No.

In the Supreme Court of the United States

HCA INC., BRIDGESTONE AMERICAS, INC. F/K/A BRIDGESTONE AMERICAS HOLDINGS, INC., HUNTSMAN CORPORATION, NECHES GULF MARINE, INC., AND HORNBECK OFFSHORE SERVICES, INC.,
Petitioners,

v.

AON CORPORATION, AON GROUP, INC., AON SERVICES GROUP, INC., AND ALAN S. DANIEL AND WILLIAMSON COUNTY AGRICULTURAL ASSOCIATION, ON BEHALF OF THEMSELVES AND ALL OTHER PERSONS SIMILARLY SITUATED,
Respondents.

On Petition for a Writ of Certiorari to The Appellate Court of Illinois, First District

PETITION FOR A WRIT OF CERTIORARI

J. CRAIG FALLS
Falls Smith LLP
111 Congress Avenue, Suite 4000
Austin, TX 78701
(512) 542-2090

J. BRETT BUSBY
Counsel of Record
JEFFREY L. OLDHAM
RALPH D. "SKIP" MCBRIDE
BRYAN S. DUMESNIL
Bracewell & Giuliani LLP
711 Louisiana, Ste. 2300
Houston, TX 77002
(713) 223-2300

Counsel for Petitioners
[Additional counsel listed on inside cover]

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D.C. 20002

L. DEWAYNE LAYFIELD
Law Office of L. DeWayne Layfield
P.O. Box 3829
Beaumont, TX 77704
(409) 832-1891

HUBERT OXFORD, III
JOSHUA C. HEINZ
Benckenstein & Oxford L.L.P.
P.O. Drawer 150
Beaumont, TX 77704
(409) 833-9182

QUESTIONS PRESENTED

In *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 821-22 (1985), this Court held that a state court may not apply a single State's laws to a nationwide class action, consistent with the federal Due Process and Full Faith and Credit Clauses, without first determining that the State has significant contacts with "the claims asserted by each member of the plaintiff class." In this case, the court considered the State's contacts on a class-wide basis, holding that Illinois law could apply to a nationwide class challenging secret insurance brokerage commissions because the commission scheme was orchestrated from the broker's principal headquarters in Illinois and third parties sent the commissions there. Thus, the court applied Illinois law to the claims of class members from other States who dealt only with affiliates of the broker incorporated in their States.

The questions presented are:

1) Does the Due Process Clause or Full Faith and Credit Clause, as interpreted in *Shutts*, require an individualized choice of law analysis for each class member's claim before a single State's law may be applied to a nationwide class action?

2) Does the lower court's determination that Illinois law applies to this nationwide class violate the Due Process Clause or Full Faith and Credit Clause?

RULE 14.1(b) STATEMENT

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows: Allied Van Lines, Inc., Aon Corporation, Aon Group, Inc., Aon Services Group, Inc., Asset Strategies, Inc., N. Albert Bacharach, Jr., Bishop and Associates, P.S.C., Bridgestone Americas, Inc., Connie Pentz Realty Co., Dale Johnson Trucking, Inc., Alan S. Daniel, Joseph C. Hawthorn, HCA Inc., W. Andrew Hoffman, Hornbeck Offshore Services, Inc., Huntsman Corporation, Gary Marcus, Neches Gulf Marine, Inc., North American Van Lines, Inc., Pritchard, McCall & Jones, LLC, Professional Asset Strategies, Inc., Rinis Travel Service, Inc., Signum LLC, and Unlimited Vacation and Cruises, and Williamson County Agricultural Association.

