No. 23-____

IN THE
Supreme Court of the United States

COUNTRY MUTUAL INSURANCE COMPANY,
Petitioner,

v.

ANGELA SUDHOLT, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, ET AL.,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Class Action Fairness Act of 2005 expanded federal-court jurisdiction over "interstate cases of national importance." Class Action Fairness Act of 2005, sec. 2(a)(4), (b)(2), Pub. L. No. 109-2, 119 Stat. 4. Congress specified narrow exceptions to that jurisdiction, two of which are at issue here. *First*, under the "home-state" exception, federal courts may not hear class actions where "the primary defendants[] are citizens of the State in which the action was originally filed." 28 U.S.C. § 1332(d)(4)(B). *Second*, under the "internal-affairs" exception, federal courts may not hear "any class action that solely involves a claim * * * that relates to the internal affairs or governance of a corporation." *Id.* § 1332(d)(9)(B).

The questions presented are:

1. Whether a court should consider a defendant's ability to pay a judgment when determining whether the defendant is a "primary defendant" under CAFA's home-state exception, as the Fifth and Seventh Circuits have held, or whether a court should instead determine if the defendant is the "real target" of the litigation, as the Third, Ninth, and Eleventh Circuits have held.

2. Whether a class action should be remanded to state court under CAFA's internal-affairs exception even if it requires a factfinder to "look beyond" the internal affairs of a corporation and evaluate other legal issues, as the Second, Seventh, and Ninth Circuits have held, or whether such a case should remain in federal court, as the Fourth Circuit has held.

PARTIES TO THE PROCEEDING

Country Mutual Insurance Company, petitioner on review, was the appellee below.

Angela M. Sudholt, Kyhl A. Sudholt, Kara Jones, Benjamin Jones, individually and on behalf of all others similarly situated, respondents on review, were the appellants below.

These individuals were defendants in the District Court: 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. None are petitioners on review.

CORPORATE DISCLOSURE STATEMENT

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

RELATED PROCEEDINGS

U.S. Court of Appeals for the Seventh Circuit

- *Sudholt* v. *Country Mutual Insurance Company*, No. 23-2507 (Oct. 2, 2023) (reported at 83 F.4th 621)
- *Sudholt* v. *Country Mutual Insurance Company*, No. 23-2507 (Oct. 31, 2023) (unreported, available at 2023 WL 7164927)

U.S. District Court for the Southern District of Illinois

- *Sudholt* v. *Country Mutual Insurance Company*, No. 3:22-cv-3064-DWD (June 26, 2023) (unreported, available at 2023 WL 4181194)

Circuit Court for St. Clair County, Illinois

- *Sudholt* v. *Country Mutual Insurance Company*, No. 22LA0970

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PETITION FOR A WRIT OF CERTIORARI

Country Mutual Insurance Company respectfully petitions for a writ of certiorari to review the judgment of the Seventh Circuit in this case.

OPINIONS BELOW

The Seventh Circuit's opinion is reported at 83 F.4th 621. Pet. App. 1a-15a. That court's order denying rehearing en banc is not reported but is available at 2023 WL 7164927. Pet. App. 46a-47a. The District Court's opinion is not reported but is available at 2023 WL 4181194. *See* Pet. App. 16a-45a.

JURISDICTION

The Seventh Circuit entered judgment on October 2, 2023, and denied a petition for rehearing en banc on October 31, 2023. On January 9, 2024, this Court extended Petitioner's deadline to petition for a writ of certiorari to March 14, 2024. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1332(d) (footnotes omitted) provides in relevant part:

* * *

> (2)(A) The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action in which * * * any member of a class of plaintiffs is a citizen of a State different from any defendant[.]
>
> * * *
>
> (4)(B) A district court shall decline to exercise jurisdiction under paragraph (2) * * * 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.
>
> * * *
>
> (9) Paragraph (2) shall not apply to any class action that solely involves a claim –
>
> * * *
>
> (A) concerning a covered security as defined under 16(f)(3) of the Securities Act of 1933 (15

> U.S.C. 78p(f)(3)) and section 28(f)(5)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(f)(5)(E));
>
> (B) 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; or
>
> (C) that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) and the regulations issued thereunder).

28 U.S.C. § 1453 (footnotes omitted) provides in relevant part:

* * *

> (b) A class action may be removed to a district court of the United States in accordance with section 1446[.]
>
> * * *
>
> (d) This section shall not apply to any class action that solely involves –
>
> (1) a claim concerning a covered security as defined under section 16(f)(3) of the Securities Act of 1933 (15 U.S.C. 78p(f)(3)) and section 28(f)(5)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(f)(5)(E));
>
> (2) a claim that relates to the internal affairs or governance of a corporation or other form of business enterprise and arises under or by

virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

(3) a claim that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) and the regulations issued thereunder).

INTRODUCTION

This petition presents two crucial questions regarding the interpretation of the Class Action Fairness Act of 2005. CAFA is a vital federal statute designed to curb serious abuses of the class-action process by "provid[ing] for Federal court consideration of interstate cases of national importance under diversity jurisdiction." CAFA, sec. 2(b)(2), Pub. L. No. 109-2, 119 Stat. 4. Congress provided for a handful of narrow exceptions to CAFA's broad grant of jurisdiction, and the circuit courts are divided with respect to how to interpret those exceptions. Despite CAFA's importance and the tremendous disagreement in the circuits, this Court has never issued a decision providing guidance on any of CAFA's exceptions. This Court should break its silence and grant the petition to address these circuit conflicts, uphold Congress's intent in enacting CAFA, and prevent forum shopping.

This case involves a dispute over Country Mutual Insurance Company's national surplus reserve, a $3.5 billion safety cushion that Country Mutual can use to absorb adverse results and maintain solvency when faced with unexpected losses during periods of unfavorable operating results. Respondents are a putative class of Country Mutual policyholders located in

Illinois who claim this national reserve is excessive, and who seek to have up to the whole amount distributed to them—even though the national reserve is intended to benefit policyholders across the country. Respondents initially filed suit in St. Clair County, Illinois, a "magnet" jurisdiction for class-action litigation that Congress specifically isolated and identified as a reason for enacting CAFA. *See* S. Rep. No. 109-14, at 13 (Feb. 28, 2005) ("Senate Report"). Country Mutual sought removal to federal court, pointing out that any decision in this case would have a nationwide impact on Country Mutual policyholders. The Southern District of Illinois agreed, concluding that Respondents' allegations are "national in scope" and the dispute should remain in federal court. Pet. App. 24a (citation omitted).

The Seventh Circuit reversed, remanding to state court—and in the process deepening two circuit splits.

