No. 23-1024

In The
Supreme Court of the United States

COUNTRY MUTUAL INSURANCE COMPANY,

Petitioner,

v.

ANGELA SUDHOLT, ET AL.,

Respondents.

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

BRIEF OF ATLANTIC LEGAL FOUNDATION & DRI CENTER FOR LAW AND PUBLIC POLICY AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTEREST OF THE *AMICI CURIAE* 1

SUMMARY OF ARGUMENT 2

ARGUMENT 4

A. This Court should grant certiorari to rein in the Second, Seventh, and Ninth Circuits' expansive interpretation of the "internal affairs" exception to removal jurisdiction under the Class Action Fairness Act 4

1. The Fourth Circuit properly allows removal of class actions in which the factfinder must "look beyond" issues of company internal affairs 7

2. Class actions alleging violations of state law consumer protection statutes do not solely relate to company internal affairs—rather, they require the factfinder to "look beyond" and decide broader issues 9

3. This Court's precedents support narrow interpretation of exceptions to CAFA removal jurisdiction 12

B. The Second, Seventh, and Ninth Circuits' misinterpretation of the internal affairs exception improperly encourages district courts to remand national class actions involving corporate decision-making and interstate harms 15

CONCLUSION 20

TABLE OF AUTHORITIES

Cases

Atlantic Marine Construction Co. v. U.S. District Court for the Western District of Texas, 571 U.S. 49 (2013) 14

Benson v. Fannie May Confections Brands, Inc., 944 F.3d 639 (7th Cir. 2019) 10

BlackRock Fin. Mgmt. Inc. v. Segregated Account of Ambac Assurance Corp., 673 F.3d 169 (2d Cir. 2012) 8

Bober v. Glaxo Wellcome PLC, 246 F.3d 934 (7th Cir. 2001) 10

Dart Cherokee Basin Operating Co., LLC v. Owens, 574 U.S. 81 (2014) 12

De Bouse v. Bayer, 922 N.E.2d 309 (Ill. 2009) 10

Dominion Energy, Inc. v. City of Warren Police & Fire Ret. Sys., 928 F.3d 325 (4th Cir. 2019) 7

Edgar v. MITE Corp., 457 U.S. 624 (1982) 5

Hertz Corp. v. Friend, 559 U.S. 77 (2010) 13

In re Johnson & Johnson Talcum Powder Products Marketing, Sales Practices, And Products Liability Litigation, MDL No. 2738 (D. N. J.) 18

In re Oil Spill by the Oil Rig "Deepwater Horizon", 21 F. Supp. 3d 657 (E.D. La. 2014) 18

In re the Exxon Valdez, 270 F.3d 1215 (9th Cir. 2001) 18

Jeffries v. Volume Servs. Am., Inc., 928 F.3d 1059 (D.C. Cir. 2019) 17

LaPlant v. Nw. Mut. Life Ins., 701 F.3d 1137 (7th Cir. 2012) 5, 15

Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit, 547 U.S. 71 (2006) 13

Siegel v. Shell Oil Co., 612 F. 3d 932 (7th Cir. 2020) 10

Spokeo, Inc. v. Robins, 578 U.S. 330 (2016) 17

Standard Fire Ins. Co. v. Knowles, 568 U.S. 588 (2013) 12

TransUnion LLC v. Ramirez, 594 U.S. 413 (2021) 17

Wigod v. Wells Fargo Bank, N.A., 673 F.3d 547 (7th Cir. 2012) 9

Woods v. Standard Ins., 771 F.3d 1257 (10th Cir. 2014) 15

Statutes

Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 2

15 U.S.C. § 1681c 17

28 U.S.C. § 1332 ..... 2, 4, 5, 6

28 U.S.C. § 1453 ..... 3, 4, 5, 6

Pub. L. 105-353, 112 Stat. 3227 13

815 Ill. Comp. Stat. ("ILCS") 505/2, 505/10a 9, 10

Other Authorities

S. Rep. No. 109-14 (2005) 5

INTEREST OF THE *AMICI CURIAE* [1]

Established in 1977, the Atlantic Legal Foundation (ALF) is a national, nonprofit, nonpartisan, public interest law firm. ALF's mission is to advance the rule of law and civil justice by advocating for individual liberty, free enterprise, property rights, limited and responsible government, sound science in judicial and regulatory proceedings, and effective education, including parental rights and school choice. With the benefit of guidance from the distinguished legal scholars, corporate legal officers, private practitioners, business executives, and prominent scientists who serve on its Board of Directors and Advisory Council, ALF pursues its mission by participating *as amicus curiae* in carefully selected appeals before the Supreme Court, federal courts of appeals, and state supreme courts. *See* atlanticlegal.org.

