reverse the district court's holding otherwise.

September 10, 2025

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