

## **APPENDIX**

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**APPENDIX A**

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UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

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No. 23-2507

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

*Plaintiffs-Appellants,*

*v.*

COUNTRY MUTUAL INSURANCE COMPANY, *et al.*,

*Defendants-Appellees.*

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Appeal from the United States District Court for the  
Southern District of Illinois.

No. 3:22-cv-3064-DWD — **David W. Dugan**, *Judge*.

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ARGUED SEPTEMBER 11, 2023 —

DECIDED OCTOBER 2, 2023

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Before WOOD, HAMILTON, and SCUDDER, *Circuit  
Judges.*

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SCUDDER, *Circuit Judge*. We accepted this interlocutory appeal to determine whether either of two exceptions to the federal jurisdiction otherwise supplied by the Class Action Fairness Act requires remanding this case to Illinois state court. The question arises in a lawsuit brought by policyholder members of Country Mutual Insurance Company alleging that the firm accumulated and retained excess surplus of over \$3.5 billion — profits resulting from premium revenues exceeding the cost of claims — and thereby failed to supply those policies at cost. The plaintiff policyholders attribute the excess surplus accumulation to Country Mutual’s directors and officers seeking to enrich themselves with excessive compensation and related benefits, in violation of fiduciary duties and other legal obligations applicable to policies issued by a mutual insurance company.

This case belongs in state court under CAFA’s internal-affairs exception. See 28 U.S.C. § 1332(d)(9)(B). Each of the plaintiffs’ four claims sounds in allegations of corporate mismanagement that not only reflect transgressions of fiduciary duties owed by current and former directors, but also breaches of contract, unjust enrichment, and a violation of the Illinois Consumer Fraud Act. We see no way to adjudicate any of these claims without immersion into the boundaries of the discretion afforded by Illinois law to officers and directors of a mutual insurance company to set capital levels and make related decisions about surplus distributions to policyholder members.

We likewise see the case as falling within CAFA’s home-state controversy exception, see 28 U.S.C.

§ 1332(d)(4)(B), as the individual defendant whose citizenship creates minimal diversity is not a “primary defendant” in the overall litigation. Under this exception too, then, we return the case to Illinois state court.

## I

### A

This appeal arises out of a class action lawsuit filed in St. Clair County, Illinois against Country Mutual and 46 of its current and former officers and directors. The plaintiffs are current or former holders of policies issued by Country Mutual or one of its affiliates, with every member of the proposed class being an Illinois citizen for purposes of the jurisdictional analysis required by CAFA. See 28 U.S.C. § 1332(d)(2). Headquartered in Bloomington, Country Mutual likewise is an Illinois citizen. And 45 of the individual director and officer defendants are also Illinois citizens. The 46th individual defendant, Robert Bateman, is a citizen of Massachusetts.

The plaintiffs brought four claims — three against Country Mutual (Counts I, II, and III) and one against the individual defendants (Count IV). Suffice it for now to observe that Count I advanced a breach of contract claim, Count II a claim under the Illinois Consumer Fraud and Deceptive Business Practices Act, and Count III a claim for unjust enrichment under Illinois law. Count IV names only the individual directors and officers and alleged a claim for breach of fiduciary duty.

Based on the size of the putative class, the amount in controversy, and the minimal diversity created by individual defendant Robert Bateman’s

Massachusetts citizenship, Country Mutual invoked CAFA and removed this case from St. Clair County to federal district court in southern Illinois. See 28 U.S.C. §§ 1332(d); 1453(b). The plaintiffs then moved to remand, contending that the action satisfies at least one of three exceptions to the federal jurisdiction otherwise supplied by CAFA: the internal-affairs exception in § 1332(d)(9)(B), the home-state controversy exception in § 1332(d)(4)(B), and the local controversy exception in § 1332(d)(4)(A).

### B

The district court denied the motion to remand, concluding that no exception applies. Regarding the internal-affairs exception and relying on our decision in *LaPlant v. Northwestern Mutual Life Insurance Co.*, 701 F.3d 1137 (7th Cir. 2012), the district court determined that the breach of contract, consumer fraud, and unjust enrichment claims do not relate solely to matters of corporate governance and thus do not fit within the exception.

Turning to the home-state controversy exception, the district court concluded that the plaintiffs targeted not only Country Mutual, but also Robert Bateman (a Massachusetts citizen and the sole non-Illinois defendant) as a “primary defendant.” The fact that Bateman was not a citizen of Illinois — the state in which the plaintiffs filed their action — meant that the class action did not qualify as a home-state controversy, making jurisdiction proper in federal court.

The district court also rejected the plaintiffs’ argument under the local controversy exception — a ruling not challenged on appeal.

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In its final analysis, the district court denied the plaintiffs’ motion to remand. We then accepted the plaintiffs’ interlocutory appeal under 28 U.S.C. § 1453(c).

## II

Congress enacted CAFA with the primary objective of “ensuring ‘Federal court consideration of interstate cases of national importance.’” *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 595 (2013) (quoting Class Action Fairness Act, Pub. L. No. 109-2, § 2(b)(2), 119 Stat. 5 (2005)). The enactment did so by amending the diversity jurisdiction statute to authorize federal courts to 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), (d)(5)(B). CAFA also loosened removal requirements. See 28 U.S.C. § 1453(b). The Supreme Court has since emphasized that there is “no antiremoval presumption attend[ing] cases invoking CAFA,” as 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).

All agree that the class action brought by the plaintiffs satisfies CAFA’s general requirements for federal jurisdiction. The question therefore is whether the action fits within either of two exceptions — internal-affairs or home-state controversy — requiring a remand to Illinois state court.

## A

Congress housed the internal-affairs exception in § 1332(d)(9) and framed it by stating that the jurisdiction otherwise supplied by CAFA in

§ 1332(d)(2) “shall not apply to any class action that solely involves a claim ... that relates to the internal affairs or governance of a corporation or other form of business enterprise and that arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized.” *Id.* § 1332(d)(9), (d)(9)(B). (The same limitation appears in CAFA’s removal provisions in 28 U.S.C. § 1453(d)(2).) The party requesting remand — here the plaintiffs — must show that the exception provision applies. See *Appert v. Morgan Stanley Dean Witter, Inc.*, 673 F.3d 609, 619 (7th Cir. 2012).

By its terms, the exception requires determining whether the class action “solely involves a claim” pertaining to a corporation’s “internal affairs or governance.” The “solely involves” limitation means that the class action cannot include a claim that does not “relate to” internal affairs or corporate governance. To put the point in affirmative terms, each claim advanced in the class action must concern a corporation’s internal affairs or governance. This formulation gives effect to Congress’s combined (though perhaps awkward) use of the terms “solely involves” and “relat[ing] to” in delineating the exception. See *Greenwich Fin. Servs. Distressed Mortg. Fund 3 LLC v. Countrywide Fin. Corp.*, 603 F.3d 23, 32 (2d Cir. 2010) (employing similar reasoning and explaining that “the phrase ‘solely involves’ ensures that federal jurisdiction under CAFA cannot be defeated by adding a claim that falls within a § 1332(d)(9) exception to a class action complaint advancing one or more other claims”).

While Congress did not supply a definition of “internal affairs” or “corporate governance,” we know



from other language within the exception — specifically, the requirement that the plaintiff’s claim be one that “arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized” — that the focus is on state corporate law. That conclusion follows even more from the recognition that the term “internal affairs” has a well-established meaning in choice of law doctrine — the “internal affairs doctrine” — “which recognizes that only one state should have the authority to regulate a corporation’s internal affairs — the state of incorporation.” *VantagePoint Venture Partners 1996 v. Examen, Inc.*, 871 A.2d 1108, 1113 (Del. 2005). The doctrine owes its existence to the principle that the law of the state of incorporation should govern “the entire gamut of internal corporate affairs,” *id.*, most especially the “relationships among a corporation and its officers, directors, and shareholders,” *id.* at 1115. See also *McDermott Inc. v. Lewis*, 531 A.2d 206, 215 (Del. 1987) (explaining the internal affairs doctrine and defining “matters peculiar to corporations” as “those activities concerning the relationships *inter se* of the corporation, its directors, officers and shareholders” (emphasis in original)).

These conclusions find only further reinforcement in CAFA’s legislative history. The Senate Report accompanying CAFA explained that the statute employs the term “internal affairs” the same way the Supreme Court did in *Edgar v. MITE Corp.*, 457 U.S. 624 (1982). See S. Rep. No. 109-14, at 45 (2005). Albeit in the context of a constitutional dispute, the Court in *Edgar* observed (in response to an argument pressed by one of the parties) that internal affairs, when used

within the realm of conflicts of law doctrine, addresses “matters peculiar to the relationships among or between the corporation and its current officers, directors, and shareholders.” *Id.* at 645.

All of this leaves us with no doubt that Congress intended CAFA’s internal-affairs exception to carry this same core meaning. The exception aims to exclude from CAFA’s jurisdiction class actions whose claims concern the governance of a corporate enterprise, including through the exercise of fiduciary duties by directors and officers — matters on which state courts have the final word under state law. In this way, then, the inclusion of an internal-affairs exception tells us that Congress wanted to leave in state court (and withhold federal jurisdiction over) class actions concentrated on matters of corporate governance, where uniform and definitive interpretations of the legal duties governing management of the enterprise facilitate commercial activity.

Returning to the case before us, our task is clear. We must discern whether the plaintiffs’ claims relate to the internal affairs or governance of Country Mutual. We conclude that they do.

In filing their complaint in the St. Clair County Circuit Court, the plaintiffs had to adhere to Illinois’s requirement of fact pleading. See *Marshall v. Burger King Corp.*, 856 N.E.2d 1048, 1053 (Ill. 2006) (explaining that Illinois law requires a plaintiff to allege facts sufficient to bring a claim within a legally recognized cause of action). To our eye, the plaintiffs adhered to this obligation, and their doing so lessens the difficulty of our review. Indeed, the complaint leaves us of the firm conviction that each of the

plaintiffs' four claims turns upon common allegations that Country Mutual and its directors and officers managed the company to benefit themselves at the expense of the policyholder members — in violation of the fiduciary obligations governing the affairs of an Illinois mutual insurance company. At every turn, the complaint alleges mismanagement, director and officer self-enrichment as well as disregard of alleged duties to return excess surplus to policyholders.

It matters not that the plaintiffs cast only one of their claims in terms of a breach of fiduciary duty and the others as a breach of contract (Count I), a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (Count II), and unjust enrichment (Count III). It is the substance of each claim that matters. In reading the factual allegations supporting Counts I, II, and III, it is clear that each claim rests on the same foundation — the contention that Country Mutual's directors and officers failed to manage the firm as a mutual insurance company and instead accumulated, if not hoarded, excess surplus to enrich themselves at the expense of the policyholder members. Here are a few representative samples of the plaintiffs' allegations:

- *Factual Allegations*: “[I]f a mutual insurance company’s board of directors is acting within its authority to provide policyholders with insurance coverage at cost, the board is not permitted to unreasonably retain excessive premiums.” Compl. ¶ 130.
- *Count I — Breach of Contract*: While “Country Mutual is permitted to exercise discretion in its determination of when it must return to its policyholders the excess of paid

premiums over the cost of providing insurance coverage,” Compl. ¶ 259, “Country Mutual’s legal duty to return to its policyholders the excess of paid premiums over the cost of providing insurance coverage is incorporated into all of its contractual agreements with its policyholders,” Compl. ¶ 256.

- *Count II — Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act:* “Country Mutual unfairly and deceptively retained the premiums paid by Country Mutual members.” Compl. ¶ 284.

- *Count III — Unjust Enrichment:* “By using premiums paid by Country Mutual members to support financial incentives of its subsidiaries, Country Mutual breached its obligation to its members to provide insurance at cost and unjustly enriched itself and its affiliates.” Compl. ¶ 296.

- *Count IV — Breach of Fiduciary Duty:* “Individual Defendants breached their fiduciary duties to Country Mutual policyholders by willfully retaining profits and revenue derived from policyholder premiums to accumulate a surplus that is grossly excessive.” Compl. ¶ 314.

Without offering any views on the merits, we see no way to resolve any of the plaintiffs’ claims without determining whether Country Mutual retained excess capital and, by extension, failed to return an amount of surplus to its policyholder members. Every claim hinges on the answer to that threshold question. Even more, the answer — as the plaintiffs seem to

acknowledge — will depend on an assessment of how Country Mutual’s directors and officers exercised the discretion they have to determine capital requirements and to make related dividend (surplus) distribution decisions. The necessary analysis must account for the complexity of insuring losses. Put another way, the ultimate resolution of each of the plaintiffs’ claims will come not from Excel spreadsheet calculations or interpreting a particular provision in one or another insurance policy but from a qualitative assessment of business judgments made by Country Mutual management. See *Hill v. State Farm Mut. Auto. Ins. Co.*, 166 Cal. App. 4th 1438, 1448–49, 1469–76 (Cal. Ct. App. 2008) (applying Illinois law in the context of a nationwide class action alleging that a mutual insurance company breached a duty to pay dividends by retaining excessive surplus and emphasizing the broad discretion directors have to make business judgments about capital retention and distributions to policyholders).

To restate our conclusion in the language Congress employed in CAFA, the plaintiffs’ complaint “solely involves” claims that root themselves in allegations that “relate to” Country Mutual’s “internal affairs” or “corporate governance” — in contentions that directors and officers exercised the discretion they have to set capital levels and determine dividend distributions in impermissible ways that benefited themselves and harmed policyholder members. *Id.* § 1332(d)(9)(B).

Our conclusion finds reinforcement in our reasoning in *LaPlant v. Northwestern Mutual Life Insurance Co.*, 701 F.3d 1137 (7th Cir. 2012). There we concluded that a breach of contract claim did not fit within

CAFA's internal-affairs exception because resolving the claim required no more than interpreting the terms and conditions of the annuity policy at issue. See *id.* at 1140. In reasoning to that conclusion, we took care to explain that the situation would have been altogether different if the plaintiffs' claim had related to something "discretionary with the board" — like a dividend payment. *Id.* Just so here: the plaintiffs' complaint — through and through — hinges recovery on showing that Country Mutual's management exceeded the bounds of permissible discretion in making capital-retention and surplus-distribution decisions.

One final point warrants attention. Country Mutual suggests that CAFA's internal-affairs exception applies only to claims against current — but not former — directors and officers. We cannot agree. It is easy to envision claims against former directors (say, for example, for violating a duty of loyalty) who allegedly looted a company and then resigned or retired. The whole case would be about corporate governance, yet Country Mutual would position such a claim outside of CAFA's internal-affairs exception simply because *former* directors committed fiduciary breaches. We see no indication that Congress intended for employment status to serve as the gating mechanism for applying CAFA's internal-affairs exception.

Because the internal-affairs exception applies, federal jurisdiction is lacking and this case must return where it originated, to the Circuit Court in St. Clair County, Illinois.

The home-state controversy exception provides an independent reason for remanding this suit to Illinois state court.

And once again we begin with CAFA's text. Under 28 U.S.C. § 1332(d)(4), a district court "shall decline to exercise jurisdiction" when "two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed." *Id.* § 1332(d)(4), (d)(4)(B).

Everyone agrees that more than two-thirds of the members of the proposed class are citizens of Illinois. The point of contention is whether one particular defendant, Robert Bateman — a citizen of Massachusetts and the defendant who supplied the minimal diversity for Country Mutual's invocation of CAFA jurisdiction in federal court — is a "primary defendant" within the meaning of the home-state controversy exception.

Congress left the term undefined in CAFA. On a prior occasion, however, we observed in passing that the plain import of "primary defendant" requires identifying the "gravamen of the complaint." *Sabrina Roppo v. Travelers Com. Ins. Co.*, 869 F.3d 568, 585 (7th Cir. 2017). Other courts have selected analogous nouns to help guide the inquiry. See, e.g., *Vodenichar v. Halcon Energy Props., Inc.*, 733 F.3d 497, 504–05 (3d Cir. 2013) (explaining that a "primary defendant" is a defendant who is the "real target" of the overall action (internal quotation marks omitted)); *Madison v. ADT, L.L.C.*, 11 F.4th 325, 328 (5th Cir. 2021) (employing similar reasoning to identify the "primary thrust" of the suit).

Reasonable minds may differ on the best synonym for “primary.” We see the controlling inquiry as one requiring an assessment of the plaintiff’s complaint as a whole — its factual allegations, claims, and requests for relief — with an eye toward examining whether the defendant in question is a principal focus of the class action. The Third Circuit has charted a similar approach, explaining that the factors most informing the analysis will often be whether the defendant in question is directly liable to the proposed class, how many class members are purportedly impacted by the defendant’s alleged actions, and the amount the defendant may lose if found liable. See *Vodenichar*, 733 F.3d at 504–05; see also *Smith v. Marcus & Millichap, Inc.*, 991 F.3d 1145, 1162 (11th Cir. 2021) (applying similar factors).

In this case, we have little difficulty seeing the spotlight of the plaintiffs’ complaint as shining foremost on Country Mutual. The company is the named defendant in three of the complaint’s four claims and the party alleged to have accumulated over \$3.5 billion in excess surplus. No doubt Country Mutual is the deepest pocket in the case, and surely the party from which the plaintiffs seek the lion’s share of any recovery.

