No. 11-1450

IN THE

Supreme Court of the United States

THE STANDARD FIRE INSURANCE COMPANY,
Petitioner,

v.

GREG KNOWLES,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JONATHAN S. MASSEY
MASSEY & GAIL, LLP
1325 G St. N.W.
Suite 500
Washington, D.C. 20005
(202) 652-4511
jmassey@masseygail.com

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BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

QUESTION PRESENTED

Whether this Court should review a District Court decision remanding this case for lack of federal subject-matter jurisdiction, where: (i) the District Court order was left unreviewed by the Court of Appeals for the Eighth Circuit, (ii) the order does not conflict with the judgment of any Circuit Court of Appeals, (iii) the order does not present an important question of federal law, and (iv) the question Petitioner seeks to present will be subsequently reviewable on certiorari from the state's highest court.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent Greg Knowles ("Plaintiff") respectfully submits this Brief in Opposition to the Petition for Writ of Certiorari ("Petition"). The Petition should be denied, for numerous reasons:

• The Petition seeks review not of a final decision by a *circuit court* on the merits, but rather of a *district court* order, regarding which the Eighth Circuit Court of Appeals denied permission to appeal.

• The Petition is premature because Respondent will be able to seek review of the same issue (the "binding" nature of a stipulation), on a full record, after the state courts decide the class certification issue.

• There is no circuit conflict. In fact, the most the Petition contends is that "[s]everal circuits, at least in dicta, have rejected the Eighth Circuit's view" (Pet. 17) *not in this case*, but *in a different case*, *Rolwing v. Nestle Holdings, Inc.*, 666 F.3d 1069 (8th Cir. 2012). The Petition ultimately acknowledges that "the Eighth Circuit, in *Rolwing*, was the first court of appeals to address the question presented squarely." Pet. 19. In short, the Petition essentially acknowledges the absence of a conflict. And it effectively asks this Court to review the Eighth Circuit's decision in another matter (*Rolwing*), *not* the district court order in this case (which does not even cite *Rolwing*).

• The Petition erroneously maintains that the district court's order in this case conflicts with this Court's decision in *Smith v. Bayer*, 131 S. Ct. 2368 (2011). That is untrue. *Smith v. Bayer* involved a completely different issue, and there is no conflict.

• The Petition involves the fact-specific application of well-settled principles of law. The Petition does not mention the fact that earlier this Term, this Court denied certiorari on the same question in No. 11-287, *Skechers USA, Inc. v. Tomlinson*, 132 S. Ct. 551 (Nov. 7, 2011).

The Petition should be denied.

STATEMENT

This case involves a putative class action filed in Arkansas state court (Miller County Circuit Court) on April 13, 2011, on behalf of a class of Arkansas residents. Pet. App. 3a. The action pleads no federal claims – only claims under Arkansas state law, based on injuries to Arkansas residents. *Id.* Plaintiff alleges that Defendant The Standard Fire Insurance Company ("Standard Fire") breached homeowners insurance policies by failing to fully reimburse losses – in particular, by failing to pay for charges reasonably associated with retaining the services of a general contractor to repair or replace damaged property. *Id.*

On May 18, 2011, Standard Fire removed the action to the U.S. District Court for the Western District of Arkansas. The sole basis of federal subject-matter jurisdiction asserted by Standard Fire was the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1332(d)(2). CAFA creates

federal subject-matter jurisdiction when three conditions are met: (1) an aggregate amount in controversy exceeding five million dollars ($5,000,000.00), exclusive of interest and costs; (2) a putative class with more than 100 members; and (3) minimal diversity, *i.e.*, a class in which at least one member is a citizen of a different state from any defendant. *Id.*

However, CAFA jurisdiction does not exist in this case, because the amount in controversy as a legal certainty does not exceed $5 million. The Complaint states that "neither Plaintiff's nor any individual Class Member's claim is equal to or greater than seventy-five thousand dollars ($75,000), inclusive of costs and attorneys fees, individually or on behalf of any Class Member . . . . Moreover, the total aggregate damages of the Plaintiff and all Class Members, inclusive of costs and attorneys' fees, are less than five million dollars ($5,000,000), and the Plaintiff and Class stipulate they will seek to recover total aggregate damages of less than five million dollars ($5,000,000)." *Id.* at 5a-6a.

