IN THE
SUPREME COURT OF THE UNITED STATES

No. _____

ERIE INDEMNITY COMPANY,

Applicant,

v.

ERIE INSURANCE EXCHANGE, an unincorporated association, by TROY STEPHENSON, CHRISTINA STEPHENSON, and STEVEN BARNETT, trustees *ad litem*, and alternatively, ERIE INSURANCE EXCHANGE, by TROY STEPHENSON, CHRISTINA STEPHENSON, and STEVEN BARNETT,

Respondent.

APPLICATION TO THE HON. SAMUEL ALITO
FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Pursuant to Supreme Court Rule 13.5, Erie Indemnity Co. ("Indemnity") respectfully requests an extension of time of 30 days, to and including October 20, 2023, for the filing of a petition for a writ of certiorari. Absent an extension of time, the deadline for filing Indemnity's certiorari petition would be September 20, 2023.

In support of this request, Indemnity states as follows:

1. The Third Circuit rendered its decision affirming the District Court's Remand Order on May 22, 2023. (**Exhibit 1**). *See Erie Ins. Exch. v. Erie Indem. Co.*, 68 F.4th 815 (3d Cir. 2023). It denied Indemnity's timely petition for panel rehearing or rehearing en banc on June 22, 2023. (**Exhibit 2**). This Court has jurisdiction under 28 U.S.C. § 1254(1).

2. This case concerns the ability of class action plaintiffs to subvert the jurisdictional protections of the Class Action Fairness Act ("CAFA") through procedural gamesmanship. It also raises important questions about what actions qualify for removal under CAFA's definition of a "class action."

3. In August 2021, Troy Stephenson, Christina Stephenson, and Steven Barnett ("Plaintiffs") filed their case against Indemnity in Pennsylvania state court on behalf of an interstate class of insurance policyholders ("Subscribers"). They challenged Indemnity's collection of a contractually authorized "Management Fee," which compensates Indemnity for running the insurance business for Subscribers. In response, Indemnity exercised its right to remove under CAFA. But, in an effort to avoid federal court, Plaintiffs voluntarily dismissed and then quickly refiled an amended version of their complaint in the same state court. They pleaded the same claim based on the same legal theory and facts as before. And they continued, through the same counsel, to seek the same class-wide injunctive relief and damages for the purported benefit of millions of Subscribers. But, in that second complaint, Plaintiffs[1] tried to disguise their class action by nominally styling their case under different state procedural rules.

4. Indemnity again removed, arguing that Plaintiffs' false labeling and their post-removal amendment through dismissal-and-refiling barred remand. The district court disagreed, holding that the jurisdictional inquiry turned solely on the procedural rules that Plaintiffs deployed in their latest complaint. (**Exhibit 3**). In

[1] Susan Rubel, who was listed as a fourth plaintiff in the original complaint, was not listed on the second complaint.

doing so, the district court relied on *Erie Insurance Exchange v. Erie Indemnity Co.*, 722 F.3d 154 (3d Cir. 2013), an earlier Third Circuit decision that had adopted a narrow view of which state procedural rules qualify for treatment as a removable "class action" under CAFA. Based on that narrow view, the district court held that Plaintiffs' latest complaint did not qualify for removal despite the fact that Plaintiffs had initially brought their suit as a class action and despite the fact that Plaintiffs sought to represent and to benefit "all" two-million-plus Subscribers nationwide.

5. After an initial denial, the Third Circuit granted Indemnity's petition for permission to appeal. (**Exhibit 4**). *See* 28 U.S.C. § 1453(c)(1).

6. Following merits briefing and oral argument, the Third Circuit affirmed. Finding itself "bound to follow" the previous Third Circuit decision's cramped reading of CAFA's definitional provision, the court "conclude[d] that this case is not a class action on its face." Ex. 1 at 9. It observed that "[t]his does not end [the jurisdictional] inquiry," because a reviewing court "must cut through any pleading artifice to identify whether the case is in substance an interstate class action." *Id.* at 9-10. But then the Third Circuit ignored Plaintiffs' jurisdictional machinations based on its novel view that courts may "look beyond the four corners of a complaint *only* when addressing factual predicates." *Id.* at 10-11 (emphasis added). Applying that distinction—which neither this Court nor any other Circuit appears to have drawn in the past—the Third Circuit concluded that Plaintiffs' false labels concerned legal requirements, not "facts beyond the Complaint." *Id.* at 11.

7. Turning to Indemnity's other argument, the Third Circuit did not dispute that federal jurisdiction attached when Indemnity first removed Plaintiffs' case. *Id.* at 13. And it conceded that "[t]he operative facts and the legal theory" were "identical" to those in Plaintiffs' original class action complaint. *Id.* at 5. But it once again elevated form over substance to allow Plaintiffs to escape that vested jurisdiction. While this Court has long held that "events occurring subsequent to removal . . . do not oust the district court's jurisdiction once it has attached," *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 293 (1938), the Third Circuit relied on *non-removal* cases to hold that a Rule 41(a) dismissal "leaves the situation as if the action never had been filed," Ex. 1 at 13 (citation omitted). It thus concluded that "this case is not a continuation" of Plaintiffs' class action for CAFA purposes, despite the "substantial factual and legal overlap" with their initial class action complaint. *Id.* at 13, 18.

8. The Third Circuit's holdings are flawed, and they directly conflict with precedents from other Circuits and this Court.

9. *First*, by overlooking Plaintiffs' pleading artifices based on a novel distinction between legal and factual predicates, the Third Circuit's decision violates this Court's clear direction that courts should not "exalt form over substance" when assessing CAFA jurisdiction. *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 595 (2013). Indeed, *Standard Fire* itself demonstrates that substance trumps form for *both* legal *and* factual questions alike. There, this Court held that a class action plaintiff could not "avoid removal to federal court" by including a stipulation that

"artificial[ly] cap[ped]" the damages sought to $5 million. *Id.* at 594-96. And it reached that conclusion based entirely on "legal principles"—namely, that "a plaintiff who files a proposed class action cannot *legally* bind members of the proposed class before the class is certified." *Id.* at 593 (emphasis added).