RULE 29.6 STATEMENT

HCA Inc. is privately held. Bridgestone Americas, Inc., formerly known as Bridgestone Americas Holdings, Inc., is a wholly owned subsidiary of Bridgestone Corporation (Japan), which is publicly traded in Japan, and Bridgestone Corporation is the ultimate parent. Huntsman Corporation is a publicly traded company (HUN), it has no parent company, and no publicly held company other than Huntsman Corporation owns 10% or more of its stock. Neches Gulf Marine, Inc. is privately held. Hornbeck Offshore Services, Inc. is a publicly traded company (HOS), it has no parent company, and no publicly held company owns 10% or more of its stock.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners HCA Inc., Bridgestone Americas, Inc., Huntsman Corporation, Neches Gulf Marine, Inc., and Hornbeck Offshore Services, Inc. respectfully petition for a writ of certiorari to review the judgment of the Appellate Court of Illinois in this case.

OPINIONS BELOW

The opinion of the Appellate Court of Illinois (App. 5a-52a) is unreported. The relevant orders of the Circuit Court of Cook County, Illinois (App. 53a-126a) are unreported.

JURISDICTION

The Appellate Court of Illinois issued its opinion on June 19, 2008, and it denied rehearing on November 10, 2008. App. 4a-5a. The Supreme Court of Illinois denied the petitions for leave to appeal on March 25, 2009. App.1a-2a. Justice Stevens extended the time for filing a petition for writ of certiorari to July 23, 2009. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Full Faith and Credit Clause provides:

"Full Faith and Credit shall be given in each State to the public Acts . . . of every other State." U.S. CONST. art. IV, § 1.

The Due Process Clause provides:

"[N]or shall any person . . . be deprived of life, liberty, or property, without due process of law." U.S. CONST. amend. V.

STATEMENT

A. The parties

1. The Aon respondents and their affiliates (collectively "Aon") are the world's second largest insurance broker and the world's largest reinsurance broker, with revenues of $47 billion from 1994 to 2004. Businesses and individuals who need insurance retain Aon to help them decide which insurance companies, products, and services best fit their needs, and to negotiate the best possible prices on their behalf. In return for these services, Aon receives either a flat fee from its client or a standard commission (typically a percentage of the premiums) from the insurance company with which it places its client's business.

From 1994 to 2004, in addition to this standard compensation, Aon secretly obtained contingent commissions and other kickbacks from insurance companies in return for steering its clients' business to those companies. R3998-4003, 13805-13811. As a result, Aon's clients did not receive the services they bargained and paid for, including honest counsel and competitive pricing for their insurance coverage. These undisclosed commissions were built into the premiums paid by clients and were quite profitable for Aon, amounting to approximately $170 million—nearly one-fourth of Aon's net income—in 2003. R4003.

2. Petitioners are clients of Aon affiliates located in various States, and they objected to the terms of a nationwide class action settlement in Illinois state court involving these undisclosed commissions. HCA, a Delaware corporation headquartered in Tennessee, is the United States' leading provider of healthcare

services. It signed written contracts with an Aon affiliate in Tennessee and paid more than $600 million for insurance purchased through that affiliate from 1998 to 2005. In 2004 and 2005, HCA also contracted with Aon affiliates in the United Kingdom and Bermuda and paid over $8 million for insurance purchased through them. R3872-3934.

Bridgestone Americas, an international family of enterprises with 53 production facilities and 53,000 employees, is headquartered in Tennessee and purchased insurance through Aon affiliates in Tennessee and London. Huntsman, a global manufacturer and marketer of differentiated chemicals based in Utah, purchased directors' and officers' liability insurance through Aon affiliates in Utah and Colorado. Neches Gulf Marine, a Texas-based company providing support services to the offshore oil and gas exploration and production industry in the Gulf of Mexico, purchased insurance through an Aon affiliate in Texas. Hornbeck Offshore, which also provides offshore services, purchased insurance through Aon affiliates in Louisiana and Texas.

B. The *Daniel* class action

1. This case was filed in the Circuit Court of Cook County, Illinois on August 19, 1999. For four years, the parties focused on motion practice and conducted only very limited discovery.