Further, Exhibit A to the Complaint is a "Sworn and Binding Stipulation," signed by Plaintiff, affirming that he will not at any time during the pendency of the case "seek damages for myself or any other individual class member in excess of $75,000 (inclusive of costs and attorneys' fees) or seek damages for the class as alleged in the complaint to which this stipulation is attached in excess of $5,000,000 in the aggregate (inclusive of costs and attorneys' fees)." *Id.* at 6a.

Accordingly, Plaintiff moved to remand this action to Arkansas state court. By Memorandum Opinion and Order of December 2, 2011, the federal district court granted the motion to remand. The court opined:

> The overarching argument Defendant submits is that the Court should completely disregard Plaintiff's self-imposed limitations in his Complaint and attached stipulation, and instead calculate the amount in controversy based on the possibility that Plaintiff could amend his Complaint in the future to increase the amount of recovery sought. Speculation as to Plaintiff's future actions cannot vest this Court with jurisdiction where it otherwise has none at the time of removal. If a court could base its jurisdiction solely upon the possibility of a future amendment by a plaintiff, any case filed in state court would be susceptible to removal no matter how the plaintiff stated his claims.

Pet. App. 12a. The district court noted that "[t]he Arkansas legislature has addressed this very issue in passing a statue this year that codifies *Bell* [*v. Hershey Co.*, 557 F.3d 953 (8th Cir. 2009)] and explicitly allows a plaintiff to file a binding stipulation 'with respect to the amount in controversy' in order to establish subject matter jurisdiction." *Id.* (citing Ark. Code Ann. § 16-63-221(a)).

The court addressed Standard Fire's concern that the Plaintiff would subsequently amend the Complaint to raise the requested damages:

> Defendant's concern about Plaintiff's future amendment of the Complaint is of no moment. If Plaintiff were to amend his Complaint after remand, disclaiming his sworn stipulation and seeking instead an amount in excess of the jurisdictional maximum, it follows that Defendant would have the right to remove again, should removal be justified.

Id. at 13a. The court also responded to Standard Fire's argument that "a class plaintiff has no right to limit recovery for a class without court approval." *Id.* at 14a. The court opined that "putative class members may simply opt out of the class and pursue their own remedies if they feel that the limitations placed on the class by Plaintiff are too restrictive." *Id.*

On January 4, 2012, the Eighth Circuit denied Standard Fire's petition for permission to appeal, without recorded dissent. *Id.* at 1a. On March 1, 2012, the Eighth Circuit denied Standard Fire's petition for rehearing, again without recorded dissent. *Id.* at 16a.

REASONS FOR DENYING THE WRIT

I. THIS CASE DOES NOT INVOLVE A DECISION ON THE MERITS BY THE COURT OF APPEALS.

The first reason to deny certiorari is the fact that the case at bar does not involve a decision on the merits by the Eighth Circuit. Rather, this case concerns an unpublished decision by the U.S. District Court for the Western District of Arkansas that was left unreviewed by the Court of Appeals for the Eighth Circuit, which denied Standard Fire's petition for permission to appeal. Pet. App. 1a.

Accordingly, there can be no "circuit conflict" because there is no meaningful decision in this case by a circuit court of appeals. Rather, Standard Fire asks this Court to review a district court remand order that the Eighth Circuit declined to review.

Even if the district court judgment in this case were directly in conflict with the decision of a court of appeals outside the Eighth Circuit (and, as discussed in Part IV, *infra*, there is no such conflict), there would be no basis for certiorari. This Court's practice with respect to district court decisions is well known:

> The Supreme Court will not grant certiorari to review a decision of a federal court of appeals merely because it is in direct conflict on a point of federal law with a decision rendered by a district court, whether in the same circuit or in another circuit. The Court tries to achieve uniformity in federal matters only among the various courts whose

> decisions are otherwise final in the absence of Supreme Court review – the courts of appeals, other federal courts of the same stature, and the highest state courts in which decisions may be had.

Eugene Gressman, et al., SUPREME COURT PRACTICE 256 (9th ed. 2007).