The DRI Center for Law and Public Policy ("The Center") is the public policy "think tank" and advocacy voice of DRI, Inc.—an international community of approximately 16,000 attorneys who represent businesses in civil litigation. DRI's mission includes enhancing the skills, effectiveness, and professionalism of defense lawyers; promoting

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[1] Petitioner's and Respondents' counsel were provided timely notice in accordance with Supreme Court Rule 37.2. No counsel for a party authored this brief in whole or part, and no party or counsel other than *amici curiae* and their counsel made a monetary contribution intended to fund preparation or submission of this brief.

appreciation of the role of defense lawyers in the civil justice system; and anticipating and addressing substantive and procedural issues germane to defense lawyers and the fairness of the civil justice system.

The Center participates as an *amicus curiae* in this Court, federal courts of appeals, and state appellate courts in an ongoing effort to promote fairness, consistency, and efficiency in the civil justice system.

Amici curiae are directly interested in the question presented. *Amici curiae* and their members and supporters are committed to strict and proper enforcement of the Congressional intent embodied in the Class Action Fairness Act, which clearly provides that federal court is the proper forum to litigate interstate class actions.

SUMMARY OF ARGUMENT

The Class Action Fairness Act (CAFA) is designed to ensure a federal forum for large, interstate class actions of national importance. *See* Class Action Fairness Act of 2005, sec. 2(a)(4), (b)(2), Pub. L. No. 109-2, 119 Stat. 4. CAFA establishes broad criteria for federal jurisdiction over class actions, including class actions in which the amount in controversy exceeds $ 5 million, any member of a plaintiff class is a citizen of a State different from any defendant, and there are 100 or more plaintiffs in the proposed class. *See* 28 U.S.C. §§ 1332(d)(2), 1332(d)(5)(B).

CAFA allows defendants to remove qualifying class actions to federal court without the consent of all defendants, departing from traditional rules requiring

all defendants to agree to removal. Further, CAFA allows removal even if only one of the defendants is a citizen of the state in which the action was originally filed, thereby eliminating the usual "home-state defendant" barrier to removal in traditional diversity cases. *See* 28 U.S.C. § 1453(b) ("A class action may be removed to a district court . . . without regard to whether any defendant is a citizen of the State in which the action is brought, except that such action may be removed by any defendant without the consent of all defendants.").

Once a defendant removes a case under CAFA, the burden shifts to the plaintiff to prove that the case should be remanded. This inquiry centers on exceptions to federal court removal jurisdiction.

This case is about the "internal affairs" exception.[2] The Second, Seventh, and Ninth Circuits are misapplying the internal affairs exception—stretching its meaning well beyond congressional intent—by remanding cases with claims and issues that go far beyond "*inter se*" liabilities among owners and managers of a company or other business entity.

Applying the internal affairs exception too broadly undermines the congressional intent for relaxed federal removal jurisdiction by excluding cases that, while involving corporate decisions, have far-reaching

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[2] Petitioners also seek certiorari on the home-state exception to CAFA removal jurisdiction. *Amici curiae* support Petitioners' request for review of the home-state exception as well.

implications beyond internal governance. This could unduly limit the ability of federal courts to adjudicate cases involving significant public interests such as cases involving environmental harm, mass torts, and employment and discrimination claims, all of which involve corporate decisions affecting both business owners and external stakeholders.

ARGUMENT

A. This Court should grant certiorari to rein in the Second, Seventh, and Ninth Circuits' expansive interpretation of the "internal affairs" exception to removal jurisdiction under the Class Action Fairness Act

CAFA provides federal district courts with jurisdiction over "class action[s]" in which the matter in controversy exceeds $ 5 million and at least one class member is a citizen of a State different from the defendant. 28 U.S.C. § 1332(d)(2)(A). A "class action" is "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," whether certified or proposed. *Id.* §§ 1332(d)(1)(B), (d)(8). CAFA permits removal "by any defendant without the consent of all defendants" and "without regard to whether any defendant is a citizen of the State in which the action is brought." *See* 28 U.S.C. §§ 1332(d)(2), (d)(6); 28 U.S.C. § 1453(b).

Under CAFA, federal courts lack jurisdiction over class actions that "solely involve" a claim that "relates

to" the "internal affairs" or "governance of a corporation" or other business enterprise under the laws of the state of incorporation. 28 U.S.C. § 1332(d)(9) ("Paragraph (2) shall not apply to any class action that solely involves a claim— … (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[.]"); *see also* 28 U.S.C. § 1453(d)(2).