10. The decision below is directly at odds with that holding and the decisions of other Circuits. Like *Standard Fire*, this case involves plaintiffs who "lack[] the authority" to proceed under the contrived labels they have affixed to their complaint. *Id.* But, unlike *Standard Fire*, the Third Circuit held that such pleading artifices could defeat CAFA jurisdiction. Ex. 1 at 10-11. And, by disregarding this Court's precedent, the decision below has opened a circuit split. Other courts have refused to "look only to the complaint" in assessing whether a case "is a class action," and have instead rejected plaintiffs' "artificial attempt[s] to disguise the true nature of the suit." *Addison Automatics, Inc. v. Hartford Cas. Ins. Co.*, 731 F.3d 740, 742, 744 (7th Cir. 2013); *see also Williams v. Emps. Mut. Cas. Co.*, 845 F.3d 891, 901 (8th Cir. 2017). The Third Circuit's decision cannot be squared with those precedents.

11. *Second*, the Third Circuit's rigid interpretation of CAFA's definitional provision conflicts with the statute's text, its express purpose, and this Court's precedents. The Third Circuit acknowledged that the "real parties in interest" here are "all" of Erie's Subscribers nationwide. Ex. 1. at 17. As a result, Plaintiffs' suit is plainly "similar" to a class action invoking Rule 23, 28 U.S.C. § 1332(d)(1)(B), in that Plaintiffs purport to represent "all" of those two-million-plus Subscribers in an effort to obtain class-wide relief on their behalf. The Third Circuit's contrary view exalts

form over substance and thwarts CAFA's statutory design by permitting removal only when plaintiffs invoke Rule 23 or an *identical* (rather than "*similar*") state procedural rule. And that approach ignores this Court's directive in *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014), to adopt a broad—rather than narrow—view of CAFA's grant of federal jurisdiction.

12. *Third*, by allowing Plaintiffs to destroy CAFA jurisdiction through their dismiss-and-refile tactic, the decision below again conflicts with this Court's clear holdings and the decisions of other Circuits. This is a removal case, and this Court has long held that a defendant's "statutory right of removal" is not "subject to the plaintiff's caprice." *Red Cab*, 303 U.S. at 294. As a result, "events occurring subsequent to removal . . . do not oust the district court's jurisdiction once it has attached." *Id.* at 293.

13. That basic tenet of removal jurisdiction applies equally in the CAFA context. Indeed, before the decision below, "[e]very circuit that has addressed the question ha[d]" followed *Red Cab*'s lead to "h[old] that post-removal events do not oust CAFA jurisdiction." *Louisiana v. Am. Nat'l Prop. & Cas. Co.*, 746 F.3d 633, 639 (5th Cir. 2014); *see also, e.g.*, *Broadway Grill, Inc. v. Visa Inc.*, 856 F.3d 1274, 1277-79 (9th Cir. 2017); *In Touch Concepts, Inc. v. Cellco P'ship*, 788 F.3d 98, 101-02 (2d Cir. 2015); *Thatcher v. Hanover Ins. Grp., Inc.*, 659 F.3d 1212, 1214-15 (8th Cir. 2011); *In re Burlington N. Santa Fe Ry. Co.,* 606 F.3d 379, 380-81 (7th Cir. 2010). The Third Circuit's decision conflicts with that "overwhelming" and previously "unanimous"

circuit authority. *Louisiana*, 746 F.3d at 640. And it conflicts with this Court's decision in *Red Cab*, too.

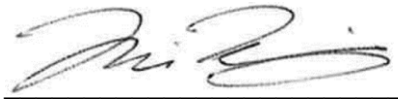
14. All of these questions are critically important. Congress enacted CAFA to provide a necessary bulwark against abuses in representative litigation. It found that such "[a]buses" had proliferated in "State and local courts" over the preceding decade. CAFA § 2(a)(2), (a)(4)(A) (codified as a note to 28 U.S.C. § 1711); *see Home Depot U.S.A., Inc. v. Jackson*, 139 S. Ct. 1743, 1752-53 (2019) (Alito, J., dissenting). And it determined that these abuses were "undermin[ing] the national judicial system, the free flow of interstate commerce, and the concept of diversity jurisdiction as intended by the framers." CAFA § 2(a)(4). If the decision below is allowed to stand, it will open a massive loophole in that jurisdictional scheme that Congress created to "ensur[e] 'Federal court consideration of interstate cases of national importance.'" *Standard Fire*, 568 U.S. at 595 (quoting CAFA § 2(b)(2)).

15. The requested extension would provide Indemnity's counsel the time needed to thoroughly prepare a certiorari petition. This case raises complex CAFA-related issues over which the circuit courts are divided. And between now and the current due date of the petition, Indemnity's counsel has substantial briefing obligations, including a motion for a preliminary injunction in the related suit of *Erie Indemnity Co. v. Stephenson*, No. 1:22-cv-00093 (W.D. Pa.), a class certification brief in *Derrick v. Glen Mills Schools*, No. 2:19-cv-01541 (E.D. Pa.), an amicus brief in *Moore v. United States*, No. 22-800 (U.S.), and an answer or motion to dismiss in *OKPLAC, Inc. v. Statewide Virtual Charter School Board*, No. CV-2023-1857 (Dist.

Ct. Okla. Cnty.). In addition, counsel is preparing for oral argument in *Honickman v. Blom Bank SAL*, No. 22-1039 (2d Cir.), which is scheduled for October 5, 2023.

WHEREFORE, for the foregoing reasons, Indemnity respectfully requests that the time to file a petition for writ of certiorari be extended to and including October 20, 2023.

Respectfully submitted,



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August 30, 2023

CORPORATE DISCLOSURE STATEMENT

Erie Indemnity Co. is a publicly traded company. It has no parent corporation and no publicly held corporation owns 10% or more of its stock.

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EXHIBIT 1

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-1053

ERIE INSURANCE EXCHANGE, an unincorporated association, by TROY STEPHENSON, CHRISTINA STEPHENSON, and STEVEN BARNETT, trustees ad litem, and alternatively, ERIE INSURANCE EXCHANGE, by TROY STEPHENSON, CHRISTINA STEPHENSON, and STEVEN BARNETT

v.

ERIE INDEMNITY COMPANY,
Appellant

On Appeal from the United States District Court
for the Western District of Pennsylvania
District Court No. 2-22-cv-00166
Magistrate Judge: The Honorable Cynthia R. Eddy

Argued April 20, 2023

Before: HARDIMAN, BIBAS, and SMITH, *Circuit Judges*

(Filed: May 22, 2023)

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OPINION OF THE COURT

SMITH, *Circuit Judge*.

