No. 24-769

In The
Supreme Court of the United States

JOAN STORMO,
AS ASSIGNEE OF PETER T. CLARK

Petitioner,

v.

STATE NATIONAL INSURANCE CO.,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the First Circuit

Reply Brief of Petitioner

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

ARGUMENT

I. Stormo is not asking this court to correct an error of state law.

Contrary to State National's gross mischaracterization of her petition, Stormo is not asking this Court stay a judgment or correct the First Circuit's "perceived error" interpreting Massachusetts law. Rather, she is asking this court to put an end to the First Circuit's openly declared hostility to certifying state law questions when requested by parties filing in federal court based on diversity jurisdiction. There is no denying that such hostility is directed only at litigants choosing to file state law claims in a federal forum.

Second, a party like Stormo making a good faith request to certify a question of state law is not seeking a "change in decision-makers." Such a statement is a gross mischaracterization of the certification procedure and disrespectful of both federal and state courts. The court to which the question is directed does not make any decision in the case; it merely answers a question of law. The decision remains with the federal court. The answer to the certified question merely simply aids the federal court in making the right decision. Certifying questions of state law is neither changing decision-makers, for forum shopping. Otherwise, Federal courts would never certify questions sua sponte. Indeed, this Court has on occasion certified questions of law to state supreme courts. *See, e.g., Elkins v. Moreno*, 435 U.S. 647, 651 (1978) ("we first decide some preliminary issues of federal law and then certify the question of state law… to the Maryland Court of Appeals").

The First Circuit's hostility to certification requests from parties filing in federal court is well known among the First Circuit bar. For example, in a case decided only the month before Petitioner's, *Roberge v. Travelers Prop. Cas. Co. of America*, 112 F.3d 45 (1st Cir. 2024), which raised a question of insurance law which was certified, Roberge (who would filed in state court) emphasized in her brief that it "was Travelers who removed the case to federal court," and therefore the district court should have "certified the question to the Rhode Island Supreme Court." Roberge brief at 19. By contrast, one experienced practitioner observed that the only reason Stormo was not certified was because the plaintiff filed in federal court.

As amply demonstrated by the dissent, the First Circuit majority failed to make an "informed of prophecy" about Massachusetts law. Instead, it grafted its own policy preferences over those of the Massachusetts Legislature and SJC, and dismissed Stormo's certification request on the grounds that she had chosen to file in federal court.

II. Stormo promptly and appropriately requested certification, whereas State National's litigation conduct was responsible for the delay.

Difficult state law questions law questions do not always arise or become apparent at an early stage of litigation. For example, in this case, State National never pressed its untimely notice defense until the eve of trial – nearly 4 years after the case was filed. Even then, the district court initially decided the question in Stormo's favor, only to reverse course

Stormo prevailed at trial and grant JNOV on the issue of whether State National was required to prove prejudice before denying coverage for failure to comply with the "as soon as practicable" type of notice in a claims-made policy. *See Chas. T. Main v. Fireman's Fund Ins. Co.*, 406 Mass. 862, 865-66 (1990) (notice-prejudice rule "applies only to the 'as soon as practicable' type of notice and not to the 'within the policy year' type").

Therefore, Stormo can hardly be faulted for requesting certification on appeal and not earlier in the district court. Additionally, her certification request in a footnote with citations was appropriate and not materially different than other requests in cases in which questions were certified.[1] In *Roberge*, 112 F.3d 45, the First Circuit certified a question where the plaintiff devoted barely one sentence in its brief to its certification request. Roberge brief at 19. Similarly, in *Zurich American Ins. Co. v. Medical Properties Trust, Inc.*, 88 F.3d 1029 (1st Cir. 2023), in which the First Circuit certified the question, the plaintiff devoted barely two sentences in its 57 page brief to requesting certification of a question of Massachusetts insurance law. MPT brief at 2, 57.

Furthermore, once the First Circuit majority rendered its decision, Stormo promptly petitioned for rehearing, explaining in detail how the First Circuit's rule disfavoring certification for parties filing in federal court violates the *Erie* doctrine by handi-

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[1] If Stormo had devoted most of her brief to trying to persuade the First Circuit that it should certify a question to the SJC, instead of arguing the merits of her case, then the charge that she is seeking to "change decision-makers" might be valid. But she did no such thing.

capping parties filing state law claims in federal court.

CONCLUSION

State National makes no real argument addressing the key issue raised by the petition. Its brief simply begs the question whether the First Circuit's openly discriminatory rule disfavoring certification by parties filing state law claims in federal court violates the *Erie* doctrine.

This case is an opportunity for the Court to address an important issue regarding diversity jurisdiction and certification of questions of state law in the federal courts.

For the reasons stated, the Court should grant Stormo's petition, or summarily reverse and remand for certification to the SJC.

Respectfully submitted,

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