The phrase "internal affairs" is not defined in CAFA. Courts have held that the phrase describes "matters peculiar to the relationships among or between the corporation and its current officers, directors, and shareholders." *LaPlant v. Nw. Mut. Life Ins.*, 701 F.3d 1137, 1140 (7th Cir. 2012); *see also Edgar v. MITE Corp.*, 457 U.S. 624, 645 (1982); S. Rep. No. 109-14, at 45 (2005) (internal affairs "refer[s] to . . . matters peculiar to the relationships among or between the corporation and its current officers, directors and shareholders") (quotation omitted).

This Court should grant certiorari to resolve the circuit split surrounding the scope of the internal affairs exception. The Seventh Circuit held that this case, in which one of four claims alleges liability under the Illinois Consumer Fraud and Deceptive Business Practices Act, "solely involves a claim that relates to" the internal affairs and corporate governance of the defendant insurance company. In so doing, the court sided with the Second and Ninth Circuits which have

remanded cases to state court under the internal affairs exception despite the pendency of claims and issues exceeding traditional questions of corporate governance. This misinterpretation of CAFA is a dangerous proposition for American businesses which could be forced into state court in a diverse array of class actions raising claims and issues going far beyond business governance and decision-making.

This putative class action involves four causes of action asserted by current and former insurance policyholders: breach of contract, breach of fiduciary duty, unjust enrichment, and violation of the Illinois Consumer Fraud and Deceptive Business Practices Act. Pet. App. 17a-18a; 85a-86a, 100a-104a. The plaintiffs filed a class action lawsuit against Petitioner Country Mutual Insurance Company and dozens of its officers and directors alleging that the company and its managers wrongfully amassed over $ 3.5 billion in surplus premium revenues. *Id.* 14a, 71a.

Country Mutual removed the case to federal district court. Pet. App. 4a (citing 28 U.S.C. §§ 1332(d), 1453(b)). The policyholders moved to remand, arguing exceptions under CAFA. Pet. App. 4a. The district court denied the motion, rejecting the notion that the claims all "centered around one core allegation" that the defendant was "governed in a manner that deprives policyholders of insurance at its cost." *Id.* 35a-36a (citation omitted). The district court ruled the plaintiffs' claims raise other 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." *Id.* 36a-37a (citation omitted).

On appeal, the Seventh Circuit reversed, holding that the policyholders' complaint "'solely'" involves claims "relat[ing] to" internal affairs, the internal affairs exception applies, and remand to state court is required. Pet. App. 2a-3a, 15a.

1. The Fourth Circuit properly allows removal of class actions in which the factfinder must "look beyond" issues of company internal affairs

In reaching its decision, the Seventh Circuit in this case departed from the well-reasoned analysis adopted by the Fourth Circuit in *Dominion Energy, Inc. v. City of Warren Police & Fire Ret. Sys.*, 928 F.3d 325 (4th Cir. 2019). *Dominion* narrowly interprets the internal affairs exception. The Fourth Circuit held that for the internal affairs exception to apply, the plaintiffs' claims must solely involve internal corporate affairs or security-based fiduciary obligations without necessitating further legal examination outside of this scope. *See id.* at 337.

The Fourth Circuit rejects the argument that claims only tangentially related to internal affairs fall within the internal affairs exception, upholding CAFA's objective to keep interstate class actions in federal court. In *Dominion*, claims of aiding and abetting breaches of fiduciary duty were considered. The court stressed that such claims extend beyond

mere internal management issues and therefore encompass additional legal considerations.

Contrasting sharply with the Fourth Circuit, the Second, Seventh, and Ninth Circuits broadly interpret the internal affairs exception. These circuits suggest that cases only partially involving fiduciary duties or securities should remain in state court, irrespective of other legal issues presented. The Seventh Circuit applied this broad interpretation here, focusing on the fiduciary obligations of Country Mutual's managers without significant regard to the national implications or involved frameworks. *See* Pet. App. 5a-12a.

Similarly, in *BlackRock Financial Management Inc. v. Segregated Account of Ambac Assurance Corp.*, 673 F.3d 169, 178-179 (2d Cir. 2012) and in *Eminence Investments, L.L.L.P. v. Bank of New York Mellon*, 782 F.3d 504, 510 (9th Cir. 2015), the Second and Ninth Circuits each held that claims involving fiduciary duties under securities should stay in state court if those duties are central to the case, even if other claims and issues are in play.