To be sure, those observations do not make Country Mutual the only “primary defendant,” for we readily accept that more than one defendant or indeed every named defendant can fit within that category in a particular case. Our only point is that an objective reading of the complaint leaves us persuaded that the 46 directors and officers do not stand as equal defendants alongside Country Mutual when considering the plain objective of this class action —



to exact a material financial recovery of billions of dollars of surplus alleged to be wrongfully withheld by a mutual insurance company from distribution to policyholder members.

The same considerations lead us to conclude that Robert Bateman is not a primary defendant. The complaint identifies him as the company's chief financial officer for two years of the decade-long surplus accumulation, but it does not otherwise say much about him. In the few places his name even appears in the plaintiffs' 48-page complaint, Mr. Bateman is but one of 46 undifferentiated directors and officers. There is no allegation, for example, that Mr. Bateman played a particular or significant role in the alleged accumulation of excess surplus. In these circumstances, and even accepting the plaintiffs' overall allegations that the surplus accumulation occurred to enrich Country Mutual's directors and officers, we cannot conclude that Mr. Bateman is a primary defendant within the meaning of CAFA's home-state controversy exception.

\* \* \*

Because this case fits within the internal-affairs exception and the home-state controversy exception, we REVERSE the district court's denial of the plaintiffs' motion to remand, and REMAND to the district court with instructions to remand the case to state court.

**APPENDIX B**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

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ANGELA M. SUDHOLT, KYHL A. SUDHOLT,  
KARA JONES, and BENJAMIN JONES,  
Individually and on Behalf of Others Similarly  
Situated,

Plaintiffs,

vs.

COUNTRY MUTUAL INSURANCE COMPANY  
AND ITS OFFICERS AND DIRECTORS, JAMES  
MELVIN JACOBS, RICHARD LOUIS GUEBERT,  
JR., JENNIFER LYNN VANCE, MILES THORNE  
KILCOIN, ROBERT HAROLD BATEMAN, PHILIP  
TIM NELSON, BRIAN KEITH DUNCAN,  
RICHARD KENNETH CARROLL, LEONARD  
BRADLEY DAUGHERTY, ROBERT EDWIN  
KLEMM, JOHN LARRY MILLER, GARY ALLEN  
SPECKHART, MARK ROGER TUTTLE, KENNETH  
CHARLES CRIPE, TAMARA DEE HALTERMAN,  
STEVEN PATRICK KOELLER, KEITH RANDALL  
MUSSMAN, STEVEN RAY STALLMAN, EARL  
HARMON WILLIAMS, LARRY WILLIAM DALLAS,  
ROBERT JOHN FECHT, JEFFREY ROBERT  
KIRWAN, DON EUGENE MEYER, MARK  
FREDERICK REICHERT, KENTON LLOYD  
THOMAS, DENNIS WAYNE GREEN, STEVEN  
WILLIAM FOUREZ, DAVID LEE SERVEN,  
BRADLEY ALLEN TEMPLE, RANDY JOSEPH  
POSKIN, MICHELE RENEE AAVANG, DAVID

LEE MEISS, CHAD KENNETH SCHUTZ, STEVEN  
GENE HOSSELTON, TROY ARNOLD UPHOFF,  
CHRISTOPHER BRUCE HAUSMAN, DALE  
BRYAN HADDEN, WAYNE ROY ANDERSON,  
SCOTT FRANCIS HALPIN, DENNIS LEE  
HUGHES, ROBERT HENRY GEHRKE, JAMES  
ALFRED ANDERSON, CHARLES MICHAEL  
CAWLEY, DARRYL ROBERT BRINKMANN, J.C.  
POOL, and TERRY ALLEN POPE,

Defendants.

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Case No. 3:22-cv-3064-DWD

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**MEMORANDUM & ORDER**

**DUGAN, District Judge:**

Before the Court is Plaintiffs' Motion to Remand or, in the Alternative, to Voluntarily Dismiss Without Prejudice ("Motion") (Docs. 34 & 35). Defendants, Country Mutual Insurance Company and its current and former officers and directors, filed Responses in Opposition to the Motion (Docs. 47 & 48). Plaintiffs then filed Replies (Docs. 51 & 52). The Court held a hearing on the Motion and is now prepared to rule. For the reasons explained below, the Motion is **DENIED**. By virtue of this ruling, the Joint Motion for Stay of Mailing of Any Certified Order of Remand (Doc. 71) is **DENIED as moot**.

**I. Background**

On November 14, 2022, Plaintiffs filed a 4-Count Complaint (Doc. 1-1) in the Circuit Court of St. Clair County. Plaintiffs, who are allegedly citizens of the

State of Illinois with their permanent residences in Clinton County and/or St. Clair County, are current and former policyholders of Defendant, Country Mutual Insurance Company (“Country Mutual”). (Doc. 1-1, pgs. 4-5). Country Mutual is an Illinois corporation with its principal place of business in McLean County. The other individual Defendants are current and former officers and directors of Country Mutual. (Doc. 1-1, pgs. 5-10). Plaintiffs, on behalf of themselves and all other similarly situated Illinois citizens who paid premiums on an insurance policy underwritten by Country Mutual or its other entities, allege Defendants failed to meet their obligation of providing and operating in a manner reasonably calculated to provide insurance at its cost. (Doc. 1-1, pgs. 4, 34-37).

More specifically, in Count I, Plaintiffs allege breaches of contract and of the covenant of good faith and fair dealing against Country Mutual. (Doc. 1-1, pgs. 37-40). In Count II, Plaintiffs allege a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 *et seq.*) against Country Mutual. (Doc. 1-1, pgs. 40-42). In Count III, Plaintiffs allege unjust enrichment by Country Mutual. (Doc. 1-1, pgs. 42-43). In Count IV, Plaintiffs allege a breach of fiduciary duty by each individual Defendant. (Doc. 1-1, pgs. 43-47). Plaintiffs seek broad relief for Defendants’ alleged retention of excess premiums as surplus, allegedly in violation of their fundamental purpose and legal obligations as a mutual insurance company, including, *inter alia*: (1) a declaration that Country Mutual’s policies and practices regarding premiums and distributions of corporate surplus are wrongful and unconscionable under its legal

obligations to policyholders; (2) an order enjoining Country Mutual from operating in a manner that is not reasonably calculated to provide insurance at its cost; (3) an award of statutory, compensatory, and punitive damages; (4) an award of restitution; (5) an award of prejudgment and postjudgment interest; (6) findings that the individual Defendants breached their fiduciary duty to policyholders; (7) an order directing Country Mutual to distribute compensation to policyholders for premiums paid in excess of the cost of insurance; and (8) an award of attorney fees and costs. (Doc. 1-1, pgs. 4, 47-48).

On December 22, 2022, Country Mutual filed a Notice of Removal (Doc. 1) under 28 U.S.C. §§ 1332, 1441, 1446, and 1453, wherein Country Mutual discussed the size of the putative class and the amount in controversy. *See* 28 U.S.C. § 1332(d)(2), (5)(B); (Doc. 1, pgs. 3-4, 7-10). With respect to minimal diversity, the Notice of Removal noted, *inter alia*, at least one of the individual Defendants is a citizen of a state different than that of any Plaintiff. *See* 28 U.S.C. § 1332(d)(2)(A); (Doc. 1, pgs. 4-5). That is, the named Plaintiffs and the proposed class members are all allegedly citizens of Illinois while Defendant Robert H. Bateman is a citizen of Massachusetts. (Doc. 1, pg. 5). An affidavit of Defendant Bateman, which was submitted as an exhibit to the Notice of Removal, indicates his domicile is in Massachusetts, where he intends to remain for the long term. (Doc. 1, pg. 6). Defendant Bateman owns real property, is registered to vote, and is licensed to drive in Massachusetts. (Doc. 1, pg. 6). Defendant Bateman owns three vehicles that are registered in Massachusetts, where he also maintains his bank account. (Doc. 1, pg. 6).

Based on the size of the class, the amount in controversy, and Plaintiffs' minimal diversity with Defendant Bateman, Country Mutual removed the case from St. Clair County.

Thereafter, on January 23, 2023, Plaintiffs filed the instant Motion, which the parties have fully briefed with their Responses and Replies. The Court held a hearing on the Motion on May 25, 2023. (Doc. 72). The parties' filings are discussed in detail below.

## **II. Analysis**

Now, Plaintiffs concede the case satisfies the requirements for removal related to class size and the amount in controversy under § 1332(d)(2) and (5)(B). (Doc. 35, pg. 6). Plaintiffs also admit, if the Court accepts the assertion that Defendant Bateman is a citizen of Massachusetts, then minimal diversity exists under § 1332(d)(2)(A). (Doc. 35, pg. 6).

In light of the representations in the Notice of Removal, the Court finds for the purposes of the Motion that Defendant Bateman is a citizen of Massachusetts. (Doc. 1, pgs. 4-7). Therefore, a grant of the Motion is proper only if one of the exceptions stated in 28 U.S.C. § 1332(d)(4)(A), (d)(4)(B), or (d)(9)(B) applies to bar an exercise of jurisdiction or if the Court may grant the alternative relief sought by Plaintiffs under Federal Rule of Civil Procedure 41(a)(2).

### **A. The Exceptions to Jurisdiction**

The party opposing the removal and seeking a remand, *i.e.*, Plaintiffs in this case, have the burden of establishing the applicability of an exception to jurisdiction. *See Appert v. Morgan Stanley Dean Witter, Inc.*, 673 F.3d 609, 618 (7th Cir. 2012) (citing

*Hart v. FedEx Ground Package Sys. Inc.*, 457 F.3d 675, 680 (7th Cir. 2006); *Evans v. Walter Indust., Inc.*, 449 F.3d 1159, 1164 (11th Cir. 2006)); accord *Schartz v. Parish*, No. 16-cv-10736, 2016 WL 7231613, \*2 (N.D. Ill. Dec. 14, 2016). The exceptions are read without a presumption for remanding or retaining jurisdiction. See *LaPlant v. Northwestern Mut. Life Ins. Co.*, 701 F.3d 1137, 1139 (7th Cir. 2012). The statutory language is given a natural meaning, in light of its context, without the Court placing “a thumb on the scale.” See *id.* (citing *Appert*, 673 F.3d at 609; *Katz v. Gerardi*, 552 F.3d 558 (7th Cir. 2009)).<sup>1</sup>

### **1. The “Local Controversy” Exception**

Section 1332(d)(4)(A), known as the “local controversy” exception, in pertinent part, provides: “A district court shall decline to exercise jurisdiction...over a class action in which...principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State in which the action was originally filed. 28 U.S.C. § 1332(d)(4)(A)(i)(III); accord *Hart*, 457 F.3d at 679.”<sup>2</sup> This exception is narrow and involves a strong

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<sup>1</sup>Country Mutual largely incorporated and adopted, by reference, the individual Defendants’ arguments as to the “home state” exception and the alternative relief requested under Rule 41(a)(2). (Doc. 47, pg. 20). Its Response is focused on the “local controversy” exception and the “internal affairs” exception. Likewise, the individual Defendants largely incorporated and adopted, by reference, Country Mutual’s arguments as to the “local controversy” and “internal affairs” exceptions. (Doc. 48, pgs. 8-9). Their Response is focused on the “home state” exception and the alternative relief requested under Rule 41(a)(2).

<sup>2</sup>The other elements of this exception are not at issue.

preference for interstate class actions being heard in federal court. *See Roppo v. Travelers Comm. Ins. Co.*, 869 F.3d 568, 584 (7th Cir. 2017) (quoting *Hart*, 457 F.3d 681). The Court must bear in mind that the purpose of each criterion of the exception “‘is to identify a truly local controversy...uniquely affect[ing] a particular locality to the exclusion of all others.’ [Citation].” *See Kurth v. Arcelormittal USA, Inc.*, No. 9-cv-108, 2009 WL 3346588, \*7 (N.D. Ind. Oct. 14, 2009) (quoting *Evans*, 449 F.3d at 1163).

Plaintiffs argue the “principal injuries” requirement is satisfied since the proposed class is limited to Illinois citizens. Plaintiffs note their allegations center on Country Mutual’s failure to provide Illinois citizens with insurance at its cost, meaning the principal injuries were felt in Illinois. (Doc. 35, pg. 9). Plaintiffs also note, over the past 10 years, 55% of premiums were paid by Illinois policyholders. (Docs. 1, pg. 9; 35, pg. 9).

In response, Country Mutual argues, despite Plaintiffs limitation of the proposed class to Illinois policyholders, the alleged injuries are “national in scope” because its policies are marketed by representatives in 19 core states. (Doc. 47, pgs. 2-4, 9). In other words, Country Mutual asserts Plaintiffs’ “principal injuries” are not limited to Illinois. Country Mutual notes, consistent with Plaintiffs’ assertion above and the Notice of Removal, “45% of [its] overall premium[s] [are] written outside of Illinois.” (Docs. 1, pg. 9; 35, pg. 9; 47, pgs. 2, 4). Country Mutual further notes that its surplus is not allocated to any particular state. (Doc. 47, pg. 10). For these reasons, Country Mutual argues any injury resulting from its alleged failure to provide insurance at its cost would be felt by



all Country Mutual policyholders throughout the country. (Doc. 47, pgs. 4-5, 9).

Here, Plaintiffs allege Country Mutual failed to provide, or operate in a manner reasonably calculated to provide, insurance at its cost, which is a “failure to satisfy [its] fundamental purpose and legal obligations” as a mutual insurance company. (Doc. 1-1, pgs. 4, 38-39, 41, 45). Further, Plaintiffs allege Defendants have a fiduciary obligation, “embedded in *every* contractual agreement between Country Mutual and its policyholders,” to maintain and distribute any and all corporate profits exclusively for the benefit of the customer-owners of the company. (Doc. 1-1, pgs. 14, 38-39, 41, 45) (Emphasis added). As Plaintiffs note, “th[ose] profits belong to Country Mutual, and ultimately, its policyholders.” (Doc. 1-1, pgs. 23-26, 34).

However, it does not appear that these baseline allegations are 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. (Docs. 1-1, pg. 13; 72, pgs. 41-42). Likewise, the parties appear to agree that 55% of premiums were paid by Illinois policyholders and 45% of premiums were paid by non-Illinois policyholders. (Docs. 1, pg. 9; 35, pg. 9; 47, pgs. 2, 4). Also, Plaintiffs’ allegations target the operations of Country Mutual and its individual officers and directors, generally, without any indication that those operations do not similarly impact policyholders in Illinois and in the 18 other states where Country Mutual does business. In other words, it seems certain allegations, related to Country Mutual’s “presentation of itself as a mutual insurance company,” could be made with equal force

in the 18 other states where it does business. (Doc. 1-1, pg. 42).

For these reasons, the Court cannot conclude that the “principal injuries,” resulting from Defendants’ alleged conduct, were incurred only in the State of Illinois, where this case was originally filed. *See* 28 U.S.C. § 1332(d)(4)(A)(i)(III). And, while not determinative, Country Mutual points to the legislative history that addresses the notion of “principle injuries,” as used in this exception, and it seems to lend support to the Court’s conclusion here. *See* Sen. Rep. No. 109-14, 40, 2005 U.S.C.C.A.N. 3, 38 (2005) (noting “principle injuries” under § 1332(d)(4)(A)(i)(III), which has a purpose of “ensur[ing] that th[e] exception is used only where the impact of the misconduct alleged by the purported class is localized,” means “all or almost all of the damage caused by defendants’ alleged conduct occurred in the state where the suit was brought,” such that conduct allegedly injuring consumers throughout the country or broadly throughout the several states would not qualify under the exception even if raised in a single-state class action). As such, the case does not present “‘a truly local controversy...uniquely affect[ing] a particular locality to the exclusion of all others.’ [Citation].” *See Kurth*, No. 9-cv-108, 2009 WL 3346588, \*7 (quoting *Evans*, 449 F.3d at 1163). Based on Plaintiffs’ own allegations, the injuries are not limited to Illinois but are instead “national in scope.” (Doc. 47, pgs. 2-4, 9). For these reasons, the Court **FINDS** the “local controversy” exception does not apply in this case.

## 2. The “Home State” Exception

Section 1332(d)(4)(B) provides: “[a] district court shall decline to exercise jurisdiction...[over a class action in which] two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed.” 28 U.S.C. § 1332(d)(4)(B). In this case, it is undisputed that “the members of all proposed plaintiff classes” are citizens of Illinois, where the case was originally filed. *See id.* The same is true with respect to Country Mutual, who is undoubtedly a “primary defendant[.]” *See id.* As a matter of fact, Defendant Bateman is the only one of the 47 total Defendants who is identified as a non-citizen of Illinois.<sup>3</sup> Therefore, if Defendant Bateman is not a “primary defendant[.]” under § 1332(d)(4)(B), then the Court must decline to exercise jurisdiction.

“Primary defendants” is not defined by the statute. *See Singh v. American Honda Fin. Corp.*, 925 F.3d 1053, 1067 (9th Cir. 2019). However, courts have defined “primary to mean direct and construed the words ‘primary defendants’ to capture those defendants who are directly liable to the proposed class, as opposed to...vicariously liable or secondarily liable based upon theories of contribution or indemnification.” *See Vodenichar v. Halcon Energy Props., Inc.*, 733 F.3d 497, 504 (3d Cir. 2013) (citing *Copper Sands Homeowners Ass’n, Inc. v. Copper Sands Realty, LLC*, No. 10-cv-510, 2011 WL 941079, \*6 (D. Nev. Mar. 16, 2011); *Anthony v. Small Tube Mfg. Corp.*, 535 F. Supp. 2d 506, 517 (E.D. Pa. 2007);

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<sup>3</sup>However, Defendants have noted that not every named individual Defendant has been served.