Erie Indemnity Co. ("Indemnity") appeals the District Court's order remanding this matter to Pennsylvania state court. Indemnity argues that the District Court had jurisdiction because the case is a "class action" for purposes of the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 ("CAFA"). In the alternative, Indemnity argues that federal jurisdiction exists because this case is a continuation of a previous federal class action against Indemnity involving similar parties and claims. We are not persuaded on either ground and will affirm the District Court's order.

I.

A.

Erie Insurance Exchange ("Exchange") is an unincorporated association that operates as a reciprocal insurance exchange under Pennsylvania law. *See* 40 Pa. Stat. § 961 (authorizing creation of insurance exchanges through which individuals "exchange reciprocal or inter-insurance contracts with each other . . . providing indemnity among themselves"). Exchange is owned by its members, who are subscribers to insurance plans offered by Erie Insurance Group. Exchange is, essentially, a pool of funds comprised of insurance premiums and other fees paid by subscribers. Exchange's funds are mainly used to cover claims by subscribers. Exchange has no independent officers nor a governing body.

Indemnity is a Pennsylvania corporation that serves as the managing agent and attorney-in-fact for Exchange. In return, and under an agreement between Indemnity and each Erie Insurance Group subscriber, Indemnity receives a management fee paid out from Exchange's funds.

In August 2021, Erie Insurance Group subscribers Troy Stephenson, Christina Stephenson, Susan Rubel, and Steven Barnett (collectively, the "Stephenson Plaintiffs") sued Indemnity in the Court of Common Pleas of Allegheny County. *See Stephenson v. Erie Indem. Co.*, 2:21-cv-1444 (W.D. Pa. Nov. 3, 2021). The suit alleged that Indemnity breached its fiduciary duty to Erie Insurance Group subscribers by charging an excessive management fee. The Stephenson

Plaintiffs brought the case as a class action under Pennsylvania law on behalf of themselves and other "Pennsylvania residents" who subscribed to Erie Insurance Group policies. JA 99.

Invoking federal jurisdiction under CAFA, Indemnity removed *Stephenson* to the U.S. District Court for the Western District of Pennsylvania. Shortly thereafter, the Stephenson Plaintiffs voluntarily dismissed the case. *See* Notice of Voluntary Dismissal, *Stephenson v. Erie Indem. Co.*, No. 21-1444, Dkt. 12 (W.D. Pa. Nov. 2, 2021).

B.

One month after the voluntary dismissal of *Stephenson*, Exchange filed this case in the Court of Common Pleas of Allegheny County. As in *Stephenson*, the Complaint here alleges that Indemnity breached its fiduciary duty by charging an excessive management fee. The operative facts and the legal theory in this case are identical to those in *Stephenson*. But unlike *Stephenson*, this case is not pled as a class action—rather, it is pled in Exchange's name "by" Troy Stephenson, Christina Stephenson, and Steven Barnett (the "Individual Plaintiffs").[1] The Individual Plaintiffs purport to bring the case "on behalf of Exchange and . . . to benefit all members of Exchange." JA 54.

Though the Complaint alleges only a single count of breach of fiduciary duty, it advances two legal theories for why

[1] Susan Rubel, who was named as a plaintiff in *Stephenson*, is not named as a trustee ad litem in this case.

the Individual Plaintiffs have a right to sue on Exchange's behalf. First, the Complaint characterizes the claim as one brought pursuant to Rule 2152 of the Pennsylvania Rules of Civil Procedure, which authorizes "[a]n action prosecuted by an association . . . in the name of a member or members thereof as trustees ad litem for such association." Pa. R. Civ. P. 2152. Alternatively, the Complaint characterizes the claim as one brought pursuant to Rule 2177 of the Pennsylvania Rules of Civil Procedure, which authorizes "a corporation or similar entity" to prosecute an action "in its corporate name." Pa. R. Civ. P. 2177.

Indemnity removed the case to the U.S. District Court for the Western District of Pennsylvania, again citing CAFA. Though the Complaint characterizes this case as an individual action on Exchange's behalf—not as a class action—Indemnity argued that the case is in substance a class action insofar as Exchange is a stand-in for a class of Erie Insurance Group subscribers. Indemnity also argued that the case was a continuation of *Stephenson* and therefore fell within the District Court's jurisdiction under "the well-established rule that plaintiffs cannot extinguish federal jurisdiction" once it has attached. JA 14. The District Court disagreed and, on Exchange's motion, remanded the case to state court.

Indemnity timely petitioned this Court for leave to appeal pursuant to 28 U.S.C. § 1453. The motions panel first denied the petition, reasoning that this case is distinct from *Stephenson* and that our precedents therefore dictate that the case is not a class action. Indemnity petitioned for rehearing.

The same motions panel then vacated its order and granted Indemnity leave to appeal.

II.

Whether the District Court had jurisdiction is the sole question on appeal. "Federal courts are courts of limited jurisdiction," and "[t]hey possess only that power authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). We therefore "presume[] that a cause lies outside [our] limited jurisdiction." *Id.* As the party seeking removal, Indemnity bears the burden of establishing federal jurisdiction, *see id.*, and here, the burden of showing that this case falls within CAFA's jurisdictional grant, *see Morgan v. Gay*, 471 F.3d 469, 473 (3d Cir. 2006), *abrogated on other grounds by Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81 (2014).

Indemnity asserts that the District Court had jurisdiction under 28 U.S.C. § 1332(d). We have jurisdiction to review the District Court's remand order pursuant to 28 U.S.C. § 1453(c). *See Erie Ins. Exch. v. Erie Indem. Co.*, 722 F.3d 154, 158 (3d Cir. 2013) ("*Erie Insurance I*"). We review issues of subject matter jurisdiction and statutory interpretation de novo. *Id.* at 158 n.1.

A.

To start, this case is not a class action as that term is defined in CAFA. Congress enacted CAFA to ensure federal

jurisdiction over "interstate cases of national importance."[2] CAFA § 2(b)(2). To that end, CAFA authorizes federal jurisdiction over class actions that arise under state law but that involve minimally diverse parties and an aggregate amount in controversy in excess of $5 million. 28 U.S.C. § 1332(d)(2). The statute defines a class action as "any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action." *Id.* § 1332(d)(1)(B).