First, the circuits are divided over CAFA's home-state exception, which provides that federal courts should "decline to exercise jurisdiction * * * over a class action in which," among other things, "the primary defendants[] are citizens of the State in which the action was originally filed." 28 U.S.C. § 1332(d)(4)(B). Respondents filed suit against Country Mutual and a number of individual defendants, including one of Country Mutual's top executives, former Chief Financial Officer Robert Bateman. Although Bateman resides in Massachusetts—meeting CAFA's minimal diversity requirements—the Seventh Circuit held that it lacked jurisdiction under CAFA's home-state exception because Bateman is not a "primary" defendant. According to the Seventh Circuit, a "primary" defendant is the defendant with "the

deepest pocket in the case," which meant that Country Mutual, and not Bateman, was a "primary" defendant. Pet. App. 14a-15a. The Fifth Circuit agrees with the Seventh Circuit's "deep pockets" legal standard. *Madison* v. *ADT, L.L.C.*, 11 F.4th 325, 329 (5th Cir. 2021).

The Third Circuit, in contrast, has rejected this "deep pockets" approach, expressly holding that "courts examining whether a defendant is a 'primary defendant' should not consider whether the defendant may be able to recover from others or whether it is able to satisfy the judgment." *Vodenichar* v. *Halcon Energy Props., Inc.*, 733 F.3d 497, 505 n.4 (3d Cir. 2013). Instead, the Third Circuit analyzes whether "the defendant is the 'real target' of the plaintiffs' accusations." *Id.* at 505. The Ninth and Eleventh Circuits follow the Third Circuit's approach. *See, e.g.*, *Singh* v. *American Honda Fin. Corp.*, 925 F.3d 1053, 1068-69 (9th Cir. 2019); *Hunter* v. *City of Montgomery*, 859 F.3d 1329, 1336 (11th Cir. 2017). Under the "real target" approach, Bateman qualifies as a primary defendant. *See* Pet. App. 25a-33a.

Second, the circuits are divided over the interpretation of the internal-affairs and securities exceptions to CAFA jurisdiction, which turn on whether a class action "*solely* involves * * * a claim that *relates to* the internal affairs or governance of a corporation" or "to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security." 28 U.S.C. § 1453(d) (emphases added). Many CAFA cases allege a breach of fiduciary duties in addition to other state-law allegations. In this situation, the Fourth Circuit holds that the internal-affairs and securities exceptions *do not* apply, because the

factfinder must "look beyond" the alleged breach of fiduciary duties and decide additional state statutory, contract, or tort issues. *See Dominion Energy, Inc.* v. *City of Warren Police & Fire Ret. Sys.*, 928 F.3d 325, 337 (4th Cir. 2019).

The Second, Seventh, and Ninth Circuits disagree and adopt an expansive view of these exceptions. Those courts hold that if the factfinder must assess an alleged breach of fiduciary duty, the internal-affairs and securities exceptions apply—even if the plaintiffs' allegations *also* require the factfinder to decide other issues, such as state contract, tort, or consumer-protection claims. *See* Pet. App. 9a-11a; *Krasner* v. *Cedar Realty Tr., Inc.*, 86 F.4th 522, 528-530 (2d Cir. 2023); *Eminence Invs., L.L.L.P.* v. *Bank of N.Y. Mellon*, 782 F.3d 504, 510 (9th Cir. 2015). Under the Fourth Circuit's approach, this case belongs in federal court; under the Second, Seventh, and Ninth Circuit's approach, it must be returned to state court.

This Court's intervention is warranted. Whether a case should remain in federal court should not depend on the jurisdiction in which it is filed. Following the decision below, it will be nearly impossible to remove class actions filed in state courts located within the Fifth and Seventh Circuits, as long as a corporate defendant with deep pockets is located in the State. It will also be nearly impossible to remove class actions filed in state courts located in the Second, Seventh, and Ninth Circuits as long as plaintiffs plead a breach of fiduciary duties, even if the case raises other important issues of state law. That result permits forum shopping in key jurisdictions, including state courts located within the Fifth and Seventh Circuits that Congress identified as a driving reason for enacting

CAFA. *See* Senate Report at 13, 24; H.R. Rep. No. 108-144, at 12 (June 9, 2003) ("House Report") (House Judiciary Committee Report on prior version of CAFA identifying Jefferson County, Texas as another "class action magnet[]"). The Court should grant certiorari.

STATEMENT

A. Statutory Background

By the mid-2000s, Congress was concerned that class-action litigants were taking advantage of the strict standards governing diversity jurisdiction to keep class-action "cases of national importance out of Federal court." CAFA, sec. 2(a)(4)(A). Worse, "many of these cases [were] filed in improbable," plaintiff-friendly jurisdictions that "had little—if anything—to do with" the parties, specifically identifying "Madison County and St. Clair County [in] Illinois" as "magnet[s]" for class-action litigation. Senate Report at 13 (citations omitted). Such "abuses of the class action device," Congress found, "harmed class members with legitimate claims and defendants that have acted responsibly," "adversely affected interstate commerce," and "undermined public respect for our judicial system." CAFA, sec. 2(a)(2)(A)-(C). They also "forced" corporate defendants "to settle frivolous claims, * * * driving up consumer prices." Senate Report at 14.

"This problem [was] particularly prevalent in insurance cases." *Id.* at 24. Some companies were "forced to settle lawsuits even though the challenged actions were fully in accordance with state law." *Id.* at 21. And where insurance cases went to trial, state courts frequently applied their own "consumer protection law," "effectively overturn[ing] insurance regulations" in other states and "establishing what amounts to a

national rule on insurance." *Id.* at 62 (discussing Illinois decision) (quotation marks and citation omitted).

CAFA aimed to "restore the intent of the framers of the United States Constitution by providing for Federal court consideration of interstate cases of national importance under diversity jurisdiction." CAFA, sec. 2(b)(2). Congress effectuated that intent in two ways.

First, it "loosened the requirements for diversity jurisdiction." *Mississippi ex rel. Hood* v. *AU Optronics Corp.*, 571 U.S. 161, 165 (2014). Under CAFA, a federal court can exercise diversity jurisdiction over a 100-person class action if at least one "member of a class of plaintiffs is a citizen of a State different from any defendant," 28 U.S.C. § 1332(d)(2)(A), and if the aggregate amount in controversy exceeds $5 million, *id.* § 1332(d)(2), (d)(6). There is "no antiremoval presumption attend[ing] cases invoking CAFA" because Congress "enacted [the statute] to facilitate adjudication of certain class actions in federal court." *Dart Cherokee Basin Operating Co., LLC* v. *Owens*, 574 U.S. 81, 89 (2014).

Second, Congress permitted the courts of appeals to review "order[s] of a district court granting or denying a motion to remand" under CAFA, setting aside the usual rule that remand orders are "not reviewable on appeal or otherwise." *Id.* at 86 (quoting 28 U.S.C. § 1453(c)(1)).

At the same time, Congress understood the importance of allowing "state courts to decide cases of chiefly local import or cases that concern traditional state regulation of the state's corporate creatures." *Estate of Pew* v. *Cardarelli*, 527 F.3d 25, 26 (2d Cir. 2008). To that end, Congress carved out "narrow"

exceptions to CAFA jurisdiction, *Dominion*, 928 F.3d at 336, three of which are relevant here.

