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Hemi v. City of New York: The U.S. Supreme Court Narrows RICO's Causation Requirement

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The United States Supreme Court recently issued a decision that further develops the fairly narrow causation requirement under the Racketeer Influenced and Corrupt Organizations Act (RICO).

In *Hemi Group, LLC and Kai Gachupin v. City of New York*, the City of New York sued Hemi Group, a New Mexico-based company that sells cigarettes online to City residents. Federal law requires out-of-state vendors to submit customer information to the States into which they ship cigarettes. Hemi failed to do so. The City argued that Hemi's interstate sale of cigarettes and its failure to file the required customer information with the State of New York constituted mail and wire fraud. In turn, the City was unable to determine which customers failed to pay the tax and could not pursue those customers for payment. Thus, the City argued, Hemi's conduct caused the City to lose millions of dollars in cigarette tax revenue.

RICO provides a private cause of action for "[a]ny person injured in his business or property *by reason of* a violation of section 1962 of this chapter." Section 1962 generally makes it unlawful for an enterprise to conduct its business through a pattern of racketeering activity. Racketeering activity includes mail and wire fraud.

The City alleged that it was damaged by losing tax revenue "by reason of" Hemi's fraud. The Supreme Court granted certiorari to determine whether the City had been directly injured from the alleged frauds. It concluded that the City could not satisfy RICO's causation requirement.

In a previous RICO case, the Supreme Court had explained that to state a claim under RICO, a plaintiff must show that a RICO predicate act is not only a "but for" cause of the injury, but is also the proximate cause of the injury. For RICO purposes, proximate cause requires some direct relation between the injury and the conduct. A causal link that is too remote, contingent, or indirect is insufficient to establish causation.

The Supreme Court concluded that the causal link between Hemi's conduct and the City's damages was too attenuated because the conduct directly responsible for the City's injury was customers' failure to pay taxes. The conduct constituting the alleged fraud, however, was Hemi's failure to file required customer information with the State. Thus, the Supreme Court reasoned, the conduct directly causing the harm was distinct from the conduct giving rise to the fraud. In rejecting the City's theory of liability, the

Supreme Court explained that "the City's theory of liability rests not just on separate *actions*, but separate actions carried out by separate *parties*." This theory was simply too remote to satisfy the causation requirement under RICO.

The Supreme Court noted and rejected the City's argument that RICO's proximate cause requirement turn on foreseeability rather than on a "direct relationship" between the fraud and the injury." Specifically, the City argued (and Justice Breyer suggested in his dissent) that the harm was foreseeable and that Hemi intended and even desired the harm that resulted. But the majority opinion makes clear that under RICO, the focus must be on the directness of the relationship between the conduct and the harm, and foreseeability is not a factor in the causation analysis. Instead, a RICO plaintiff's injuries must be caused by reason of the alleged fraud.

Given the harsh results of a RICO judgment – liability under the statute comes with treble damages and attorney's fees – the *Hemi* decision is an important piece in the RICO defense puzzle. A RICO defendant should always evaluate whether the proximate cause requirement is satisfied when determining whether to file a dispositive motion.