Our precedent in *Erie Insurance I* makes clear that this case is not a class action on its face. *Erie Insurance I* involved the same nominal parties and the same state procedural rules as this case. 722 F.3d at 156–57. We held that the case was not

[2] CAFA does not define what makes a class action nationally important, and we have not yet had the opportunity to address that question. When our sister circuits have sought such a definition, they generally have looked to the citizenship of the parties, the location of the operative facts, and which state's laws provide the basis for the legal claims. *See, e.g.*, *Dominion Energy, Inc. v. City of Warren Police & Fire Ret. Sys.*, 928 F.3d 325, 338 (4th Cir. 2019) (concluding that class action against large utility company on behalf of "thousands of . . . class members across the United States" was nationally important); *Bridewell-Sledge v. Blue Cross of Cal.*, 798 F.3d 923, 933 (9th Cir. 2015) (characterizing case as "largely a local California controversy involving routine employment discrimination claims arising solely under California law").

a class action for CAFA purposes because Rule 2152 was not "similar" to Rule 23.[3] *Id.* at 159. Accordingly, and on a record materially identical to this case, we affirmed the district court's order remanding the case to state court. *Id.* at 163.

Despite Indemnity's insistence to the contrary, we are bound to follow *Erie Insurance I*. Only when Supreme Court authority has "undermine[d] the rationale" of our precedent may a panel of this Court "reconsider contrary prior holdings without having to resort to an en banc rehearing." *DiFiore v. CSL Behring, LLC*, 879 F.3d 71, 76 (3d Cir. 2018). No such authority undermines *Erie Insurance I*. When we decided *Erie Insurance I*, we did so with the benefit of Supreme Court dicta and legislative history supporting a liberal construction of CAFA's jurisdictional provisions. That the Supreme Court has since reiterated those directives in cases involving other requirements of CAFA jurisdiction, *see, e.g.*, *Dart Cherokee*, 574 U.S. at 89, does nothing to undermine *Erie Insurance I*'s rationale. We must therefore conclude that this case is not a class action on its face.

This does not end our inquiry. If a complaint does not satisfy CAFA's jurisdictional requirements on its face, we must cut through any pleading artifice to identify whether the

[3] We further explained, albeit in dictum, that "Rule 2177 is even less like Rule 23 [than is Rule 2152] in that it contains none of Rule 23's class-related requirements, and, unlike Rule 2152, does not even explicitly contemplate a suit filed by a member 'on behalf of' an association." *Id.* Suits brought under Rule 2177 thus also are not "class actions" for CAFA purposes.

case is in substance an interstate class action. In *Standard Fire Insurance Co. v. Knowles*, the Supreme Court noted that courts must be careful not to "exalt form over substance" when determining whether a case satisfies CAFA's jurisdictional requirements. 568 U.S. 588, 595 (2013). At least one of our sister circuits has taken this dictum as an "instruct[ion] . . . to look beyond the complaint to determine whether the putative class action meets [CAFA's] jurisdictional requirements." *Rodriguez v. AT & T Mobility Servs. LLC*, 728 F.3d 975, 981 (9th Cir. 2013). Though we have not addressed that precise issue in the CAFA context, we repeatedly have held that courts may look beyond a complaint when ruling on factual challenges to their subject matter jurisdiction. *See Davis v. Wells Fargo*, 824 F.3d 333, 346 (3d Cir. 2016). Indemnity invites us to look beyond the Complaint's characterization of this case as an individual action to the fact that the Complaint ultimately seeks to benefit a large interstate class of Erie Insurance Group subscribers.

But we have made clear—albeit outside the CAFA context—that we will look beyond the four corners of a complaint only when addressing factual predicates, not legal requirements, for our subject matter jurisdiction. *See Davis*, 824 F.3d at 346. And indeed, the overwhelming majority of CAFA cases in which courts have looked beyond the four corners of the complaint have turned on CAFA's amount in controversy requirement—a quintessentially factual inquiry. *See, e.g.*, *Standard Fire*, 568 U.S. at 596 (holding that a plaintiff may not evade CAFA jurisdiction by stipulating that the class would seek damages below CAFA's jurisdictional threshold); *Freeman v. Blue Ridge Paper Prods., Inc.*, 551 F.3d

405, 410 (6th Cir. 2008) (aggregating the amount in controversy across five related cases to determine whether case at bar met CAFA's jurisdictional threshold). But the primary obstacle preventing *this* case from falling within CAFA's definition of a class action is a quintessentially legal requirement: whether the Pennsylvania procedural rules governing Exchange's claim are similar to Rule 23. Search as we might, there are no facts beyond the Complaint that could alter our conclusion that the relevant state rules are dissimilar to Rule 23 and that this case therefore falls beyond the scope of CAFA jurisdiction. *See Erie Insurance I*, 722 F.3d at 160 ("No amount of piercing the pleadings will change the statute or rule under which the case is filed." (cleaned up)).

We likewise decline Indemnity's invitation to construe CAFA's text liberally in light of that statute's "primary objective: ensuring 'Federal court consideration of interstate cases of national importance.'" *Standard Fire*, 568 U.S. at 595 (quoting CAFA § 2(b)(2)). To be sure, we are careful not to "interpret federal statutes to negate their own stated purposes." *N.Y. State Dep't of Soc. Servs. v. Dublino*, 413 U.S. 405, 419–20 (1973). Nor have we shied away from adopting purpose-driven—even atextual—constructions of CAFA in the past. *See Morgan v. Gay*, 466 F.3d 276, 279 (3d Cir. 2006) (offering "common sense revision" to misleading statutory text that contravened Congress's intent in enacting CAFA). "But no legislation pursues its purposes at all costs," *Rodriguez v. United States*, 480 U.S. 522, 525–26 (1987), and "we are not free to rewrite this statute (or any other) as if it did," *Bartenwerfer v. Buckley*, 143 S. Ct. 665, 675 (2023). Indeed, "it frustrates rather than effectuates legislative intent

simplistically to assume that *whatever* furthers the statute's primary objective must be the law." *Rodriguez*, 480 U.S. at 526.

CAFA's text leaves no wiggle room. A state court proceeding will be considered a class action under CAFA only if it is "filed under" a "State statute or rule of judicial procedure" that "authoriz[es] an action to be brought by 1 or more representative persons as a class action" and otherwise is "similar" to Rule 23. 28 U.S.C. § 1332(d)(1)(b). As discussed above, we are bound by our precedent to conclude that the state procedural rules at issue are dissimilar to Rule 23. *See Erie Insurance I*, 722 F.3d at 159. We likewise are bound by Congress's decision to limit CAFA jurisdiction to cases filed under state procedural rules similar to Rule 23. We acknowledge that CAFA was "intended to expand substantially federal court jurisdiction over class actions." S. Rep. No. 109-14, at 43 (2005). Yet Congress's "policy concerns cannot trump the best interpretation of the statutory text." *Patel v. Garland*, 142 S. Ct. 1614, 1627 (2022). And that text plainly dictates that this case falls beyond CAFA's ambit.