Under the home-state exception, "[a] district court shall decline to exercise jurisdiction * * * over a class action in which * * * two-thirds or more of" the class, "and the primary defendants, are citizens of the State in which the action was originally filed." 28 U.S.C. § 1332(d)(4)(B).

Under the internal-affairs and securities exceptions, federal courts have no jurisdiction if a class action "solely involves * * * a claim that relates to" "the internal affairs or governance of a corporation or other form of business enterprise" or to "the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security." *Id.* § 1453(d)(2), (3).

Congress did not define the terms "primary defendants," "internal affairs," or "relates to," and the interpretation of these terms divides the circuit courts.

B. Factual Background

Country Mutual is an Illinois company that insures more than 1.4 million vehicles and 700,000 homes across the country. Pet. App. 23a. Country Mutual's policies "are marketed by representatives in 19 core states," and almost half of its premiums are paid by non-Illinois policyholders. Pet. App. 22a.

As a mutual insurance company, Country Mutual sells insurance policies to customers that in turn grant customers membership interests in the company, providing limited rights defined by Illinois insurance law. *See* 215 Ill. Ins. Code 5/36 *et seq*. Like every mutual insurance company, Country Mutual retains a portion of the premiums paid by its customers

in a national surplus reserve. This reserve acts as "a safety cushion to absorb adverse results and * * * maintain the company's solvency during periods of unfavorable operating results." Terrie E. Troxel & George E. Bouchie, *Property-Liability Insurance Accounting and Finance* 129 (4th ed. 1995); *see* U.S. Congressional Budget Office, *The Economic Impact of a Solvency Crisis in the Insurance Industry* 10 (Apr. 1994) ("The capital and surplus of an insurer is its capital base or cushion against extraordinary losses that threaten the health of the company.").

Unlike stock insurers, mutual insurers tend to "have greater difficulty in raising capital" and must "rely to a greater extent on accumulated surplus and income from new members" to maintain solvency. Robert W. Klein, Nat'l Assoc. of Ins. Comm'rs, *A Regulator's Introduction to the Insurance Industry* 5-4 (1999). That means that, on average, "mutual insurers hold more surplus than stock insurers." Lawrence S. Powell, Nat'l Assoc. of Mutual Ins. Cos., *What It Means to Be Mutual* 14 (Apr. 2017). During the multi-year period at issue, Country Mutual increased its national reserve from $1.6 to $3.5 billion. Pet. App. 14a, 71a.

C. Procedural History

1. Respondents are a putative class of Country Mutual's customers in Illinois. In 2022, Respondents sued Country Mutual and 46 of its former and current officers in the Circuit Court of St. Clair County, Illinois, alleging that Country Mutual's national reserve is too large. Pet. App. 17a-18a. Respondents' allegations have at most a tentative connection to St. Clair County: Out of all the parties involved, only two named plaintiffs reside in St. Clair County, and they

alleged that they purchased policies from an affiliate of Country Mutual *not sued* in this case.

Respondents brought three claims against Country Mutual: a breach-of-contract claim, a claim that Country Mutual violated the Illinois Consumer Fraud and Deceptive Business Practices Act, and an unjust-enrichment claim. Pet. App. 18a. They brought a fourth claim against the individual defendants—and not Country Mutual—alleging that they breached their fiduciary duties by using Country Mutual's reserve to unjustly enrich themselves. *See id.*; Pet. App. 85a-86a, 100a-104a. Respondents seek "broad relief," including statutory, compensatory, and punitive damages against the individual defendants and Country Mutual, as well as distribution of up to the entire $3.5 billion national reserve to the class of policyholders currently located in Illinois. Pet. App. 18a-19a.

Country Mutual invoked CAFA and "removed this case from St. Clair County to federal district court in southern Illinois." Pet. App. 4a (citing 28 U.S.C. §§ 1332(d), 1453(b)). CAFA's minimal diversity requirement is met because Bateman, who served as Country Mutual's CFO, is a Massachusetts citizen. Pet. App. 3a-4a.

2. Respondents moved to remand, contending that the home-state and internal-affairs exceptions to CAFA jurisdiction applied. Pet. App. 4a.[1] The District Court disagreed.

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[1] Respondents also sought remand under CAFA's local-controversy exception, *see* 28 U.S.C. § 1332(d)(4)(A)(i)(III), which the District Court ruled did not apply because Country Mutual is a national company with policyholders across the country. Pet. App. 24a. Respondents did not appeal that ruling.

Applying the Third Circuit's decision in *Vodenichar*, the District Court held that the home-state exception did not apply because Bateman was a "primary defendant[]." 28 U.S.C. § 1332(d)(4)(B). The District Court explained that "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.'" Pet. App. 25a (quoting *Vodenichar*, 733 F.3d at 504). "Courts also look to the allegations in the complaint," the District Court explained, "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.'" Pet. App. 26a (quoting *Vodenichar*, 733 F.3d at 505) (quotation marks omitted).

Applying these principles, the District Court concluded that Bateman was a primary defendant. The court reasoned that Plaintiffs brought a "'direct' claim" against "each individual Defendant, including Defendant Bateman," alleging that each "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." Pet. App. 29a (citations omitted). The court cited the complaint's allegations that Bateman and other defendants aimed to "enrich themselves," not Country Mutual. Pet. App. 30a. The court further reasoned that "Bateman's alleged conduct conceivably impacted a significant portion of the proposed class during and in the years after his tenure." Pet. App. 32a. Finally, the District Court found it significant that Respondents "include[d] a single

Prayer for Relief in their Complaint" and "d[id] not specify whether the request is directed at Country Mutual, the Individual Defendants, or both." Pet. App. 32a-33a.

The District Court also declined to remand under the internal-affairs exception. Citing this Court's decision in *Edgar* v. *MITE Corp.*, 457 U.S. 624, 645 (1982), the court explained that the term "internal affairs" derives from conflict-of-laws principles and refers to "matters peculiar to the relationship among or between the corporation and its current officers, directors, and shareholders." Pet. App. 34a. The District Court rejected Respondents' contention that their complaint "'solely'" involves claims "relat[ing] to" Country Mutual's internal affairs, because, according to Respondents, all four "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." Pet. App. 35a-36a (citation omitted). Even if "these claims involve [such] a common thread," the District Court reasoned, the claims raise additional questions under "contract and tort principles," so "the proposed class action clearly does not 'solely' involve claims relating to the internal affairs or governance of Country Mutual." Pet. App. 36a-37a (citation omitted). The District Court emphasized that Respondents' consumer-protection claim by definition involves allegations of deception of "the general public"—conduct "not peculiar to corporate relationships." Pet. App. 36a-37a.

3. Respondents sought review in the Seventh Circuit. The Seventh Circuit reversed and ordered the case remanded to St. Clair County court. *See* Pet. App. 2a-3a, 15a.