*Kitson v. Bank of Edwardsville*, No. 6-cv-528, 2006 WL 3392752, \*13-17 (S.D. Ill. Nov. 22, 2006)); accord *Kurth*, No. 9-cv-108, 2009 WL 3346588, \*6; but see *Madison v. ADT, L.L.C.*, 11 F.4th 325, 328 (5th Cir. 2021) (“Whether...vicariously or secondarily liable is a relevant factor, certainly, but it does not necessarily control a court’s determination, or the analysis would often be at odds with the Supreme Court’s admonition ‘against adopting rules in the [class action] context that would “exalt form over substance.”’”). Put another way, “[t]he phrase ‘primary defendants’ indicates a chief defendant or chief class of defendants.” See *Watson v. City of Allen, Texas*, 821 F.3d 634, 641 (5th Cir. 2016).

Courts also look to the allegations in the complaint to identify who is expected to sustain the greatest loss from liability and whether those defendants, when compared to the other defendants, “have ‘substantial exposure to significant portions of the proposed class.’” See *Vodenichar*, 733 F.3d at 505 (citing *Bennett v. Bd. of Comm’rs for East Jefferson Levee Dist.*, Nos. 7-cv-3130, 7-cv-3131, 2007 WL 2571942, \*6 (E.D. La. Aug. 31, 2007); quoting *Robinson v. Cheetah Transp.*, No. 6-cv-0005, 2006 WL 468820, \*2, n. 7 (W.D. La. Nov. 14, 2006)); *Smith v. Marcus & Millichap, Incorp.*, 991 F.3d 1145, 1162 (11th Cir. 2021). These considerations focus on the number of proposed class members impacted by the defendant’s actions and the amount the defendant may lose if liable. See *Vodenichar*, 733 F.3d at 505. The Court assumes liability, then determines the number of proposed class members to whom a defendant may be liable and the identity of the defendants who will sustain the greatest loss if liable, *i.e.*, the “real

targets” of the allegations. *See id.* at 505-06; *see also Watson*, 821 F.3d at 641 (discussing the Fifth Circuit’s prior application of the “primary defendants” requirement as well as the putative plaintiffs’ claims against the various defendants, the defendants with the “ ‘primary role in the alleged’ violations,” and the lawsuit’s “primary thrust”); *Madison*, 11 F.4th at 328 (“[T]here is much to commend the *Vodenichar* emphasis on the ‘real target’ of the litigation and *Watson*’s description of the controversy’s ‘primary thrust.’ ”); *Singh*, 925 F.3d at 1067 (Ninth Circuit discussing, *inter alia*, *Vodenichar* and *Watson* before outlining a test that “align[ed]” itself with its “sister circuits,” *i.e.*, the Third and the Fifth Circuits); *Hunter v. City of Montgomery, Alabama*, 859 F.3d 1329, 1336 (11th Cir. 2017) (agreeing with the reasoning and rule articulated in *Vodenichar*, at least where monetary relief is sought). The Court emphasizes that these considerations are not exhaustive and should not be applied mechanically, as “[t]he inquiry is whether a defendant is a “ ‘principal,’ “fundamental,” or “direct” ’ defendant.” *See Singh*, 925 F.3d at 1068 (quoting *Vodenichar*, 733 F.3d at 504).<sup>4</sup>

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<sup>4</sup>As noted by the Third Circuit in *Vodenichar*, the above-described approach to the meaning of “primary defendants” is supported by the statute’s legislative history and the statements of the statute’s sponsors. *See Vodenichar*, 733 F.3d at 504-05, n. 5 (“[T]he Sponsors intended the identity of the ‘primary defendants’ to be determined based upon the allegations concerning the defendants expected to be liable to the greatest number of class members and to suffer the greatest loss if liability is found.”); 151 Cong. Rec. H723-01, 2005 WL 387992 (daily ed. Feb. 17, 2005) (statement of Representative Bob Goodlatte).

Plaintiffs argue Defendant Bateman, the only identified out-of-state Defendant, is not a “primary defendant.” (Doc. 35, pg. 10). Plaintiffs note that Defendant Bateman is 1 of 46 individual Defendants named in 1 of 4 Counts. (Doc. 35, pg. 10). Plaintiffs also suggest, without the alleged improper accumulation of excess premium surpluses by Country Mutual, they would not have a basis for breach of fiduciary duty claims against any individual Defendants in Count IV. (Doc. 35, pg. 8, n. 3). Further, Plaintiffs argue Defendant Bateman, whose tenure with Country Mutual lasted approximately 2 years and 3 months, cannot be liable to any Plaintiffs for breaches of fiduciary duty that occurred before or after that short tenure. (Doc. 35, pg. 12). Country Mutual, by comparison, is the only Defendant named in 3 of the 4 Counts alleged in the Complaint. (Doc. 35, pg. 11). Country Mutual is also the only Defendant named in more than one Count. (Doc. 35, pg. 11). For these reasons, Plaintiffs argue Country Mutual faces the greatest exposure to liability. (Doc. 35, pg. 11). Plaintiffs emphasize, due to the varying tenures of the individual Defendants and the potential absence of overlap between those tenures and the time any Plaintiff was paying a premium, Country Mutual is the only Defendant against whom every Plaintiff has a legal claim. (Doc. 35, pgs. 11-12).

In response, the individual Defendants argue 46 of the 47 total Defendants are individual Defendants. (Doc. 48, pg. 6). The individual Defendants also argue they are not joined in this case for purposes of indemnification or contribution and Plaintiffs’ breach of fiduciary duty claim is not premised on vicarious liability. (Doc. 48, pg. 6). To the contrary, the

individual Defendants maintain that they are sued based on duties allegedly owed to each proposed class member, directly, and the alleged breach of those duties as a result of each individual Defendant's personal acts. (Doc. 48, pg. 6).

Here, the Court initially recognizes the rather awkward nature of the test for identifying primary defendants and the fact that it requires a fair bit of guesswork. This is especially so for that part of the test requiring a court, without meaningful acuity or resolution, to forecast the proper apportionment of damages among the various defendants. On the other hand, giving focus to the actions or conduct of a given defendant seems to be a more workable process, particularly because the plaintiff is the master of the complaint and is free to describe the specific actions that bring a defendant into the lawsuit. Here, Plaintiffs describes in some detail the actions of Defendant Bateman that give rise to his being named as a defendant.<sup>5</sup>

Based on Plaintiffs' own "direct" claim, each individual Defendant, including Defendant Bateman, had the "ability to control the business and affairs of Country Mutual" due to his or her position as an officer and/or director of Country Mutual. (Docs. 1-1, pgs. 22-23, 43-45; 35, pg. 3). Indeed, Plaintiffs allege the individual Defendants, including Defendant Bateman, "did not merely acquiesce in decisions taken by others but consciously made the decision to breach their fiduciary duty as part of a concerted policy and practice of the Board of Directors." (Doc. 1-1, pg. 47).

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<sup>5</sup>The Court is mindful that the case was initially filed in Illinois state court where "fact pleading" is required.

It was the individual Defendants who were required to supervise the “management, policies, practices, and controls of the financial affairs of the mutual insurance company” by, *inter alia*, doing the following: managing, directing, conducting, and supervising the business affairs of Country Mutual under all applicable laws; ensuring Country Mutual complied with its legal obligations; avoiding the wasting of assets; and maximizing the value to policyholders by providing insurance at its cost. (Doc. 1-1, pgs. 23-24). In short, due to “their positions of authority and control as directors and/or officers of Country Mutual, [the] Individual Defendants were able to, and did, exercise control over the acts complained of” in this case. (Doc. 1-1, pg. 23). Further, the individual Defendants and their decision-making was clearly integral to “fulfill[ing] Country Mutual’s fundamental purpose of providing insurance at cost,” even if they allegedly usurped profits in order to enrich themselves to the detriment of policyholders. See *Vodenichar*, 733 F.3d at 505 (stating, when determining whether a defendant is a “primary defendant,” courts should decide whether the plaintiff seeks to hold the defendant responsible for its own actions or to have the defendant pay for others’ actions); (Doc. 1-1, pgs. 22-26, 24, 34, 45-46). It is difficult for Plaintiffs to parbuckle their arguments for the “home state” exception against the winds of their own Complaint. Thus, the Court concludes that Defendant Bateman’s alleged actions and involvement in the events giving rise to liability are significant. As such, the Court cannot single-out Defendant Bateman as a non-primary defendant.



Further, Plaintiffs are correct that Country Mutual is the only Defendant named in 3 of the 4 Counts alleged in the Complaint. However, the Court can just as easily note that Country Mutual is only 1 of 47 total Defendants in this case. Therefore, the case demonstrates that merely comparing the number of counts alleged against a particular defendant or the number of defendants named in a particular count does not necessarily illustrate who is a primary defendant. *See Singh*, 925 F.3d at 1069 (finding it was not enough for the district court to look only at what claims were asserted against which defendants, even though doing so can help to determine direct versus secondary liability and the exposure to liability, because “a mechanical review of how many claims are asserted against a defendant is inappropriate”); *Vodenichar*, 733 F.3d at 506 (finding a corporation was a “primary defendant[],” where, although more claims were asserted against other defendants, the claims against the corporation were as or more significant, the plaintiffs alleged each defendant was directly liable, the plaintiffs appeared to apportion liability equally, and the plaintiffs sought similar relief from the defendants).

It is clear, however, that the alleged conduct of both Country Mutual and the individual Defendants, including Defendant Bateman, impacted significant portions of the proposed class. Plaintiffs allege Country Mutual may be liable to every proposed class member, and that may well be true. But the Court does not believe that fact alone renders Defendant Bateman or the other individual Defendants non-primary under § 1332(d)(4)(B). In other words, while an individual Defendant’s liability to the proposed

class members may hinge on the timing of the individual Defendant's tenure at Country Mutual, that is not to say those individual Defendants are not exposed to substantial liability to significant portions of the proposed class. Indeed, Plaintiffs identify two individuals, Defendants James M. Jacobs and Richard L. Guebert, Jr., who have been employed by Country Mutual since 2012 and 2013, respectively. (Docs. 1-1, pgs. 5-6; 35, pg. 12). Since Defendants Jacobs and Guebert's tenure with Country Mutual spanned a significant portion of the time relevant to this lawsuit, they are exposed to substantial liability to significant portions of the proposed class. The same is true for Defendant Bateman even though he was employed by Country Mutual for only about 2 years and 3 months. (Docs. 1-2, pg. 3; 35, pg. 12). Due to the nature of the allegations, which relate to the individual Defendants' control, authority, supervision, and decision-making, Defendant Bateman's alleged conduct conceivably impacted a significant portion of the proposed class during and in the years after his tenure. (Doc. 1-1, pgs. 22-24, 44-45, 47).

Moreover, Plaintiffs include a single Prayer for Relief in their Complaint, which requests varying forms of relief from both Country Mutual and the individual Defendants. (Doc. 1-1, pgs. 47-48). In other words, Plaintiffs do not include a prayer for relief in each Count of the Complaint, which, as has been discussed, do not always pertain to the same Defendants. Notably, in terms of statutory, compensatory, and punitive damages, Plaintiffs do not specify whether the request is directed at Country Mutual, the individual Defendants, or both. (Doc. 1-1, pgs. 47-48). This manner of pleading tends to

exacerbate the “awkward nature” of the test for identifying primary defendants and its associated “guesswork.” *See supra*, pg. 14. Even assuming each Defendant is liable, though, the Court cannot estimate the amount any single defendant or class of defendants may lose if liable, and Plaintiffs do not even attempt to do so or to meaningfully distinguish between the Defendants on this basis. *See Vodenichar*, 733 F.3d at 505; *Kurth*, No. 9-cv-108, 2009 WL 3346588, \*7 (holding the “home state” exception did not apply, where, *inter alia*, a direct recovery was sought from all defendants, to the same extent, and there was no suggestion certain defendants were more culpable or liable than others).

For these reasons, the Court **FINDS** both Country Mutual and the individual Defendants, including Defendant Bateman, are the “real targets” of the allegations made by Plaintiffs and are inseparably the subjects of the lawsuit’s “primary thrust.” *See Vodenichar*, 733 F.3d at 505-06; *Watson*, 821 F.3d at 641; *Madison*, 11 F.4th at 328; *Singh*, 925 F.3d at 1067. Accordingly, the Court **FINDS** Country Mutual and the individual Defendants, including Defendant Bateman, are primary defendants under § 1332(d)(4)(B), such that the “home state” exception does not apply in this case.

### **3. The “Internal Affairs” Exception**

Section 1332(d)(9)(B), known as the “internal affairs” exception, states: “Paragraph (2) shall not apply to any class action that solely involves a claim...that relates to the internal affairs or governance of a corporation or other form of business enterprise and that arises under or by virtue of the laws of the State in which such corporation or

business enterprise is incorporated or organized.” 28 U.S.C. § 1332(d)(9)(B). The Seventh Circuit, in the context of 28 U.S.C. § 1453(d)(2), which includes identical language to that in § 1332(d)(9)(B), has noted the following with respect to the internal affairs doctrine:

[It] is ‘a conflict of laws principle which recognizes that only one State should have the authority to regulate a corporation’s internal affairs — matters peculiar to the relationship among or between the corporation and its current officers, directors, and shareholders — because otherwise a corporation could be faced with conflicting demands.’

*LaPlant*, 701 F.3d at 1139 (quoting *Edgar v. MITE Corp.*, 457 U.S. 624, 645 (1982); citing *Atherton v. FDIC*, 519 U.S. 213, 223 (1997)); accord *CDX Liquidating Trust v. Venrock Assocs.*, 640 F.3d 209, 212 (7th Cir. 2011); see also *Nagy v. Riblet Prods. Corp.*, 79 F.3d 572, 576 (7th Cir. 1996) (“A single rule for each corporation’s internal affairs reduces uncertainty and the prospect of inconsistent obligations; it also enables the corporate venturers to adjust the many variables of corporate life (including contractual promises made to CEOs), confident that they can predict the legal effect of these choices.”).

Sections 1332(d)(9)(B) and 1453(d)(2) “reflect[] the view that, when just one state’s law applies to a nationwide class, a state court can provide a satisfactory resolution.” See *LaPlant*, 701 F.3d at 1139. Further, different conflicts of law principles apply where the rights of third parties, who are external to the corporation, are at issue. See *Mindspirit, LLC v. Evalueserve Ltd.*, 346 F. Supp. 552,

581 (S.D. N.Y. 2018) (quoting *Roselink Investors, L.L.C. v. Shenkman*, 386 F. Supp. 2d 209, 225 (S.D. N.Y. 2004)); accord *First Nat'l City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 621 (1983). The execution of a contract or the commission of a tort, for example, do not implicate the internal affairs doctrine because such “issues ‘can practicably be decided differently in different states.’ [Citation].” See *Mindspirit*, 346 F. Supp. at 581 (quoting *Tyco Int’l, Ltd. v. Kozlowski*, 756 F. Supp. 2d 553, 560 (S.D. N.Y. 2010); citing *Roselink Investors*, 386 F. Supp. 2d at 225).

Under these authorities, Plaintiffs argue their claims relate to Country Mutual’s internal governance because those claims are centered around one core allegation, namely, that Country Mutual has been governed in a manner that deprives policyholders of insurance at its cost. (Doc. 35, pg. 13). This core allegation, in Plaintiffs’ view, raises a fundamental question about whether Country Mutual is acting in accordance with its legal purpose as a mutual insurance company. (Doc. 35, pg. 14). In this way, the case does not merely involve claims grounded in contract or tort but claims in corporate law. (Doc. 35, pg. 14). Plaintiffs emphasize, under the established meaning of “internal affairs,” the case “is not concerned with a run-of-the-mill dispute about an insurer’s obligation to pay on a policy, but rather [with] whether County [sic] Mutual’s strategy of accumulating surplus is so divorced from industry and regulatory standards that it cannot be reconciled with a basic obligation to provide insurance ‘at cost.’” (Doc. 35, pg. 15).

In response, Country Mutual argues Plaintiffs cannot satisfy this exception because, contrary to the explicit statutory language, the claims alleged in the Complaint extend beyond Country Mutual's "current" officers and directors and do not "solely involve[] a claim...that relates to" Country Mutual's internal affairs or corporate governance. *See* 28 U.S.C. § 1332(d)(9)(B); (Doc. 47, pgs. 12-13). Country Mutual argues Plaintiffs' claims instead involve current, as well as former, officers and directors. (Doc. 47, pgs. 12-13). Further, Defendants argue Plaintiffs' claims involve tort, insurance, and contract law rather than "solely" corporate law. (Doc. 47, pgs. 15-19).

Here, Plaintiffs allege breaches of contract and of the covenant of good faith and fair dealing, a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, unjust enrichment, and breaches of fiduciary duties. In doing so, Plaintiffs reference the obligations and duties contained in its contractual agreements with its policyholders, as well as Defendants' duties under tort principles. (Doc. 1-1, pgs. 14-16, 19, 22-27, 31-34, 36, 38-47). Plaintiffs also cite the Illinois Insurance Code and the Illinois Consumer Fraud and Deceptive Business Practices Act, the latter of which, generally, involves Defendants' alleged deception of Plaintiffs and the general public. (Doc. 1-1, pgs. 17, 19, 25).