Lastly, we note the Eighth Circuit's insightful dictum that when a plaintiff "seeks to return [a previously removed] case to his original chosen forum in a form that will avoid removal," it is not readily apparent "who is the forum shopper." *Tillman v. BNSF Ry. Co.*, 33 F.4th 1024, 1029 (8th Cir. 2022). It is for precisely this reason that text, rather than policy, must guide our jurisdictional inquiry. And it is for precisely this reason that we will adhere to our precedent and decline to treat this case as a class action.

B.

Recognizing the challenge that it faces in characterizing this individual claim as a class action, Indemnity has a fallback position: that the District Court had jurisdiction here because this case is a continuation of *Stephenson*.

Federal courts have long held that "events occurring subsequent to removal . . . do not oust the district court's jurisdiction once it has attached." *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 293 (1938). We assume, for the purpose of this case, that this rule applies to CAFA jurisdiction. *See Louisiana v. Am. Nat. Prop. Cas. Co.*, 746 F.3d 633, 639 (5th Cir. 2014) (noting that "[e]very circuit that has addressed the question has held that" the *Red Cab* rule applies in the CAFA context). We likewise assume that the district court had jurisdiction in *Stephenson*.

But the *Red Cab* rule does not support Indemnity's assertion of federal jurisdiction, because this case is not a continuation of *Stephenson*. "[I]t is hornbook law that 'a voluntary dismissal without prejudice under Rule 41(a) leaves the situation as if the action never had been filed.'" *United States v. L-3 Commc'ns EOTech, Inc.*, 921 F.3d 11, 19 (2d Cir. 2019) (emphasis omitted) (quoting 9 Charles Alan Wright & Arthur R. Miller *et al.*, Federal Practice and Procedure § 2367, at 559 (3d ed. 2017)). It follows that when a plaintiff voluntarily dismisses his case, "any future lawsuit based on the same claim is an entirely new lawsuit unrelated to the earlier (dismissed) action." *City of South Pasadena v. Mineta*, 284 F.3d 1154, 1157 (9th Cir. 2002) (alterations omitted) (quoting

Sandstrom v. ChemLawn Corp., 904 F.2d 83, 86 (1st Cir. 1990)).

Our opinion in *Vodenichar v. Halcon Energy Properties, Inc.*, is not to the contrary. 733 F.3d 497 (3d Cir. 2013). There, as here, we addressed a situation in which the plaintiffs voluntarily dismissed a federal court class action and refiled a new case in state court. *Id.* at 502. In determining whether the case fell within the district court's CAFA jurisdiction, we characterized the plaintiffs' voluntary dismissal and refiling strategy as similar "[i]n practical terms" to "a situation where a party amends a pleading to join parties to an existing case." *Id.* at 509. We therefore deemed it appropriate to "consider[] the second filed action a continuation of the first filed action." *Id*.

But a closer look at *Vodenichar* reveals this language to have been a red herring. The issue there was whether the dismissed action was an "other class action" as that term is used in CAFA's local controversy exception. *Id*. at 506 (citing 28 U.S.C. § 1332(d)(4)(A)). And to that end, our reasoning rested entirely on the text and purpose of the local controversy exception. *Id*. at 508–10. We noted that Congress "excluded from the local controversy exception cases where a defendant was named in multiple similar cases" because it was concerned that defendants would "face copycat[] suits in multiple forums." *Id.* at 508. By the same token, we reasoned that the "other class action" requirement was linked to one of Congress's goals in enacting CAFA: "control[ling] the impact of multiple class actions filed by different members of the same class against a defendant by providing a single forum to resolve

similar claims." *Id.* Noting the unique procedural history of *Vodenichar* and its predecessor and the many commonalities between the two suits, we determined that the situation in *Vodenichar* did not implicate Congress's policy concern because it was "not a copycat situation where the defendants face similar class claims brought by different named plaintiffs and different counsel in different forums." *Id.* at 509 We therefore concluded that the predecessor suit was not, "[i]n practical terms," an "other class action" for the purpose of the local controversy exception. *Id.*

Thus despite any facial similarities to this case, *Vodenichar* did not address the situation before us now, in which a removing defendant seeks to tie the instant case to its predecessor as a means of establishing federal jurisdiction. In fact, our decision to treat the two actions as a single proceeding in *Vodenichar* had precisely the opposite legal consequence in that case as it would here. There, we concluded that the successor case fell within CAFA's local controversy exception and thus exceeded the district court's jurisdiction. *Id.* at 510. Accordingly, we affirmed the district court's order remanding the case to state court. *Id.* By contrast if we were to treat *this* case as a continuation of *Stephenson*, we would reverse the District Court's remand order and hold that the plaintiffs' decision to file this case in state court had no bearing on whether the case would proceed in the state or federal forum.

That result would contradict our result in *Vodenichar*. We concluded there that the successor case fell within CAFA's local controversy exception and so belonged in state court rather than federal court. *Id.* at 509. That exception applies only

where at least one defendant "is a citizen of the State in which the action was originally filed." § 1332(d)(4)(A)(i)(II)(cc). *Vodenichar*'s predecessor was filed in Pennsylvania federal court and involved only one defendant, a Delaware corporation. *See id.* at 502, 504. It was the plaintiffs' addition of two Pennsylvania corporations as defendants in the refiled action that brought *Vodenichar* within the scope of the local controversy exception and thereby provided the basis for remanding the case to state court. *See id.* at 507.

That our jurisdictional determination in *Vodenichar* hinged on the updates in the refiled complaint makes clear that we considered *Vodenichar* to be a continuation of its predecessor only for the purpose of the local controversy exception. As noted above, it is an "elementary principle that jurisdiction which has once attached is not lost by subsequent events." *Fairview Park Excavating Co. v. Al Monzo Const. Co.*, 560 F.2d 1122, 1125 (3d Cir. 1977) (citation omitted). If we truly considered the *Vodenichar* plaintiffs' voluntary dismissal and refiling to be "no different from a situation where a party amends a pleading to join parties to an existing case," 733 F.3d at 509, we would have concluded that the case belonged in federal court and vacated the District Court's order—just as Indemnity asks us to do here. Instead, we concluded that the case belonged in state court without discussing whether federal jurisdiction had attached during the predecessor case. *Vodenichar* therefore supports rather than undermines the longstanding rule that a case brought after a voluntary dismissal is "an entirely new lawsuit unrelated to the earlier (dismissed) action." *Sandstrom*, 904 F.2d at 86.

