No. 22-209

IN THE

Supreme Court of the United States

TRANSAMERICA RETIREMENT SOLUTIONS, LLC,

Petitioner,

v.

GLORIA A. ADDISON, *ET AL.*,

Respondents.

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

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

1. Whether the court of appeals abused its discretion in denying petitioners' application for leave to appeal.

2. Whether the district court erred in remanding this action because it falls within the local-event exception to the Class Action Fairness Act's grant of federal jurisdiction over "mass actions" in which more than 100 plaintiffs join their individual claims in a single action.

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INTRODUCTION

This case was filed in a Mississippi state court by 272 individual plaintiffs, respondents in this Court, who seek to recover damages for injuries resulting from a single event in a single state: the failure of a pension fund. Petitioner Transamerica Retirement Solutions is the defendant whose wrongful acts are alleged to have caused the failure. Transamerica removed the case to federal district court, invoking a provision of the Class Action Fairness Act (CAFA) creating federal jurisdiction over certain "mass actions," defined as cases in which 100 or more plaintiffs seek a joint trial of claims involving common issues of law or fact. 28 U.S.C. § 1332(d)(11)(A)–(B). The district court remanded the case on the ground that it falls within the local-event exception to CAFA's mass-action provision, which excludes assertion of federal jurisdiction over any case in which "all of the claims in the action arise from an event or occurrence in the State in which the action was filed, and that allegedly resulted in injuries in that State or in States contiguous to that State." *Id.* § 1332(d)(11)(B)(ii)(I). Transamerica sought leave to appeal the remand under 28 U.S.C. § 1453, and a Fifth Circuit panel denied leave unanimously and without opinion. The court also denied requests for reconsideration and for rehearing en banc, again without dissent.

Transamerica now asks this Court to resolve what it characterizes as a conflict between the Fifth, Third, and Eleventh Circuits, on the one hand, and the Ninth Circuit, on the other, over the definition of the term "an event or occurrence" in CAFA. Specifically, it asks this Court to overturn a prior Fifth Circuit precedent, *Rainbow Gun Club, Inc. v. Denbury Onshore, L.L.C.*,

760 F.3d. 405 (5th Cir. 2014), holding that "an event or occurrence" includes a pattern of related misconduct leading to "a single focused event" that is the basis of the claims. *Id*. at 412. Transamerica asserts that *Rainbow Gun Club* conflicts with Ninth Circuit precedent that it believes imposes a narrower, single-event rule under which, it contends, the claims against it would fall outside the local-event exception. *See Allen v. Boeing Co.*, 784 F.3d 625 (9th Cir. 2015).

In its petition for leave to appeal in the Fifth Circuit, however, Transamerica did not indicate that it sought to appeal for the purpose of challenging the *Rainbow Gun Club* definition of an event or occurrence. Instead, it identified five other issues that it claimed justified appeal of the remand order, all of which assumed the correctness of Fifth Circuit precedent. Transamerica raised the issue that is the subject of its petition for certiorari only in its petition for rehearing. Under these circumstances, this Court cannot infer that the Fifth Circuit's discretionary denial of leave to appeal (or its denial of rehearing) rested on a ruling on the question Transamerica now seeks to raise. Thus, the only question that could properly be before the Court is whether the Fifth Circuit abused its discretion in denying leave to appeal based on the issues Transamerica "submit[ted]" in its petition for leave to appeal. *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 93 (2014). But Transamerica does not assert that any of *those* issues merits review by this Court.

Even if the question Transamerica seeks to raise were properly presented, Transamerica's claim that this case implicates a conflict between the Fifth and Ninth Circuits' definitions of an event or occurrence is wrong. The Ninth Circuit recognized in *Allen* that its

standard is not "necessarily contrary" to the Fifth Circuit's decision in *Rainbow Gun Club*. 684 F.3d at 633. As the Ninth Circuit explained, the outcome in *Allen* would be the same under the Fifth Circuit's holding in *Rainbow Gun Club* that the local-event exception applies where related wrongful acts "resulted in a single happening … which produced the alleged injuries to the plaintiffs." *Allen*, 684 F.3d at 633 (citing *Rainbow Gun Club*, 760 F.3d at 412). The Ninth Circuit's ruling therefore did not require it to reject the Fifth Circuit's approach, *see id.* at 634, and no other Ninth Circuit precedent—or other federal appellate precedent—holds the exception inapplicable to such facts.

