

IN THE  
**Supreme Court of the United States**

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COUNTRY MUTUAL INSURANCE COMPANY,  
*Applicant,*

v.

ANGELA SUDHOLT, individually and on behalf  
of all others similarly situated, et al.,  
*Respondents.*

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**APPLICATION FOR AN EXTENSION OF TIME ON BEHALF OF COUNTRY  
MUTUAL INSURANCE COMPANY TO FILE A PETITION FOR A WRIT OF  
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE  
SEVENTH CIRCUIT**

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January 9, 2024

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## **CORPORATE DISCLOSURE STATEMENT**

Illinois Agricultural Association, a not-for-profit corporation, is the ultimate controlling person of COUNTRY Mutual Insurance Company. Neither entity is publicly held.

## APPLICATION

To the Honorable Amy Coney Barrett, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Seventh Circuit:

Pursuant to Rule 13.5 of the Rules of this Court and 28 U.S.C. § 2101(c), Applicant COUNTRY Mutual Insurance Company (Country Mutual) respectfully requests a 45-day extension of time, to and including March 14, 2024, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

1. The Seventh Circuit entered judgment on October 2, 2023. *See Sudholt v. Country Mut. Ins. Co.*, 83 F.4th 621 (7th Cir. 2023), App. 1a-14a. The court denied Applicant’s petition for rehearing en banc on October 31, 2023. *See* App. 15a. Unless extended, the time to file a petition for a writ of certiorari will expire on January 29, 2024. This application is being filed more than 10 days before a petition is currently due. *See* Sup. Ct. R. 13.5. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

2. Congress enacted the Class Action Fairness Act (CAFA) to ensure “Federal court consideration of interstate cases of national importance,” *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 595 (2013) (citation omitted), and to prevent state-court “bias against out-of-State defendants,” CAFA, Pub. L. No. 109-2, § 2(a)(4)(B), 119 Stat. 4 (2005). To accomplish that goal, Congress amended the diversity-jurisdiction statute and loosened removal requirements. *See* 28 U.S.C. §§ 1332(d)(2), (5)(B); 1453(b). Federal courts can hear a class action if the proposed

class has more than 100 members, the parties are minimally diverse, and the amount in controversy exceeds \$5 million. *See* 28 U.S.C. § 1332(d)(2), (5)(B). This Court has confirmed that there is “no antiremoval presumption attend[ing] cases invoking CAFA,” because Congress “enacted [the statute] to facilitate adjudication of certain class actions in federal court.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 89 (2014).

3. All parties (and the courts below) agree that the class allegations here satisfy CAFA’s initial jurisdictional requirements, but the Seventh Circuit held below that the action fits within two jurisdictional exceptions—the internal-affairs and home-state controversy exceptions—and remanded to Illinois state court.

4. This case presents important questions that warrant this Court’s attention. First, the Court should address a circuit split with respect to the scope of the “internal affairs” exception, and in particular when a claim “relates to” the internal affairs of a corporation. And second, the Court should address the standard for determining whether a defendant is a “primary” defendant for purposes of CAFA’s home-state exception, which has likewise divided the circuits.

5. Country Mutual is an Illinois company that insures more than 1.4 million vehicles and 700,000 homes across the country. App. 23a. As a mutual insurance company, Country Mutual sells insurance policies to customers that in turn grant customers membership interests in the company, providing limited rights as defined by Illinois statute. Art. III, Ill. Ins. Code, 215 ILCS § 5/36 *et. seq.* The customers/members are not shareholders in the traditional sense.

6. Country Mutual has reserves for the benefit of all policyholders in all states, which acts as “a safety cushion to absorb adverse results and \* \* \* maintain the company’s solvency during periods of unfavorable operating results.” Terrie E. Troxel & George E. Bouchie, *Property-Liability Insurance Accounting and Finance* 129 (4th ed. 1995).

7. During the nine-year period at issue in this case (from 2012 to 2021), Country Mutual increased its national reserve from \$1.6 billion to \$3.5 billion. Respondents—a putative class of Country Mutual’s customers in Illinois—argue that this figure is excessive, and they contend that Country Mutual breached their contractual obligations to Respondents, violated the Illinois Consumer Fraud and Deceptive Business Practices Act, and was unjustly enriched, and that some of its current and former officers breached their fiduciary duties.

8. Respondents sued Country Mutual and 46 of its former and current officers and directors in the Circuit Court of St. Clair County, Illinois, seeking distribution of up to the entire \$3.5 billion reserve to policyholders in Illinois—which would potentially leave Country Mutual without any national reserve in case of catastrophic loss, affecting policyholders across the country—along with statutory, compensatory, and punitive damages. Country Mutual removed the case to federal court under CAFA’s minimal diversity provision because an individual defendant, former Chief Financial Officer and Executive Vice President Bateman, is a Massachusetts citizen. Respondents moved to remand under several of CAFA’s exceptions, including the internal-affairs and home-state exceptions.

9. The district court rejected Respondents' arguments, concluding that this case should remain in federal court under CAFA. As relevant here, the district court held that Respondents' claims cannot be characterized as relating "solely" to Country Mutual's "internal affairs," because Respondents' contract, statutory, and equitable claims are "not peculiar to corporate relationships." App. 35a. The district court reached the same conclusion with respect to the home-state exception, concluding that Bateman was a "primary" defendant because Respondents alleged that Country Mutual's officers, including Bateman, "had the ability to control the business and affairs of Country Mutual" and "allegedly usurped profits in order to enrich themselves to the detriment of policyholders." App. 28a-29a (internal quotation marks and citation omitted). And because Respondents "include[d] a single Prayer for Relief in their Complaint" failing to "specify whether the request is directed at Country Mutual, the Individual Defendants, or both," they turned any analysis of the home-state exception into "guesswork." App. 31a. The district court also found it significant that Respondents' allegations are not "limited to policyholders in the State of Illinois, as Country Mutual provides coverage for more than 1.4 million vehicles and 700,000 homes across 19 states," and "45% of the premiums were paid by non-Illinois policyholders." App. 23a.