Standard Fire cites *Hohn v. United States*, 524 U.S. 236 (1998), for the proposition that this Court may grant certiorari after a court of appeals denies permission to appeal. Pet. 1. But *Hohn* involved a certificate of appealability under the Antiterrorism and Effective Death Penalty Act (AEDPA), not a petition for permission to appeal in a civil case, and in any event the issue is not the raw jurisdictional power of this Court but rather the prudential use of its certiorari authority. This Court has explained that it grants certiorari "to resolve disagreement among the *courts of appeals* on a question of national importance." *Grutter v. Bollinger*, 539 U.S. 306, 322 (2003) (emphasis added); *see also Clay v. United States*, 537 U.S. 522, 524 (2003) (granting review of "recurring question on which courts of appeals have divided"). The instant case does not involve a decision by a court of appeals on the merits.

Standard Fire fails to acknowledge the extraordinary nature of its request. Instead, it refers repeatedly to the "decisions below" (Pet. 10), the "Orders Below" (*id.* at 11, 13) (quoting headings), and what the "Lower Courts" ruled (*id.* at 11) (quoting heading), without making clear that this case involves an unpublished and unreviewed

decision by a district court, not a decision on the merits by the Eighth Circuit.

At times, Standard Fire appears to seek review of the Eighth Circuit's decision in an entirely different case, *Rolwing v. Nestle Holdings, Inc.*, 666 F.3d 1069 (8th Cir. 2012). For example, Standard Fire contends that "[t]he Eighth Circuit's conclusion in *Rolwing* is erroneous." Pet. 11. *See also id.* at 17 citing *Rolwing*). But the *Rolwing* case, rather than this one, would be the proper vehicle for reviewing the Eighth Circuit's decision in *Rolwing*. *Rolwing* was decided *after* the district court's Memorandum Opinion and Order in this case and hence was not cited by the district court. Nor was *Rolwing* cited in any of the Eighth Circuit Orders in this case.

If Standard Fire is correct that the use of binding stipulations is frequent (Pet. 8), then this Court will have ample opportunities in the future to review the question presented. The instant case is not an appropriate vehicle.

II. THIS CASE DOES NOT REPRESENT AN APPROPRIATE VEHICLE TO DECIDE THE QUESTION PRESENTED.

A. Standard Fire's Argument Is Premature Because The State Courts Have Yet To Consider Class Certification.

Certiorari should be denied for the further reason that the question Standard Fire seeks to present is premature. Standard Fire asks this Court to decide whether a stipulation limiting the amount of damages a putative class representative seeks is binding on absent class members. Standard Fire

contends that "the absent putative class members did not receive any notice, and therefore had no opportunity to be heard" and that "the stipulation device jeopardizes the rights of the putative class members." Pet. 14.

This argument is misguided and premature. The state courts have yet to rule on Plaintiff's motion for class certification. Indeed, because Standard Fire removed the case to federal court shortly after it was filed, Plaintiff has not even moved for class certification. If and when Plaintiff moves to certify a class, Standard Fire will be free to argue that the stipulation violates the due process rights of absent class members and that Plaintiff's stipulation is a factor to consider in whether the class should be certified or whether Plaintiff is an adequate class representative.[1] If the state court agrees with Standard Fire's position that the class should not be certified, then the defendant will not face a class action or any of the risks of which it complains. If a state court ultimately grants a motion for class certification, Standard Fire will have the opportunity to pursue appellate review in the usual

[1] *See Holcombe v. Smithkline Beecham Corp.*, 272 F. Supp.2d 792, 793 (E.D. Wis. 2003) ("Judicial concern about a limitation on the value of claims may be addressed when the question of plaintiff's adequacy as a representative is considered."); *Four Way Plant Farm, Inc. v. National Council on Compensation Ins.*, 894 F. Supp. 1538, 1544 (M.D. Ala. 1995) ("Whether plaintiffs, as representatives of a presently uncertified class, can waive any potential federal claims is an issue to consider when deciding whether the class should be certified or what class should be certified.").

course and eventually to seek certiorari on its due process arguments.

Such review, coming at a later time, would provide Standard Fire with the chance to raise its objection on the basis of a fully developed record on the adequate representation issue. That record would enable this Court to make a more informed assessment of the reasonableness of Plaintiff's binding stipulation, in light of the available evidence, Standard Fire's potential defenses, the likely damages and relief, and other issues.