Even if these claims involve a common thread related to Country Mutual's alleged obligation to provide insurance to its policyholders at its cost, the proposed class action clearly does not "solely" involve claims relating to the internal affairs or governance of Country Mutual and arising under or by virtue of the laws of Illinois. *See* 28 U.S.C. § 1332(d)(9)(B). Put

differently, the alleged conduct is not peculiar to corporate relationships. *See LaPlant*, 701 F.3d at 1139; *CDX Liquidating Trust*, 640 F.3d at 212. Plaintiffs' claims, which are grounded in contract and tort principles, may be decided differently from state to state, depending upon their respective bodies of contract and tort law. *See Mindspirit*, 346 F. Supp. at 581; *see also LaPlant*, 701 F.3d at 1140 (stating lawsuits related to the meaning of insurance policy provisions "are decided every day without either judge or litigants dreaming that they need to understand or address corporate law. These are disputes about the policies, resolved under insurance law rather than...the internal-affairs doctrine. Just so with disputes about the meaning of annuity contracts."); *Mashallah, Inc. v. West Bend Mutual Ins. Co.*, 20 F.4th 311, 326 (7th Cir. 2021) ("But '[w]hatever rights a member of a mutual company has are delineated by the terms of the contract, and come from it alone.' [Citation].").

Further, Plaintiffs' claims are not peculiar to the relationship between Country Mutual and its *current* officers, directors, and shareholders. *See LaPlant*, 701 F.3d at 1139; *CDX Liquidating Trust*, 640 F.3d at 212. Rather, the individual Defendants are both *current and former* officers and directors of Country Mutual. *See LaPlant*, 701 F.3d at 1139; *CDX Liquidating Trust*, 640 F.3d at 212. Likewise, Plaintiffs are *current and former* policyholders of Country Mutual. (Doc. 1-1, pgs. 4-5). Therefore, even though mutual insurance companies are owned by their policyholders, *i.e.*, their members, the present case does not involve matters peculiar to Country Mutual and its *current* officers, directors, and shareholders.

*See LaPlant*, 701 F.3d at 1139; *CDX Liquidating Trust*, 640 F.3d at 212; *see also Mindspirit, LLC*, 346 F. Supp. at 581 (holding the internal affairs doctrine was inapplicable, where the plaintiff's breach of contract claim did not implicate the relationships of the corporation, its directors, officers, or shareholders, was not brought by those corporate individuals or on behalf of the corporation, and the breach of contract claim concerned the rights of a third party who was a corporate outsider); *Dominion Energy, Inc. v. City of Warren Police and Fire Ret. Sys.*, 928 F.3d 325, 337 (4th Cir. 2019) (finding aiding and abetting claims failed to satisfy the internal affairs exception, where they were entirely predicated on relationships other than those among or between a corporation, its directors, and its stockholders, namely, on the relationships of the corporation's CEO and board members with individuals outside the corporation). It is notable, too, that the Seventh Circuit has commented on the relationship presented by the parties under the internal affairs exception. *See LaPlant*, 701 F.3d at 1140 (stating, in the context of the "internal affairs" doctrine, "policyholders in a mutual have 'ownership' interests, but that is not enough," as other disputes involving ownership interests and money due to a creditor are "regularly resolved under the law of contract...[and] are not thought of as disputes about internal corporate affairs"); *see also Lubin v. Equitable Life Assur. Soc. of U.S.*, 326 Ill. App. 358, 368 (1945) ("[A] mutual life insurance company[s]...policy contracts create the relationship solely of debtor and creditor between it and its policyholders.").



For these reasons, the conflicts of law principles, underlying the “internal affairs” doctrine, do not apply in this case. *See LaPlant*, 701 F.3d at 1139; *CDX Liquidating Trust*, 640 F.3d at 212; *Nagy*, 79 F.3d at 576. In other words, it does not appear the State of Illinois, and only the State of Illinois, should have the authority to regulate the conduct alleged in order to avoid conflicting demands or obligations, reduce uncertainty, and predict the legal effect of corporate choices. *See LaPlant*, 701 F.3d at 1139; *CDX Liquidating Trust*, 640 F.3d at 212; *Nagy*, 79 F.3d at 576. Accordingly, the Court **FINDS** the “internal affairs” exception is inapplicable in this case.

#### **B. Voluntary Dismissal Under Rule 41(a)(2)**

As alternative relief, Plaintiffs request a dismissal under Rule 41(a)(2). Under Rule 41(a)(2), “an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.” Fed. R. Civ. P. 41(a)(2). It is an abuse of discretion to grant a motion under Rule 41(a)(2) if the defendant will suffer “plain legal prejudice” as a result of the dismissal. *See Kovalic v. DEC Intern., Inc.*, 855 F.2d 471, 473 (7th Cir. 1988) (quoting *U.S. v. Outboard Marine Corp.*, 789 F.2d 497, 502 (7th Cir. 1986)); *accord Gillaspay v. Club Newton, Inc.*, No. 20-cv-13, 2022 WL 17414984, \*1 (N.D. Ind. Dec. 5, 2022). Generally, several factors guide the court’s consideration of whether the defendant has suffered “plain legal prejudice,” including the defendant’s effort and expense in preparing for trial, the plaintiff’s excessive delay and lack of diligence in prosecuting the case, whether the explanation for the need to dismiss is sufficient, and whether a motion for summary judgment is pending. *See Kovalic*, 855 F.2d

at 473-74 (quoting *Pace v. Southern Express Co.*, 409 F.2d 331, 334 (7th Cir. 1969)); accord *Gillaspy*, No. 20-cv-13, 2022 WL 17414984, \*1.

While it is sometimes possible to amend away jurisdiction, “removal cases present concerns about forum manipulation that counsel against allowing a plaintiff’s post-removal amendments to affect jurisdiction.” See *In re Burlington Northern Santa Fe Ry. Co.*, 606 F.3d 379, 381 (7th Cir. 2010) (citing *Rockwell Int’l Corp. v. U.S.*, 549 U.S. 457, 473-74, n. 6 (2007)). As such, the “well established rule,” including in the context of the Class Action Fairness Act (“CAFA”), is that jurisdiction is determined at the time of removal and nothing filed thereafter may affect jurisdiction. See *id.* at 380-81 (citing *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 293 (1938); *In re Shell Oil*, 970 F.2d 355, 356 (7th Cir. 1992); *Bullard v. Burlington Northern Santa Fe Ry. Co.*, 535 F.3d 759, 762 (7th Cir. 2008)); *Altoum v. Airbus S.A.S.*, No. 10-cv-467, 2010 WL 3700819, \*2 (N.D. Ill. Sept. 19, 2010).

Plaintiffs admit that they seek “the option of refile[ing] their Complaint[,] without naming Robert H. Bateman as a defendant,” in state court. (Doc. 35, pg. 15). In doing so, Plaintiffs argue their claims are not dependent upon Defendant Bateman and, in fact, that “many members of the proposed class do not possess individual claims...against Bateman[] because his time with Country Mutual was relatively short.” (Doc. 35, pg. 15). According to Plaintiffs, the relevant questions of law in this case “should be decided by a state court.” (Doc. 35, pg. 15). Further, Plaintiffs argue Defendants will not be prejudiced by a grant of this requested relief, as the case was initiated in

November 2022, only an Answer to the Complaint and Notice of Removal has been filed, no discovery has been exchanged, and Plaintiffs have diligently prosecuted their claims. (Doc. 35, pgs. 16-17).

In response, Defendants take issue with Plaintiffs' reasons for seeking relief under Rule 41(a)(2). Country Mutual argues Plaintiffs' alternative request for relief is "procedural gamesmanship" that seeks to deprive it of access to a federal forum. (Doc. 47, pg. 2). Likewise, the individual Defendants argue Plaintiffs should not be allowed to forum shop by dismissing Defendant Bateman, thereby prejudicing Plaintiffs by destroying minimal diversity jurisdiction and depriving them of a statutory right to access the federal courts following a proper removal. (Doc. 48, pgs. 1-2, 9-13, 18).

Here, Plaintiffs are correct that the case is still in its early stages, such that neither Defendants' effort and expense in trial preparation nor Plaintiffs' speed in prosecuting the case weigh in favor of denying the alternative relief sought under Rule 41(a)(2). *See Kovalic*, 855 F.2d at 473-74; *accord Gillaspay*, No. 20-cv-13, 2022 WL 17414984, \*1. Also, there is no motion for summary judgment pending. *See Kovalic*, 855 F.2d at 473; *accord Gillaspay*, No. 20-cv-13, 2022 WL 17414984, \*1. However, the Court finds this issue must be decided based on the remaining consideration, namely, whether Plaintiffs' explanation for the need to dismiss this action is sufficient. *See Kovalic*, 855 F.2d at 474 ("[T]he enumeration of the factors to be considered...is not equivalent to a mandate that each and every factor be resolved in favor of the moving party before dismissal is appropriate. It is rather simply a guide for the trial

judge, in whom the discretion ultimately rests.’ [Citation].”).

By their own admission, Plaintiffs seek the alternative relief under Rule 41(a)(2) to strike Defendant Bateman from the Complaint and refile this case in the Circuit Court of St. Clair County. (Doc. 35, pg. 15). In doing so, Plaintiffs merely indicate that the relevant questions of law in this case “should be decided by a state court.” (Doc. 35, pg. 15). However, the Court has now found that the case was properly removed from the Circuit Court of St. Clair County and that no exception to the Court’s jurisdiction supports a remand. Therefore, it is undeniable that a grant of the alternative relief under Rule 41(a)(2), based on the explanation provided by Plaintiffs, would operate to deprive Defendants of their statutory right to proceed in federal court after a proper removal. In finding that this would constitute “plain legal prejudice,” the Court notes it is acting consistent with the Seventh Circuit’s “well established rule” that jurisdiction, even in the context of CAFA, is determined at the time of removal and cannot be affected by subsequent filings. *See Burlington*, 606 F.3d at 380-81; *Altoum*, No. 10-cv-467, 2010 WL 3700819, \*2; *see also Cedar Lodge Plantation, L.L.C. v. CSHV Fairway View I, L.L.C.*, 768 F.3d 425, 427 (5th Cir. 2014) (“[W]hat matters for the purpose of determining CAFA jurisdiction is ‘the status of an action when filed — not how it subsequently evolves.’”); *Bullard v. Burlington Northern Santa Fe Ry. Co.*, No. 7-cv-6883, 2008 WL 4104355, \*8 (N.D. Ill. Aug. 29, 2008) (stating, in the context of the defendants’ concern that the dismissal of fifty-three plaintiffs would allow the remaining plaintiffs to

defeat federal jurisdiction under CAFA, the subsequent voluntary dismissal of certain plaintiffs would have no effect on the court's subject matter jurisdiction because the question of whether the defendants satisfied the requirements of CAFA is determined at the time of removal).

Indeed, the Court is acting consistent with the decisions of other courts that have similarly considered this issue. *See Bullard*, No. 7-cv-6883, 2008 WL 4104355, \*10 (concluding a grant of the plaintiffs' motion to dismiss the claims of fifty-three plaintiffs under Rule 41(a)(2) would constitute "plain legal prejudice" to the defendants, where, *inter alia*, "Plaintiffs had to have understood, when filing a single mass action complaint in state court on behalf of 144 individuals, that they would be subject to federal jurisdiction under CAFA if the defendants chose to remove it...[and] [h]aving lost that gamble, [Plaintiffs] should not now be permitted to file a new, CAFA-proof action in a state court venue they believe would be more favorable to them, forcing defendants to litigate duplicative actions"); *Tillman v. BNSF Ry. Co.*, 33 F.4th 1021, 1029 (8th Cir. 2022) ("Our settled rule is that a plaintiff seeking voluntary dismissal without prejudice must give a reason other than 'merely to seek a more favorable forum.' [Citations]."); *Thatcher v. Hanover Ins. Group, Inc.*, 659 F.3d 1212, 1214-15 (8th Cir. 2011) (stating the rule against seeking a more favorable forum through voluntary dismissals and finding, in the context of a removal under CAFA, the district court erred by failing to address the plaintiff's purpose in seeking a voluntary dismissal, where the plaintiff's "expressed intent" was to amend the complaint in order to avoid federal

jurisdiction); *Blaes v. Johnson & Johnson*, 858 F.3d 508, 512, 515 (8th Cir. 2017) (stating “[a] plaintiff cannot use a motion to voluntarily dismiss to seek a more favorable forum”); *Cedar Lodge Plantation, L.L.C.*, 768 F.3d at 429 (“Allowing Cedar Lodge to avoid federal jurisdiction through a post-removal amendment would turn the policy underlying CAFA on its head.”); *McEachern v. Whirlpool Corp.*, No. 19-cv-13084, 2020 WL 13499903, \*1 (E.D. Mich. Jan. 15, 2020) (denying the plaintiff’s motion to voluntarily dismiss the case under Rule 41(a)(2), where the plaintiff “expressly state[d]” a dismissal was sought to circumvent CAFA jurisdiction and to have the case heard in state court); *Loper v. Lifeguard Ambulance Serv., LLC*, No. 19-cv-583, 2020 WL 8617215, \*10 (N.D. Al. Jan. 10, 2020) (finding it would constitute “clear legal prejudice” to allow the plaintiff to dismiss her complaint in order to file a new class action, admittedly limited to Alabama citizens for purposes of the “home-state” exception to federal jurisdiction, in Alabama state court).

For these reasons, the Court **DENIES** the alternative relief under Rule 41(a)(2).

### **III. Conclusion**

For the reasons explained above, the Motion to Remand or, in the Alternative, to Voluntarily Dismiss Without Prejudice is **DENIED**. In light of this ruling, the Joint Motion for Stay of Mailing of Any Certified Order of Remand is **DENIED as moot**.

**SO ORDERED.**

Dated: June 26, 2023

/s/ David W. Dugan  
DAVID W. DUGAN

45a

United States District Judge

46a

**APPENDIX C**

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**UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

**Chicago, Illinois 60604**

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October 31, 2023

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**Before**

DIANE P. WOOD, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

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No. 23-2507

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

*Plaintiffs-Appellants,*

*v.*

COUNTRY MUTUAL INSURANCE COMPANY, et  
al,

*Defendants-Appellees.*

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Appeal from the United States District Court  
for the Southern District of Illinois.

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47a

No. 3:22-cv-03064-DWD

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David W. Dugan, *Judge*.

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**ORDER**

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Defendants-appellees filed a petition for rehearing and rehearing *en banc* on October 16, 2023. No judge in regular active service has requested a vote on the petition for rehearing *en banc*, and all members of the original panel have voted to deny panel rehearing. The petition for rehearing and rehearing *en banc* is therefore DENIED.

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**APPENDIX D**

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IN THE CIRCUIT COURT  
TWENTIETH JUDICIAL CIRCUIT  
ST. CLAIR COUNTY, ILLINOIS

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No: 22LA0970

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**JURY DEMANDED**

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ANGELA M. SUDHOLT, KYHL A. SUDHOLT,  
KARA JONES, AND BENJAMIN JONES,  
INDIVIDUALLY AND ON BEHALF OF ALL  
OTHERS SIMILARLY SITUATED,

Plaintiffs,

v.

COUNTRY MUTUAL INSURANCE COMPANY  
AND ITS OFFICERS AND DIRECTORS, JAMES  
MELVIN JACOBS, RICHARD LOUIS GUEBERT,  
JR., JENNIFER LYNN VANCE, MILES THORNE  
KILCOIN, ROBERT HAROLD BATEMAN, PHILIP  
TIM NELSON, BRIAN KEITH DUNCAN,  
RICHARD KENNETH CARROLL, LEONARD  
BRADLEY DAUGHERTY, ROBERT EDWIN  
KLEMM, JOHN LARRY MILLER, GARY ALLEN  
SPECKHART, MARK ROGER TUTTLE, KENNETH  
CHARLES CRIPE, TAMARA DEE HALTERMAN,  
STEVEN PATRICK KOELLER, KEITH RANDALL

MUSSMAN, STEVEN RAY STALLMAN, EARL HARMON WILLIAMS, LARRY WILLIAM DALLAS, ROBERT JOHN FECHT, JEFFREY ROBERT KIRWAN, DON EUGENE MEYER, MARK FREDERICK REICHERT, KENTON LLOYD THOMAS, DENNIS WAYNE GREEN, STEVEN WILLIAM FOUREZ, DAVID LEE SERVEN, BRADLEY ALLEN TEMPLE, RANDY JOSEPH POSKIN, MICHELE RENEE AAVANG, DAVID LEE MEISS, CHAD KENNETH SCHUTZ, STEVEN GENE HOSSELTON, TROY ARNOLD UPHOFF, CHRISTOPHER BRUCE HAUSMAN, DALE BRYAN HADDEN, WAYNE ROY ANDERSON, SCOTT FRANCIS HALPIN, DENNIS LEE HUGES, ROBERT HENRY GEHRKE, JAMES ALFRED ANDERSON, CHARLES MICHAEL CAWLEY, DARRYL ROBERT BRINKMANN, J.C. POOL, AND TERRY ALLEN POPE GEHRKE, JAMES ALFRED ANDERSON, CHARLES MICHAEL CAWLEY, DARRYL ROBERT BRINKMANN, J.C. POOL, AND TERRY ALLEN POPE,

Defendants.