The certiorari petition details the sharp divide between the Fourth Circuit on one hand, and the Second, Seventh, and Ninth Circuits on the other surrounding the meaning of the internal affairs exception. *See* Pet. at 27-35. This split is ripe for this Court's resolution. This Court should clarify the application of the internal affairs exception to ensure uniformity and uphold CAFA's goal of managing nationally significant class actions in federal court.

Resolving this discrepancy will ensure that cases of broad relevance are appropriately handled at the federal level, avoiding the pitfalls of fragmented jurisdictional interpretations and anti-corporate biases of many state courts.

2. Class actions alleging violations of state law consumer protection statutes do not solely relate to company internal affairs—rather, they require the factfinder to "look beyond" and decide broader issues

The Seventh Circuit's interpretation of what constitutes internal affairs and corporate governance substantially broadens the interpretation of CAFA's internal affairs exception. The Illinois Consumer Fraud and Deceptive Practices Act encompasses a wide array of deceptive practices in the marketplace, including false advertising and sales fraud. *See* 815 ILCS 505/2. A claim is established by showing: "'(1) a deceptive or unfair act or promise by the defendant; (2) the defendant's intent that the plaintiff rely on the deceptive or unfair practice; and (3) that the unfair or deceptive practice occurred during a course of conduct involving trade or commerce." *Wigod v. Wells Fargo Bank, N.A.*, 673 F.3d 547, 574 (7th Cir. 2012). To obtain relief, a plaintiff must only show that he suffered "actual damage" because of the defendant's violation. *See* 815 ILCS 505/10a.

"The statute allows a plaintiff to premise her claim on either deceptive conduct or unfair conduct (or

both)." *Benson v. Fannie May Confections Brands, Inc.*, 944 F.3d 639, 646 (7th Cir. 2019). A "practice is deceptive 'if it creates a likelihood of deception or has the capacity to deceive'" from the perspective of a "reasonable consumer." *Id.* (quoting *Bober v. Glaxo Wellcome PLC,* 246 F.3d 934, 938 (7th Cir. 2001)). Deceptive practices arise from a defendant's affirmative lies or misrepresentations as well as a defendant's omission or concealment of material facts. *De Bouse v. Bayer,* 922 N.E.2d 309, 316 (Ill. 2009).

The primary purpose of the Act is to protect consumers. *See Siegel v. Shell Oil Co.*, 612 F. 3d 932, 934 (7th Cir. 2020). A plaintiff need not be an owner, a member, a shareholder, etc. Rather, anyone who suffers "actual damage" can assert a claim. *See* 815 ILCS 505/10a. Thus, a claim only indirectly intersects with corporate governance issues surrounding deceptive business practices. The Seventh Circuit nonetheless held that because the plaintiffs allege mismanagement of excess premium surplus, this case falls within the CAFA internal affairs exception.

The court's decision to classify consumer protection claims as "solely" relating to internal corporate affairs is short-sighted. The internal affairs exception applies to disputes over the rights and obligations of the company's internal stakeholders—mostly shareholders, directors, and officers—and their governance roles. Here, the Respondent policyholders' claims extend beyond mere governance issues into

alleged statutory violations and tortious conduct, which supports federal jurisdiction under CAFA.

While corporate governance involves oversight and strategic decisions, the claims here relate to operational practices with external implications—specifically, the accumulation and retention of excess surplus, which affects policyholders directly and which affects consumers of insurance more generally. The district court got it right when it denied remand, concluding the consumer-protection claims facially involve allegations of deception of "the general public"—conduct "not peculiar to corporate relationships." Pet. App. 36a-37a.

When the Seventh Circuit held otherwise and concluded that these claims solely relate to corporate governance, it failed to acknowledge the implications of its reasoning. For example, consumer protection claims typically arise from interactions between the company and the public. These claims involve issues such as false advertising, product warranties and defects, deceptive trade practices, and violations of consumer rights laws. They are concerned with the company's conduct in its transactions and communications with consumers at large—not its internal governance structure or decision-making.

By categorizing consumer protection claims this way, the court of appeals effectively opened the door to a wide range of putative class actions that could be construed as involving internal corporate affairs. The decision effectively extended the exception's

application, opening the state courthouse doors to a host of litigation that should rightfully be adjudicated in federal court. Many kinds of cases involve a company's alleged misleading practices toward consumers—conduct which turns on decisions of the business entity's human managers. These cases involve governance insofar as they allege decisions by managers to engage in deceptive practices. But these kinds of cases concern statutory violations impacting constituents who are outsiders to the business entity, thus extending the exception beyond internal affairs.