The live complaint, which was filed in June 2003, named Respondents Alan Daniel (a New Jersey resident) and Williamson County Agricultural Association (an Illinois corporation) as plaintiffs, and it alleged Illinois law causes of action against Aon for breach of fiduciary duty, conspiracy to breach fiduciary duty, deceptive trade and business practices,

consumer fraud, and unjust enrichment. The complaint sought certification of a nationwide class on the fiduciary duty and conspiracy claims, and it alleged a constructive trust theory of recovery.

2. Although this case eventually settled shortly after Aon was investigated by several government entities (as explained below), Aon initially defended itself vigorously. Early in the case, Aon moved to dismiss the complaint and opposed class certification on the ground that applying Illinois law to Daniel's claims and to those of a nationwide class was prohibited by the federal Constitution as interpreted in *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985). *E.g.*, R1075-1077, 1092, 1108, 1118-1119. Aon also pointed out substantial differences in state laws regarding breach of fiduciary duty and the availability of a constructive trust theory of recovery. *E.g.*, R1069-1075, 1088-1095.

In a November 2003 order, the trial court denied Aon's motion to dismiss the complaint as to Daniel. It reasoned that Illinois had the most significant relationship to his claims because the kickback scheme was orchestrated from Aon headquarters in Illinois, the kickbacks were received there, and the Aon affiliate with which Daniel dealt had its principal place of business in Illinois. App. 122a, 126a.

Then, in July 2004, the trial court granted plaintiffs' motion for certification of a nationwide class of all persons who employed the services of an Aon affiliate that was eligible to or did receive undisclosed commissions. Relying on its November 2003 order, the court found "that the plaintiffs' allegations are sufficient to support the ruling that Illinois law may be properly applied to both named plaintiffs' claims, and subsequently, to the class members' claims.

Therefore, this Court holds that no individual choice of law analyses will be required to be entered into by way of certifying a nationwide class in this matter." App. 114a; *see id.* at 105a (reiterating "that both Daniel's and WCAA's claims (and in following, the class' claims) shall be governed by Illinois law"). The court also noted the "obvious benefits" of "having these issues addressed and decided in a single forum at a single time." App. 100a.

The certified class presently consists of over 1.5 million Aon clients of all different sizes from all 50 States and the District of Columbia. Those clients formed relationships with Aon entities located in each State and in other countries. Some of these relationships were memorialized in written contracts, and some of the contracts contained provisions choosing the law of jurisdictions other than Illinois. *E.g.*, R3872-3934 (HCA contracts); R7448-7473 (contract selecting New Jersey law).

3. Aon moved for reconsideration of the interlocutory class certification ruling, arguing that *Shutts* required the court to conduct a 50-state conflicts of law analysis as well as to determine whether Illinois had sufficient contacts with the claims of each class member. The court largely rejected that argument in a November 2004 order reaffirming certification. The court did acknowledge that contracts between Aon affiliates and some class members might be needed to define their confidential relationship, and if so "this Court must conclude pursuant to Section 188 [of the Restatement (Second) of Conflicts of Law] that the law of all 50 states will apply to plaintiffs' claims and the Court will need to conduct an exhaustive analysis of [those laws]." App. 90a. The court put off a decision on whether such an

analysis was required because the existence and content of particular contracts was not yet known. *Ibid.*

For class members without contracts, the court reiterated that Illinois law applied and held that it "need not engage in individual conflicts of law analysis for the 50 states." App. 91a-92a. It also held that application of Illinois law was consistent with *Shutts* simply because "the pleadings in this matter clearly demonstrate that the parties were aware that they were dealing with an Aon entity from Illinois." App. 95a. Alternatively, the court reasoned that even if the laws of all 50 States applied, laws requiring individualized proof of the existence of a fiduciary duty could be "handled in subclasses" because the common and predominant question was whether any duty was breached. App. 93a-94a. If subclasses became unmanageable, the court noted that it could later set aside the class certification. App. 92a. The court did not address the other conflicts identified by Aon, such as the availability and nature of a constructive trust recovery in other states.

Aon asked the trial court to certify for interlocutory appeal the question whether this class action violated *Shutts*, and it filed an extensive brief explaining why the court's latest order "directly conflicts" with *Shutts*. R1419-1427. The trial court declined to certify the appeal.