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**COMPLAINT**

NOW COME Plaintiffs, Angela M. Sudholt, Kyhl A. Sudholt, Kara Jones, and Benjamin Jones, individually and on behalf of all others similarly situated, against Defendant Country Mutual Insurance Company and its officers and directors James Melvin Jacobs, Richard Louis Guebert, Jr., Jennifer Lynn Vance, Miles Thorne Kilcoin, Robert

Harold Bateman, Philip Tim Nelson, Brian Keith Duncan, Richard Kenneth Carroll, Leonard Bradley Daugherty, Robert Edwin Klemm, John Larry Miller, Gary Allen Speckhart, Mark Roger Tuttle, Kenneth Charles Cripe, Tamara Dee Halterman, Steven Patrick Koeller, Keith Randall Mussman, Steven Ray Stallman, Earl Harmon Williams, Larry William Dallas, Robert John Fecht, Jeffrey Robert Kirwan, Don Eugene Meyer, Mark Frederick Reichert, Kenton Lloyd Thomas, Dennis Wayne Green, Steven William Fourez, David Lee Serven, Bradley Allen Temple, Randy Joseph Poskin, Michele Renee Aavang, David Lee Meiss, Chad Kenneth Schutz, Steven Gene Hosselton, Troy Arnold Uphoff, Christopher Bruce Hausman, Dale Bryan Hadden, Wayne Roy Anderson, Scott Francis Halpin, Dennis Lee Hughes, Robert Henry Gehrke, James Alfred Anders, Charles Michael Cawley, Darryl Robert Brinkmann, J.C. Pool, and Terry Allen Pope as Individual Defendants, and states as follows:

#### **NATURE OF THE CASE**

1. Country Mutual Insurance Company (“Country Mutual”) is an Illinois mutual insurance corporation.
2. As a mutual insurer in Illinois, both Country Mutual and its officers and directors have a fiduciary obligation under Illinois law to act to maintain and distribute any and all corporate profits *exclusively* for the benefit of the shareholders. *Lower v. Lanark Mutual Fire Insurance Co.*, 114 Ill. App.3d 462 (1983).
3. The essence of mutual insurance is that mutual insurance is insurance at cost. “The furnishing of insurance to members at cost is the chief aim and function of a mutual insurance company, and any

company which does not return to the policyholders or members the excess of the premium over the cost cannot be said to be a mutual insurance company.” *Kimberly-Clark v. Factory Mutual*, 566 F.3d 541 (5th Cir. 2009) (citing *Am. Ins. Co. of Tex. v. Thomas*, 146 F.2d 434, 436 (5th Cir. 1945)).

4. For the last decade, Country Mutual has knowingly and intentionally failed to meet its obligation of providing insurance at cost.

5. For the last decade, Country Mutual has knowingly and intentionally failed to meet its obligation of operating in a manner reasonably calculated to provide insurance at cost.

6. Plaintiffs seek a remedy against Country Mutual and its officers and directors for this failure to satisfy Country Mutual’s fundamental purpose and legal obligations as an Illinois mutual insurance company.

**PARTIES: PLAINTIFFS AND CORPORATE  
DEFENDANT**

7. Plaintiff Angela M. Sudholt is a natural person and citizen of the State of Illinois. Her permanent residence is in Trenton, Illinois. Plaintiff Angela M. Sudholt is a former policyholder of a Country Mutual insurance policy. Ms. Sudholt purchased her policy in Breese, Illinois, located in Clinton County in 2010. Ms. Sudholt has been a Country Mutual policyholder from 2010 to 2022. During this period, she paid all premiums and has never had a lapse in coverage.

8. Plaintiff Kyhl A. Sudholt is a natural person and citizen of the State of Illinois. His permanent residence is in Trenton, Illinois. Plaintiff Kyhl A. Sudholt is a former policyholder of a Country Mutual

insurance policy. Mr. Sudholt purchased his policy in Breese, Illinois, located in Clinton County. Mr. Sudholt has been a Country Mutual policyholder from 2010 to 2022. During this period, he paid all premiums and has never had a lapse in coverage.

9. Plaintiffs Angela and Kyhl Sudholt will hereinafter collectively be referred to as the “Sudholt Plaintiffs.”

10. Plaintiff Kara Jones is a natural person and citizen of the State of Illinois. Her permanent residence is in O’Fallon, Illinois. Plaintiff Kara Jones is a current policyholder of a Country Life Insurance Company policy. Ms. Jones purchased her policy in O’Fallon, Illinois, located in St. Clair County. Ms. Jones has been a Country Life Insurance Company policyholder from 2015 to the present. During this period, she paid all premiums and has never had a lapse in coverage.

11. Plaintiff Benjamin Jones is a natural person and citizen of the State of Illinois. His permanent residence is in O’Fallon, Illinois. Plaintiff Benjamin Jones is a current policyholder of a Country Life Insurance Company policy. Mr. Jones purchased his policy in O’Fallon, Illinois, located in St. Clair County. Mr. Jones has been a Country Life Insurance Company policyholder from 2010 to the present. During this period, he paid all premiums and has never had a lapse in coverage.

12. Plaintiffs Kara and Benjamin Jones will hereinafter collectively be referred to as the “Jones Plaintiffs.”

13. Defendant Country Mutual is an Illinois corporation, with its principal place of business

located at 1701 Towanda Avenue, Bloomington, Illinois, 61701.

**PARTIES: CURRENT AND FORMER  
OFFICERS OF COUNTRY MUTUAL**

14. Defendant James Melvin Jacobs (“Jacobs”) has served as the Chief Executive Officer of Country Mutual from 2018 to the present.

15. Jacobs served as the General Counsel, Secretary, & Chief Legal Officer of Country Mutual during the years 2012 to 2017.

16. Defendant Richard Louis Guebert, Jr. (“Guebert”) has served as the President of Country Mutual and a director of Country Mutual from 2013 to the present.

17. Guebert served as a Vice President of Country Mutual and a director of Country Mutual during 2012.

18. Defendant Jennifer Lynn Vance (“Vance”) has served as the Executive Vice President, Secretary, and General Counsel of Country Mutual from 2019 to the present.

19. Vance was General Counsel, Secretary, and Chief Legal Officer of Country Mutual during 2018.

20. Defendant Miles Thorne Kilcoin (“Kilcoin”) has served as Executive Vice President and Chief Financial Officer of Country Mutual from 2016 to the present.

21. During 2015, Kilcoin served as the Interim Chief Financial Officer of Country Mutual.

22. During the years 2013 and 2014, Defendant Robert Harold Bateman (“Bateman”) served as Executive Vice President and Chief Financial Officer of Country Mutual.

23. During the year 2012, Defendant Philip Tim Nelson (“Nelson”) served as the President of Country Mutual and a director of Country Mutual.

24. Defendants Jacobs, Guebert, Vance, Kilcoin, Bateman, and Nelson have all been identified as corporate officers in one or more Annual Statements filed by Country Mutual.

**PARTIES: CURRENT AND FORMER  
DIRECTORS OF COUNTRY MUTUAL**

25. Country Mutual does not disclose to its policyholders the number of officers and directors of Country Mutual and its affiliated companies.

26. Country Mutual does not disclose to its policyholders a full listing of the names of all officers and directors of Country Mutual and its affiliated companies.

27. Defendant Brian Keith Duncan (“Duncan”) has served as a Vice President, director and/or trustee of Country Mutual from 2017 to the present.

28. Defendant Richard Kenneth Carroll (“Carroll”) has served as a director and/or trustee of Country Mutual from 2020 to the present.

29. Defendant Leonard Bradley Daugherty (“Daugherty”) has served as a director and/or trustee of Country Mutual from 2021 to the present.

30. Defendant Robert Edwin Klemm (“Klemm”) has served as a director and/or trustee of Country Mutual from 2017 to the present.

31. Defendant John Larry Miller (“Miller”) has served as a director and/or trustee of Country Mutual from 2013 to the present.



32. Defendant Gary Allen Speckhart (“Speckhart”) has served as a director and/or trustee of Country Mutual from 2013 to the present.

33. Defendant Mark Roger Tuttle (“Tuttle”) has served as a director and/or trustee of Country Mutual from 2019 to the present.

34. Defendant Kenneth Charles Cripe (“Cripe”) has served as a Director and/or Trustee of Country Mutual from 2018 to the present.

35. Defendant Tamara Dee Halterman (“Halterman”) has served as a Director and/or Trustee of Country Mutual from 2015 to the present.

36. Defendant Steven Patrick Koeller (“Koeller”) has served as a Director and/or Trustee of Country Mutual from 2019 to the present.

37. Defendant Keith Randall Mussman (“Mussman”) has served as a Director and/or Trustee of Country Mutual from 2020 to the present.

38. Defendant Steven Ray Stallman (“Stallman”) has served as a Director and/or Trustee of Country Mutual from 2014 to the present.

39. Defendant Earl Harmon Williams (“Williams”) has served as a Director and/or Trustee of Country Mutual from 2014 to the present.

40. Defendant Larry William Dallas (“Dallas”) has served as a Director and/or Trustee of Country Mutual from 2020 to the present.

41. Defendant Robert John Fecht (“Fecht”) has served as a Director and/or Trustee of Country Mutual from 2019 to the present.

42. Defendant Jeffrey Robert Kirwan (“Kirwan”) has served as a Director and/or Trustee of Country Mutual from 2015 to the present.

43. Defendant Don Eugene Meyer (“Meyer”) has served as a Director and/or Trustee of Country Mutual from 2020 to the present.

44. Defendant Mark Frederick Reichert (“Reichert”) has served as a Director and/or Trustee of Country Mutual from 2016 to the present.

45. Defendant Kenton Lloyd Thomas (“Thomas”) has served as a Director and/or Trustee of Country Mutual from 2014 to the present.

46. Defendant Dennis Wayne Green (“Green”) served as a Director and/or Trustee of Country Mutual during the years 2012 to 2020.

47. Defendant Steven William Fourez (“Fourez”) served as a Director and/or Trustee of Country Mutual during the years 2016 to 2019.

48. Defendant David Lee Serven (“Serven”) served as a Director and/or Trustee of Country Mutual during the years 2012 to 2019.

49. Defendant Bradley Allen Temple (“Temple”) served as a Director and/or Trustee of Country Mutual during the years 2012 to 2019.

50. Defendant Randy Joseph Poskin (“Poskin”) served as a Director and/or Trustee of Country Mutual during the years 2012 to 2019.

51. Defendant Michele Renee Aavang (“Aavang”) served as a Director and/or Trustee of Country Mutual during the years 2015 to 2018.

52. Defendant David Lee Meiss (“Meiss”) served as a Director and/or Trustee of Country Mutual during the years 2012 to 2018.

53. Defendant Chad Kenneth Schutz (“Schutz”) served as a Director and/or Trustee of Country Mutual during the years 2012 to 2018.

54. Defendant Steven Gene Hosselton (“Hosselton”) served as a Director and/or Trustee of Country Mutual during the years 2012 to 2017.

55. Defendant Troy Arnold Uphoff (“Uphoff”) served as a Director and/or Trustee of Country Mutual during the years 2012, 2015, and 2016.

56. Defendant Christopher Bruce Hausman (“Hausman”) served as a Director and/or Trustee of Country Mutual during the years 2012, 2014 to 2015.

57. Defendant Dale Bryan Hadden (“Hadden”) served as a Director and/or Trustee of Country Mutual during the years 2012 to 2015.

58. Defendant Wayne Roy Anderson (“Wayne Anderson”) served as a Director and/or Trustee of Country Mutual during the years 2012 to 2014.

59. Defendant Scott Francis Halpin (“Halpin”) served as a Director and/or Trustee of Country Mutual during the years 2012 to 2014.

60. Defendant Dennis Lee Hughes (“Hughes”) served as a Director and/or Trustee of Country Mutual during the years 2013 and 2014.

61. Defendant Robert Henry Gehrke (“Gehrke”) served as a Director and/or Trustee of Country Mutual during the years 2012 to 2014.

62. Defendant James Alfred Anderson (“James Anderson”) served as a Director and/or Trustee of Country Mutual during the years 2012 and 2013.

63. Defendant Charles Michael Cawley (“Cawley”) served as a Director and/or Trustee of Country Mutual during the years 2012 and 2013.

64. Defendant Darryl Robert Brinkmann (“Brinkmann”) served as a Director and/or Trustee of Country Mutual during the years 2012 and 2013.

65. Defendant J.C. Pool (“Pool”) served as a Director and/or Trustee of Country Mutual during the year 2012.

66. Defendant Terry Allen Pope (“Pope”) served as a Director and/or Trustee of Country Mutual during the year 2012.

#### **JURISDICTION AND VENUE**

67. Jurisdiction is proper in Illinois pursuant to 735 ILCS 5/209(b)(3) as Country Mutual is a corporation organized under the laws of the State of Illinois and its principal place of business and domicile is in Illinois.

68. Venue is proper in the Circuit Court for the Twentieth Judicial Circuit in St. Clair County, Illinois under the Illinois Code of Civil Procedure, 735 ILCS 5/2-101 and 5/2-102 as Defendants routinely transact substantial business in St. Clair County Illinois.

69. The Jones Plaintiffs are residents of St. Clair County, Illinois.

70. Country Mutual entered into a contract of insurance with the Jones Plaintiffs in St. Clair, Illinois.

**FACTS SUPPORTING THE COMPLAINT**

**Country Mutual is a Mutual Insurance Company that Operates as Part of a Family of Affiliated Entities**

71. Country Mutual is a privately-owned mutual insurance company.

72. Country Mutual invests in and owns other companies that it refers to as its affiliates and subsidiaries.

73. “Country Financial” is the marketing name for the “Country Financial family of affiliated companies which include Country Life Insurance Company (hereinafter “Country Life”), Country Mutual Insurance Company, and their respective subsidiaries.”<sup>1</sup>

74. Country Mutual is a member of an insurance holding company group which consists of six insurance companies in addition to several non-insurance entities. See **Exhibit A**, Country Mutual Consolidated Financial Statement for Years 2020-21. Country Financial’s noninsurance subsidiaries include Country Trust Bank and Country Capital Management Company.<sup>2</sup>

75. The Country Financial insurance holding company group includes Country Casualty Insurance Company (“Country Casualty”), Country Preferred Insurance Company (“Country Preferred”), and Cotton States Life Insurance Company (“Cotton Life”).

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<sup>1</sup> [www.countryfinancial.com](http://www.countryfinancial.com)

<sup>2</sup> <https://www.countryfinancial.com/en/about-us/who-we-are/our-history.html>

76. Country Casualty, Country Preferred, and Cotton Life are all wholly owned subsidiaries of Country Mutual.

77. Country Casualty is an Illinois domiciled stock company.

78. Country Preferred is an Illinois domiciled stock company.

79. Cotton Life is a Georgia domiciled stock company.

80. Country Mutual does not have a separate website from Country Financial. All marketing materials and messages are contained on Country Financial's website.

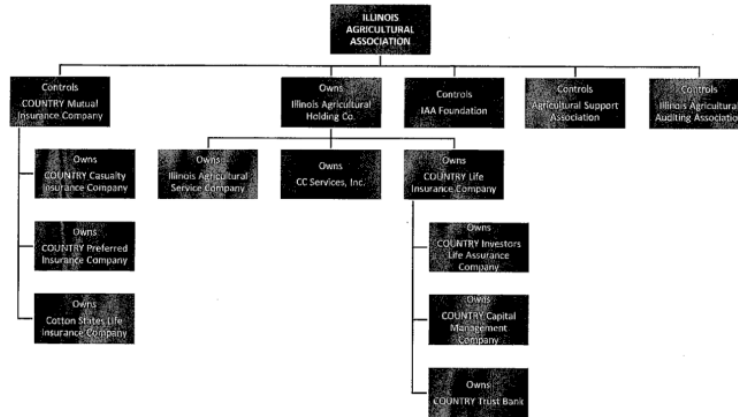
81. Country Financial's parent company is Illinois Agricultural Association, (*see* Ex. A), more commonly known as Illinois Farm Bureau ("IFB").

82. The Illinois Agricultural Association also owns the Illinois Agricultural Holding Company, which in turn owns Country Life.

83. Country Life is therefore affiliated with Country Mutual under the Country Financial "family of companies."

84. The following chart depicts Country Financial's organization structure in 2021:

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See **Exhibit B**, Country Mutual 2021 Annual Statement, Schedule Y.

85. As per Country Mutual’s 2021 annual statement disclosures, “The Company is a member of an insurance holding company group which consists of six insurance companies in addition to several non-insurance entities. The ultimate controlling company is the Illinois Agricultural Association. Control among group members is maintained through a combination of factors including common management, interlocking boards of directors, and stock ownership.” See **Exhibit A**.

86. Country Mutual sells property and casualty insurance. Country Mutual and its subsidiaries, Country Preferred and Country Casualty, “collectively, offer auto, home, farm, and business insurance.”<sup>3</sup> The companies provide coverage for more than 1.4 million vehicles and 700,000 homes.<sup>4</sup>

<sup>3</sup> <https://www.countryfinancial.com/en/about-us/who-we-are/our-history.html>

<sup>4</sup> *Id.*

87. Country Mutual and Country Preferred require prospective policyholders to become members of IFB and pay annual dues to IFB in order to purchase and maintain policies with Country Mutual and Country Preferred.<sup>5</sup>

**As a Mutual Insurance Company, Country  
Mutual Owes a Duty to its  
Policyholders/Members to Provide Insurance  
At Cost**

88. By operating as a mutual insurance company, rather than as a stock insurance company, Country Mutual is obligated to act solely for the benefit of its policyholders.