B. Standard Fire's Argument Is Premature Because It Would Have The Chance To Invoke CAFA Removal At A Later Time.

Standard Fire's Petition is premature for a second reason: it will have the opportunity to present its arguments for a federal forum if and when the class action ever seeks more than $5 million in damages. CAFA eliminates the requirement that cases must be removed within one year of filing. 28 U.S.C. § 1453(b). Under CAFA, a case may be removed at any time, assuming that the requirements of federal subject-matter jurisdiction are satisfied. *Id.*

Thus, if Standard Fire is correct that Plaintiff's tactics create the potential for "[a]buses" (Pet. 16) – perhaps because "Plaintiff left open some doors to potentially modify or negate his 'stipulation' at a later date" or because the class definition may be "altered at a later point" (*id.* at 8) – then Standard Fire could attempt to remove this action to federal court pursuant to CAFA. Similarly, if a future court ever ruled that the stipulation is not binding on

absent class members as a matter of due process, enabling a different class representative to pursue claims for different relief and different amounts in controversy, then Standard Fire would be free to invoke CAFA at that time.

Notably, the district court made precisely this point, and Standard Fire's Petition offers no response to the district court's analysis that a defendant facing a change in circumstances would be free to seek the protections of CAFA:

> Defendant's concern about Plaintiff's future amendment of the Complaint is of no moment. If Plaintiff were to amend his Complaint after remand, disclaiming his sworn stipulation and seeking instead an amount in excess of the jurisdictional maximum, it follows that Defendant would have the right to remove again, should removal be justified.

Id. at 13a.

III. THE DECISION BELOW IS CONSISTENT WITH *SMITH v. BAYER.*

Standard Fire maintains that the district court's order in this case conflicts with this Court's decision in *Smith v. Bayer*, 131 S. Ct. 2368 (2011). That is untrue. *Smith v. Bayer* did not involve a binding stipulation or subject-matter jurisdiction under CAFA. Rather, *Smith v. Bayer* concerned a federal court injunction ordering a West Virginia state court not to consider a motion for class certification filed by plaintiffs who had previously been absent class members in a federal court action in the District of

Minnesota, which had denied class certification. This Court held that the injunction was improper under the relitigation exception to the Anti-Injunction Act, 28 U.S.C. § 2283.

This Court explained that absent class members were not "parties" to the Minnesota federal court proceeding, partly because the federal court had denied class certification: "The definition of the term 'party' can on no account be stretched so far as to cover a person like Smith, whom the plaintiff in a lawsuit was denied leave to represent." *Id*. at 2379.

The instant case is different. This case involves a question of removal under CAFA, not a decision to enjoin a state-court proceeding and the implications of the Anti-Injunction Act. Indeed, if the West Virginia state-court proceeding in *Smith v. Bayer* had been subject to removal to federal court under CAFA, then there would have been no need to enjoin it.

Moreover, this case is different from *Smith v. Bayer* because here there has been no ruling on class certification by any court, and thus this case does not involve a lawsuit by an absent class member seeking to relitigate an order rendered at a previous stage of the case, when there was a different class representative.

Rather, the question in the instant case is whether there was federal jurisdiction *at the time of removal* over *this* action filed by *this* Plaintiff – i.e., whether the stipulation is binding *now* on Plaintiff and on the class *now* being proposed by the Plaintiff. It is hornbook law that federal subject-matter jurisdiction must be determined based upon the

allegations of the complaint as set forth at the time the petition for removal was filed and that contingent events are inadequate to establish federal jurisdiction. *Dole Food Co. v. Patrickson*, 538 U.S. 468, 478 (2003); *see also Wisconsin Dept. of Corrections v. Schacht*, 524 U.S. 381, 390 (1998) ("for purposes of removal jurisdiction, we are to look at the case as of the time it was filed in state court – prior to the time the defendants filed their answer in federal court").

Smith v. Bayer presented a separate issue: the ability of an absent class member to relitigate (in a *subsequent* action) a certification question previously resolved by a different court. *Smith v. Bayer* did not involve a case at the time of removal. By contrast, the question here is whether federal subject-matter jurisdiction existed in the case at bar at the time of removal. It is not relevant to that question whether the stipulation might be held invalid in a hypothetical future ruling, either at the class certification stage or in a subsequent proceeding.

The distinction between (i) the situation at the time of removal and (ii) contingent future events was the key point made in Plaintiff's Response to the Petition for Rehearing in the Court of Appeals, Pet. App. 27a, 29a, which the Petition takes out of context. Pet. 11. Plaintiff did not "concede[]" in the Court of Appeals that the stipulation was not binding for present purposes. *Id.* Rather, Plaintiff' explained that "Defendant's argument is just a premature challenge to whether Plaintiff is an adequate representative." Pet. App. 29a.