In this case, as in *Rainbow Gun Club*, the respondents' injuries result from a "single focused event" that is "the basis of the asserted liability," 760 F.3d at 412—here, the catastrophic failure of a pension plan. Transamerica points to no circuit that has upheld mass-action jurisdiction under CAFA over such a claim, and the district court's remand in this case was correct under any reasonable reading of CAFA's language. If, in some future case, a court of appeals applies the local-event exception to reach an outcome contrary to that which another circuit would reach in comparable circumstances, a conflict meriting resolution by this Court may present itself. But *this* case, in which the court of appeals did not issue any holding on the application of the exception, and in which the district court's remand is consistent with precedent in each of the only four circuits that have addressed the subject to date, is wholly unworthy of review by this Court.

STATEMENT

A. CAFA's Local-Event Exception

Congress enacted CAFA to address concerns about important interstate class actions being decided in state courts and perceptions of class-action abuse. Class Action Fairness Act of 2005, Pub. L. No. 109-2, § 2, 119 Stat. 4, 4–5 (2005), 28 U.S.C. § 1711 note. CAFA provides that, subject to several exceptions, federal courts have original and removal jurisdiction over class actions in which the amount in controversy exceeds $5 million and at least one class member and one defendant are citizens of different states. 28 U.S.C. § 1332(d)(2).

CAFA also includes a provision allowing certain "mass actions" to be treated as class actions for purposes of CAFA original and removal jurisdiction. A mass action is "any civil action … in which monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs' claims involve common questions of law or fact." *Id.* § 1332(d)(11)(B)(i). To fall within federal jurisdiction under CAFA, a mass action must meet all of the jurisdictional requirements of a class action. *See id.* Even then, however, the federal court may assert jurisdiction only over those plaintiffs in the mass action whose individual claims meet the $75,000 amount-in-controversy requirement for conventional diversity jurisdiction. *See id.*

Congress further limited federal jurisdiction over mass actions by excluding four types of civil actions that would otherwise qualify as removable mass actions. *Id.* § 1332(d)(11)(B)(ii). The first exception, the "local-event exception," provides that a removable "mass action shall not include any civil action in which

… all of the claims in the action arise from an event or occurrence in the State in which the action was filed, and that allegedly resulted in injuries in that State or in States contiguous to that State." *Id.* § 1332(d)(11)(B)(ii)(I).

B. The Fifth Circuit's Decision in *Rainbow Gun Club*

The *Rainbow Gun Club* decision involved efforts by a defendant to remove a mass action to federal court. The plaintiffs in that case entered into oil, gas, and mineral leases with the defendant. *Rainbow Gun Club,* 760 F.3d at 407. They later sued, arguing that the defendant had breached its duty to act as a reasonable and prudent operator of the well that was drilled under these leases. *Id.* A magistrate judge found that the local-event exception applied. and the defendant appealed. *Id.* at 408.

The Fifth Circuit reasoned that the plain meanings of "event" and "occurrence" support the view that the local-event exception uses language that is "not generally understood to apply only to incidents that occur at a discrete moment in time." *Id.* at 409. Looking also to legislative history and the decisions of the Third and Ninth Circuits, the Fifth Circuit concluded that, while the local-event exception "certainly applies in cases in which the single event or occurrence happens at a discrete moment in time, the single event or occurrence may also be constituted by a pattern of conduct" that leads "to a single focused event that culminates in the basis of the asserted liability." *Id.* at 412. The plaintiffs' claims therefore belonged in state court because their complaint alleged "multiple acts of negligence" giving rise to one harm-causing event from which their claims arose, "the failure of the well." *Id.*

C. Facts and Proceedings Below

This petition involves a civil action originally filed in the Circuit Court of Jackson County, Mississippi. The plaintiffs, who are respondents here, are 272 current or former employees of Singing River Health System (SRHS), a local medical services provider operating hospitals, hospices, clinics, and pharmacies throughout Mississippi's Gulf Coast.

