

No. 17-829

**In The
Supreme Court of the United States**

SASKATCHEWAN MUTUAL
INSURANCE COMPANY,

Petitioner,

v.

CE DESIGN, LTD.,

Respondent.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit**

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the District Court correctly dismissed this action, in which Appellant Saskatchewan Mutual Insurance Company (“SMI”) seeks recognition and enforcement of a \$1,000 judgment entered by the Queen’s Bench of Saskatchewan, based on a lack of subject matter jurisdiction. Appellee CE Design, Ltd. (“CED”) agrees with the conclusions of the District Court, and the Seventh Circuit Court of Appeals, that subject matter jurisdiction over this action is lacking because, as the Court of Appeals held in materially identical circumstances in *Travelers Property Cas. Co. v. Good*, 689 F.3d 714 (7th Cir. 2012), SMI cannot aggregate the claims of different class members to satisfy 28 U.S.C. § 1332(a) and cannot avail itself of 28 U.S.C. § 1332(d) because it is not a plaintiff class.

PARTIES TO THE PROCEEDINGS

Petitioner, who was Defendant-Appellant below, is Saskatchewan Mutual Insurance Company (referred to herein as “SMI”). Respondent, who was Plaintiff-Appellee below, is CE Design, Ltd. (referred to herein as “CED”).

CORPORATE DISCLOSURE STATEMENT

In accordance with Supreme Court Rule 29.6, Respondent CED hereby states that it has no parent corporation and no publicly held corporation owns 10% or more of its stock.

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INTRODUCTION

Petitioner has offered no compelling reason to justify this Court's review of the Appellate Court's decision that its effort to recognize and enforce a \$1,000 judgment entered by the Queen's Bench of Saskatchewan, was properly dismissed for a lack of subject matter jurisdiction. To the contrary, the appellate court's decision is a routine and correct application of well-settled precedent. The decisions below do not implicate any conflict with any decision of this Court, or any circuit split. Nor has SMI identified any narrow issue of significance warranting review. To the contrary, SMI simply presents an array of complaints about the decisions below, essentially urging the Court to engage in an exhaustive evaluation of the District Court's and Appellate Court's specific factual findings and legal holdings in this case. That is not a proper basis for certiorari review.

Finally, even if all that were not the case, based on CED's acceptance of a proposal from SMI's Saskatoon-based counsel, the Saskatchewan Judgment that formed the basis for this action is satisfied in full, thus eliminating any bona fide controversy. As such, this action is now moot.



STATEMENT OF THE CASE

Petitioner's Statement of the Case is incomplete, in that it (1) fails to set out fully the "facts material to consideration of the questions presented" and (2) fails

to contain “the basis for federal jurisdiction in the court of first instance.” Sup. Ct. R. 14.1(g). Respondent respectfully sets out the following facts material to the consideration of the question presented and further incorporates the facts recited in the Seventh Circuit’s opinion below. *See* Pet., Appendix A, at 2a-3a.

A. Background and the Underlying Action

On May 15, 2015, CED filed an action against Homegrown Advertising, Inc. (“Homegrown”) in Illinois state court. (R. 4, ¶ 6). That action (the “Underlying Action”) asserted causes of action under the federal Telephone Consumer Protection Act, 47 U.S.C. § 227, and two state law claims. Homegrown was insured during the pertinent time period pursuant to an insurance policy (the “Policy”) issued by SMI. Homegrown tendered the Underlying Action to SMI for defense and indemnity, and SMI denied the tender and disclaimed its duties under the Policy.

The parties to the Underlying Action reached a classwide settlement. On February 15, 2007, the court in the Underlying Action finally approved the terms of the settlement and granted final judgment in favor of CED and the class it represents and against Homegrown (the “Underlying Judgment”). (R. 4, ¶ 10). The Underlying Judgment was for \$5,000,000.00 plus costs and interest on behalf of the class. (R. 4, ¶ 12). SMI does not assert that any single class member is entitled to \$75,000.00 in the Underlying Judgment.

Indeed, SMI acknowledges that the class in the underlying action is comprised of 23,541 members. (R. 7, p. 5).

On March 26, 2007, CED filed a citation to discover assets from SMI, seeking to collect proceeds of the Policy. (*Id.*, ¶ 11). Service of a citation is all that is required to properly commence post-judgment proceedings. SMI failed to respond to the citation, and judgment was entered against SMI itself.