What's more, the two actions at issue here involve different plaintiffs, further revealing that they are different cases. *Cf. Vodenichar*, 733 F.3d at 502 (treating two cases with shared plaintiffs as one). Formally, this case is pled in Exchange's name, while *Stephenson* was a class action pled on behalf of four named plaintiffs and other Pennsylvania residents who subscribed to Erie Insurance Group policies. And functionally, the real parties in interest here are different from the real parties in interest in *Stephenson*. While the proposed plaintiff class in *Stephenson* was expressly limited to "Pennsylvania residents," JA 99, any benefit that Exchange recovers here would flow to "all members of Exchange" no matter where they reside, JA 54. That difference undermines Indemnity's assertion that this case is merely *Stephenson* by another name.

The Seventh Circuit's decision in *Addison Automatics, Inc. v. Hartford Casualty Insurance Co.* likewise illustrates that while courts have at times found it rhetorically useful to characterize subsequent actions as continuations of voluntarily dismissed actions, they have not relied on that analogy as a rule of decision. 731 F.3d 740 (7th Cir. 2013). In *Addison*, the Seventh Circuit looked to a prior class action in holding that the federal courts had jurisdiction over a case that did not purport to raise class claims. *Id.* at 741. The litigation began when Addison Automatics, Inc. ("Addison") filed a class action against Domino Plastics Company ("Domino"), which Domino's liability insurer declined to defend. *Id.* at 741. Domino and Addison entered into a settlement agreement in which "Domino assigned to Addison—as class representative—whatever claims Domino might have against

its absent liability insurers" conditioned on Addison's service as class representative in a suit against the insurers. *Id.* Addison sued the insurer both individually and as a class representative, and the insurer removed to federal court under CAFA. *Id.* Addison voluntarily dismissed the case and filed a new case in state court, this time bringing only individual claims. *Id.* at 741–42.

In holding that the nominally individual suit was a class action for the purpose of CAFA jurisdiction, the Seventh Circuit noted the importance of focusing on substance rather than form in the CAFA context and analogized voluntary dismissal and refiling to amending the complaint. *Id.* at 744. But the court emphasized that its decision did "not depend" on that "detail[]," as the case would have been a federal class action and the court's "decision would [have been] the same even if Addison had not filed th[e] first complaint." *Id.* Instead, the court concluded that the case was "in substance a class action" because Addison had standing to sue "only in its capacity as class representative" and not individually. *Id.* at 742.

We are not blind to the substantial factual and legal overlap between this case and *Stephenson*. Nor do we ignore the fact that Exchange filed this case only one month after the Stephenson Plaintiffs dismissed their case against Indemnity and less than two months after Indemnity removed *Stephenson* to federal court. But we are not prepared to essentially set aside a basic principle of Anglo-American law: that distinct cases filed by distinct plaintiffs deserve distinct judicial treatment. We therefore will not gloss over the differences—however

minor or formalistic—between this case and *Stephenson*, and so will not treat Exchange's individual suit as a mere amendment to the Stephenson Plaintiffs' class action.

III.

The District Court correctly determined that this case was neither a class action as that term is defined in CAFA nor a continuation of the voluntarily dismissed class action in *Stephenson*. Seeing no basis for exercising federal jurisdiction, we therefore will AFFIRM the District Court's order remanding this case to state court.

EXHIBIT 2

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-1053

ERIE INSURANCE EXCHANGE, an unincorporated association, by TROY STEPHENSON, CHRISTINA STEPHENSON, and STEVEN BARNETT, trustees ad litem, and alternatively, ERIE INSURANCE EXCHANGE, by TROY STEPHENSON, CHRISTINA STEPHENSON, and STEVEN BARNETT

v.

ERIE INDEMNITY COMPANY,
Appellant

District Court No. 2-22-cv-00166

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, JORDAN, HARDIMAN, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES, CHUNG, and SMITH[*], Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge

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[*] The vote of the Honorable D. Brooks Smith, Senior Judge of the United States Court of Appeals for the Third Circuit, is limited to panel rehearing.

who concurred in the decision having asked for rehearing, and none of the panel having voted for rehearing, the petition for rehearing, is denied.

BY THE COURT,

s/D. Brooks Smith
Circuit Judge

Dated: June 22, 2023
Amr/cc: All counsel of record

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
PITTSBURGH

ERIE INSURANCE EXCHANGE, AN UNINCORPORATED ASSOCIATION, BY TROY STEPHENSON, CHRISTINA STEPHENSON, AND STEVEN BARNETT, TRUSTEES AD LITEM, AND ALTERNATIVELY, ERIE INSURANCE EXCHANGE, BY TROY STEPHENSON, CHRISTINA STEPHENSON, AND STEVEN BARNETT; Plaintiff, vs. ERIE INDEMNITY COMPANY, Defendant,	2:22-CV-00166-CRE

MEMORANDUM OPINION[1]

CYNTHIA REED EDDY, Chief United States Magistrate Judge.

I. INTRODUCTION

Plaintiffs Troy Stephenson, Christina Stephenson, and Steven Barnett as trustees *ad litem* on behalf of Erie Insurance Exchange (collectively Plaintiffs or "Exchange") initiated this breach of fiduciary duty action against Defendant Erie Indemnity Company ("Indemnity") in the Court of Common Pleas of Allegheny County, Pennsylvania. Thereafter, Indemnity removed the action to this Court. Presently for consideration is Exchange's motion to remand (ECF No. 19). The motion is fully briefed and ripe for consideration.

For the reasons that follow, said motion is granted and this case shall be remanded to the

[1] All parties have consented to jurisdiction before a United States Magistrate Judge; therefore the Court has the authority to decide dispositive motions, and to eventually enter final judgment. *See* 28 U.S.C. § 636, *et seq*.

Court of Common Pleas of Allegheny County, Pennsylvania.