> In sum, Plaintiffs proposing class actions can and often must make decisions affecting the ultimate value of the claims of merely "proposed" class members. Importantly, the due process rights of such proposed class members are always protected before any such decisions are considered "binding." In particular, the plaintiff must always demonstrate "adequate representation" of the class throughout the case.

Id.

Plaintiff's point was that the decision to stipulate to damages of a certain size is no different from innumerable other decisions that class representatives inevitably make as masters of their complaints. Named plaintiffs bringing putative class actions necessarily "limit" the recovery of the proposed class by, for example, picking and choosing which defendants to sue, which causes of action and elements of damages to include, and what kinds of litigation tactics to pursue in discovery, pretrial motions, and beyond. The ability of a court at the certification stage to consider a stipulation (along with other litigation decisions by the proposed class representative) in assessing adequacy of representation does not mean that the stipulation and other features of the complaint may be disregarded in determining whether there is federal subject-matter jurisdiction at the time of removal.

Otherwise, removal jurisdiction would arise in virtually any class action filed in state court, even if it involved only state residents and pleaded solely state law claims below the CAFA jurisdictional

minimum. If a putative class representative's decisions in framing the complaint could be disregarded, a federal court could always speculate (for example) that an entirely hypothetical new class representative *might* assert a federal claim for the class (establishing federal question jurisdiction) or *might* expand the class to meet the CAFA jurisdictional minimum.

That is not the law under CAFA, and more specifically nothing in *Smith v. Bayer* addresses that question. There is no merit to Standard Fire's argument that the orders below conflict with *Smith v. Bayer*.

IV. THERE IS NO CIRCUIT CONFLICT.

Certiorari should be denied because the district court's order in this case does not conflict with decisions of any circuit court. Standard Fire suggests that "[s]everal circuits, at least in dicta, have rejected the Eighth Circuit's view" (Pet. 17), but ultimately acknowledges that "the Eighth Circuit, in *Rolwing*, was the first court of appeals to address the question presented squarely." *Id.* at 19. This case is not *Rolwing*, and in any event Standard Fire's acknowledgement of the absence of a square circuit conflict should be the end of the matter with respect to certiorari.

Instead of presenting the kind of well-developed and mature circuit conflict that this Court considers in its certiorari process, this case involves a district court order that is consistent with precedent in every other circuit.

• From the Fifth Circuit, Standard Fire cites a pre-CAFA case, *Manguno v. Prudential Property & Casualty Ins. Co.*, 276 F.3d 720 (5th Cir. 2002), which upheld the denial of a class representative's motion to remand because a purported waiver of attorneys' fees was inconsistent with state law. *Id.* at 722. In the instant case, by contrast, the district court held that Plaintiff's stipulation was consistent with state law. Pet. App. 12a. Further, in *Manguno,* the Fifth Circuit opined (in a portion of the opinion not quoted by Standard Fire):

> Manguno's purported waiver of attorney's fees is ineffective. Louisiana Code of Civil Procedure article 862 provides that state courts will grant to a successful plaintiff the relief to which she is entitled, even if she has not demanded such relief.

276 F.3d at 724. Only then did the Fifth Circuit offer the dictum quoted by Standard Fire: "Moreover, it is *improbable* that Manguno can ethically unilaterally waive the rights of the putative class members to attorney's fees without their authorization." *Id.* (emphasis added). Thus, the Fifth Circuit did not squarely address the issue presented by Standard Fire, and its views on what a class representative may "ethically" do are pure dicta.

• Standard Fire also cites an unpublished Fifth Circuit decision, *Ditcharo v. United Parcel Serv., Inc.*, 376 Fed. Appx. 432 (5th Cir. 2010), which under the Fifth Circuit's rules is not precedential except in very limited circumstances. 5th Cir. R. 47.5.4.

• From the Sixth Circuit, Standard Fire cites dictum from *Smith v. Nationwide Prop. & Cas. Ins. Co.*, 505 F.3d 405, 407 (6th Cir. 2007), but Standard Fire ignores the *holding* of *Smith*, which was that the jurisdictional requirements of CAFA could not be met where a class representative pleaded only breach of contract claims and expressly disclaimed punitive damages in the complaint:

> In the Amended Complaint, Plaintiff "disclaims any ... punitive damages" on his behalf or that of the class members. He has further disclaimed recovery of punitive damages by pleading only breach of contract claims. . . . Accordingly, there is no merit to Defendant's argument that an allegation of a breach of the contractual duty of good faith and fair dealing and Defendant's alleged attempt "to keep Plaintiff from discovering the truth about its contractual obligations" would be sufficient grounds upon which to base an award of punitive damages in this instance. To decide otherwise on these facts would require a strained reading of the complaint and completely discount Plaintiff's express disclaimer.