Respondents were participants in the SRHS's defined-benefit retirement plan. Transamerica provided actuarial and administrative services to the plan for several years starting in 2011. From 2009 to 2014, SRHS made only one of its required annual contributions to the plan based on advice provided by Transamerica and the plan's auditor, KPMG. As a result, the plan's funding ratio for its anticipated benefits payments dropped precipitously. In December 2014, SRHS announced that the plan would be frozen and liquidated. Actions brought on behalf of participants in the Chancery Court for Jackson County, Mississippi, led to an order preventing SRHS from terminating the plan, appointment of a special fiduciary to administer and pursue claims on behalf of the plan, and a settlement (in which Transamerica and KPMG did not participate). Even after the settlement, the plan remained significantly underfunded, and in April 2018 the Chancery Court entered an order cutting all benefits by 25% and eliminating annual cost-of-living increases. The special fiduciary then sought and obtained an order from the Chancery Court permitting her to abandon her claims against Transamerica and KPMG, and authorizing individual beneficiaries to file their own cases against those defendants.

This case is one of many filed on behalf of hundreds of plan beneficiaries in the Circuit Court of Jackson County after the Chancery Court's order authorizing such suits. The actions allege that the plan's failure was the result of Transamerica's and KPMG's misrepresentations and wrongful actions, and the plaintiffs seek damages for injuries suffered when the plan failed and benefits were cut dramatically.

Transamerica removed the case, which asserts claims of more than 100 plaintiffs, to the United States District Court for the Southern District of Mississippi, asserting jurisdiction under CAFA's mass-action provision. The other cases against Transamerica and KPMG remained in the Circuit Court of Jackson County, where a single judge was specially appointed by the Mississippi Supreme Court to manage all the cases.

Respondents moved to remand this case, arguing that none of the plaintiffs' claims satisfied the $75,000 individual amount-in-controversy requirement and that, in any event, the case falls within the local-event exception because all of the claims arise from an event or occurrence in the forum state—the failure of the plan—that caused injuries in that state.

On March 29, 2022, the district court granted the motion. Pet. App. 2a–26a. The court first held that Transamerica had presented evidence establishing that the value of the claim of one of the 272 plaintiffs exceeded $75,000, which was sufficient to meet the threshold requirement for removal of the mass action. The court then considered application of the local-event exception. The court began by noting that the parties disagreed over who bore the burden of proving applicability of the exception, but that there was no

need to resolve the issue because the outcome in this case did not depend on the burden of persuasion. *Id.* 16a. Applying the Fifth Circuit's decision in *Rainbow Gun Club*, the district court held that "CAFA's local single event exclusion applies, because the Complaint alleges 'an ongoing pattern of conduct' on the part of Transamerica and KPMG 'that was contextually connected' and which culminated in a single event or occurrence, the failure of the Plan." *Id.* 24a (quoting *Rainbow Gun Club*, 760 F.3d at 413).

Transamerica sought leave to appeal under 28 U.S.C. § 1453(c)(1), which allows permissive appeals of remand orders under CAFA. Its petition for permission to appeal raised issues concerning the burden of proof, argued that the district court had misapplied *Rainbow Gun Club*, and asserted that the case falls outside the local-event exception because, in Transamerica's view, not all of the injuries were suffered in Mississippi or contiguous states.[1] The petition did not ask the court to grant leave to appeal in order to reconsider *Rainbow Gun Club* and adopt Ninth Circuit precedent concerning the local-event exception. On May 10, 2022, the Fifth Circuit denied Transamerica's motion for leave to appeal without opinion or comment. Pet. App. 1a.