89. The essential nature of Country Mutual as a mutual insurance company is that the excess in the premiums paid over the actual cost of providing such insurance as ascertained by the premiums paid versus the liabilities, shall be returned to the policyholder.

90. Because a mutual insurance company providing auto, farm, home, and business insurance is “mutually” owned by the insurance policyholders rather than by stockholders, the defining objective of a mutual insurance company is to provide insurance at cost.

91. Although Country Mutual does not have to answer to shareholders, as a mutual insurer in Illinois, both Country Mutual and its officers and directors have a fiduciary obligation under Illinois law to act to maintain and distribute any and all corporate

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<sup>5</sup> [www.countryfinancial.com/SiteController?url=/customerSupport/@quote/farmBureauIL](http://www.countryfinancial.com/SiteController?url=/customerSupport/@quote/farmBureauIL)



profits *exclusively* for the benefit of the customer-owners of the company.

92. This obligation is embedded in every contractual agreement between Country Mutual and its policyholders.

93. This obligation cannot be negated or restricted by language in a contractual agreement between Country Mutual and its policyholders.

94. If a mutual insurance company uses surplus funds to serve its own means or those of its officers and directors, rather than providing insurance at cost, then the mutual insurance company is not acting as a mutual insurance company and is violating Illinois law.

95. Despite the foregoing obligations imposed on Country Mutual and its officers and directors by operation of Illinois law, Country Mutual officers and directors do not maintain and distribute Country Mutual corporate funds exclusively for the benefit of its policyholders.

96. Despite claiming to be a mutual insurance company that operates for the mutual benefit of its policyholders, Country Mutual is the sole owner of three stock insurance companies: Country Preferred, Country Casualty, and Cotton Life.

97. A mutual insurance company cannot operate for the *exclusive benefit* of its policyholders if those policyholders' benefits do not fully account for the profits derived from the stock insurance company subsidiaries of the mutual insurance company.

98. Even if the duties of Country Mutual and its officers and directors did not exist as a matter of law due to Country Mutual's legal status as a mutual

insurance company, they would arise as the result of the contractual promises made by Country Mutual to its policyholders and the special circumstances of the relationship between Country Mutual, its officers and directors, and its policyholders.

99. The following language regarding the Sudholt Plaintiffs' rights as Country Mutual policyholders/members (hereinafter "policyholder" or "Member") is contained in the "General Policy Conditions" section of the Sudholt Plaintiffs' insurance policy:

**16. Mutuality Of Policy.** By accepting this policy the policyholder becomes a member of Country Mutual Insurance Company with all the rights and privileges of a member. These rights and privileges are as provided in the Country Mutual By-Laws in force at the time this policy takes effect, or that may become effective during the continuance of this policy. When this policy is either lapsed or terminated, **you** will cease to be a member of Country Mutual and **your** rights and interests in Country Mutual will end. An **insured** must cooperate with **us** by doing all that is possible to prevent losses. The purpose is to reduce the cost of insurance to the lowest point consistent with solvency and sound insurance protection.

**17. Policy Non-Assessable.** This policy will be without contingent liability and is non-assessable.

**18. Participation In Savings And Earnings.** This policy is on the mutual or

participating plan. This means that during the continuance of this policy **you** will be entitled to participate in Country Mutual's savings and earnings as determined by the Board of Directors.

**19. Annual Meeting.** The annual meeting of the members will be held at the principal location of Country Mutual unless a different place is fixed by the Board of Directors. The annual meeting will be held each year on a day and hour set by the Board of Directors. The notice of any meeting of members will fix the hour, day and place of that meeting.

See **Exhibit C** (Copy of Sudholt Plaintiffs' Country Mutual Policy).

100. The plain language of the Country Mutual policy conditions states that Country Mutual Members have "rights and privileges" as provided by the Country Mutual By-Laws, and those Members are entitled to participate in Country Mutual's "Savings and Earnings" program "**as determined by the Board of Directors.**"

101. Per the plain language of Country Mutual's own policy, an agency relationship was created between Country Mutual Members and the Country Mutual Board of Directors.

102. Per the plain language of Country Mutual's own policy, Country Mutual required its Members to place its trust and confidence in its Board of Directors regarding Members' entitlement to participate in Country Mutual's savings and earnings program.

103. Per the plain language in Country Mutual's own policy, Members, including Plaintiffs, were

reliant on the Board of Directors' discretion in receiving "savings and earnings."

104. Per the plain language in Country Mutual's own policy, Country Mutual placed its Board of Directors in a position of superiority and influence over its Members by having the Board of Directors exercise discretion in their role as the agents of Country Mutual Members.

105. The position of superiority and influence Country Mutual's Board of Directors exercised over its Members provides an alternative basis for the Board of Directors' fiduciary duty on behalf of Country Mutual Members. *See Fichtel v. Bd of Directors*, 389 Ill. App. 3d 951, 962-63 (2009) ("A fiduciary duty may be created, however, where one party places trust and confidence in another, thereby placing the latter party in a position of influence and superiority over the former. This position of superiority may arise by reason of friendship, agency, or experience.") (internal citations and quotation marks omitted).

106. While the Jones Plaintiffs hold policies with Country Life rather than Country Mutual, the Jones Plaintiffs' policy similarly provides that their "Policy is Participating." *See Exhibit D*, Copy of Jones Plaintiffs' Country Life Policy. As policyholders of a Participating Policy with Country Life, the Jones Plaintiffs are similarly entitled to the return of excess in the premiums in the form of dividends from Country Mutual and/or the "Country Financial family of affiliated companies."

**As a Direct Consequence of Country Mutual's Failure to Provide Insurance at Cost, Country Mutual's Financial Surplus and Level of**

### **Capitalization Grossly Exceeds Regulatory Requirements and Industry Averages**

107. Regulators impose risk-based capital (“RBC”) requirements to ensure that insurance companies can fulfill their financial obligations to policyholders.<sup>6</sup>

108. The RBC requirement is a statutory minimum level of capital that is based on two factors: 1) an insurance company’s size; and 2) the inherent riskiness of its financial assets and operations.<sup>7</sup>

109. The Risk-Based Capital metric was developed by the National Association of Insurance Commissioners (“NAIC”) to help insurance regulators ensure that insurance companies can fulfill their financial obligations to policyholders.

110. Illinois’s Risk-Based Capital Law, 215 ILCS 5/35A, is part of the Illinois Insurance Code.

111. 215 ILCS 5/35A incorporates and adopts the NAIC’s Risk-Based Capital metric and the NAIC’s schedule of RBC ratios that trigger regulatory intervention.

112. The Risk-Based Capital metric was developed by NAIC in the 1990s as a superior alternative to fixed capital requirements for insurance companies.

113. Under fixed capital standards, every insurance company was required to hold the same minimum amount of capital, regardless of its financial condition, size, and risk profile.

114. One problem with fixed capital standards was that they did not address the variation in financial

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<sup>6</sup> <https://content.naic.org/cipr-topics/risk-based-capital>

<sup>7</sup> *Id.*

risks across different insurance sectors and companies.

115. Another problem with fixed capital standards was that they did not adequately factor in the size of the insurance companies when setting the appropriate minimum amount of capital.

116. Risk-based capital requirements address both of these problems by explicitly factoring in an insurance company's size and the inherent riskiness of an insurance company's financial assets and operations.

117. Risk-based capital requirements are generally reported in terms of RBC ratios.

118. Different regulatory interventions are triggered when an insurance company's RBC ratio dips below certain levels.

119. RBC ratios allow the financial health of different insurance companies to be compared in a consistent manner.

120. RBC ratios are obtained by dividing an insurance company's total adjusted capital by its risk-based capital.

121. In Illinois, a property and casualty insurer's amount of risk-based capital is determined by the RBC formula, which in turn is determined by the instructions adopted by NAIC. *See* 215 ILCS 5/35 A-5.

122. The RBC formula takes into account asset risks, credit risks, underwriting risks, and "all other business risks and other relevant risks set forth in the RBC instructions." 215 ILCS 5/35A-10(c).

123. In Illinois, "total adjusted capital" means the sum of (1) an insurer's statutory capital and surplus

and (2) any other items that are included in the NAIC formula for total adjusted capital. *See* 215 ILCS 5/35A-35.

124. All else being equal, an Illinois insurance company with a larger surplus will have a larger amount of total adjusted capital.

125. All else being equal, an Illinois insurance company with a larger surplus will have a higher RBC ratio.

126. In Illinois, the first level of regulatory intervention for lack of adequate capitalization occurs when a property and casualty insurance company's RBC ratio drops below 2.0. *See* 215 ILCS 5/35A-5; 215 ILCS 5/35A-5.

127. Over the last 10 years, the average property and casualty insurance company in the United States has maintained an RBC ratio of roughly 6.0.

128. Thus, the average property and casualty insurance company maintains three times as much total adjusted capital (when compared to the company's risk-based capital) as required by the NAIC and the Illinois Insurance Code.

129. It is possible that a mutual insurance company and its board of directors, acting in good faith and fulfillment of fiduciary duties, might occasionally overestimate the amount of annual policy premiums that must be retained in order to meet regulatory reserve and capitalization requirements.

130. But if a mutual insurance company's board of directors is acting within its authority to provide policyholders with insurance coverage at cost, the board is not permitted to unreasonably retain excessive premiums.

131. For instance, if a board of directors learns that the mutual insurance company's surplus has increased for two consecutive years and reached a size that is significantly larger than regulatory requirements and industry averages, a board would be compelled by Illinois law and the board's duties of good faith, care, and loyalty to adjust its projections and prevent the total surplus and the company's RBC ratio from increasing further.

132. Furthermore, if a board of directors engaged in a good-faith decision-making process that relied on an overly conservative business projection in one particular year and consequently retained an excess amount of annual premiums, the board would appropriately adjust its decision-making process in the following year.

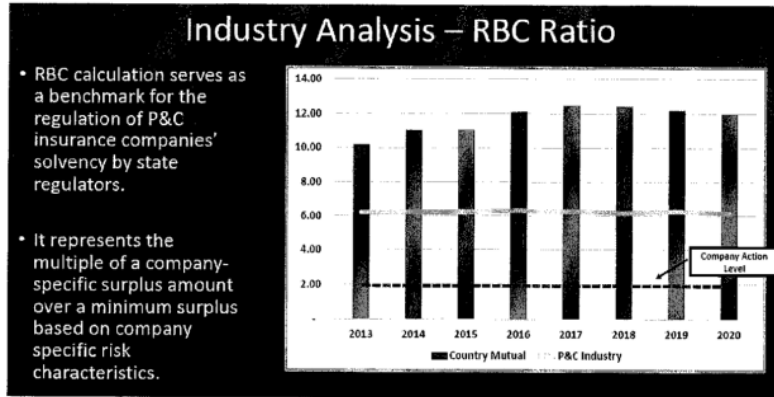
133. Thus, once a mutual insurance company's surplus and RBC ratio has significantly outpaced regulatory requirements and the industry average, a mutual insurance company and board of directors acting in good faith would make decisions that permit the company's RBC ratio to experience "regression to the mean" and decline to a level closer to the industry average, which in this case is already three times the minimum regulatory requirement.

134. Country Mutual's RBC ratio has not experienced any sort of "regression to the mean."

135. For ten consecutive years leading up to the present day, Country Mutual's RBC ratio has at least five times the regulatory requirement.

136. Since 2016, Country Mutual's RBC ratio has been roughly double the industry average.

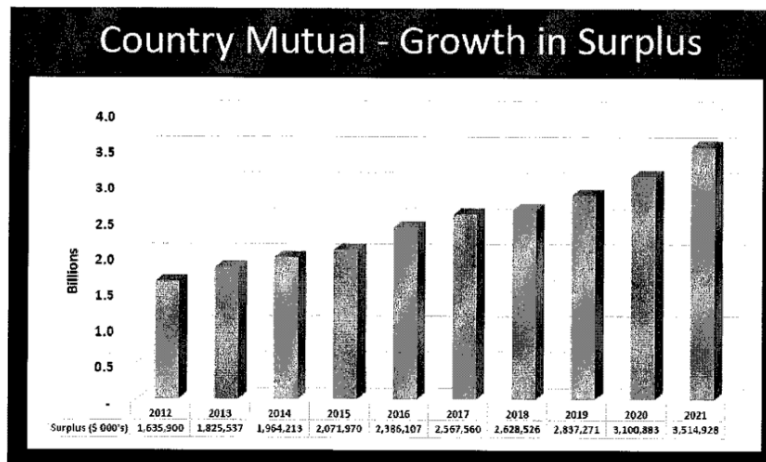




*Larger image attached as Exhibit E.*

137. Whereas the minimum RBC ratio for a property and casualty insurance company to avoid regulatory intervention is 2.0, and the average ratio in the property and casualty segment of the insurance market is roughly 6.0, Country Mutual's ratio was already at 10.0 by 2013 and since grown to more than 12.0.

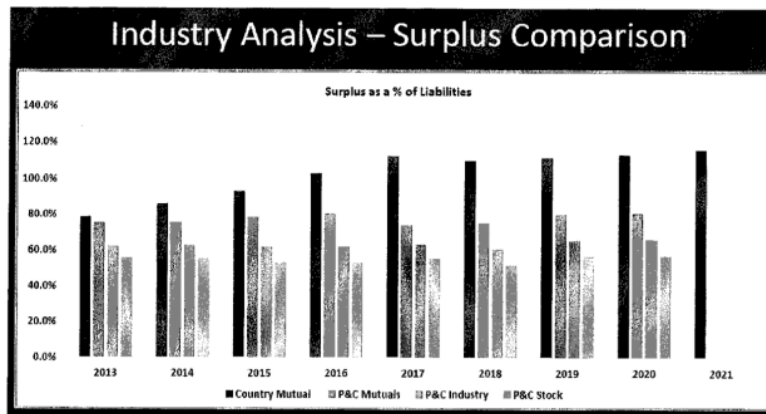
138. Country Mutual's total surplus grew from roughly \$1.6 billion in 2012 to over \$3.5 billion in 2021.



*Larger image attached as **Exhibit F**.*

139. Upon information and belief, Country Mutual's total surplus has grown every year for ten consecutive years leading up to the present day.

140. As a result of this growth, Country Mutual is now in the extraordinary position of a mutual insurance company whose assets are worth twice as much as its total liabilities:



*Larger image attached as **Exhibit G**.*

**Country Mutual's Officers and Directors Have Used Their Overlapping Positions with Country Mutual Affiliates and Subsidiaries to Engage in Self-Dealing**

141. Due to their positions as officers and/or directors of Country Mutual and their ability to control the business and affairs of Country Mutual, Individual Defendants owed Country Mutual and its policyholders the fiduciary obligations of good faith, trust, loyalty, due care, and diligence.

142. Individual Defendants were required to use their utmost ability to control and manage Country

Mutual in a fair, just, honest, and equitable manner that avoids fraudulent conduct, illegality, and overreaching consistent with Country Mutual's organization as a mutual insurance company.

143. Individual Defendants were, and are, required to act in furtherance of the best interests of Country Mutual and its policyholders so as to benefit all policyholders and not in furtherance of their own personal interests or benefit.

144. Individual Defendants have or had a duty to Country Mutual not to usurp corporate profits to enrich themselves to the detriment of Country Mutual policyholders.

145. Each officer and director of Country Mutual owed Country Mutual and its policyholders the fiduciary duties of good faith, trust, loyalty, due care, and diligence in the administration of the company's affairs.

146. Each officer and director of Country Mutual was obligated to use and preserve Country Mutual's property and assets in accordance with these duties, as well as the highest obligations of fair dealing.

147. Because of their positions of authority and control as directors and/or officers of Country Mutual, Individual Defendants were able to, and did, exercise control over the acts complained of herein.

148. The Country Mutual officers and directors breached their fiduciary duties to Country Mutual by diverting profits and revenue realized from the collection of policyholders' premiums and investments in various for-profit subsidiaries in order to compensate Country Mutual executives.

149. Specifically, the Individual Defendants excessively compensated themselves using profits realized from the premiums paid in by Country Mutual policyholders and transactions and/or investments in subsidiary entities.

150. These profits belong to Country Mutual, and ultimately, its policyholders.

151. To discharge the aforesaid duties, Country Mutual officers and directors were required to exercise reasonable and prudent supervision over the management, policies, practices, and controls of the financial affairs of the mutual insurance company. By virtue of these duties the officers and directors were required, to among other things:

- a. Manage, direct, conduct, and supervise the business affairs of Country Mutual in accordance with all applicable law;
- b. neither engage in self-dealing nor knowingly permit any officer, director, or employee of Country Mutual to engage in self-dealing;
- c. ensure that Country Mutual complied with its legal obligations and requirements;
- d. conduct the activities of Country Mutual in an efficient businesslike manner, so as to potentially provide the highest quality performance of its business;
- e. avoid wasting Country Mutual's assets; and
- f. maximize the value to the policyholders in rendering insurance at cost.

152. Each Individual Defendant owed Country Mutual and its policyholders the fiduciary duties of good faith, trust, loyalty, due care, and diligence in the management and administration of mutual insurance company's affairs, as well as in the use and preservation of its property and assets.

153. The officers and directors were, therefore, obligated in their dealings with Country Mutual and its subsidiaries to use their fiduciary relationship with Country Mutual to conduct all of the business dealings of Country Mutual for the benefit of Country Mutual policyholders and fulfill Country Mutual's fundamental purpose of providing insurance at cost. *See Exhibit C*, ("Mutuality of Policy" language) ("**The purpose is to reduce the cost of insurance to the lowest point consistent with solvency and sound insurance protection.**") (emphasis added).