3. This Court's precedents support narrow interpretation of exceptions to CAFA removal jurisdiction

In *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588 (2013), this Court held that CAFA's jurisdictional thresholds cannot be circumvented through procedural tactics such as plaintiffs stipulating to damages below the federal jurisdictional limit. *Standard Fire* affirmed this Court's commitment to enforcing CAFA's mandate that class actions of national importance be adjudicated in federal court, where a broader perspective on interstate legal issues and uniform legal standards can be applied.

Similarly, in *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81 (2014), the Court reinforced a broad interpretation of CAFA's removal, holding that a notice of removal need only plausibly allege that the amount in controversy exceeds the jurisdictional threshold. By rejecting the need for evidence of the

amount in controversy at the removal stage, this Court facilitated federal jurisdiction over class actions, which aligns with CAFA's purpose to provide a federal class action forum for cases with significant interstate implications.

In *Hertz Corp. v. Friend*, 559 U.S. 77 (2010), the Court clarified how a corporation's principal place of business should be determined for purposes of diversity jurisdiction, adopting a "nerve center" approach focused on the corporation's headquarters. That decision simplifies jurisdictional questions and potentially broadens federal jurisdiction over class actions involving corporations, once again underscoring CAFA's requirement that qualifying interstate class actions be litigated in federal court.

And, in *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71 (2006), the Court held that the Uniform Standards Act of 1998 (SLUSA), Pub. L. 105-353, 112 Stat. 3227, preempts state-law claims in "covered class actions" brought by holders of securities, thereby broadening federal jurisdiction over such cases, and reflecting a trend towards limiting plaintiffs' ability to evade federal jurisdiction through strategic pleading.

Furthermore, this Court's opinion in *Cyan, Inc. v. Beaver County Employees Retirement Fund*, 583 U.S. 416 (2018), again addressing state court jurisdiction under SLUSA, provides instructive parallels for interpreting the internal affairs exception under CAFA. *Cyan* recognizes that state sovereignty must

be balanced against Congressional intent underlying federal statutes. This nuanced balance is critical under CAFA and the internal affairs exception, requiring a careful approach to jurisdictional exceptions that neither unduly restricts access to federal courts for significant class actions nor encroaches upon state court authority over corporate governance. A measured interpretation of CAFA's internal affairs exception upholds federalism.

In *Atlantic Marine Construction Co. v. U.S. District Court for the Western District of Texas*, 571 U.S. 49 (2013), although not directly related to CAFA or the internal affairs exception, the Court addressed the enforcement of forum-selection clauses, holding that the party requesting the forum change bears the burden of proof, a process reviewed by a balancing-of-conveniences analysis.

The decision highlights that procedural tactics do not trump federal court jurisdiction, favoring a straightforward interpretation that respects statutory language and intent. This aligns with the overarching notion that federal court authority under CAFA cannot be evaded through misapplied exceptions, and that federal court is the preferred forum for class actions impacting nationwide interests.

B. The Second, Seventh, and Ninth Circuits' misinterpretation of the internal affairs exception improperly encourages district courts to remand national class actions involving corporate decision-making and interstate harms

Absent a grant of certiorari by this Court, there is a real-world risk that enterprising plaintiffs' lawyers will exploit the lower courts' broad interpretation of the internal affairs exception. If left undisturbed, the Seventh Circuit's opinion particularly could embolden plaintiffs' lawyers to seek remand to state court in myriad class actions involving claims and issues outside the scope of business internal affairs.

CAFA cases commonly involve factual and legal issues transcending company business managers' alleged misconduct. *See, e.g., LaPlant v. Nw. Mut. Life Ins.,* 701 F.3d 1137, 1138 (7th Cir. 2012); *Woods v. Standard Ins.,* 771 F.3d 1257, 1260 (10th Cir. 2014). And virtually all claims against a business entity can attack company management, decision-making, and internal governance. After all, business entities can act only through their human agents.

For example, claims against businesses for harm allegedly caused by pollution or other environmental actions often involve corporate decisions on operational practices that impact the public. Class actions involving "forever chemicals" or other forms of environmental negligence affecting communities

could be seen through the lens of corporate governance, particularly as to operational practices.