Transamerica submitted a petition for rehearing in which it argued, for the first time, that *Rainbow Gun Club*'s reading of the local-event exception was erroneous and that the Fifth Circuit should instead adopt Ninth Circuit authority that, Transamerica asserted, would lead to a different result in this case. Because

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[1] The petition for permission to appeal, dated April 11, 2022, is the second entry on the Fifth Circuit's docket for Miscellaneous Case No. 22-90016.

the rehearing petition was submitted after the deadline, Transamerica was required to submit a motion for leave to refile it out of time. The court of appeals granted that motion but did not order respondents to file a response to the petition. The court denied panel reconsideration and rehearing en banc on June 7, 2022. Pet. App. 27a. The rehearing order stated that no member of the panel or judge in regular active service had requested a vote on rehearing en banc and, like the order denying leave to appeal, was unaccompanied by any opinion or by comment by the panel or any Fifth Circuit judge. *Id*. 28a.

REASONS FOR DENYING THE WRIT

I. The issue Transamerica asks this Court to resolve is not properly presented by the Fifth Circuit panel's discretionary denial of leave to appeal.

Transamerica's petition for leave to appeal in the Fifth Circuit told the court that there were five "important questions" justifying a permissive appeal from the remand order in this case under 28 U.S.C. § 1453(c). Pet. for Permission to Appeal 12. Three of those questions involved the burden of proof (which the district court had held would not affect the outcome of the case), *see id*.; the other two questions asked whether the district court had misapplied the local-event exception and the Fifth Circuit's own precedent in *Rainbow Gun Club* by not properly determining that the alleged misconduct had culminated in a single focused event that was the basis of the asserted liability, and by not requiring proof that all injuries occurred in Mississippi or a contiguous state, *see id*. at 12, 17–19. Nowhere did the petition argue that an appeal was justified by any flaw in the *Rainbow Gun*

Club standard or by its claimed inconsistency with the law of the Ninth Circuit, which the petition did not even cite.

In such circumstances, the court's denial of leave to appeal cannot be understood to reflect anything more than the court's conclusion that neither Transamerica's burden-of-proof arguments, which the district court had no need to and did not address, nor its fact-bound challenges to the application of circuit precedent presented fairly debatable issues of sufficient importance to merit review. The court's exercise of its discretion to deny review of those issues does not reflect resolution of any dispute over the very different legal issue that Transamerica now seeks to present to this Court.

Accordingly, however this Court might decide the question that Transamerica belatedly seeks to present, it could not find that the Fifth Circuit's discretionary denial of leave to appeal was "infected by legal error" and thus constituted an abuse of discretion. *Dart Cherokee*, 574 U.S. at 93. Accordingly, the question Transamerica asks this Court to resolve is not properly presented by the Fifth Circuit's order denying leave to appeal.

By contrast, *Dart Cherokee* held that this Court has jurisdiction to review a court of appeals' order denying leave to appeal under § 1453 and can set it aside as an abuse of discretion when, "[f]rom all signals [this Court] can discern," *id.*, the denial of review "relied on [a] legally erroneous" resolution of a disputed issue that "the parties submit[ted]" to the court of appeals, *id.* at 91, 93. The "signals" that the Court relied on in *Dart Cherokee* included the fact that the petition for leave to appeal and response "urged

conflicting views" and "trained their arguments" on the exact issue raised in this Court, *id*. at 93; that the court's order stated that it had considered those submissions and the "applicable law," *id*.; that the dissenting judge in the court of appeals (speaking for half of the full court) had characterized the denial of review as effectively imposing erroneous requirements for notices of removal, *id*. at 94; and that the ruling had the "practical effect" of forcing responsible attorneys in the circuit to comply with an erroneous requirement that removal notices include an evidentiary submission, thus effectively preventing the issue from arising in future cases, *id*. at 92.