II. BACKGROUND

Exchange is an unincorporated association that operates as a reciprocal insurer. It has no employees, officers, or board of directors. Indemnity serves as the managing agent and attorney-in-fact for Exchange in its operation as a reciprocal insurer. Exchange alleges that by virtue of this relationship, Indemnity owes fiduciary duties to Exchange. Exchange alleges that Indemnity has breached its fiduciary duties by charging Exchange an annual "Management Fee" that equates to tens of millions of dollars that is not used to cover the cost of serving as the attorney-in-fact and managing agent for Exchange, but funnels this money to Indemnity's shareholders, including a small group of controlling shareholders who are members of Indemnity's Board of Directors and who set the Management Fee in the form of dividends and "special dividend" payments.

Plaintiffs Troy Stephenson, Christine Stephenson and Steven Barnett initiated this action in the Court of Common Pleas of Allegheny County as trustees *ad litem* for Exchange under Rule 2152 of the Pennsylvania Rules of Civil Procedure. Plaintiffs allege two causes of action against Indemnity based on a breach of fiduciary duty for Indemnity's conduct in December 2019 and 2020 related to the management fee charge. On January 27, 2022, Indemnity filed a Notice of Removal asserting that this Court has jurisdiction under Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2) ("CAFA"). Exchange moves to remand the action to state court and argues that this Court lacks jurisdiction under CAFA.

III. STANDARD OF REVIEW

"Generally, 'federal courts have a strict duty to exercise the jurisdiction that is conferred upon them by Congress.'" *NORCAL Mut. Ins. Co. v. Laurel Pediatric Assocs., Inc.*, No. 3:21-CV-66, 2022 WL 1308109, at *2 (W.D. Pa. May 2, 2022) (quoting *Quackenbush v. Allstate Ins. Co.*,

517 U.S. 706, 716, 116 S. Ct. 1712, 135 L. Ed. 2d 1 (1996)). The party seeking removal of an action to federal court bears the burden of establishing that federal subject matter jurisdiction exists. *Kaufman v. Allstate New Jersey Ins. Co.*, 561 F.3d 144, 151 (3d Cir. 2009). To determine whether removal is proper, the court should examine the allegations set forth in the complaint and the notice of removal. *Erie Ins. Exch. v. Erie Indem. Co.*, 722 F.3d 154, 158 (3d Cir. 2013).

IV. DISCUSSION

Exchange argues that this case must be remanded to state court because this action does not meet the subject matter jurisdiction requirements of CAFA because (1) this action is not a "class action" within the meaning of CAFA and (2) the parties are not minimally diverse as required by CAFA § 1332(d)(2)(A).

"CAFA grants federal courts original jurisdiction over actions in which: (1) the matter constitutes a 'class action'; (2) 'the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs'; (3) CAFA's minimal diversity requirements are met; and (4) there are at least 100 members of the putative class." *Hoffman v. Nutraceutical Corp.*, 563 F. App'x 183, 185 (3d Cir. 2014) (unpublished) (quoting 28 U.S.C. § 1332(d)(2), (d)(5)(B)). "The proper test in a CAFA removal action depends on the nature of the jurisdictional facts alleged and whether they are in dispute." *Judon v. Travelers Prop. Cas. Co. of Am.*, 773 F.3d 495, 500 (3d Cir. 2014).

Exchange takes issue with the first element and argues that the complaint does not allege a class action under the Federal Rules of Civil Procedure or any similar Pennsylvania statutes or rule.

Indemnity argues that the Court should consider the parties litigation history and because Exchange has attempted to assert class claims under CAFA with respect to the management fees in prior actions, including a recently removed action that included class claims that Plaintiffs

voluntarily dismissed post-removal to this Court, the Court should consider the claims asserted here as class claims. Indemnity argues that Plaintiffs' voluntary dismissal of the prior putative class action and filing of this case sans-class claims is the functional amendment, or amendment *de facto*, of Plaintiff's previously voluntarily dismissed action.

CAFA defines a "class action" as "any civil action filed under Rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action." 28 U.S.C. § 1332(d)(1)(B). Under the unambiguous definition of "class action," "[t]he statute directs [the court] to inquire whether th[e] action was brought under a 'state statute or rule' that is 'similar' to Rule 23 or, in other words, 'whether the state statute authorizes the suit "as a class action." ' " *Erie Ins. Exchange*, 722 F.3d at 158 (quoting *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 848 (9th Cir. 2011)).

The parties previously litigated the same issue of whether the federal court had jurisdiction under CAFA where trustees *ad litem* of the Exchange brought breach of contract, breach of fiduciary duty claims and equitable relief under Pennsylvania Rule of Civil Procedure 2152 ("Rule 2152") in state court. *Erie Ins. Exchange*, 722 F.3d at 157. Indemnity removed the action to federal court, Exchange moved to remand and the district court granted that motion and remanded the case to state court. On appeal, the Court of Appeals for the Third Circuit held that there was no federal jurisdiction under CAFA because Exchange did not bring class claims, nor could it under Rule 2152 as an unincorporated association bringing claims on behalf of its members. The court of appeals found that

> Rule 2152 contains none of the defining characteristics of Rule 23 of the Federal Rules of Civil Procedure ("Rule 23"). It does not, for example, provide for class certification mechanisms, . . . list requirements such as numerosity or commonality that a suit must meet to constitute a class action . . . or specify the form and substance of notice that must be given to absent class members[.] Nor does Rule 2152 permit individual class members to opt-out or provide for the appointment of

> a lead plaintiff or class counsel. Far from "authorizing an action to be brought by [a] representative person[] as a class," 28 U.S.C. § 1332(d)(1)(B), Rule 2152 merely authorizes suits by representatives on behalf of an unincorporated association. *See* Pa. R. Civ. P. 2152. Indeed, to the extent we have interpreted Pennsylvania law on the matter, we have held that suits by members of an unincorporated association (such as those contemplated by Rule 2152) may not be brought as a class action. *See Underwood v. Maloney*, 256 F.2d 334, 337 (3d Cir. 1958) ("Pennsylvania has forbidden a suit by or against an unincorporated association to be maintained as a class action.").

Erie Ins. Exchange, 722 F.3d at 158–59. The court of appeals further explained that a suit under Rule 2152 "is properly understood as a suit by one entity, not by 'a conglomerate of individuals.' " *Erie Ins. Exchange*, 722 F.3d at 159 (quoting *Long v. Sakleson*, 328 Pa. 261, 195 A. 416, 420 (1937)). It further found that "[p]laintiffs are the masters of their complaints and are 'free to choose the statutory provisions under which they will bring their claims[,]' " *id.* (quoting *Purdue Pharma L.P. v. Kentucky*, 704 F.3d 208, 216 (2d Cir. 2013) n. 7 (2d Cir.2013)), and concluded that there was no jurisdiction under CAFA and affirmed the district court's remand of the action to state court. *Erie Ins. Exchange*, 722 F.3d at 156.