With regard to the home-state exception, the Seventh Circuit had "little difficulty seeing the spotlight of the plaintiffs' complaint as shining foremost on Country Mutual" because it is "the deepest pocket in the case, and surely the party from which the plaintiffs seek the lion's share of any recovery." Pet. App. 14a. These "same considerations" led the court "to conclude that Robert Bateman is not a primary defendant." Pet. App. 15a.

The Seventh Circuit also held that the "case belongs in state court under CAFA's internal-affairs exception." Pet. App. 2a. "It matters not that the plaintiffs cast only one of their claims [expressly] in terms of a breach of fiduciary duty," the court explained, because "each claim rests on the same foundation" of corporate mismanagement. Pet. App. 9a. According to the court, there is "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." Pet. App. 10a. According to the Seventh Circuit, because "[e]very claim hinges on the answer to that threshold question," all of Respondents' claims "'relate to'" Country Mutual's internal affairs regardless of whether the claims also implicate significant contract, tort, and state statutory questions. Pet. App. 10a-11a (citation omitted).

The Seventh Circuit denied Country Mutual's petition for rehearing en banc. Pet. App. 46a-47a. This petition follows.

REASONS FOR GRANTING THE PETITION

I. THE CIRCUITS ARE DIVIDED OVER THE TEST FOR ASSESSING A "PRIMARY DEFENDANT" FOR PURPOSES OF CAFA'S HOME-STATE EXCEPTION.

The home-state exception directs district courts to "decline to exercise jurisdiction" over class actions where, among other things, "the primary defendants[] are citizens of the State in which the action was originally filed." 28 U.S.C. § 1332(d)(4)(B). Because the statute refers to "primary *defendants*"—plural—there may be more than one such defendant. The federal courts are sharply divided over who fits this bill. In determining whether a defendant is one of the "primary defendants," the Seventh and Fifth Circuits consider the defendant's ability to pay. In stark contrast, the Third Circuit has rejected this consideration in favor of an approach that focuses on the defendant's alleged liability, and the Ninth and Eleventh Circuits agree. In those circuits, the question is what the defendant *did*, not whether the defendant can *pay*. This Court should grant certiorari and resolve this clear split.

A. The Circuits Are Sharply Split.

1. In the Fifth and Seventh Circuits, when considering whether a defendant is one of the "primary defendants," courts analyze the defendant's ability to pay a money judgment.

In the decision below, the Seventh Circuit held that the individual defendants—including Bateman—"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." Pet. App. 14a-15a. Country Mutual, the court explained, is "[n]o doubt * * * the deepest pocket in the case, and surely the party from which the plaintiffs seek the lion's share of any recovery." Pet. App. 14a. Based on these considerations, the court "conclude[d] that Robert Bateman is not a primary defendant." Pet. App. 15a.

The Fifth Circuit agrees. *See Madison*, 11 F.4th at 329. *Madison* concerned a state-court class action brought against an "employee who installed ADT's home-security surveillance systems and used his access privileges to spy on customers." *Id.* at 327. ADT, an out-of-state defendant, intervened and removed to federal court. *See id.* On appeal, the Fifth Circuit held that ADT was a "primary defendant" under the home-state exception. *Id.* at 328-329. The Fifth Circuit noted that the plaintiffs "claim to represent a class of plaintiffs seeking millions in recovery." *Id.* at 329. And it recognized that the plaintiffs "have asserted claims against *only* the offending employee," not ADT. *Id.* (emphasis added). But the court surmised that "the thrust of this suit is to gain access to ADT's deep pockets." *Id.* The Fifth Circuit accordingly held that ADT "must be considered a primary defendant under CAFA." *Id.*

2. In stark contrast, the Third Circuit has squarely rejected that a defendant's ability to pay matters to whether that defendant is one of the "primary defendants." In *Vodenichar*, the Third Circuit analyzed dictionary definitions, district court cases, and CAFA's legislative history, and concluded that "courts tasked with determining whether a defendant is a 'primary defendant' under CAFA should assume liability will be found and determine whether the defendant is the

'real target' of the plaintiffs' accusations." 733 F.3d at 505. This "real target" approach focuses on what the defendant *did*, not whether the defendant can *pay*.

The Third Circuit thus considers whether the defendant is "directly liable to the proposed class, as opposed to being vicariously or secondarily liable based upon theories of contribution or indemnification." *Id.* at 504. The Third Circuit also considers "whether, given the claims asserted against the defendant, it has potential exposure to a significant portion of the class and would sustain a substantial loss as compared to other defendants if found liable." *Id.* at 505-506. This requires analyzing "the number of class members purportedly impacted by the defendant's alleged actions." *Id.* at 505.

Unlike the Seventh and Fifth Circuits, the Third Circuit has expressly held that it does "not consider whether the defendant * * * is able to satisfy the judgment" as part of analyzing whether a defendant is a "primary defendant." *Id.* at 505 n.4 (emphasis added).[2] That is because a defendant's ability to pay is irrelevant to whether it is the "real wrongdoer[]." *Id.* at 505.

"Applying these principles," the Third Circuit in *Vodenichar* concluded that an out-of-state oil company was a primary defendant because the "[p]laintiffs allege that each defendant is directly liable, appear to apportion liability equally among the defendants, and seek similar relief from all

[2] The Seventh Circuit has suggested that its general approach is "similar" to the Third Circuit, Pet. App. 14a, but there is a clear split over whether courts should consider a defendant's ability to pay.

defendants." *Id.* at 506. The court accordingly held "that the home state exception d[id] not apply." *Id.*

The Ninth Circuit "[a]lign[ed]" itself with the Third Circuit in *Singh*. 925 F.3d at 1068. There, a plaintiff brought a state-court class action against a group of car dealerships and American Honda Finance Corporation (AHFC). *Id.* at 1058, 1069. AHFC, an out-of-state defendant, removed to federal court. *Id.* at 1061. On appeal from the district court's denial of the plaintiff's remand motion, the Ninth Circuit applied the Third Circuit's "real target" framework to conclude that AHFC is *not* a primary defendant. *See id.* at 1068.

The Ninth Circuit analyzed "whether the defendant is sued directly or alleged to be directly responsible for the harm to the proposed class or classes, as opposed to being vicariously or secondarily liable," whether "the defendant's potential exposure to the class relative to the exposure of other defendants," and whether "a defendant is a principal, fundamental, or direct defendant." *Id.* (quotation marks omitted). The Ninth Circuit reasoned that the dealerships, as opposed to AHFC, "are allegedly responsible for the direct harm to consumers" and "have more exposure to the class." *Id.* at 1069. The Ninth Circuit in *Singh* expressly rejected the district court's view that "AHFC's ability to satisfy a potential judgment was a relevant consideration" to whether it qualified as a "primary" defendant. *Id.*[3]

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[3] The Ninth Circuit expressed "no view" on whether a defendant's ability to pay may be relevant in a future case. 925 F.3d at 1069 n.16. However, the Ninth Circuit's adoption of the Third Circuit's approach in *Vodenichar*—which focuses on what the

The Eleventh Circuit also "agree[s]" with the Third Circuit's standard. *Hunter*, 859 F.3d at 1336. *Hunter* concerned a state-court class action alleging that the City of Montgomery and an out-of-state company that managed the City's red-light cameras violated state law. *Id.* at 1331. The defendants removed to federal court, and plaintiffs moved to remand under the home-state exception, arguing that the out-of-state company was not a "primary" defendant. *Id.* at 1336. After reviewing dictionary definitions and CAFA's legislative history, the Eleventh Circuit "agree[d]" with the Third Circuit's "reasoning and rule" in *Vodenichar*, interpreting the phrase "primary defendants" to "capture those who are directly liable to the proposed class, as opposed to being vicariously or secondarily liable based upon theories of contribution or indemnification." *Id.* at 1336 (quoting *Vodenichar*, 733 F.3d at 504-505).