This case has none of those features. The briefing on the petition for leave to appeal contained no airing by either party of the issue *Transamerica* now seeks to present. The court's order denying leave to appeal, which states only that leave to appeal is denied, Pet. App. 1a, contains no hint that the panel considered and resolved any legal issue, let alone the question presented here—which was *not* included in the petition for leave to appeal. And the denial of leave to appeal in this case will not have the practical effect of preventing attorneys who wish to challenge the Fifth Circuit's legal standard in future cases from seeking to do so, because there is no way to present a notice of removal that will obviate the need to consider the issue in a case that presents it, as there was in *Dart Cherokee* (where responsible attorneys would likely comply with the erroneous requirement of submitting evidence establishing the amount in controversy together with removal notices rather than challenging that requirement). Under the circumstances here, the Court cannot draw the inference that the Fifth Circuit's denial of leave to appeal and subsequent denial

of rehearing "relied on" the "premise" that Transamerica now claims is "legally erroneous." *Dart Cherokee*, 574 U.S. at 91.[2]

Not until its petition for rehearing or rehearing en banc did Transamerica first attempt to raise the question it now presents to this Court. The Fifth Circuit granted Transamerica leave to file that petition after it was initially submitted out of time. However, the court's willingness to allow the late filing of the petition does not mean that its denial of rehearing reflects a determination of the issue presented in the petition that could be overturned as legally erroneous if Transamerica's question presented were answered in its favor by this Court. The court's denial of rehearing stated no views on the merits, and none of the court's fifteen judges even requested a vote on en banc consideration. If anything, the only discernible "signal" the denial of rehearing sends is that a party waits until its petition for rehearing to tell a court of appeals why it thinks its request for permission to appeal should be granted does so too late.

II. This case implicates no conflict among the circuits.

Even if the question that Transamerica poses were properly presented by the Fifth Circuit's order denying leave to appeal, there would be no reason for

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[2] Under the approach of Justice Scalia's dissenting opinion in *Dart Cherokee*, it would also be impossible to find the denial of leave to appeal an abuse of discretion here. *See* 574 U.S. at 102 (Scalia, J., dissenting). And under the view taken in Justice Thomas's dissent, this Court would not even have jurisdiction to review the order for abuse of discretion because the case was never "in" the court of appeals. *See id*. at 104 (Thomas, J., dissenting).

review by this Court. There is no conflict among the circuits over the applicability of the local-event exception when, as in this case, a pattern of related wrongdoing culminates in a single focused event from which the plaintiffs' claims arise.

Even on Transamerica's account, the alleged circuit split is exceptionally shallow. Transamerica acknowledges that only four courts of appeals have addressed the issue and it concedes that three of them would hold that cases like this one involve "an event or occurrence," as the local-event exception requires. *See Rainbow Gun Club*, 760 F.3d at 412; *Spencer v. Specialty Foundry Prods. Inc.*, 953 F.3d 735, 742–43 (11th Cir. 2020) (adopting *Rainbow Gun Club*'s approach); *Abraham v. St. Croix Renaissance Grp.,* 719 F.3d 270, 276–77 (3d Cir. 2013) (holding that a pattern of related misconduct may constitute an event or occurrence, without explicitly requiring that it culminate in a single, focused event). Transamerica's side of the claimed split, by its account, consists of a single circuit, the Ninth, which has in two cases stated that claims fall outside the exception if they involve no "singular happening." *Allen*, 784 F.3d at 634; *see Nevada v. Bank of Am. Corp.*, 672 F.3d 661 (9th Cir. 2012). Such a lopsided "conflict"—on an issue that has reached the courts of appeals only five times in the 17-year history of CAFA—would provide little reason for review even in a case that genuinely presented that claimed disagreement.

In *this* case, there is no reason at all for review of Transamerica's question because there is *no division* among the courts of appeals concerning cases that involve wrongdoing that culminates in a single, focused event giving rise to the claims—such as the catastrophic pension-plan failure at issue here. Neither of

the Ninth Circuit decisions holds that such claims fail to meet the Ninth Circuit's "singular happening" test. Rather, the Ninth Circuit has explicitly declined to hold that related acts of wrongdoing that culminate in a single, focused event fall outside the exception.

In *Nevada*, the Ninth Circuit stated that a pattern of wrongdoing that manifested itself in thousands of separate transactions involving different parties at different times was not one "event or occurrence." 672 F.3d at 668.[3] That statement is *not* inconsistent with *Rainbow Gun Club*, *Abraham*, *Spencer*, or the district court's remand order in this case, none of which involved multiple discrete events. Indeed, *Spencer*, in which the Eleventh Circuit adopted the holding of *Rainbow Gun Club*, held that the claims at issue there did not satisfy the local-event exception precisely because they involved "a series of discrete incidents." 953 F.3d at 743.