Following a second citation to discover assets, SMI has extensively litigated its liability in the Underlying Action. It first asserted that there was no personal jurisdiction over it in Illinois. That resulted in a decision by the Illinois Appellate Court that SMI had waived its challenge to personal jurisdiction. *See CE Design, Ltd. v. Homegrown Advertising, Inc.*, 2011 WL 10303450 (Ill. App. May 17, 2011).

Following remand, SMI has extensively litigated the merits in the citation proceeding. On May 12, 2015, the Illinois circuit court granted in part and denied in part CED's motion for judgment on the pleadings. (Appellee's Appendix ("CE App.") SA1).¹ It held that all of SMI's coverage defenses failed but held that CED would need to establish the reasonableness of

¹ The Court properly could take judicial notice of the filings and orders in the state court action because they are matters of public record. *See, e.g., Guaranty Bank v. Chubb Corp.*, 538 F. 3d 587, 591 (7th Cir. 2008); *Radaszewski v. Maram*, 383 F. 3d 599, 600 (7th Cir. 2004); *Henson v. CSC Credit Servs.*, 29 F. 3d 280, 284 (7th Cir. 1994).

the underlying settlement. (*Id.*). Following additional discovery, CED moved for summary judgment on the remaining issues. On July 26, 2016, the Illinois court denied that motion (SA2). The matter is set for trial.

B. The Saskatchewan Judgment

CED made an attempt in 2007 to enforce the judgment entered in the Illinois Action in Saskatchewan. (R. 4, ¶ 13). As the Appellate Court observed, that “gambit failed.” On January 8, 2008, the Saskatchewan court held that – based on the record of the Illinois proceedings at the time – that it would not enforce the Illinois judgment because SMI had not received sufficient notice and opportunity to be heard. (R. 1). It also assessed \$1,000.00 in costs against CE Design (the “Saskatchewan Judgment”). (*Id.*, ¶ 21).

C. Proceedings Below

SMI elected to initiate a new action in the District Court on June 4, 2015, seeking to recognize and enforce the Saskatchewan Judgment. (*Id.*). The District Court *sua sponte* ordered the parties to brief the issue of subject matter jurisdiction. Following briefing and argument, the District Court held that subject matter jurisdiction was lacking and dismissed the case. (R. 12).

SMI appealed that decision to the Seventh Circuit Court of Appeals. In an opinion dated July 26, 2017,

the Appellate Court affirmed the decision of the District Court. Pet., Appendix A. The Court of Appeals turned, first, to the threshold question of subject-matter jurisdiction. In that regard, the Court observed:

Two possible bases for jurisdiction have been advanced: the Class Action Fairness Act (CAFA), 28 U.S.C. § 1332(d), and the alienage branch of diversity jurisdiction, 28 U.S.C. § 1332(a)(2). The district court found CAFA inapplicable because the class is the defendant in this suit, and this court has held that CAFA applies only to plaintiff classes. *Travelers Prop. Cas. v. Good*, 689 F.3d 714, 723 (7th Cir. 2012). As for diversity jurisdiction, the court concluded that no individual class member could satisfy the \$75,000 amount-in-controversy requirement, and none of the exceptions to the general prohibition on aggregating claims applied. *See Snyder v. Harris*, 394 U.S. 332 (1969). Those rulings ended the case in the district court.

Pet. at 4a.

The Appellate Court agreed. It first disposed of the argument that jurisdiction could be invoked under CAFA because of the “fundamental obstacle: CAFA ‘applies only where there is a plaintiff class, not a defendant class.’” Pet. at 5a, *citing Travelers Prop. Cas. v. Good*, 689 F.3d 714, 723 (7th Cir. 2012). As the case reached the federal court, SMI was the plaintiff and the class is the defendant. A straightforward application of *Good* takes CAFA jurisdiction “off the table.” Pet. at 5a.

Secondly, it disposed of SMI's alienage jurisdiction argument, holding that the amount in controversy requirement is not met because the "record does not reveal . . . even a chance that at least one class member has put more than \$75,000 in controversy [and] the general rule is that the claims of multiple litigants cannot be aggregated to reach the jurisdictional amount in controversy" and no pertinent exception applies. Pet. at 10a.