The Eleventh Circuit then applied the Third Circuit's approach and concluded that the home-state exception applied. The Eleventh Circuit explained that the plaintiffs sought "monetary relief * * * from the City alone," and not from the out-of-state defendant. *Id.* at 1337. "Even if the City could and did seek indemnification or contribution from" the out-of-state defendant, it would be based on a theory of vicarious or secondary liability, which the Eleventh Circuit concluded was not enough to make the out-of-state defendant "a 'primary defendant.'" *Id.* (quoting *Vodenichar*, 733 F.3d at 504-505).

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defendant allegedly did rather than the defendant's ability to pay—demonstrates a clear split with the Seventh Circuit below.

By considering a defendant's ability to pay, the Seventh and Fifth Circuits take a fundamentally different approach to the home-state exception than the Third, Ninth, and Eleventh Circuits do. The "plain objective," Pet. App. 14a, or "thrust," *Madison*, 11 F.4th at 329, of a class action seeking monetary damages is *always* to secure monetary relief. This Court should grant certiorari and bring uniformity to this important area of the law, which determines when litigation may remain in federal court.

B. The Decision Below Is Wrong.

The Seventh Circuit's conclusion that an out-of-state defendant is not one of the "primary defendants" by considering his ability to pay—rather than his alleged liability to the plaintiffs—is wrong, as demonstrated by the text, structure, purpose, and history of CAFA.

1. The Seventh Circuit's interpretation of CAFA is contrary to the plain text. Congress did not adopt a special definition of "primary defendants" in CAFA, and so "primary" should be given its ordinary meaning. *See Schindler Elevator Corp.* v. *U.S. ex rel. Kirk*, 563 U.S. 401, 407 (2011). The ordinary meaning of "primary" is "principal, fundamental, or direct." *Vodenichar*, 733 F.3d at 504 (quotation marks omitted) (quoting Merriam-Webster's Collegiate Dictionary 923 (10th ed. 2002)); *Singh*, 925 F.3d at 1068 (same). The "primary defendants" in a class action are those who were directly involved in the alleged misconduct, as opposed to defendants who are on the hook vicariously. *See Vodenichar*, 733 F.3d at 504. Put simply, primary defendants are the "real wrongdoers." *Id.* at 505. As the Third Circuit has explained, "whether the defendant * * * is able to satisfy the judgment" through deep pockets has nothing to do

with whether that defendant is the real wrongdoer. *Id.* at 505 n.4.

The Seventh Circuit's interpretation is also contrary to CAFA's structure. The "primary defendant" exception limits the federal courts' ability to exercise their subject-matter jurisdiction. *See* 28 U.S.C. § 1332(d)(4)(B). Subject-matter jurisdiction is "the courts' statutory or constitutional power to adjudicate the case." *Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. 83, 89 (1998). A federal court's authority to hear a case should not rise and fall according to whether a defendant has the financial ability to pay a judgment. A federal court has power over a *case*—and the case does not change depending on whether the defendant has deep pockets.

The Seventh Circuit's interpretation is likewise contrary to CAFA's purpose, which is to keep "actions that have a truly local focus" in state court, while opening the federal courthouse doors to interstate actions. Senate Report at 28; *accord* House Report at 23. A defendant's ability to pay is simply irrelevant to whether a controversy is local or national.

To the extent the term "primary defendants" is ambiguous, moreover, the Seventh Circuit's approach is inconsistent with the legislative history. As Chief Judge Carnes explained in *Hunter*, "absent any other source of guidance," courts interpreting the phrase "primary defendants" have been forced to "reluctantly and cautiously turn to legislative history materials." 859 F.3d at 1335; *see also Vodenichar*, 733 F.3d at 504-505 (looking to legislative history). On three different occasions, members of Congress have explained that the term "primary defendants" should be

> interpreted to reach those defendants who are the real "targets" of the lawsuit—i.e., the defendants that would be expected to incur most of the loss if liability is found. Thus, the term "primary defendants" should include any person who has substantial exposure to significant portions of the proposed class in the action, particularly any defendant that is allegedly liable to the vast majority of the members of the proposed classes (as opposed to simply a few individual class members).

Senate Report at 43 (relied on in *Hunter*, 859 F.3d at 1336);[4] *accord* 151 Cong. Rec. H723, H732 (daily ed. Feb. 17, 2005) (cited in *Vodenichar*, 733 F.3d at 504-505); House Report at 38 (cited in *Hunter*, 859 F.3d at 1336, and *Vodenichar*, 733 F.3d at 505 & n.7).

These legislative materials make clear that Congress intended the term "primary defendants" to encompass those defendants that face the greatest *liability*—not those with the deepest pockets. Liability is a far better proxy for the extent of the defendant's involvement in the underlying conduct, and thus better illustrates whether the case is truly local and should return to state court.

2. Under the majority approach—which considers a defendant's liability to the class rather than the size of his bank account—Bateman is a primary defendant. The District Court so concluded, Pet. App. 29a-

[4] As the Eleventh Circuit has recognized, although the Senate Report articulated this interpretation in the context of a different CAFA exception, "[t]here is no good reason to believe that the Senate Judiciary Committee's explanation of 'primary defendants' would not also apply to the home state exception." *Hunter*, 859 F.3d at 1336 n.4.

33a, and the Seventh Circuit reached a contrary conclusion because it focused on the size of Country Mutual's bank account, rather than Bateman's alleged liability, Pet. App. 14a-15a.

Bateman is the former CFO of Country Mutual and resides in Massachusetts. Respondents seek to hold Bateman directly—not vicariously—liable for breach of fiduciary duties. *See* Pet. App. 100a-104a (Count Four). Country Mutual is not named as a defendant in this count; this count names only the individual directors and officers as defendants. Pet. App. 100a.

As CFO, Bateman had "the[] ability to control the business and affairs of Country Mutual." Pet. App. 72a. And in that position, Respondents allege that Bateman was one of the decisionmakers who "did not attempt to provide insurance at cost" or "give serious consideration to the possibility of providing insurance at cost." Pet. App. 103a. He did so, according to Respondents, to "inflate and enhance" his personal "well-being," not Country Mutual's. Pet. App. 87a.