As for *Allen*, the Ninth Circuit held that there was no "singular happening" where the claims alleged environmental harms occurring over a forty-year period due to one defendant's conduct, as well as harms attributable to different conduct of a different defendant in a subsequent ten-year period. 784 F.3d at 633–34. The court expressly noted that the result in that case would be the same under the *Rainbow Gun Club* test, because there was no consistent pattern of wrongdoing over time and the wrongdoing did not culminate in

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[3] The court's statement in *Nevada* about the local-event exception was not necessary to its decision, because the court ultimately held that the case was not a mass action at all because it was brought by a state in its parens patriae role. *See id.* at 672. This Court confirmed the correctness of that decision in *Mississippi ex rel. Hood v. AU Optronics Corp.*, 571 U.S. 161 (2014).

"a single focused event" that was the "basis of the asserted liability." *Id.* at 634 (quoting *Rainbow Gun Club*, 760 F.3d at 412). Moreover, *Allen* explicitly states that the Ninth Circuit's test is not "necessarily contrary" to "[t]he Fifth Circuit's approach." *Id.* at 633. Although the court stopped short of endorsing *Rainbow Gun Club* outright, nothing that it said suggests that the Ninth Circuit would hold that a case involving the kind of culminating event at issue here would full outside the local-event exception. And Transamerica cites no subsequent decisions of the Ninth Circuit applying its standard to allow removal of a mass action involving such a single culminating event.

In short, *no* court has held that a pattern of wrongdoing leading to a single, focused, harm-causing event falls outside the exception. At most, *Allen* and *Abraham* suggest that the Ninth and Third Circuits *might* reach different results in a completely different kind of case: one involving long-term releases of pollutants that arguably do not involve a single, focused, culminating event. *Abraham*, while consistent with the Ninth Circuit case law in holding that the local-event exception applies only when claims arise from a "single" event or occurrence, 719 F.3d at 280, found that requirement satisfied by claims arising from dispersal of pollutants from an industrial site, allegedly attributable to the owner's failure to take remedial action and its concealment of the hazard, *id.* at 279–80. The majority of the divided Ninth Circuit panel in *Allen* was critical of *Abraham*, suggesting that that panel might have reached a different result on the facts of *Abraham* than did the Third Circuit. *See Allen*, 784 F.3d at 630. But the factual differences between the cases make even that possibility uncertain. *See Spencer*, 953 F.3d at 743 (noting that the facts in

Abraham, unlike those in *Allen*, can be viewed as involving "a culminating harm-causing event," albeit one occurring "over a discrete, though lengthy, period of time").[4]

Moreover, in light of the Eleventh Circuit's recent decision in *Spencer* adopting the *Rainbow Gun Club* standard, and the Ninth Circuit's expression of openness to that standard in *Allen*, it appears likely that the circuits will coalesce around *Rainbow Gun Club*'s approach. That approach combines features of the two earliest decisions discussing the standard: *Abraham*, which noted that the term "event or occurrence" does not exclude events that "persist over a period of time," 719 F.3d at 277, and *Nevada*, which stated that an event must nonetheless be a "*single* event," 672 F.3d at 668. Given that neither the Third Circuit nor any district court within the circuit has addressed the subject in the nine years since *Abraham*, there is no reason to believe that the Third Circuit would be unwilling to accept the Fifth Circuit's refinement of the standard. Further percolation through the other circuits is more likely to lead to consensus than conflict given the trend in the cases.