Likewise, product liability and mass tort cases involving allegedly defective products allegedly causing widespread harm to consumers commonly focus on matters of internal corporate decision-making—often decisions made over decades. This includes decisions about design issues, the nature and contours of product warranties, the handling of warranty claims, the decision of whether and when to recall products, the scope of a recall, the issuance and scope of post-sale warnings, etc. All such cases involve corporate decision-making.

Similarly, class actions alleging systemic discrimination involve high level corporate policies and practices. Disputes over corporate policies, including wage and hour claims, discrimination, and workplace safety claims, might be framed as internal affairs. This could impact workers' ability to seek redress on a nationwide scale, affecting employment standards and protections that benefit from the consistency and broader scope of federal adjudication.

And with the increasing importance of data privacy and security, class actions against tech companies for breaches or misuse of consumer data could be impacted. If these issues are seen as internal management decisions on data handling or security measures, such cases might be forced into state courts, leading to varied interpretations of privacy laws and regulations across different jurisdictions. In the

future more plaintiffs will pursue so-called "no injury" class actions claiming technical statutory violations to seek massive statutory civil penalties. *See TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021); *Spokeo, Inc. v. Robins*, 578 U.S. 330 (2016); *see also, e.g.*, *Jeffries v. Volume Servs. Am., Inc.*, 928 F.3d 1059, 1066 (D.C. Cir. 2019) (affording standing to class plaintiffs asserting Fair and Accurate Credit Transaction Act claims under 15 U.S.C. § 1681c(g)(1), alleging injury from information printed on credit card receipts).

The scope of all such litigation extends beyond internal affairs, with broader rights at issue, but that won't stop the plaintiffs' bar from citing the lower courts' opinions to argue such cases fall within the internal affairs exception. It is easy for plaintiffs to plead that internal corporate decisions violate consumer protection laws, as the Seventh Circuit held here in this case involving the Illinois statute. The lower courts' take on the scope of the internal exception gives the plaintiffs' bar an "in": the opportunity to argue that third-party claims are matters of corporate governance and *inter se* internal affairs truncating federal court jurisdiction.

The lower courts' broad interpretation could mean that actions taken by companies, even those affecting nationwide public safety and health, might be considered internal affairs. This could prevent these critical matters from being addressed in a unified manner at the federal level, potentially affecting regulatory standards nationwide. Applying the

internal affairs exception this way would limit federal oversight in cases involving nationwide consumer products and safety issues. If claims related to product defects or misleading advertising are construed to fall within the scope of a company's internal governance, such cases could be relegated to state courts. This fragmentation could lead to inconsistent rulings and standards for products distributed nationally, undermining consumer protection efforts and regulatory oversight.

The practical application of federal jurisdiction in managing complex, multi-jurisdictional disputes can be seen in cases such as *In re Johnson & Johnson Talcum Powder Products Marketing, Sales Practices, And Products Liability Litigation*, MDL No. 2738 (D. N.J.), *In re Oil Spill by the Oil Rig "Deepwater Horizon"*, 21 F. Supp. 3d 657 (E.D. La. 2014), and *In re the Exxon Valdez*, 270 F.3d 1215 (9th Cir. 2001). These cases exemplify federal courts' ability to handle extensive disputes that impact multiple states and many stakeholders. The lower courts' interpretation of the internal affairs exception could hinder federal oversight in cases demanding a coordinated response.

Expansively interpreting the internal affairs exception as encompassing claims beyond traditional corporate governance matters—such as claims alleging violations of state law consumer protection statutes—is a CAFA loophole that encourages forum-shopping. Plaintiffs' attorneys are motivated to seek out favorable venues. And when there is a circuit split like this one, inconsistent outcomes undermine

principles of fairness and equality before the law. By encouraging plaintiffs to try to sidestep federal jurisdiction, the expansive interpretation of the internal affairs exception could lead to a surge in class actions litigated in state court.

Forcing defendants to litigate class actions in state court, despite diversity of citizenship, unduly burdens businesses operating across state lines. This creates uncertainty for corporations and their investors, who rely on consistent and predictable legal structures to make informed decisions. Proliferation of state court class actions would burden corporate defendants with costly, uncertain, and protracted litigation. That could stifle innovation and economic growth. There are implications for industries ranging from pharmaceuticals to automotive manufacturing.

The exception should not swallow the rule. Class actions involving diversity of citizenship and issues of nationwide importance should be litigated in federal court. Certiorari should be granted to resolve the scope of the internal affairs exception. Resolving this circuit split and reversing the Seventh Circuit Court of Appeals safeguards federal court removal jurisdiction by ensuring that state courts are afforded only the limited deference which Congress intended.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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