C. The government investigation and settlement

Meanwhile, beginning in early 2004, the attorneys general and insurance regulatory agencies of New York, Connecticut, and Illinois (collectively, the "Regulatory Agencies") investigated Aon's misconduct in collecting undisclosed financial incentives for

steering business to certain insurers. In early 2005, the Regulatory Agencies filed complaints against Aon and its affiliates arising out of this conduct. A147-223.

On March 4, 2005, Aon's CEO admitted that "Aon and other insurance brokers and consultants entered into contingent commission agreements . . . that created conflicts of interest." R3982. On the same day, the Regulatory Agencies and Aon entered into a settlement that required Aon to pay $190 million into an opt-in fund for clients who retained Aon to place, renew, consult on, or service insurance from 2001 to 2004, where such placement resulted in contingent commissions or overrides. R4886, 4890.

D. The *Daniel* settlement and Petitioners' objections

1. Although the regulatory settlement covered only clients from 2001 to 2004 who opted in, the *Daniel* case provided a ready vehicle for Aon to bind other affected clients to a settlement. Aon quickly agreed to settle *Daniel* on March 9 for $38 million—exactly 20% of the Regulatory Settlement—and agreed to give half of that amount to counsel for the plaintiff class as attorneys' fees. Another $5 million was set aside to pay the settlement administrator Aon had chosen, leaving a fund of $14 million to compensate class members. R5570-5598. The unclaimed balance of the regulatory settlement, which amounted to approximately $49 million, ultimately was added to the *Daniel* settlement fund as well. R16552-16553. The settlement agreement stated that Aon still did not agree that certification was proper but did agree that the settlement was fair. R5573.

The trial court preliminarily approved the settlement. In so doing, it broadened and clarified the class definition to include all affected Aon clients from 1994 to 2004, regardless of whether contingent commissions were disclosed to them. R2276-2277.

2. Approximately 50 parties objected to the settlement, including the Attorney General of Florida and sophisticated business entities. Among other objections, Petitioners referred back to Aon's briefing and argued that class certification could not be maintained, or that at minimum subclasses with different settlement values were required, given the differences in state fiduciary duty and other laws and the various contracts that Aon affiliates had with certain class members. *E.g.*, R3858-3859, 3862-3864; R vol. 77, at 175-188, 244-245, 248-249; R vol. 78, at 227-229, 231-232. For example, HCA explained at the fairness hearing that its remedy for breach of fiduciary duty under Tennessee law included forfeiture of Aon's fees and thus was worth more than $24 million, much more generous than the remedy available under Illinois law (which was $178,453.79 under the *Daniel* settlement). R vol. 78, at 218-219, 224.

The trial court overruled all objections, approved the settlement as fair and reasonable, and approved $19 million in attorneys' fees for class counsel. App. 56a-57a, 79a-83a, 85a. With respect to the certification issue, the court said that it had "already noted that maintaining a nationwide class may require the creation of subclasses" and that "there has been no indication up to this point that such subclasses would in fact be unmanageable." App. 79a. The court entered final judgment on the same day, however, without resolving the subclass point. App. 53a-57a.

3. Petitioners and other objectors appealed on several grounds, including that the trial court violated *Shutts* by applying Illinois law to this nationwide class. The Illinois Appellate Court affirmed, reviewing the issue *de novo* and agreeing that Illinois law could be applied class-wide. App. 5a-52a. The court acknowledged that "[t]he injury is the result of the contractual relationship" between the parties and that "many class members entered into contracts in states other than Illinois." App. 20a. It concluded, however, that Illinois law applied because (1) the wrongful scheme was orchestrated from "Aon's center of business" in Illinois, and (2) the class's theory of recovery was to impose a constructive trust on contingent commissions "under the control of an Illinois defendant." App. 19a. The court also held that the trial court was not required to consider variations in the laws of the 50 States because the settlement was fair and class members who would have been better off under their own State's laws could have opted out. App. 22a-24a, 29a.