Indemnity has provided no tenable reason to deviate from this result. Exchange brings this lawsuit under Rule 2152 and does not assert class claims or any state law equivalent, and as such, there is no basis for CAFA jurisdiction. Indemnity cites *Loper v. Lifeguard Ambul. Serv., LLC*, 2:19-CV-583-CLM, 2020 WL 8617215, at *8 (N.D. Ala. Jan. 10, 2020) for the proposition that a plaintiff cannot use Federal Rule of Civil Procedure 15 to amend his complaint to divest a federal court of jurisdiction under CAFA, and also cannot do so by using the voluntary dismissal procedure under Rule 41 to do the same. In *Loper*, the court denied the plaintiff's request to amend her complaint in an attempt to divest the court of CAFA jurisdiction and further denied the plaintiff's request to voluntarily dismiss her action so that she could refile it so that it did not meet the jurisdictional requirements of CAFA. In so denying, the court noted "that it would be passing

strange to bar a Plaintiff from divesting a federal court of jurisdiction by using Rule 15 to amend his complaint but allow him to do so using Rule 41." *Loper*, 2020 WL 8617215, at *10. However, in *Loper*, the court was addressing whether to exercise its discretion to approve a stipulation of dismissal under Rule 41(a)(2) which requires a court order and for the court to allow dismissal "on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). Instantly, Exchange's previous case was voluntarily dismissed under Fed. R. Civ. P. 41(a)(1)(A)(i) prior to any answer being filed and did not require a court order to become immediately operative. *See Stephenson v. Erie Indemnity Company*, 2:21-cv-1444 (W.D.Pa.) (ECF No. 12). Rule 41 is clear that a stipulation of dismissal under Rule 41(a)(1)(A) "does not require a court order, nor does it require the approval of the court." *State Nat'l Ins. Co. v. Cnty. of Camden*, 824 F.3d 399, 406 (3d Cir. 2016). *See also Blair v. Comprehensive Healthcare Mgt. Services, LLC*, 2:18-CV-1667, 2021 WL 3855931, at *3 (W.D. Pa. Aug. 27, 2021). Because a dismissal under Rule 41(a)(1)(A) does not require a court order or approval, [the Court of Appeals for the Third Circuit has] held that '[t]he entry of such a stipulation of dismissal is effective automatically.' " *State National Insurance Company*, 824 F.3d at 406 (quoting *First Nat. Bank of Toms River, N. J. v. Marine City, Inc.*, 411 F.2d 674, 677 (3d Cir. 1969)). A stipulation to dismiss under Rule 41(a)(1)(A) is "immediately self-executing. No separate entry or order is required to effectuate the dismissal." *State Nat'l Ins. Co*, 824 F.3d at 406–07 (footnotes omitted). *But see* Fed. R. Civ. P. 41(a)(2) (explicitly requiring a court order to approve of the dismissal "on terms that the court considers proper.").[2] Therefore, this Court cannot consider Exchange's previously dismissed case that included class claims as a basis for CAFA

[2] While the Court did issue an order approving the stipulation of dismissal, such an Order was superfluous, was entered for the purpose of directing the Clerk's Office to close the case and did not require the Court's discretion for the voluntary dismissal to become immediately effective. *See Stephenson v. Erie Indemnity Company*, 2:21-cv-1444 (W.D.Pa.) (ECF No. 13).

jurisdiction in this case which pleads no class claims or state law equivalent claims. The present action as it is pleaded includes no class claims and because Exchange is the scrivener of its complaint and is free to choose the statutory provisions under which it will bring its claims, there is no basis for CAFA jurisdiction. As previously noted by the court of appeals:

> This case was not filed under any rule that contemplates class proceedings, and Indemnity does not contend otherwise. It therefore fails to meet the statutory definition of "class action" and may not properly be removed under CAFA. Even after accepting Indemnity's invitation to perform an analysis beyond what CAFA's text requires, and to wade through the complaint in hopes of concluding that something else is afoot, we have failed to uncover any evidence that this case is really a class action wolf dressed in sheep's clothing.

Erie Ins. Exch., 722 F.3d at 163. Accordingly, Plaintiffs' motion to remand is GRANTED.

V. CONCLUSION

Based on the foregoing, Exchange's motion to remand (ECF No. 19) is GRANTED and the Clerk's Office shall remand this case to the Court of Common Pleas of Allegheny County, Pennsylvania forthwith. Should Indemnity seek a stay of this Order, they shall file said motion to stay remand of the case by **October 5, 2022**.

An appropriate Order follows.

DATED this 28th day of September, 2022.

BY THE COURT:

s/Cynthia Reed Eddy
Chief United States Magistrate Judge

EXHIBIT 4

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 22-8051

ERIE INSURANCE EXCHANGE, an unincorporated association, by TROY STEPHENSON, CHRISTINA STEPHENSON, and STEVEN BARNETT, trustees ad litem, and alternatively, ERIE INSURANCE EXCHANGE, by TROY STEPHENSON, CHRISTINA STEPHENSON, and STEVEN BARNETT

v.

ERIE INDEMNITY COMPANY,
Petitioner

(2:22-cv-00166)

SUR PETITION FOR REHEARING

Present: AMBRO, KRAUSE, and NYGAARD, Circuit Judges

The petition for rehearing filed by Petitioner Erie Indemnity Company in the above-entitled case having been submitted to the judges who participated in the decision of this Court, it is hereby ORDERED that the petition for rehearing by the panel is GRANTED. The Court's order of November 7, 2022 is hereby VACATED. Petitioner's Petition for Leave to Appeal (Dkt. No. 1) is GRANTED and Petitioner's appeal is referred to a merits panel for further briefing on the merits, as well as this Court's

jurisdiction over Petitioner's appeal. The Clerk of Court is directed to issue a briefing schedule in accordance with 28 U.S.C. § 1453(c)(2), which requires the merits panel to render judgment not later than 60 days after Petitioner files its appeal, unless both parties agree to an extension under 28 U.S.C. § 1453(c)(3). In light of this decision, no further action will be taken by the en banc court.

BY THE COURT,

s/ Cheryl Ann Krause
Circuit Judge

Dated: January 9, 2023
Amr/cc: All counsel or record