Meanwhile, in the absence of any disagreement among the circuits over the proper treatment of the kinds of claims at issue in *this* case, potential disagreements over the scope of the exception as applied

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[4] Among other things, *Abraham* involved a shorter, fixed period of time (approximately a decade) than did *Allen*, and all of the claims were attributable to a uniform course of alleged misconduct by a single defendant at a single site, with a single mechanism of exposure. The Ninth Circuit in *Allen* suggested that the result might be different had *Allen* shared more of those characteristics. See 784 F.3d at 633–34.

to other fact patterns provide no reason for review. This Court, after all, does not sit to decide abstract issues over legal standards, but to decide questions that determine the correctness of the judgments of lower courts: The Court "reviews judgments, not opinions." *Chevron, U.S.A., Inc. v. NRDC*, 467 U.S. 837, 842 (1984). Choosing among different formulations of a standard in a case where all of the formulations point to the same outcome is not this Court's role. And review is all the more unwarranted in a case where there has been no merits decision by a court of appeals to crystalize the issue and allow a fully informed determination whether the case involves some genuine disagreement among the circuits that merits review.

III. The district court's decision to remand was correct.

A. Review is also unwarranted because the district court's decision is correct and consistent with the plain meaning of the statute, under which the failure of the pension plan that gave rise to the claims at issue here is unquestionably an "event or occurrence." The key words in the statute, "event" and "occurrence," have well-defined common meanings. An "event" is "something that happens: OCCURRENCE." Webster's Third New International Dictionary Unabridged (2017). An occurrence, likewise, is "something that takes place." *Id.*; *see also* Black's Law Dictionary1299 (11th ed. 2019) ("[s]omething that happens or takes place"). Any ordinary English speaker would agree that the failure of a pension plan, resulting in an across-the-board 25% benefit cut to all plan participants, is something that happens. And it is also something from which all the claims arise, as the plan's default in paying benefits causes the injuries suffered by

the individual beneficiaries of a defined-benefit plan. *See Thole v. U.S. Bank N.A.*, 140 S. Ct. 1615, 1622 (2020).

Moreover, as the Fifth Circuit observed in *Rainbow Gun Club*, in common parlance something that happens does not exclusively mean something that takes place at a precise moment in time. Thus, even assuming that the statute's use of the article "an" and the singular words "occurrence" and "event" limit the local-event exception to single occurrences and events, a single event or occurrence may span a considerable period of time and encompass a continuing course of conduct. *See* 760 F.3d at 409–12. That Congress chose terms that have not only common but legal meanings is also significant: "Occurrence" is a term that, in legal parlance (particularly in liability insurance policies), refers specifically to "an accident, event, or continuing condition that results in personal injury or property damage." Black's Law Dictionary 1299.

Notably, there are no words in the statute that point to a more limited meaning of the terms used. Congress did not use the word "single" to modify "event or occurrence" and, indeed, substituted the words "an event or occurrence" for "a single sudden accident," which was used in an earlier proposed version of the local-event exception. *See Rainbow Gun Club*, 760 F.3d at 410. In the absence of such a specific limitation, the Dictionary Act generally mandates that "[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise … words importing the singular include and apply to several persons, parties, or things." 1 U.S.C. § 1. A reading demanding strict singularity, under which an event or occurrence may not encompass any continuing conduct, no matter how integrally related its elements

may be and how singular an event it leads to, is impossible to square with the statute.

Moreover, even the strictest reading of the statute amply encompasses a case like this one, in which a single, focused event gives rise to all the claims asserted. The failure of a pension plan is a singular happening under any view of those words. That the failure may have multiple contributing causes, including a continuing pattern of misconduct by a defendant, does not make the event itself—on which all the claims depend—any less singular. In short, the assertion that a pension plan's failure was not an event or occurrence is nonsensical under any understanding of the meaning of those terms.

B. In addition to its claim that the district court erred in treating the failure of the plan as an event or occurrence, Transamerica repeatedly states its view that the court erred in not demanding proof that that event caused *no* injuries outside the forum state (Mississippi) or contiguous states. Transamerica further asserts that some of the injuries at issue must have occurred outside Mississippi and contiguous states because some of the plaintiffs have addresses in states that do not border Mississippi.