REASONS FOR GRANTING THE PETITION

The court below approved a nationwide settlement class involving 1.5 million plaintiffs from all over the country. It acknowledged that the varying laws of different States would otherwise apply to different class members' claims. Yet the court held that it was not required by the federal Constitution to conduct an individualized choice of law analysis as to each class member's claims. Instead, it considered the named plaintiffs' contacts with Illinois, and it held that Illinois law should apply to all class members' claims because the defendants hatched their secret scheme and received its fruits there.

The Illinois court's decision squarely conflicts with *Shutts*, which makes clear that the Due Process Clause and the Full Faith and Credit Clause require an individualized choice of law analysis for each class member's claim before a single State's law may be applied. Not only did the lower court wrongly refuse to conduct that individualized analysis, but the analysis it did perform was constitutionally defective in precisely the same ways as the Kansas court's analysis reversed in *Shutts*. For example, the court pointed to no evidence that a non-Illinois plaintiff who dealt with a non-Illinois Aon entity entirely outside of Illinois expected that claims growing out of their relationship would be decided under Illinois law. For these reasons alone, the Court should grant certiorari and set the case for briefing and oral argument, or, because the decision below is so plainly inconsistent with *Shutts*, summarily reverse.

At minimum, if *Shutts* does not straightforwardly demand reversal, there is a square conflict in the lower courts over whether a court must conduct an individualized assessment of whether a given State's law can constitutionally apply to the claims of each class member. The Third, Fifth, Eighth, and Ninth Circuits, along with the high courts of Connecticut, Maryland, and Texas, hold that such an analysis is required. In contrast, the courts below—like other courts in Illinois and courts in Oklahoma—refused to engage in such an analysis. In addition, the decisions below implicate a split of authority over whether a court may take the class nature of a lawsuit into account in deciding whether the laws of a single State can be applied to the claims of every plaintiff before it.

These questions recur frequently and are critically important, not only to fundamental principles of due process and federalism, but also to our national economy. And this challenge to a final judgment is an ideal vehicle—and a rare opportunity—for this Court to resolve these questions or, at the least, to confirm that it meant what it said in *Shutts*.

I. The Decision Below Is Directly Contrary To *Shutts*.

One of the "compelling reasons" for the exercise of this Court's certiorari jurisdiction is that a state court "has decided an important federal question in a way that conflicts with relevant decisions of this Court." Sup. Ct. R. 10(c). Not all such conflicts warrant the exercise of certiorari, but this is one of the cases that calls for it. The conflict between *Shutts* and the decision below is "direct" and "readily apparent," E. Gressman et al., SUPREME COURT PRACTICE § 4.5, at 250 (9th ed. 2007), such that it is inescapable that this Court's prior ruling "rejected the position taken by the [Illinois court] below," *Spears v. United States*, 129 S.Ct. 840, 842-843 (2009) (per curiam summary reversal).

1. In *Shutts*, a nationwide class of plaintiffs brought suit in Kansas state court against an out-of-state corporation. 472 U.S. at 800-803. The Kansas courts agreed to certify the class and to apply Kansas law class-wide. *Ibid.* This Court reversed, holding that in order to apply a single State's law to a nationwide class action, that State must have sufficient connections "to the claims asserted by each member of the plaintiff class" to ensure that "the choice of [its] law is not arbitrary or unfair." *Id.* at 821-822. The Court explained that when the laws of interested States conflict, the Due Process Clause and the

Full Faith and Credit Clause prohibit a court from applying the law of one State to every claim in the case unless that State has a "significant contact or significant aggregation of contacts" to each class member's claims. *Id.* at 816-822.