Id. at 408. The Sixth Circuit opined that "[i]t is well established that the plaintiff is 'master of [his] complaint' and can plead to avoid federal jurisdiction. Accordingly, subject to a 'good faith' requirement in pleading, a plaintiff may sue for less than the amount [he] may be entitled to if [he] wishes to avoid federal jurisdiction and remain in state court." *Id.* at 407 (citation omitted; all but first brackets in original).

• From the Seventh Circuit, Standard Fire cites dictum from *Pfizer, Inc. v. Lott*, 417 F.3d 725 (7th Cir. 2005), but omits mention of the holding of that case: that CAFA did not apply to the plaintiff's suit at all, because it was filed prior to the effective date of the statute. *Id.* at 726-27. The Seventh Circuit's comment that a "stipulation would not bind the other members of the class," *id.* at 725, was dictum.

• Also from the Seventh Circuit, Standard Fire also cites *Back Doctors Ltd. v. Metropolitan Property & Casualty Ins. Co.*, 637 F.3d 827 (7th Cir. 2011) (Easterbrook, C.J.), which found that the $5 million CAFA jurisdictional threshold was met on the basis of a punitive damages claim. However, the complaint in the instant case does not seek punitive damages. Moreover, the plaintiff in *Back Doctors* did not file anything limiting the amount of the claim. As the Seventh Circuit explained:

> Back Doctors did not file in state court a complaint that disclaimed punitive damages or otherwise make a disavowal that is conclusive as a matter of state law. Instead it declared in the district court that it does not "now" want punitive damages, and the district judge relied on this when remanding the suit.

637 F.3d at 830.

Contrary to Standard Fire's implication, the Seventh Circuit actually approved the use of a stipulation: a "plaintiff in Illinois can limit the relief to an amount less than the jurisdictional minimum, and thus prevent removal, by filing a binding stipulation or affidavit with the complaint." *Id.* at

831. The court explained that "[l]itigants sometimes . . . prevent removal, by forswearing any effort to collect more than the jurisdictional threshold." *Id.* at 830. For that proposition, *Back Doctors* cited *Oshana v. Coca-Cola Co.*, 472 F.3d 506 (7th Cir. 2006), a class action case in which the Seventh Circuit reaffirmed that "the plaintiff [is] the master of the complaint" and opined that "[i]f [named plaintiff] Oshana really wanted to prevent removal, she should have stipulated to damages not exceeding the $75,000 jurisdictional limit. . . . A stipulation would have had the same effect as a statute that limits a plaintiff to the recovery sought in the complaint." *Id.* at 511-12.

Back Doctors also cited the Seventh Circuit's prior decision in *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446, 448 (7th Cir. 2005) (Easterbrook, J), a class action case under CAFA explaining that, because the plaintiff is the "master of the case" and "may limit his claims (either substantive or financial) to keep the amount in controversy below the threshold," the removing party must "show not only what the stakes of the litigation could be, but also what they are given the plaintiff's actual demands." 427 F.3d at 44; *see also Garbie v. DaimlerChrysler Corp.*, 211 F.3d 407, 411 (7th Cir. 2000) ("Even if the Michiganders were added [to the class action] to prevent removal, that is their privilege; plaintiffs as masters of the complaint may include (or omit) claims or parties in order to determine the forum.").

Hence, the Seventh Circuit, in *Back Doctors* itself and in other decisions reaffirmed in *Back Doctors*, has plainly recognized that a plaintiff in a

class action remains the master of the complaint and may properly limit claims in order to avoid federal jurisdiction.

There is no conflict between the district court decision in the instant case and precedent in either the Fifth or Seventh Circuits.

V. THIS CASE DOES NOT PRESENT AN IMPORTANT QUESTION OF FEDERAL LAW.

Standard Fire contends that the district court's decision violates the due process rights of absent class members and contravenes the purpose of CAFA. Pet. 13-17. Those contentions are baseless. The district court applied well-settled law in a fact-bound way that raises no important federal question. That is no doubt why, earlier this Term, this Court denied certiorari on the same question in No. 11-287, *Skechers USA, Inc. v. Tomlinson*, 132 S. Ct. 551 (Nov. 7, 2011).