10. Respondents appealed, and the Seventh Circuit reversed. It first reasoned that all of Respondents' claims fall within Country Mutual's internal affairs because, collectively, they "sound[] in allegations of corporate mismanagement" and "the answer \* \* \* will depend on an assessment of how Country Mutual's directors

and officers exercised the discretion they have to determine capital requirements”—an assessment that the Seventh Circuit concluded implicates Illinois corporate law. App. 2a, 10a. The Seventh Circuit did not explain why Respondents’ contract, tort, and consumer-protection claims “aris[e] under or by virtue of” Illinois corporate law. 28 U.S.C. § 1332(d)(9)(B). As for the home-state exception, the Seventh Circuit recognized that “every named defendant can fit within” the statutory definition of “primary defendant,” but concluded that Bateman did not qualify because it was the company that “accumulated over \$3.5 billion in excess surplus,” was presumed to have “the deepest pocket,” and is “surely the party from which [Respondents will] seek the lion’s share of any recovery,” and because more claims were asserted against the company than Bateman. App. 13a.

11. Country Mutual sought rehearing en banc, which the Seventh Circuit denied. App. 15a.

12. The Seventh Circuit’s decision in this case splits from the decisions of other circuits. In *Dominion Energy, Inc. v. City of Warren Police and Fire Retirement System*, 928 F.3d 325 (4th Cir. 2019), for example, the Fourth Circuit rejected the capacious reading of the internal affairs exception adopted by the court below, concluding that it is *not enough* for a claim to relate in some general sense to the internal affairs of a corporation. *Id.* at 338. As the Fourth Circuit explained, the internal affairs exception is not met where—as here—a suit could “potentially impact thousands of \* \* \* stockholders and class members across the United States.” *Id.*

13. As for the home-state exception, the Third Circuit has squarely held that courts “should not consider whether the defendant \* \* \* is able to satisfy the judgment”—directly contrary to the Seventh Circuit’s approach. *Vodenichar v. Halcon Energy Props., Inc.*, 733 F.3d 497, 505 n.4, 506 (3d Cir. 2013). The Third Circuit holds, moreover, that the relevant question is not the *number* of claims asserted against a specific defendant, but whether the asserted claims are “significant.” *Id.* at 506. The Ninth Circuit’s approach is “align[ed]” with the Third Circuit’s position in *Singh v. American Honda Finance Corp.*, 925 F.3d 1053, 1067-69 (9th Cir. 2019).

14. The issues in this case are exceptionally important. Respondents seek to entirely drain Country Mutual’s \$3.5 billion national reserve, potentially leaving Country Mutual without the ability to address catastrophic loss. As the district court recognized, such a remedy would affect hundreds of thousands of Country Mutual’s insureds across the country, App. 23a—not just in Illinois—making this precisely the type of case Congress has committed to federal hands. This is why other circuits have repeatedly stressed that the party seeking remand to state court “must prove that [an exception] divest[s] the district court of subject matter jurisdiction,” *Preston v. Tenet Healthsystem Mem’l Med. Ctr., Inc.*, 485 F.3d 793, 797 (5th Cir. 2007), and that removal exceptions must be “narrowly construed,” *Dominion Energy*, 928 F.3d at 342. In the decision below, the Seventh Circuit not only disregarded those bedrock principles but created malleable standards shrewd plaintiffs will no doubt be able to



abuse. This Court's intervention is urgently needed to restore uniformity and ensure that CAFA remains capable of serving the purpose for which Congress enacted it.

15. Good cause exists for a 45-day extension. Undersigned Counsel of Record was just engaged for this matter on January 3, 2024. He needs time to familiarize himself with the issues and facts. The issues presented in this case are complex and affect hundreds of thousands of consumers across the country, with billions of dollars at stake. Additionally, Counsel of Record has a number upcoming argument and briefing deadlines, including before this Court: (1) a response brief in *Krahling v. Merck & Co. Inc.*, No. 23-2553 (3d Cir.), due January 16, 2024; (2) a response brief in *Light v. Davis*, No. 23-2785 (3rd Cir.), due January 22, 2024; (3) an opening brief in *In re: Merck Mumps Vaccine Antitrust Litigation*, No. 23-3089 (3d Cir.), due January 24, 2024; (4) a petition for certiorari in *Bassett v. Arizona*, No. 23A4785 (U.S.), due January 31, 2024; (5) a petition for certiorari in *Caswell v. Colorado*, No. 23A447 (U.S.), due January 31, 2024; (6) a reply brief in *Savage v. United States*, No. 23-3577 (6th Cir.), due February 14, 2024; (7) a reply brief on the merits in *Coinbase v. Suski*, No. 23-3 (U.S.), due February 16, 2024; (8) a response brief on the merits in *National Rifle Association v. Vullo*, No. 22-842 (U.S.), due February 20, 2024; (9) pre- and post-trial briefing in *Accent Delight International Ltd. v. Sotheby's*, No. 18-cv-09011-JMF (S.D.N.Y.); and (10) post-trial briefing in *Epic Games, Inc. v. Google LLC*, No. 20-cv-05671-JD (N.D. Cal.). The requested extension will ensure that counsel have time to fully brief the important issues in this case.

16. For all these reasons, Applicant Country Mutual respectfully requests that the Court extend the time to file a certiorari petition to and including March 14, 2024.

Respectfully Submitted,

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