In so holding, this Court expressly rejected certain of the Kansas court's rationales for applying its laws class-wide. The Court first disagreed that the unpaid royalties sought by the plaintiffs were analogous to a "common fund," such that Kansas had a special interest in applying its own law, because there was no specific identifiable res located in Kansas. *Shutts*, 472 U.S. at 819-820. Instead, the Court emphasized, the funds had been commingled with the defendant's general corporate accounts. *Ibid.*

Further, the Court explained that the class nature of the lawsuit was not a basis for relaxing the constitutional choice of law standard, flatly rejecting the "bootstrap" argument of the Kansas court that "it had much greater latitude in applying its own law to the transactions in question than might otherwise be the case" merely "by reason of the fact that it was adjudicating a nationwide class action." *Id.* at 820-821; *see also id.* at 821 (constitutional limitations on choice of law are "not altered by the fact that it may be more difficult or more burdensome to comply with the constitutional limitations because of the large number of transactions which the State proposes to adjudicate and which have little connection with the forum").

The Court's decision in *Shutts* was based on the federal Due Process Clause and the Full Faith and Credit Clause, and thus it was driven by twin concerns of fairness to the parties and appropriate deference to the laws of other States. 472 U.S. at 818-

819, 822. Of special concern was "the expectation of the parties": "[t]here is no indication that when [they entered into leases] outside of Kansas, . . . the parties had any idea that Kansas law would control." *Id.* at 822. For these reasons, the Court reversed the judgment applying Kansas law to all claims of every class member. *Id.* at 823.

2. On its face, *Shutts* makes plain that the Illinois courts erred by certifying a nationwide class and giving final approval to a settlement governed exclusively by Illinois law. As Petitioners and the Aon Respondents both pointed out repeatedly to the Illinois courts, there were numerous, irreconcilable conflicts between the laws of the various States on the claims and remedies being certified. Yet the Illinois courts flaunted this Court's direction in *Shutts* regarding the analysis required when such conflicts exist.

a. Most obviously, the courts below expressly held that no choice of law analysis had to be conducted for each class member's claims. The Illinois trial court, for instance, stated flatly that "no individual choice of law analyses will be required to be entered into by way of certifying a nationwide class in this matter." App. 114a. True to its statement, the trial court focused on the claims of the two named plaintiffs, which had significant contacts with Illinois that other class members' claims lacked. App. 125a (explaining that Daniel dealt with Aon affiliate in Illinois). Then, without considering any other class members' claims, the court announced that Illinois law would apply to the entire class. App. 105a, 113a-114a. The Illinois Appellate Court agreed with the trial court's analysis and its refusal to consider other States' laws, reasoning that "[n]o rule requires a trial court to canvas the laws of all fifty states" and

that dissatisfied class members from other States "may opt-out." App. 18a-24a, 29a.

Yet this Court's principal holding in *Shutts* was that a State must have significant contacts with "the claims asserted by *each member* of the plaintiff class" in order for the choice of its law to be constitutionally valid. 472 U.S. at 821 (emphasis added). The courts below thus disregarded what *Shutts* required: an individualized analysis of each class member's claims. Moreover, *Shutts* held that an opportunity to opt out was no substitute for this analysis. *Id.* at 820.

b. Apart from the Illinois courts' refusal to conduct the individualized choice of law analysis required by *Shutts*, the analysis they did employ was constitutionally deficient for the very same reasons identified in *Shutts*. For one thing, the courts relied on allegations that the undisclosed commissions sought by plaintiffs were received in Illinois, and that any recovery would come from Illinois. This Court flatly rejected that reasoning in *Shutts*, explaining that the "common fund" concept could not be applied outside of the context where there was a specific, identifiable, non-commingled res necessarily located in the State. Here, there is no evidence that such a res exists in Illinois. That basis for the Illinois courts' analysis cannot be squared with *Shutts*.

c. Furthermore, the Illinois courts flaunted the rationales driving this Court's *Shutts* decision: the expectations of the parties, their due process rights, and the full faith and credit interests of other States. The Illinois courts applied Illinois law to claims by non-Illinois plaintiffs who dealt with non-Illinois Aon entities entirely outside of Illinois. There is no evidence that, when class members located outside of Illinois used Aon entities incorporated in their home

States to procure insurance, they had any idea that Illinois law could apply to their transaction. That is particularly true because any breach of fiduciary duty necessarily happened in each State where a plaintiff purchased insurance from its fiduciary without being told of the kickbacks. Indeed, most of the plaintiff class never dealt with the Aon parent company's headquarters or anyone else in Illinois.