Respondents allege, moreover, that Bateman "did not merely acquiesce in decisions taken by others." Pet. App. 104a. As the District Court explained, "Bateman's alleged actions and involvement in the events giving rise to liability are significant." Pet. App. 30a. And "[d]ue 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." Pet. App. 32a.

In short, Bateman is a primary defendant. That remains true regardless of the size of his bank account.

And because he is diverse from Respondents, CAFA demands that this case be resolved in federal court.

II. THE DECISION BELOW EXACERBATES A CLEAR SPLIT OVER THE STATUTORY INTERPRETATION OF CAFA'S INTERNAL-AFFAIRS AND SECURITIES EXCEPTIONS.

This case also presents a second, separate issue with significant disagreement among four courts of appeals with respect to the statutory interpretation of CAFA's internal-affairs and securities exceptions. Those exceptions apply when a case "solely involves * * * a claim that relates to" either the internal affairs of a corporation or the rights, duties, or obligations created by a security. 28 U.S.C. § 1453(d)(2), (3). The Fourth Circuit has interpreted this language narrowly to govern cases where a claim involves *only* the internal affairs of a corporation or the rights, duties, or obligations created by a security, and does not require "a finder of fact to look beyond" those issues to decide other questions. *Dominion*, 928 F.3d at 337. In contrast, the Second, Seventh, and Ninth Circuits hold that any claim that requires the factfinder to answer a question about a corporation's internal affairs or securities should remain in state court, *even if* the claim also requires the factfinder to decide other state-law issues. *See* Pet. App. 9a-11a; *Krasner*, 86 F.4th at 528-530; *Eminence*, 782 F.3d at 510. This Court's intervention is urgently needed to address this statutory interpretation question, which impacts which claims may remain in federal court under CAFA.

A. The Federal Courts Are Divided Over When Claims "Relate To" A Corporation's Internal Affairs Or Securities.

Many CAFA cases—including the decision below—involve allegations about a breach of fiduciary duties by corporate officers, while also raising other legal issues for a factfinder to resolve. *See, e.g.*, *LaPlant* v. *Nw. Mut. Life Ins. Co.*, 701 F.3d 1137, 1138 (7th Cir. 2012); *Woods* v. *Standard Ins. Co.*, 771 F.3d 1257, 1260 (10th Cir. 2014). In this situation, the courts of appeals are divided with respect to whether the case should remain in federal court. This division stems from disagreement over the interpretation of CAFA's text and purpose.

1. On one side of the split, the Fourth Circuit construes "CAFA's grant of federal court jurisdiction broadly" and applies "removal exceptions in a narrow fashion." *Dominion*, 928 F.3d at 336 & n.11 (citing *Dart Cherokee*, 574 U.S. at 81). In *Dominion*, the Fourth Circuit held that a dispute over a merger should remain in federal court because the dispute did not require the factfinder to address *only* an alleged breach of fiduciary duties, but instead required the factfinder to "look beyond" that question to decide additional questions of state law. *See id.* at 337. According to the Fourth Circuit, "the Supreme Court has explained that a statutory phrase such as 'relates to' * * * is generally 'unhelpful' to a reviewing court because a clever person can conjure up 'infinite relations' among things." *Id.* (citation omitted). The Fourth Circuit thus looked beyond "the unhelpful text and the frustrating difficulty of defining 'relates to'" and considered instead "the objectives of the statute." *Id.* at 338 (alterations).

Applying this approach, the Fourth Circuit declined to remand a claim against a third party for aiding and abetting the alleged breach of fiduciary duties by the corporation's officers, because the claim "ask[ed] a finder of fact to look beyond the internal affairs" of the corporation. *Id.* at 337. The plaintiffs argued that the aiding-and-abetting claim "generally 'relate[s] to'" internal affairs because the "*the breach of fiduciary duty claims* concern [the company's] internal affairs" and those claims are in turn "*related to* the aiding and abetting claims." *Id.* at 338 (emphases added) (citation omitted). But the Fourth Circuit rejected such a "boundless reading" of the relates-to clause as "wholly inconsistent with CAFA's purpose and objective of broad federal jurisdiction." *Id.* The Fourth Circuit interpreted the phrase "solely involves * * * a claim that relates to" in accordance with its plain text to encompass only those claims that require a factfinder to analyze the internal affairs of the corporation, and not claims that require a factfinder to address other issues (such as state law on aiding-and-abetting). *See id.* at 337-338.

The Fourth Circuit applied a similarly "narrow[]" analysis to CAFA's securities exception, which relies on the same "solely involves * * * a claim that relates to" language. *Id.* at 338, 342; *see* 28 U.S.C. § 1453(d).[5] The court again rejected the argument that plaintiffs' claims "relate[] to" fiduciary duties created by a security in some general sense because "adjudication of [the] aiding-and-abetting claim necessarily requires a

[5] Because the two exceptions use "identical" prefatory language, *Eminence*, 782 F.3d at 506, they must be interpreted to have "the same" scope, Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 170 (2012).

determination of whether a fiduciary duty was breached in the first place." *Dominion*, 928 F.3d at 344 (Motz, J., dissenting).[6] The court accordingly held that the securities exception did not apply. *Id.* at 342-343.

When analyzing both the internal-affairs and securities exceptions, the Fourth Circuit considered whether plaintiffs' aiding-and-abetting claims were "interstate claims of national importance." *Id.* at 337, 343. Because plaintiffs' "claims involve one of the largest energy utility companies in this country * * * , and they potentially impact thousands of * * * stockholders and class members across the United States," the Fourth Circuit concluded that the claims should remain in federal court lest they undermine CAFA's objective "of ensuring that interstate class action claims of national importance are heard and resolved in the federal courts." *Id.* at 338 (quotation marks omitted).

2. On the other side of the split, the Second, Seventh, and Ninth Circuits have adopted a broad reading of the internal-affairs and securities exceptions. In those circuits, if the factfinder must decide a fiduciary-duties question to resolve plaintiffs' claim—*even if* the factfinder is also required to decide other state-law issues—the case should remain in state court.

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[6] Judge Motz agreed with the majority that the internal-affairs doctrine did not apply because the aiding-and-abetting claim involved "conduct by * * * third parties and outsiders." *Dominion*, 928 F.3d at 344 (Motz, J., dissenting). Judge Motz did not comment on the majority's broader holding that the internal-affairs exception does not apply when a claim requires the factfinder to address issues of state law beyond the internal affairs of a corporation.

The Seventh Circuit's decision below presents a stark contrast to the Fourth Circuit's decision in *Dominion*. As in *Dominion*, this case alleges a breach of fiduciary duties, but the factfinder will also be required to address other legal issues, including state contract, tort, and consumer-protection questions. *See* Pet. App. 8a-9a. And as in *Dominion*, this case is plainly interstate in character—plaintiffs seek to distribute a national reserve fund, which would affect millions of policies across the country. Unlike the Fourth Circuit's decision in *Dominion*, however, the Seventh Circuit concluded that this case should be remanded to state court.