154. Individual Defendants breached their fiduciary duties to Country Mutual and, subsequently, the policyholders, by diverting profits and revenue realized by Country Mutual from the collection of policyholders' premiums, savings negotiated with other affiliates, and other forms of revenue, to purchase and/or gain full control of Cotton Life, Country Mutual's for-profit subsidiary.

155. The money used for premiums paid by the policyholders of Country Mutual to invest in this for-profit subsidiary and the profits made or benefits received from said investments, have not been returned, in any way, to the policyholders of Country Mutual.

156. Rather, these funds are being diverted to the Individual Defendants.

157. As an Illinois mutual reserve company, organized and operated under Illinois law, and one that applies to the State of Illinois to approve its published rates, Country Mutual is obligated to completely and accurately report its financial status to the Director of Insurance of the State of Illinois as well as its policyholders.

158. The annual financial report of Country Mutual to the Director of Insurance of the State of Illinois fails to include an accurate report of the financial affairs of the Country Mutual for-profit affiliates, does not disclose the salaries, bonuses, and/or other financial benefits received by the Country Mutual officers or directors and those who also sit on the Boards of its affiliates.

159. Country Financial provides a “Financial Services Summary Handbook,” purportedly to promote “transparency” so that prospective clients “know how [Country Financial’s] companies work together.”<sup>8</sup> The first paragraph of the Handbook states:

This handbook provides important information to help you understand the type and scope of products and services available through Country Financial®, the standard of care we owe to you, material fees and costs that may apply, and conflicts of interest associated with a recommendation. Country Trust Bank® (CTB), Country® Capital Management Company (CCMC), and Country Investors Life Assurance Company®

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<sup>8</sup> <https://www.countryfinancial.com/en/privacy-and-security/customer-relationship-summary-and-investor-handbook.html>

(CTLAC) [collectively referred to as the “companies”, “we”, “our”, or “us”] are a part of a family of affiliated insurance and financial services companies operating under the Country Financial trade name.<sup>9</sup>

160. Another section of the Handbook states in relevant part:

### **Compensation & Conflicts of Interest**

The availability of insurance, investments products and services can vary by state, by each of the companies, and by a financial professional’s licensing and authorities. Ask a financial professional if you have any questions about product or service availability.

When making recommendations for any qualified account, securities transaction, or investment strategy involving securities, we are prohibited from putting our financial or other interests ahead of yours. We have policies and procedures in place addressing both conflicts of interest and ethical obligations, and we require all personnel to act in accordance with applicable laws, regulations, and industry rules. Failure to do so can result in disciplinary measures including termination. However, the way that we make money can create financial incentives that could cause our interests to conflict with yours.

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<sup>9</sup> <https://www.countryfinancial.com/content/dam/cfin/pdfs/investments/financial-services-handbook-0921-084MM.pdf>

**Our financial professionals earn cash compensation, which may include commissions from premium payments and/or fees based generally on the value of the policy or account. In addition to cash compensation, Country Financial® may recognize Financial Representatives and Agency Managers through incentive programs that factor in overall sales of products and services offered by the companies.**

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**In addition to the conflicts our financial professionals have, conflicts may exist between the companies. We have a process in place to mitigate and address these conflicts.**

161. However, no such similar handbook is available online for prospective policyholders of Country Mutual.

162. At all times relevant herein, Country Mutual, acting through its officers and directors, purported to represent and protect Country Mutual's and, thereby, the Members' interests, ensuring that Country Mutual and the Members would receive the maximum benefit from these third-party, for-profit transactions and contracts.

163. Instead, Individual Defendants breached their fiduciary obligations and placed their own interests, in the forms of increased compensation, above those of Country Mutual and the Members, thereby refusing to distribute the profits to the Members of Country Mutual.



164. Therefore, the officers and directors breached the fiduciary duties they owed to Country Mutual and the Members by failing to exercise due care, diligence, and loyalty with regard to the interests of the policyholders, knowing that the Officers' and Directors' maintained positions of superiority and expertise and were required to exercise these duties to protect the company's and Members' interests.

165. The breaches of fiduciary duties by the Individual Defendants are further evidenced by the fact that the Country Mutual officers and directors simultaneously serve as officers and/or directors on the boards of Country Mutual's for-profit subsidiaries, Country Preferred, Country Casualty and Cotton Life.

166. During his time as an officer of Country Mutual, Defendant Jacobs has also served as an officer of Cotton Life.

167. During his time as an officer and director/trustee of Country Mutual, Defendant Guebert has also served as an officer and director/trustee of Country Preferred and Country Casualty.

168. During her time as an officer of Country Mutual, Defendant Vance has also served as an officer of Country Preferred, Country Casualty and Cotton Life.

169. During his time as an officer of Country Mutual, Defendant Kilcoin has also served as an officer of Country Preferred, Country Casualty and Cotton Life.

170. During his time as an officer of Country Mutual, Defendant Bateman also served as an officer

of Country Preferred, Country Casualty and Cotton Life.

171. During his time as an officer of Country Mutual, Defendant Bateman also served as a director/trustee of Cotton Life.

172. During his time as an officer and director/trustee of Country' Mutual, Defendant Nelson also served as an officer and director/trustee of Country Preferred and Country Casualty.

173. During his time as a Vice President and director of Country Mutual, Defendant Duncan has also served as a Vice President and director of Country Preferred and Country Casualty.

174. During his time as a director of Country Mutual, Defendant Carroll has also served as a director of Country Preferred and Country Casualty.

175. During his time as a director of Country Mutual, Defendant Daugherty has also served as a director of Country Preferred and Country Casualty.

176. During his time as a director of Country Mutual, Defendant Klemm has also served as a director of Country Preferred and Country Casualty

177. During his time as a director of Country Mutual, Defendant Miller has also served as a director of Country Preferred and Country Casualty.

178. During his time as a director of Country Mutual, Defendant Speckhart has also served as a director of Country Preferred and Country Casualty.

179. During his time as a director of Country Mutual, Defendant Tuttle has also served as a director of Country Preferred and Country Casualty.

180. During his time as a director of Country Mutual, Defendant Cripe has also served as a director of Country Preferred and Country Casualty.

181. During her time as a director of Country Mutual, Defendant Halterman has also served as a director of Country Preferred and Country Casualty.

182. During his time as a director of Country Mutual, Defendant Koeller has also served as a director of Country Preferred and Country Casualty.

183. During his time as a director of Country Mutual, Defendant Mussman has also served as a director of Country Preferred and Country Casualty.

184. During his time as a director of Country Mutual, Defendant Stallman has also served as a director/trustee of Country Preferred and Country Casualty.

185. During his time as a director of Country Mutual, Defendant Williams has also served as a director/trustee of Country Preferred and Country Casualty.

186. During his time as a director of Country Mutual, Defendant Dallas has also served as a director of Country Preferred and Country Casualty.

187. During his time as a director of Country Mutual, Defendant Fecht has also served as a director of Country Preferred and Country Casualty.

188. During his time as a director of Country Mutual, Defendant Kirwan has also served as a director of Country Preferred, Country Casualty and Country Life.

189. During his time as a director of Country Mutual, Defendant Meyer has also served as a director of Country Preferred and Country Casualty.

190. During his time as a director of Country Mutual, Defendant Reichert has also served as a director of Country Preferred and Country Casualty.

191. During his time as a director of Country Mutual, Defendant Thomas has also served as a director of Country Preferred and Country Casualty.

192. During his time as a director of Country Mutual, Defendant Green also served as a director of Country Preferred and Country Casualty.

193. During his time as a director of Country Mutual, Defendant Fourez also served as a director of Country Preferred and Country Casualty.

194. During his time as a director of Country Mutual, Defendant Serven also served as a director of Country Preferred and Country Casualty.

195. During his time as a director of Country Mutual, Defendant Temple also served as a director/trustee of Country Preferred and Country Casualty.

196. During his time as a director of Country Mutual, Defendant Poskin also served as a director of Country Preferred and Country Casualty.

197. During her time as a director of Country Mutual, Defendant Aavang also served as a director/trustee of Country Preferred and Country Casualty.

198. During his time as a director of Country Mutual, Defendant Meiss also served as a

director/trustee of Country Preferred and Country Casualty.

199. During his time as a director of Country Mutual, Defendant Schultz also served as a director/trustee of Country Preferred and Country Casualty.

200. During his time as a director of Country Mutual, Defendant Hosselton also served as a director of Country Preferred and Country Casualty.

201. During his time as a director of Country Mutual, Defendant Uphoff also served as a director/trustee of Country Preferred and Country Casualty.

202. During his time as a director of Country Mutual, Defendant Hausman also served as a director/trustee of Country Preferred and Country Casualty.

203. During his time as a director of Country Mutual, Defendant Hadden also served as a director/trustee of Country Preferred and Country Casualty.

204. During his time as a director of Country Mutual, Defendant Wayne Anderson also served as a director of Country Preferred and Country Casualty.

205. During his time as a director of Country Mutual, Defendant Halpin also served as a director of Country Preferred and Country Casualty.

206. During his time as a director of Country Mutual, Defendant Hughes also served as a director/trustee of Country Preferred and Country Casualty.

207. During his time as a director of Country Mutual, Defendant Gehrke also served as a director of Country Preferred and Country Casualty.

208. During his time as a director of Country Mutual, Defendant James Anderson also served as a director of Country Preferred and Country Casualty.

209. During his time as a director of Country Mutual, Defendant Cawley also served as a director of Country Preferred and Country Casualty.

210. During his time as a director of Country Mutual, Defendant Brinkmann also served as a director of Country Preferred and Country Casualty.

211. During his time as a director of Country Mutual, Defendant Pool also served as a director of Country Preferred and Country Casualty.

212. During his time as a director of Country Mutual, Defendant Pope also served as a director of Country Preferred and Country Casualty.

213. The law of the State of Illinois recognizes a presumption of self-dealing created by the decision of a corporate defendant to place or allow one of its officers and/or directors to sit on the boards and/or control subsidiaries.

214. Country Mutual's conduct creates a presumption of self-dealing because its executives, officers, and directors enjoy the same positions on the boards of its subsidiaries, which are not mutual insurance companies.

215. Those non-mutual company subsidiaries are financially incentivized by Country Mutual's success in selling policies to consumers. *Cf.* "Financial Services Summary Handbook," language, *supra*,

“Our financial professionals earn cash compensation, which may include commissions from premium payments and/or fees based generally on the value of the policy or account.”).

216. Upon information and belief, sales personnel associated with Country Financial and Country Mutual selectively direct wealthier and more desirable customers away from Country Mutual and towards Country Preferred and/or Country Casualty.

217. This practice creates a conflict between Country Mutual’s stated purpose of “reduc[ing] the cost of insurance to the lowest point consistent with solvency and sound insurance protection” for its own customers and the goal of making profits for Country Mutual subsidiaries.

218. Country Mutual policyholders do not benefit from the accumulation of profits by Country Mutual subsidiaries.

219. The executives, directors and board members of Country Mutual use the profits made by Members’ premiums to compensate themselves through their positions with Country Mutual subsidiaries.

220. Those excess premiums paid by the Members are rightfully owed to Country Mutual Members, and **exclusively** Country Mutual Members.

221. The officers and directors who have done so as set forth herein have knowingly engaged in prohibited self-dealing, and have failed to notify the Members of their dual obligations to the mutual insurance company and its subsidiaries.

222. By virtue of this conduct and of the corresponding presumption it creates, Defendants have the burden of showing that their conduct was for

the exclusive benefit of Country Mutual and its Members and not, in any manner, detrimental to the company's interests or those of the Members. Failing to do so is evidence that the Officers and Directors violated their fiduciary duties to the mutual reserve company and its Members.

223. Country Mutual, has excluded profits and financial benefits received from and by its subsidiaries from its annual report to its Members, and to the Director of Insurance of the State of Illinois, thereby wrongfully inflating its profits and its premium charges in seeking and successfully obtaining numerous and substantial rate increases in the last several years.

224. Country Mutual has inflated the premiums charged to the Members, due to the failure to account for and distribute the profits derived from its for-profit subsidiaries in a manner that would lower the burden of property/casualty insurance expenses. The conduct described in the preceding paragraphs is intended to inflate and enhance the financial wellbeing of Country Mutual's subsidiaries to the detriment of the Members of Country Mutual.

225. Further, in addition to the conduct described above, the Members never receive actual disclosure regarding how many subsidiaries Country Mutual owns, the nature of those companies, or whether it receives a profit from them.

226. Country Financial's website names only seven (7) affiliates and subsidiaries,<sup>10</sup>

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<sup>10</sup> See <https://www.countryfinancial.com/en/about-us/who-we-are/our-history.html> (listing Country Mutual Insurance Company, Country Preferred Insurance Company, Country Casualty



227. Nowhere, however, in the policy documents attached nor on the website does Country Mutual ever actually disclose to its Members the full list of subsidiaries, parents, or affiliates that it owns or in which it maintains an interest.

228. Country Mutual does not disclose on its website that its subsidiaries, Country Preferred, Country Casualty and Cotton Life, are in fact stock insurance companies.

229. Country Mutual does not provide its Members any information about profits from its subsidiaries.

230. As mentioned above, the breaches of fiduciary duties by Country Mutual's officers and directors are further evidenced by the fact that Country Mutual places officers and members of its Board on the Boards of its subsidiaries, Country Preferred, Country Casualty and Cotton Life.

231. This presumptive self-dealing bars the Individual Defendants from attempting to justify or sustain their burden of proof as to their conduct by use of the corporate or business judgment rule.

232. The conduct described in the preceding paragraphs was (and is) intended to inflate and enhance the financial wellbeing of the Individual Defendants, wrongfully diverting surplus profits away from Country Mutual and, subsequently, its Members. Thus, the Officers and Directors have breached their fiduciary duties of care, loyalty, and

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Insurance Company, Country Life Insurance Company, Country Trust Bank, and Country Capital Management Company, as subsidiaries and affiliates) (last visited 10/11/2022).

good faith owed to Country Mutual, and demand upon these directors should be excused.

233. Despite this fiduciary relationship, the Individual Defendants breached their fiduciary duties to Country Mutual Members in one or more of the following ways:

- a. The Officers and Directors breached their duties owed to Country Mutual and the Members by using funds belonging to Country Mutual and, ultimately, the Members, to serve their own financial interests, thereby acting beyond the legal authority granted to a mutual reserve company under Illinois law; and/or
- b. The Officers and Directors breached their fiduciary duties owed to the Members by acting in a manner contrary to the principles of a mutual insurance company by failing and refusing to provide the maximum financial benefits to Country Mutual and its Members. Instead, the Officers and Directors used Country Mutual corporate profits to invest in for-profit subsidiaries of Country Mutual, such as Country Preferred, Country Casualty, and Cotton Life, using none of the profits to reduce premiums, as is required by mutual insurance, but, instead, to enrich themselves.

#### **CLASS ALLEGATIONS**

234. Plaintiffs bring this action on behalf of themselves and all others similarly situated pursuant to Rule 23. This action satisfies the numerosity,

typicality, adequacy, predominance, and superiority requirements of Rule 23.

235. The proposed Class is defined as:

All Illinois citizens who, during the applicable statute of limitations period through the present, paid premiums on an insurance policy underwritten by Country Mutual and/or paid premiums on a participating policy issued by another Country Financial entity.

236. Plaintiffs reserve the right to modify or amend the definition of the proposed Class before the Court determines whether certification is appropriate.

237. Excluded from the Class are Defendants, their parents, subsidiaries, affiliates, officers, directors, legal representatives, successors, and assigns; any entity in which Defendants have a controlling interest; all members who make a timely election to be excluded; governmental entities; and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

238. The members of the Class are so numerous that joinder is impractical. The Class consists of hundreds of thousands of members, the identities of whom are within the exclusive knowledge of Defendants and can be ascertained only by resort to Defendants' records.

239. Plaintiffs' claims are typical of the claims of the Class in that Plaintiffs, like all members of the Class, are Members who were charged insurance premiums that exceed any reasonable definition of insurance at cost and did not subsequently receive an appropriate distribution of the surplus created by those excessive premiums. Plaintiffs, like all members of the Class,

has been damaged by Defendants' misconduct in that they have been charged excessive insurance premiums and been denied the benefit of an appropriate distribution of surplus.

240. Furthermore, the factual basis of Defendants' misconduct is common to all members of the Class and represents a common thread of deceptive and unlawful conduct resulting in injury to all members of the Class. Plaintiffs have suffered the harm alleged and have no interests antagonistic to the interests of any other members of the Class.

241. The questions in this action are ones of common or general interest such that there is a well-defined community of interest among the members of the Class. These questions predominate over questions that may affect only individual class members because Defendants have acted on grounds generally applicable to the Class.