In these circumstances, it is fundamentally unfair and arbitrary to apply Illinois law to all class members, at least without applying some individualized choice of law scrutiny. Applying Illinois law would also fail to give effect to the laws and interests of the States where the fiduciary relationship was created and breached. In sum, the policies identified in *Shutts* are aimed precisely at avoiding a case such as this, and the Illinois courts failed to give them effect.

d. In addition, the Illinois courts relied on the type of "bootstrapping" argument rejected by this Court in *Shutts* and other cases. *Shutts* made clear that whether a case arises in the context of a class action has no bearing on the constitutional analysis required. 472 U.S. at 820-821. In the same vein, this Court has recognized that a class action is merely a procedural device and cannot be used in a manner that alters the parties' substantive rights as individual litigants. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 612-613 (1997).

In this case, however, the Illinois courts relaxed the choice of law analysis due to the class nature of the lawsuit. The trial court emphasized that "the disposition of a nationwide class action in a single forum has advantages for [Aon]," since it would allow Aon to "hav[e] these issues addressed and decided in

a single forum and at a single time, rather than the forums of fifty (50) States or by the way of filing thousands of individual cases." App. 100a. In addition, the trial court acknowledged that "the law of the fifty (50) states would apply" under "a more traditional tort class action analysis," but it applied Illinois law based on the constructive trust theory of recovery that was selected to facilitate certification. App. 115a. Finally, as described above, both courts failed to conduct a choice of law analysis with respect to each class member's claims in the same way that would have been required if each member had brought the action as an individual plaintiff. The courts below erred by modifying their choice of law analysis in these ways.

3. It is not just Petitioners that believe the Illinois courts' analysis is flatly contrary to *Shutts* in these respects. The Aon Respondents repeatedly made these same arguments to the trial court in opposing certification. Specifically, Aon argued that *Shutts* requires sufficient contacts between Illinois and "each and every" class member's claims; that Illinois law cannot apply to this nationwide class action under a proper *Shutts* analysis; and that the trial court violated *Shutts* by relying on "common fund" reasoning, engaging in "bootstrapping," and ignoring the expectations of the parties. *E.g.*, R1077, 1092, 1108, 1118-1119, 1419-1427. Yet the Illinois courts still never engaged in a proper *Shutts* analysis of the connection between Illinois and each class member's claims. This is the rare case, then, in which both Petitioners and the Aon Respondents

have consistently maintained that the lower court failed to apply this Court's precedent.[1]

* * *

For these reasons, the decision below is directly contrary to *Shutts*. Not only is it wrong, but it involves an issue of far-reaching importance and is part of an ongoing trend that threatens to strip *Shutts* of any meaningful effect. *See infra*, Part III. This Court should make clear that it meant what it said in *Shutts*: state courts may not gratuitously apply their own laws to nationwide class actions without ensuring that federal constitutional requirements are satisfied. And this case offers a unique opportunity for the Court to address this issue be-

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[1] The courts below also violated *Shutts* in a second, independent way: they failed to decide whether there were conflicts in the laws of the various States before certifying a nationwide settlement class under Illinois law and approving a final settlement. *See Shutts*, 472 U.S. at 816-818 (courts must determine whether forum's law conflicts "in any material way with any other law which could apply," including those advanced by the party in the case). At an interlocutory stage of this case, in response to Aon's arguments on reconsideration of class certification, the Illinois trial court did preliminarily consider this issue. App. 88a-94a. But it never addressed all of the conflicts raised by Aon, and it never resolved the issue because it simply acknowledged that there might be conflicts and that it would need to create subclasses or decertify the class if any conflicts were real, leaving final determination of that question for a later date. App. 90a, 92a-93a. Even in finally approving the settlement, the trial court suggested that subclasses with different settlement values might be proper to accommodate conflicts, but it never created such subclasses. App. 79a. Regardless, the court's preliminary discussion of possible conflicts occurred well before the class definition was expanded and Petitioners joined the case, pointing out numerous additional conflicts that the trial court never addressed.

cause, unlike past petitions raising the issue, there is no question regarding jurisdiction here. *See infra*, Part IV. The Court should grant certiorari and either summarily reverse the decision below or set the case for briefing and oral argument.