The Appellate Court concluded, therefore that neither "CAFA nor conventional diversity jurisdiction empowers us to hear this matter." Pet. at 12a. Accordingly, it affirmed the judgment of the district court dismissing this case for lack of subject matter jurisdiction. (*Id.*).

D. Recent Full and Complete Resolution of the Saskatchewan Judgment

SMI also has initiated a separate, competing declaratory judgment action in Saskatoon, Saskatchewan. During the course of those proceedings, certain actions were undertaken by SMI that could, under local rules and practice, subject SMI to an assessment of costs. In December 2017, Saskatchewan-based counsel for SMI proposed that the parties resolve those costs by off-setting them against the outstanding \$1,000 judgment that forms the basis for SMI's efforts in this case. CED accepted the proposal, and confirmed by letter dated January 4, 2018, that:

The agreed costs with respect to the application to strike the Borcia Affidavit are set off

against the amount owing by CE Design, Ltd. to Saskatchewan Mutual Insurance in relation to the costs order of Justice R.C. Mills, in his Judgment dated January 8, 2008 in Q.B.G. No. 1195 of 2007, Judicial Centre of Saskatoon, such that indebtedness flowing from the order of costs of Justice R.C. Mills of January 8, 2008 is fully satisfied.

A copy of the confirmation correspondence is included herewith as Appendix A.



REASONS FOR DENYING THE PETITION

I. THIS CASE IS NOW MOOT.

Even if there otherwise were a reason for this Court to consider granting the Petition, and there is not, the full and complete satisfaction of the Saskatchewan Judgment, a resolution proposed by SMI and accepted by CED, renders these proceedings to recognize and enforce that judgment entirely moot.

When a party with standing at the inception of the litigation loses standing due to intervening events, the inquiry is one of mootness. Mootness is the doctrine of standing set in a time frame; that is, “the requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).” *Arizonans for Official English v. Arizona*, 520 U.S. 43, 68, n. 22, 117 S.Ct. 1055, 1069 (1997), quoting *United States Parole Comm’n v. Geraghty*, 445 U.S. 388, 397, 100 S.Ct. 1202

(1980); see *Milwaukee Police Ass’n v. Board of Fire & Police Com’rs of City of Milwaukee*, 708 F. 3d 921, 928 (7th Cir. 2013). Thus, the mootness doctrine requires re-evaluating the standing requirements throughout litigation. If at any point the plaintiff would not have standing to bring suit at that time, the case has become moot. *Id.*

The agreement of the parties, by its terms, ends any claims or controversies between SMI and CED regarding SMI’s attempt to have this Court recognize and enforce the Saskatchewan Judgment. Applying the “time frame” approach, therefore, any justiciable claims that SMI may have had originally with regard to the Saskatchewan Judgment (and the Seventh Circuit correctly concluded it had none within the jurisdiction of the federal courts) it is now moot.

II. PETITIONER CONCEDES THAT THIS CASE IS UNIQUE, MAKING A WRIT OF CERTIORARI INAPPROPRIATE.

Petitioner states that this case is distinctly unique because – in Petitioner’s words it is a matter of “first impression.” Pet. at 4. The Seventh Circuit did not refuse to apply this Court’s prior rulings, or tread new ground, but rather followed them. *E.g.*, *Snyder v. Harris*, 394 U.S. 332 (1969). Nor is there any circuit split warranting certiorari review. While Petitioner argues that the Seventh Circuit’s decision was incorrect, it cites no divergence between courts in any circuit. To the contrary, as reflected in the decisions below, the

outcome of this case was merely guided by the application of established precedent to the facts and circumstances presented.

III. PETITIONER FAILS TO PRESENT A NARROW, SIGNIFICANT ISSUE OF LAW FOR REVIEW, MAKING A WRIT OF CERTIORARI INAPPROPRIATE.

Petitioner seeks a writ of certiorari on an inherently generic and overly broad question: “whether the registration of a foreign judgment alters the status of the parties to that judgment.” Pet. at i. Petitioner’s question itself shows why this case does not warrant certiorari review. Stephen M. Shapiro, et al., *Supreme Court Practice*, § 6.25(i) (10th ed. 2013) (“General or indefinite questions, such as whether the court below erred . . . in deciding the case against petitioner, are wholly inadequate.”). Rather than argue for a focused review of a specific error committed by the Seventh Circuit, Petitioner asks the Court to engage in an exhaustive evaluation of the District Court’s and Appellate Court’s specific factual findings and legal holdings in this case. That is not a proper basis for certiorari review.