242. Among the questions of law and fact common to the Class include:

- a. Whether Country Mutual violated its contractual obligations and its duty of good faith and fair dealing by charging excessive insurance premiums;
- b. Whether Country Mutual violated its contractual obligations and its duty of good faith and fair dealing by failing to make appropriate distributions of accumulated surplus funds;
- c. Whether Country Mutual breached its duty to its members/policyholders by diverting revenue received through

premium payments to its subsidiary companies;

- d. Whether Country Mutual violated the Illinois Consumer Fraud and Deceptive Business Practices Act by holding itself out as a mutual insurance company while operating in a manner inconsistent with a mutual insurance company's fundamental purpose of providing insurance at cost;
- e. Whether Country Mutual unjustly enriched itself at the expense of its policyholders;
- f. Whether the Individual Defendants violated their fiduciary duties by pursuing a policy or practice of accumulating a massive surplus and refusing to distribute that surplus to Country Mutual Members;
- g. The proper method or methods by which to measure damages; and
- h. The declaratory and injunctive relief to which the Class is entitled.

243. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the amount of each individual Class member's claim is small relative to the complexity of the litigation, no Class member could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the members of the Class will continue to suffer losses and Defendants' misconduct will proceed without remedy.

244. Even if Class members themselves could afford such individual litigation, the court system could not. Given the complex legal and factual issues involved,

individualized litigation would significantly increase the delay and expense to all parties and to the Court. Individualized litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a class action presents far fewer management difficulties, allows for the consideration of claims which might otherwise go unheard because of the relative expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale, and comprehensive supervision by a single court.

245. Plaintiffs are committed to the vigorous prosecution of this action and have retained competent counsel experienced in the prosecution of class actions, particularly on behalf of consumers and against financial institutions. Accordingly, Plaintiffs are adequate representatives and will fairly and adequately protect the interests of the Class.

246. Plaintiffs suffer a substantial risk of repeated injury in the future. Plaintiffs are at risk of being charged additional excessive premiums in the future.

247. Plaintiffs and the Class are entitled to injunctive and declaratory relief as a result of the conduct complained of herein.

248. Money damages alone could not afford adequate and complete relief, and injunctive relief is necessary to restrain Defendants from continuing to commit their illegal actions.

**COUNT ONE: DIRECT ACTION FOR BREACH  
OF CONTRACT AND THE COVENANT OF  
GOOD FAITH AND FAIR DEALING  
(On Behalf of the Class Against Country  
Mutual)**

249. Plaintiffs readopt and reallege the allegations and statements in paragraphs 1 through 248 above as if fully set forth herein.

250. Plaintiffs and Country Mutual have contracted for insurance coverage.

251. As an Illinois mutual insurer, Country Mutual has a legal duty to provide insurance coverage at cost.

252. This duty is categorically imposed on all Illinois mutual insurers and cannot be negated or restricted by any language in a contractual agreement between a mutual insurer and its policyholders.

253. Country Mutual's legal duty to provide insurance coverage at cost is incorporated into all of its contractual agreements with its policyholders.

254. As an Illinois mutual insurer, Country Mutual has a legal duty to return to its policyholders the excess of paid premiums over the cost of providing insurance coverage.

255. This duty is categorically imposed on all Illinois mutual insurers and cannot be negated or restricted by any language in a contractual agreement between a mutual insurer and its policyholders.

256. Country Mutual's legal duty to return to its policyholders the excess of paid premiums over the cost of providing insurance coverage is incorporated into all of its contractual agreements with its policyholders.

257. The duty of good faith and fair dealing is implied in every contract formed under Illinois law. *Gore v. Indiana Ins. Co.*, 376 Ill. App. 3d 282, 286 (2007).

258. Country Mutual is permitted to exercise discretion in its determination of what constitutes the provision of insurance coverage at cost.

259. Country Mutual is permitted to exercise discretion in its determination of when it must return to its policyholders the excess of paid premiums over the cost of providing insurance coverage.

260. The duty of good faith and fair dealing limits Country Mutual's discretion by requiring Country Mutual to "exercise it reasonably and with proper motive, not arbitrarily, capriciously, or in a manner inconsistent with the parties' reasonable expectations." *Id.*

261. Country Mutual has pursued a deliberate policy and practice of refusing to provide insurance coverage at cost.

262. Country Mutual has pursued a deliberate policy and practice of refusing to return to policyholders the excess of paid premiums.

263. Instead of upholding its stated policy and purpose of "reduc[ing] the cost of insurance to the lowest point consistent with solvency and sound insurance protection," Country Mutual, operating under the veil of "Country Financial," funneled the premiums it collected from Country Mutual Members, to its subsidiaries who are not mutual insurance companies.

264. By using premiums—paid by Country Mutual Members—to support financial incentives of its subsidiaries, Country Mutual breached its obligation to its members to provide insurance at cost. Country Financial's own financial service handbooks even acknowledge that "conflicts may exist between [its]



companies,” but Country Mutual provides its policyholders with no similar disclosure.

265. By using premiums—paid by Country Mutual Members—to support financial incentives of its subsidiaries, Country Mutual breached its duty to its Members.

266. By pursuing these deliberate policies and practices, Country Mutual has failed to exercise its discretion in a reasonable manner.

267. By pursuing these deliberate policies and practices, Country Mutual has failed to exercise its discretion with a proper motive.

268. By pursuing these deliberate policies and practices, Country Mutual has acted arbitrarily and/or capriciously.

269. By pursuing these deliberate policies and practices, Country Mutual has acted in a manner inconsistent with the reasonable expectations of its Members.

270. Country Mutual has breached the covenant of good faith and fair dealing in the Policy Agreement as alleged herein.

271. Plaintiffs and the members of the Class have performed all or substantially all of the obligations imposed on them under the Policy Agreement.

272. Plaintiffs and the members of the Class have sustained damages as a result of Country Mutual’s breach of the covenant of good faith and fair dealing.

**COUNT TWO: DIRECT ACTION FOR  
VIOLATION OF THE ILLINOIS CONSUMER  
FRAUD AND DECEPTIVE BUSINESS  
PRACTICES ACT**

**(On Behalf of the Class Against Country Mutual)**

273. Plaintiffs readopt and reallege the allegations and statements in paragraphs 1 through 248 above as if fully set forth herein.

274. Country Mutual has violated the Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”), 815 ILCS 505/1, *et seq.*

275. Section 2 of the ICFA, 815 ILCS 505/2, provides:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the “Uniform Deceptive Trade Practices Act”, approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal Trade Commission Act.

276. Section 10a of the ICFA provides in relevant part:

(a) Any person who suffers actual damage as a result of a violation of this Act committed by any other person may bring an action against such person. The court, in its discretion may award actual economic damages or any other relief which the court deems proper

...

(c) . . . [I]n any action brought by a person under this Section, the Court may grant injunctive relief where appropriate and may award, in addition to the relief provided in this Section, reasonable attorney's fees and costs to the prevailing party.

815 ILCS 505/10A(a), (c).

277. Plaintiffs and other members of the Class are "consumers" or "persons," as defined under the ICFA, 815 ILCS 505/1 *et seq.*

278. Country Mutual holds itself out to the public as a mutual insurance company.

279. Country Mutual holds itself out to its Members as a mutual insurance company.

280. A mutual insurance company provides insurance coverage at cost and returns to its policyholders the excess of paid premiums over the cost of providing insurance coverage.

281. As alleged herein, Country Mutual does not provide insurance coverage at cost.

282. As alleged herein, Country Mutual does not return to its policyholders the excess of paid premiums over the cost of providing insurance coverage.

283. Instead of upholding its stated policy and purpose of “reduc[ing] the cost of insurance to the lowest point consistent with solvency and sound insurance protection,” Country Mutual, operating under the veil of “Country Financial,” deceptively funneled the premiums it collected from Country Mutual Members to its subsidiaries who are not mutual insurance companies.

284. Country Mutual unfairly and deceptively retained the premiums paid by Country Mutual members. Country Mutual deceived its members by purporting to provide its members insurance “at the lowest point consistent with solvency and sound insurance protection,” when, Country Mutual used premiums—paid by Country Mutual policyholders/members—to support financial incentives of its subsidiaries.

285. Therefore, Country Mutual does not operate in a manner that fits the definition of a mutual insurance company.

286. Because Country Mutual does not operate in a manner that fits the definition of a mutual insurance company, its presentation of itself as a mutual insurance company is an unfair and deceptive policy and practice

287. Country Mutual intended and intends for Plaintiffs and members of the Class to rely on its deceptive presentation of itself as a mutual insurance company.

288. Mutual insurance companies are intended to derive commercial benefit from their historical association with grassroots community groups and their ability to publicly distance themselves from the

openly profit-driven orientation of stock insurance companies.

289. Country Mutual's deception occurred in the course of trade or commerce in Illinois.

290. Country Mutual's deception has proximately caused the injuries suffered by Plaintiffs and members of the Class.

**COUNT THREE: DIRECT ACTION FOR  
UNJUST ENRICHMENT**

**(On Behalf of the Class Against Country  
Mutual)**

291. Plaintiffs readopt and reallege the allegations and statements in paragraphs 1 through 248 above as if fully set forth herein.

292. Country Mutual has received a benefit from Plaintiffs and members of the Class in the form of paid policy premiums that grossly exceed Country Mutual's cost of providing insurance coverage.

293. Country Mutual has unjustly retained excess paid premiums to the detriment of Plaintiffs and members of the Class.

294. Country Mutual's retention of those excess paid premiums and refusal to return them to Plaintiffs and members of the Class violates the fundamental principles of justice, equity, and good conscience.

295. Specifically, instead of upholding its stated policy and purpose of "reduc[ing] the cost of insurance to the lowest point consistent with solvency and sound insurance protection," Country Mutual, operating under the veil of "Country Financial," funneled the premiums it collected from Country Mutual members,

to its subsidiaries who are not mutual insurance companies.

296. By using premiums paid by Country Mutual members to support financial incentives of its subsidiaries, Country Mutual breached its obligation to its members to provide insurance at cost and unjustly enriched itself and its affiliates. Country Financial's own financial service handbooks even acknowledge that "conflicts may exist between [its] companies," but Country Mutual provides its policyholders with no similar disclosure.

297. By using premiums paid by Country Mutual members to support financial incentives of its subsidiaries, Country Mutual unjustly enriched itself and its subsidiaries.

298. Country Mutual should not be allowed to profit or enrich itself or its subsidiaries inequitably and unjustly at the expense of Plaintiffs and members of the Class.

299. Country Mutual should be required to make restitution to Plaintiffs and members of the Class.

**COUNT FOUR: DIRECT ACTION FOR  
BREACH OF FIDUCIARY DUTY  
(On Behalf of the Class Against Individual  
Defendants)**

300. Plaintiffs readopt and reallege the allegations and statements in paragraphs 1 through 248 above as if fully set forth herein.

301. Defendant Country Mutual is a mutual insurance company organized under the laws of Illinois.

302. Under Illinois law, a mutual insurance company is wholly owned by its policyholders.

303. “It is the essence of mutual insurance that the excess in the premium over the actual cost as later ascertained shall be returned to the policyholder. Some payment to the policy holder representing such excess is ordinarily made by every mutual company every year.” *Penn Mut. Life Ins. Co. v. Lederer*, 252 U.S. 523 (1920).

304. Mutual insurance is insurance at cost.

305. A mutual insurer is obligated to set the rates it charges its policyholders for coverage at cost.

306. A mutual insurer may incorporate into its definition of “insurance at cost” a modest amount for operating expenses, salaries and bonuses, a claims reserve, and any capitalization requirements imposed by state or federal law.

307. Any excess surplus over and above that modest amount must be returned to the owners in the form of premium reductions or rebates of excess premiums collected.

308. By operating as a mutual insurance company, rather than a stock insurance company, Country Mutual had an obligation to act solely for the benefit of its Members.

309. By reason of their position as directors of Country Mutual and their ability to control the business affairs of Country Mutual, the Individual Defendants owed Country Mutual and its Members the fiduciary duties of good faith, trust, loyalty, due care, and diligence.

310. Individual Defendants were, at all relevant times, required to act in the furtherance of the best interests of Country Mutual and its Members so as to benefit all Members.

311. Individual Defendants were, at all relevant times, required to use their utmost ability to control and manage Country Mutual in a fair, just, honest and equitable manner.

312. Individual Defendants were, at all relevant times, required to use their utmost ability to avoid fraudulent conduct, illegality, or any conduct inconsistent with Country Mutual's organization as a mutual insurance company.

313. Individual Defendants were, at all relevant times, obligated in their dealings with Country Mutual and its affiliated business entities to conduct Country Mutual's business in a manner that fulfilled Country Mutual's fundamental purpose of providing insurance to policyholders at cost.

314. Individual Defendants breached their fiduciary duties to Country Mutual policyholders by willfully retaining profits and revenue derived from policyholder premiums to accumulate a surplus that is grossly excessive to any reasonable definition of "insurance at cost."

315. Over the course of at least ten years, Individual Defendants have repeatedly approved decisions to charge Country Mutual policyholders premiums that were inflated beyond what was necessary to provide insurance at cost.

316. These inflated premiums had the effect of adding to a surplus that was already much larger than regulatory requirements and industry norms.



317. The consistent, repeated and protracted nature of these decisions to charge inflated premiums is indicative of a conscious refusal to fulfill Individual Defendants' fiduciary duty to provide insurance at cost.

318. Upon information and belief, Individual Defendants did not attempt to provide insurance at cost in 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, or 2021.

319. Upon information and belief, Individual Defendants did not give serious consideration to the possibility of providing insurance at cost in 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, or 2021.

320. Therefore, the consistent and repeated decisions to charge inflated premiums were not the result of a decision-making process that complied with the fiduciary duties of good faith, trust, loyalty, due care and diligence.

321. Over the course of at least ten years, Individual Defendants have repeatedly failed to authorize any distribution of excess paid premiums to Country Mutual policyholders.

322. This failure occurred despite the obvious size and growth of Country Mutual's already bloated financial surplus.

323. The consistent, repeated and protracted nature of these failures is indicative of a conscious refusal to seriously consider the possibility of distributing excess premiums to Country Mutual policyholders.

324. Upon information and belief, Individual Defendants did not attempt to distribute excess paid

premiums from previous years in 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, or 2021.

325. Upon information and belief, Individual Defendants did not give serious consideration to the possibility of distributing excess paid premiums from previous years in 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, or 2021.

326. Therefore, the consistent and repeated refusals to authorize any return of excess paid premiums to Country Mutual policyholders were not the result of a decision-making process that complied with the fiduciary duties of good faith, trust, loyalty, due care, and diligence.

327. Individual Defendants did not merely acquiesce in decisions taken by others but consciously made the decision to breach their fiduciary duty as part of a concerted policy and practice of the Board of Directors.

328. Each and every member of the Class has suffered a separate and distinct injury in the form of excessive policyholder premiums over the course of the policyholder's contracts with Country Mutual that were never returned to the member.

329. Each and every member of the Class has suffered a deprivation of the policyholder's right to receive insurance at cost from Country Mutual.

330. The mutual insurance policyholder's right to receive insurance at cost exists independently of any right held by Country Mutual.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf of the Class, respectfully requests that the

following declarations be entered as to Country Mutual and that the Court grant the following relief:

- A. Certify this matter to proceed as a class action under 735 ILCS 5/2-801;
- B. Designate Plaintiffs as Class Representatives for the Class;
- C. Designate the undersigned as Class Counsel;
- D. Declare that Country Mutual's status as a mutual insurance company creates an obligation for Country Mutual to provide insurance at cost;
- E. Declare that Country Mutual's policies and practices regarding premiums and distributions of corporate surplus are wrongful and unconscionable in light of its statutory, common-law, and contractual obligations to Country Mutual policyholders;
- F. Enjoin Country Mutual from operating in a manner that is not reasonably calculated to provide insurance at cost;
- G. Award Plaintiffs and the Class statutory, compensatory, and punitive damages for violations of Illinois statutory and common law in an amount to be proven at trial;
- H. Award Plaintiffs and the Class restitution in an amount to be proven at trial;
- I. Award Plaintiffs and the Class pre-judgment and post-judgment interest at the maximum rate permitted by applicable law;

- J. Enter a finding that Country Mutual's officers and directors breached and abrogated their fiduciary duty to Country Mutual policyholders by failing to operate Country Mutual in a manner reasonably calculated to provide insurance at cost;
- K. Enter a finding that Country Mutual's officers and directors breached and abrogated their fiduciary duty to Country Mutual policyholders by repeatedly failing to make a good-faith, reasonable decision as to whether the premiums charged to Country Mutual policyholders were reasonably calculated to provide insurance at cost;
- L. Enter a finding that Country Mutual's officers and directors breached and abrogated their fiduciary duty to Country Mutual policyholders by repeatedly failing to make a good-faith, reasonable decision as to whether distributions of accumulated corporate surplus were needed to fulfill Country Mutual's obligation to provide insurance at cost;
- M. Enter an order directing Country Mutual to distribute such amount as necessary to compensate Country Mutual's current and former policyholders for premium payments in excess of what is necessary to provide insurance at cost;
- N. Award costs and disbursements of Plaintiffs in connection with this action, including reasonable attorney's fees and costs pursuant to law;

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- O. Grant leave to amend these pleadings to conforming to evidence produced at trial; and
- P. Award such further relief as this Court deems just and appropriate under the circumstances.

**JURY DEMAND**

Plaintiffs, by counsel, demands trial by jury.

Dated: November 14, 2022 2022

Respectfully submitted,

By:           /s/David Cates          

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\* *Pro Hac Vice* applications to be submitted

***Counsel for Plaintiff and the Proposed  
Class***

A true copy of the original on file in my office

Attested to this 1st day of December 2022

Marie Zaiz

Clerk of the Circuit Court, 20th Judicial Circuit

St. Clair County, Illinois

By s/ Austin France

Deputy Clerk