The Seventh Circuit acknowledged that three of the four counts in the complaint allege ordinary contract, tort, and consumer-protection claims. Pet. App. 9a. But the court nevertheless concluded that each of those allegedly raises an issue related to fiduciary duties, and that *even if* a factfinder would be called on to decide other issues—such as whether a contract was breached, whether defendants were unjustly enriched, and whether consumers were injured—the internal-affairs exception was satisfied. Pet. App. 9a-11a.

The decision below examined CAFA's text, purpose, and history, and arrives at a different conclusion from the Fourth Circuit. The Seventh Circuit acknowledged that "Congress did not supply a definition of 'internal affairs' or 'corporate governance.'" Pet. App. 6a-7a. Instead of reading that exception narrowly, however, the Seventh Circuit interpreted it broadly, emphasizing that "only one state should have the authority to regulate a corporation's internal affairs." Pet. App. 7a. The Seventh Circuit concluded that its

broad interpretation "find[s] only further reinforcement in CAFA's legislative history." *Id.*

Applying that expansive reading, the Seventh Circuit held that the internal-affairs exception applied because, in its view, "each of the plaintiffs' four claims *turns upon* common allegations that Country Mutual and its directors and officers" violated their "fiduciary obligations," even though Respondents *also* allege violations of contract, tort, and state consumer-protection law. Pet. App. 8a-9a (emphasis added). Unlike the District Court below and the Fourth Circuit in *Dominion*, the Seventh Circuit did not analyze the national character of the litigation or the fact that it impacts policyholders outside of Illinois. *See* Pet. App. 5a-12a.

The Second Circuit has followed the same approach as the Seventh. In *BlackRock Financial Management Inc.* v. *Segregated Account of Ambac Assurance Corp.*, 673 F.3d 169 (2d Cir. 2012), the court held that the securities exception did not apply where a trustee sought to confirm its settlement authority under "the relationship created by or underlying the security" and "New York's common law of trusts." *Id.* at 179. In the Second Circuit's view, it was enough that the case "concern[ed] the relationship between the entity which administers the securities * * * and the certificateholders'"; the securities exception still applied even if the case also raised questions under "some [other] source of law." *Id.* at 178-179.

The Second Circuit reiterated its "expansive" view of the securities exception just last year in *Krasner*, 86 F.4th at 528 (quotation marks omitted). Expressly "agree[ing]" with Judge Motz's dissenting opinion in *Dominion*—and disagreeing with the Fourth Circuit

majority—the Second Circuit held that the key question is whether the resolution of plaintiffs' claims "necessarily depends on proving a breach of fiduciary duty grounded in [the plaintiff's] securities." *Id.* at 530 & n.3. If it does, the claim "relates to" the duties created by a security *even if* the claim would also require a factfinder to address other legal issues. *See id.* at 530-531. The Second Circuit did not consider the interstate character of the dispute.

The Ninth Circuit follows the same approach as the Second and Seventh. In *Eminence*, bondholders sued a New York bank, alleging a breach of fiduciary duty, unjust enrichment, gross negligence, and violations of California's business-practices statutes. 782 F.3d at 505. Relying on Second Circuit case law, the Ninth Circuit held that the securities exception applied because plaintiffs' claims were "based on 'fiduciary duties'"—even though the plaintiffs also raised claims that would require a factfinder to address "state and federal laws, industry standards, and professional codes of ethics." *Id.* at 507, 510 (discussing *BlackRock*, 673 F.3d at 176).

Given this stark divergence among four courts of appeals, this Court should step in to address the circuits' disparate views with respect to both the text and purpose of CAFA's exceptions.

B. The Seventh Circuit Is Wrong.

The Seventh Circuit's approach contravenes the text, purpose, and history of CAFA. CAFA's internal-affairs and securities exceptions apply where a class action "solely involves * * * a claim that relates to" the internal affairs of a corporation or the rights, duties, and obligations relating to or created by a security. 28 U.S.C. § 1453(d)(2), (3). The Fourth Circuit correctly

interpreted this language to apply where a claim *solely* requires the factfinder to assess the internal affairs of a corporation or the rights, duties, and obligations relating to or created by a security. If a claim *also* requires the factfinder to assess other issues—such as state law on aiding-and-abetting liability, the terms of a contract, or the elements of a state consumer-protection claim—then the internal-affairs and securities exceptions do not apply.

Interpreting CAFA's internal-affairs and securities exceptions so broadly that they encompass mill-run contract, tort, and statutory questions reads the word "solely" out of Section 1453(d). And it runs headlong into this Court's direction to go "beyond" "unhelpful" terms such as "relates to" and "look instead to the objectives of the * * * statute." *N.Y. State Conf. of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U.S. 645, 656 (1995). The objective of CAFA is to ensure that cases of national importance—including insurance disputes—remain in federal court, rather than "magnet" jurisdictions for state class-action litigation such as St. Clair County. *See* Senate Report at 13. The Fourth Circuit's approach, which considers whether a case involves issues of national importance, is consistent with CAFA's purpose to ensure that interstate disputes may be litigated in federal court, unlike the approach adopted by the Seventh Circuit below.[7]

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[7] The Fourth Circuit's approach comports with the Senate's direction to "narrowly construe[]" the exception. *See* Senate Report at 45 ("By corporate governance litigation, the Committee means only litigation based solely on (a) state statutory law regulating the organization and governance of business enterprises * * *

The Seventh Circuit's decision, moreover, is contrary to the rationale underpinning the internal-affairs doctrine. Congress borrowed the term "internal affairs" from the conflicts-of-laws context. Pet. App. 7a (citing *Edgar*, 457 U.S. at 645); Senate Report at 45. In that context, the internal-affairs doctrine dictates "that only one State should have the authority to regulate a corporation's internal affairs * * * because otherwise a corporation could be faced with conflicting demands." *Edgar*, 457 U.S. at 645 (citing Restatement (Second) of Conflict of Laws § 302 cmt. B (1971)). In deciding whether the internal-affairs doctrine applies, courts "distinguish between acts which can be performed by both corporations and individuals, and those activities which are peculiar to the corporate entity." *McDermott, Inc.* v. *Lewis*, 531 A.2d 206, 214 (Del. 1987) (cited in Senate Report at 45 n.129). Because "[c]orporations and individuals alike enter into contracts [and] commit torts," "[t]he internal affairs doctrine has no applicability in these situations." *Id.* at 214-215. The Fourth Circuit's narrow reading of the internal-affairs exception thus reflects the traditional understanding of the "internal affairs" doctrine. *See Maracich* v. *Spears*, 570 U.S. 48, 59-60 (2013) ("Unless commanded by the text, * * * [statutory] exceptions ought not operate to the farthest reach of their linguistic possibilities if that result would contravene the statutory design.").