This Court has long recognized that, "since the plaintiff is the master of the complaint, the well-pleaded-complaint rule enables him . . . to have the cause heard in state court" by limiting the claim to avoid federal subject-matter jurisdiction. *Holmes Group, Inc. v. Vornado Air Circulation Systems, Inc.*, 535 U.S. 826, 831 (2002) (internal quotation marks and citation omitted). *See, e.g.*, *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 294 (1938) ("If [the plaintiff] does not desire to try his case in the federal court he may resort to the expedient of suing for less than the jurisdictional amount, and though he would be justly entitled to more, the

defendant cannot remove."). In fact, the general rule that a plaintiff may frame her suit to avoid removal jurisdiction has been the law for over a century.[2]

This Court is familiar with the same principle in the context of class actions. For example, *United States v. Hohri*, 482 U.S. 64 (1987), involved a putative class action suit by nineteen individuals (former internees or their representatives) against the United States. The named plaintiffs limited requested damages to $10,000 per claim in order to qualify for federal district court jurisdiction and avoid the claims court. *Id.* at 66 & n.1. This Court did not suggest any infirmity with that jurisdictional strategy.

Standard Fire contends that limiting class claims below the jurisdictional threshold would circumvent CAFA's statutory scheme. To the contrary: Such a limitation serves CAFA's purposes by ensuring that the damages in this case will be capped at $5 million and will not present the risk of

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[2] *See, e.g.*, *Central R. Co. v. Mills*, 113 U.S. 249, 257 (1885) ("[T]he question whether a party claims a right under the constitution or laws of the United States is to be ascertained by the legal construction of its own allegations, and not by the effect attributed to those allegations by the adverse party."); *The Fair v. Kohler Die & Specialty Co.*, 228 U.S. 22, 25 (1913) ("Of course, the party who brings a suit is master to decide what law he will rely upon . . . .") (Holmes, J.); *Great North R. Co. v. Alexander*, 246 U.S. 276, 282 (1918) ("[T]he plaintiff may by the allegations of his complaint determine the status with respect to removability of a case . . . ."); *see also Iowa City Ry. v. Bacon*, 236 U.S. 305, 308 (1915) (holding that plaintiff could defeat removal by requesting only $1,900 in damages (at a time when the jurisdictional threshold was $2,000), even though plaintiff's loss was $10,000).

a limitless judgment. The limitation avoids the risks of enormous class action judgments that Standard Fire argues motivated the enactment of CAFA.

Moreover, limiting claims is perfectly consistent with CAFA. Section 2(b) of CAFA states that one of "[t]he purposes of th[e] Act" is 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." 28 U.S.C. § 1711 note, subpart (2). Cases like this one – involving purely state-law claims by residents of a single state, below the jurisdictional minimum – do not implicate the congressional purpose.

Further, the longstanding nature of the jurisdictional principle applied by the district court militates against any inference that CAFA meant to displace it *sub silentio*. This Court has opined that "[w]e assume that Congress is aware of existing law when it passes legislation." *Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990). Nothing that Congress included in CAFA suggests that a plaintiff bringing a class action is no longer the master of her complaint or is somehow prevented from "suing for less than the jurisdictional amount." *St. Paul Mercury*, 303 U.S. at 294.

Standard Fire insists, with less than complete plausibility, that it seeks to vindicate the due process interests of absent class members. It maintains that the stipulation is not fair to absent class members, who supposedly would be in better hands if Standard Fire were permitted to protect their interests by removing this case to federal court.

Standard Fire's argument that class representatives should not be permitted to make unilateral decisions as to damages has no merit. A decision to stipulate to a particular level of damages is no different from any other strategic choices that a class representative must make in litigating a case, and "any putative class members who disagree with the Plaintiffs limitation of damages have the ability to opt out from the class at the appropriate time." *Hooks v. Associates Fin. Serv. Co.*, 966 F. Supp. 1098, 1101 (M.D. Ala. 1997).

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

JONATHAN S. MASSEY
MASSEY & GAIL, LLP
1325 G St. N.W.
Suite 500
Washington, D.C. 20005
(202) 652-4511
jmassey@masseygail.com

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