Transamerica's assertions are irrelevant to whether this Court should grant certiorari, for several reasons. First, Transamerica's question presented is limited to the meaning of "an event or occurrence," and does not even include any claimed error with respect to the location of the resulting injuries. Second, even if Transamerica had drafted a question presented that included the latter issue, it has made no attempt to demonstrate that that issue would merit the Court's review: It points to no disagreement

among the courts of appeals on the issue, and, indeed, cites no decision of any court of appeals that has addressed it. Third, the district court did not rule on the issue, and the court of appeals' order denying leave to appeal did not pass on it. A case in which an issue has gone completely unexplored by the lower courts is a poor candidate for review by this Court.

Transamerica's argument also rests on a misreading of the statute. The local-event exception does not say that all claims in the case must be based on injuries suffered in the forum state or a contiguous state, nor does it define an event or occurrence as one that causes injury *only* in the forum state or contiguous states. What the statutory language requires is that all the claims must arise from an event or occurrence, and that the event or occurrence must be "in the State in which the action was filed," and must have "allegedly caused injuries in that State or in States contiguous to that State." 28 U.S.C. § 1332(d)(11)(B)(ii)(I). The statutory language does not require that all the claims arise from the in-state injuries; they need only arise from the event or occurrence, and the event or occurrence, in turn, need only have taken place in the forum state and have caused injuries there or in contiguous states. The allegations here satisfy the plain language of the statute because the event or occurrence undisputedly caused injuries in the forum state or contiguous states.

Finally, even if all claims were required to allege injuries in the forum state, that requirement would be satisfied here. Injuries involving the loss of funds held in a trust in the forum state can readily be described as injuries in the forum state.

IV. Review of Transamerica's arguments in this case would not serve the purposes of CAFA's mass action provision.

Transamerica asserted below that it would suffer "harm" if the district court's remand were allowed to stand because it would have to "defend a 'mass action' in state court." Pet. for Permission to Appeal 21. But it identified no real harm. Mass actions, unlike class actions, are collections of individual claims and do not require certification or judicial approval of settlements to protect absent class members. Thus, there is no possibility that their litigation in state court will implicate CAFA's principal concern: the perception of its supporters that some state-court "judges have reputations for readily certifying classes and approving settlements without regard to class member interests." S. Rep. No. 109-14, at 4 (2005).

Moreover, removal of this case would not relieve Transamerica of the burden of defending against claims arising out of the plan's failure in Mississippi state courts. Many other cases against Transamerica, involving many other plaintiffs, remain pending in the Circuit Court of Jackson County, Mississippi, where they are pending before a specially appointed state court judge. Dividing litigation between the federal and state courts would increase the burden on all parties and needlessly expend the resources of the federal district court.

Indeed, even in the unlikely event that this Court were to hold that the district court erred in applying the local-event exception, much of this case could still end up back in state court. CAFA's mass action provision has an important limitation: Unlike true class actions, which are subject only to an aggregate amount-

in-controversy requirement of $5,000,000 under CAFA, *see* 28 U.S.C. § 1332(d)(2), mass actions are subject to two distinct amount-in-controversy requirements that operate in different ways. The mass action as a whole must meet the $5,000,000 aggregate jurisdictional amount, but even if it does, federal "jurisdiction shall exist only over those plaintiffs whose claims in a mass action satisfy the [$75,000] jurisdictional amount requirements under [§ 1332(a)]." 28 U.S.C. § 1332(d)(11)(B)(i). The claims of all other plaintiffs in the mass action must be remanded for lack of jurisdiction.

Here, the district court found that Transamerica had identified *one* of the 272 plaintiffs whose individual claim met the $75,000 jurisdictional amount threshold. Thus, unless Transamerica identified additional plaintiffs with $75,000 claims, the claims of the other 271 plaintiffs would have to be remanded to state court, leaving only one plaintiff in the "mass action" in federal court.[5] That result would do nothing to advance Transamerica's purported objective of avoiding mass litigation in state court—it would accomplish nothing but delay. The consequences of accepting Transamerica's arguments in this case underscore that it is a wholly unsuitable vehicle for considering the scope of the local-event exception, even if that issue had been decided by the court of appeals and otherwise merited review.

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[5] The statute does not specify whether a "mass action" remains subject to federal jurisdiction if fewer than 100 plaintiffs remain after the claims of those who do not meet the amount-in-controversy requirement are returned to state court.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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