It's helpful to step back and consider what Respondents are asking the St. Clair County court to decide. Respondents' consumer-protection claim alleges that,

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[and] (b) state common law regarding the duties owed between and among owners and managers of business enterprises * * * .").

because Country Mutual did not provide insurance "at cost," it deceived consumers when it advertised itself as a mutual insurance company at the time consumers purchased policies. To decide this claim, the factfinder must assess whether Country Mutual intended Respondents to rely on the alleged deception; whether the alleged deception occurred in the course of conduct involving trade or commerce; whether Respondents were actually deceived; and whether Respondents suffered actual damage. *See Connick* v. *Suzuki Motor Co.*, 675 N.E.2d 584, 593 (Ill. 1996) (listing elements of consumer-protection claim). *All* these questions require the factfinder to decide issues of state law outside the question of any alleged breach of fiduciary duties. Indeed, similar to *Dominion*, the consumer-protection claim by definition involves Country Mutual's alleged misrepresentations to consumers when they were outsiders to the corporate relationship, *before* they became policyholders. *See id.* at 594.

Respondents similarly allege that Country Mutual "violated its contractual obligation * * * by charging excessive insurance premiums"—an obligation that is allegedly imposed by Illinois *insurance law*. Pet. App. 90a; *see also* Pet. App. 66a-69a (citing "Illinois's Risk-Based Capital Law, 215 ILCS 5/35A"). This claim requires the factfinder to decide questions of state insurance law. Pet. App. 67a-71a. Respondents' unjust-enrichment claim likewise requires a factfinder to determine whether Country Mutual and its officers improperly retained a benefit, as well as whether the retention of this benefit was "unjust" under Illinois's "principles of justice, equity, and good conscience." *HPI Health Care Servs., Inc.* v. *Mt. Vernon Hosp., Inc.*, 545 N.E.2d 682, 679 (Ill. 1989).

No traditional conception of "internal affairs" or "corporate governance" requires such a case to be brought in state court. The Seventh Circuit's erroneous ruling calls out for this Court's review.

III. THE QUESTIONS PRESENTED ARE EXCEPTIONALLY IMPORTANT AND THIS CASE IS AN UNUSUALLY GOOD VEHICLE.

The Seventh Circuit's interlocutory order warrants this Court's review. Congress expressly permitted courts of appeals to review CAFA remand orders under 28 U.S.C. § 1453(c)(1), and this Court has previously granted certiorari to clarify other aspects of CAFA's diversity jurisdiction—even in cases where the circuit court "declined to hear an appeal." *Dart Cherokee*, 574 U.S. at 89; *see Standard Fire Ins. Co.* v. *Knowles*, 568 U.S. 588, 591-592 (2013). The questions presented here are equally as "important, unsettled, and recurrent." *Dart Cherokee*, 574 U.S. at 91 (citation omitted). And because the Seventh Circuit has spoken its final word, Country Mutual (with as much as $3.5 billion at stake in this case alone) and countless other corporations will be denied "any other opportunity * * * to vindicate [their] claimed legal entitlement * * * to have a federal tribunal adjudicate the merits" of their cases unless this Court grants certiorari. *Id.* (citation omitted).

1. This case is a perfect example of a class action "of national importance" that should be in federal court. *Standard Fire*, 568 U.S. at 595 (quoting CAFA, sec. 2(b)(2))). Country Mutual is a national insurance company that sells millions of policies across the United States. Yet Respondents—a class of Illinois policyholders—seek distribution of up to Country

Mutual's entire $3.5 billion national reserve to Illinois policyholders alone, in addition to alleged punitive damages against Country Mutual. And they do so on the basis of contract, tort, and consumer-protection claims that present important interstate questions about whether "consumers" were "harmed" and state insurance law violated. *Pilgrim* v. *Universal Health Card, LLC*, 660 F.3d 943, 946 (6th Cir. 2011). As Congress put it in enacting CAFA, one State should not be allowed to impose its own common-law principles on others or create "a national rule on insurance"—which is precisely what would happen if this case proceeds in state court. Senate Report at 62. Nor should one state court be allowed to drain Country Mutual's national reserve, potentially leaving non-Illinois policyholders without any recourse in the face of catastrophic loss.

The only way the Seventh Circuit could reach the conclusions it did was by turning CAFA on its head. Rather than interpret CAFA's grant of jurisdiction "broadly, with a strong preference that interstate class actions should be heard in a federal court," *Dart Cherokee*, 574 U.S. at 89 (quoting Senate Report at 43), the Seventh Circuit opted for the broadest reading of the *exceptions* to federal-court jurisdiction. Under the Seventh Circuit's reasoning, nearly every claim against a corporation "relates to" discretionary corporate decisions and securities in some general way, requiring remand to state court. Similarly, if the primary-defendant inquiry looks for the defendant with the deepest pockets, CAFA's minimal diversity requirements are meaningless in practice. Nearly all class actions feature a corporate defendant with deep pockets; but Congress did not mention corporations, it mentioned "primary defendants." The Seventh

Circuit's approach "exalt[s] form over substance" and "run[s] directly counter to CAFA's primary objective: ensuring 'Federal court consideration of interstate cases of national importance.'" *Standard Fire*, 568 U.S. at 595 (quoting CAFA, sec. 2(b)(2)).

The concerns expressed by this Court in *Standard Fire* are even more pressing here. Congress enacted CAFA to put a stop to a very specific kind of forum-shopping: Plaintiffs' counsel's ability to "'game' the procedural rules and keep nationwide * * * class actions in state courts whose judges have reputations for readily certifying classes and approving settlements without regard to class member interests." Senate Report at 4. Congress identified St. Clair County as one such "magnet" jurisdiction. *Id.* at 13-14, 22. Yet this case has virtually no connection to the County. *See supra* p. 11. The Court should make clear that it will not tolerate such transparent efforts to end-run CAFA's carefully crafted boundaries.

2. This petition is an ideal vehicle to resolve these important issues. Unlike several CAFA cases this Court has considered, this petition arises from a fully reasoned opinion reviewing a remand order. *Compare Dart Cherokee*, 574 U.S. at 89 (reviewing denial of petition to appeal remand order); *Standard Fire*, 568 U.S. at 591-592 (same). This Court can thus review these issues *de novo*, not for abuse of discretion. *See Dart Cherokee*, 574 U.S. at 90-91. And given the Seventh Circuit's detailed opinion, this Court need not search for "signals" to determine the circuit court's rationale. *Id.* at 91; *see id.* at 97 (Scalia, J., dissenting) (identifying "insuperable" problems with reviewing unreasoned denials of petitions to appeal remand orders).

The Court has repeatedly sought to curb opportunistic pleading of CAFA's requirements for federal jurisdiction and bring circuit-court jurisprudence back in line with the statute's "primary objective." *Standard Fire*, 568 U.S. at 595. It should do so again here.

CONCLUSION

The petition for a writ of certiorari should be granted and the decision reversed.

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