Far from presenting a narrow issue, moreover, Petitioner attempts a shotgun approach. Petitioner argues, *inter alia*: (1) CAFA must be, but was not, broadly construed (Pet. at 5); (2) registration of a judgment does not change the status of the parties to the judgment (Pet. at 6); and (3) the Seventh Circuit’s

reliance on comity was improper (Pet. at 10). It is not the role of this Court to review potentially erroneous factual findings or conclusions of the lower courts. *E.g.*, *United States v. Johnston*, 268 U.S. 220, 227 (1925) (“We do not grant a certiorari to review evidence and discuss specific facts.”); *Texas v. Mead*, 465 U.S. 1041, 1043 (1984) (*quoting Johnston*); *NLRB v. Hendricks Cnty. Rural Elec. Membership Corp.*, 454 U.S. 170, 176 n. 8 (1981) (improvident grant of cross-petition that presented “primarily a question of fact, which does not merit Court review”); *see also* Sup. Ct. R. 10 (“A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.”). By simply throwing up serial lists of purported legal and factual errors, and failing to identify any specific legal question that might be important to this Court, Petitioner has itself shown why its writ of certiorari should be denied. *See Yee v. City of Escondido*, 503 U.S. 519, 536 (1992) (Supreme Court Rule 14.1(a) is intended “to focus on the questions the Court has viewed as particularly important”).

IV. IN ALL EVENTS, THE SEVENTH CIRCUIT’S RESOLUTION OF THE SUBJECT MATTER JURISDICTION ISSUES WAS CORRECT.

Federal jurisdiction is limited. It is fundamental that “[f]ederal courts are not courts of general jurisdiction; they have only the power that is authorized by Article III of the Constitution and the statutes enacted by Congress pursuant thereto.” *Bender v. Williamsport*

Area School Dist., 475 U.S. 534, 541 (1986). SMI asserts as a basis for federal jurisdiction: diversity jurisdiction under 28 U.S.C. § 1332(a) or CAFA jurisdiction under 28 U.S.C. § 1332(d). Neither is met here. Diversity jurisdiction requires two things: diversity of citizenship and sufficient amount in controversy. SMI has not and cannot show that amount in controversy requirements are satisfied. CAFA applies to certain plaintiff class actions where the plaintiff classes seek at least \$5,000,000.00 in the aggregate. Again, the requirements are not met here.

On its face, this is an action to register and collect a *de minimus* award of litigation costs – “SMI seeks to collect its judgment of \$1,000.” (R. 1). This is not an insurance coverage declaratory judgment action. Nor is it an action filed by CED to collect on behalf of a class the judgment entered against SMI. Those issues are being addressed in a long-pending state court action in Lake County, Illinois. Nevertheless, SMI seeks to invoke this Court’s jurisdiction as a plaintiff based on nothing more than a bootstrap from the existence of those other issues being litigated elsewhere. Clearly an action between two parties for \$1,000.00 does not qualify for federal jurisdiction pursuant to § 1332. The Seventh Circuit was absolutely correct.

Further, CAFA only applies to actions initiated by a class, and this case is not a plaintiff class action. Moreover, CAFA applies only to certain plaintiff class actions where the plaintiff class seeks in excess of \$5 million in the aggregate. Again, the requirements are not met here. It is well-established that a litigant may

not aggregate the damages owed to underlying class members pursuant to a class judgment in determining jurisdiction over an insurance coverage action. Simply put, this is not a class action and the amount in controversy in SMI's action to enforce the \$1,000.00 Saskatchewan Judgment does not exceed \$5,000,000.00. On this point, as well, the Seventh Circuit was absolutely correct.

CONCLUSION

For each of the reasons discussed above, the Petition presents no basis for this Court's review. Even if it otherwise could do so, recent developments – the full and complete satisfaction of the Saskatchewan Judgment forming the basis for this action based on a proposal made by SMI, and accepted by CED – renders the case moot. Accordingly, the Petition for writ of certiorari should be denied.

January 8, 2018

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