II. At Minimum, There Is A Conflict Among Federal Appellate Courts And State Courts Of Last Resort Over What *Shutts* Requires.

To the extent the court below did not violate the plain dictates of *Shutts*, at minimum, its ruling joins a sharp conflict among the lower courts over how to implement *Shutts*' principal holding: that the federal Constitution requires a significant connection between a State and the claims of each class member for that State's law to apply. In addition, the Illinois court's decision is inconsistent with several federal and state appellate decisions holding that a court may not take the class nature of the lawsuit into consideration in determining whether a single State's law may be applied to a nationwide class. Both conflicts warrant this Court's review.

A. Lower courts disagree over whether the Constitution requires a court to conduct an individualized choice of law analysis for each class member's claims in a nationwide class action.

Notwithstanding *Shutts*' requirement that Illinois have a "significant aggregation of contacts to the claims asserted by each member of the plaintiff class," 472 U.S. at 821-822, the Illinois trial court held that "no individual choice of law analyses" were needed to certify this nationwide class, and the appellate court agreed. App. 114a. Instead, those courts focused on the two named plaintiffs and then applied

Illinois law to the entire class in blanket fashion, observing that the scheme was orchestrated from Aon's principal headquarters in Illinois and the undisclosed commissions were received there. App. 19a-20a, 114a, 122a-126a.

The Oklahoma Supreme Court also follows this class-wide approach. In its view, a defendant's principal place of business is "where conduct relevant to all class members occurred," and applying the law of that State to a nationwide consumer class action is consistent with *Shutts*. *Ysbrand v. DaimlerChrysler Corp.*, 81 P.3d 618, 626 (Okla. 2003).

The Illinois and Oklahoma courts' narrow reading of the constitutional constraints on choice of law directly conflicts with decisions of the Eighth Circuit and the Connecticut Supreme Court. In addition, the class-wide approach used in Illinois and Oklahoma is inconsistent with decisions of the Third, Fifth, and Ninth Circuits, as well as decisions of the highest courts of Maryland and Texas. Those courts have properly held that *Shutts* requires an individualized choice of law analysis for each class member's claims. This Court's review is necessary to resolve the conflict.

1. In *In re St. Jude Medical, Inc.*, 425 F.3d 1116 (8th Cir. 2005), the Eighth Circuit held that a cursory choice of law analysis strikingly similar to the one employed by the Illinois courts in this case was insufficient to comply with *Shutts*. The district court had certified a nationwide consumer class under Minnesota law because (1) the defendant was headquartered in Minnesota; and (2) much of the conduct relevant to the claims occurred in or emanated from Minnesota, where the defective product was produced. *Id.* at 1119.

The Eighth Circuit reversed, holding that "class certification was in error because the district court did not conduct a thorough conflicts-of-law analysis with respect to each plaintiff class member before applying Minnesota law." *Id.* at 1120. In particular, "the [district] court did not analyze the contacts between Minnesota and each plaintiff class member's claims"—an inquiry necessary for the "protection of out-of-state parties' constitutional rights." *Ibid.* The court remanded for the "individualized choice-of-law analysis" required by *Shutts*, observing that there was no indication that out-of-state parties had any idea that Minnesota law could control potential claims when they received the product. *Id.* at 1120-1121.

Federal appellate courts around the country agree that *Shutts* requires courts to "apply an individualized choice of law analysis to each plaintiff's claims." *Georgine v. Amchem Prods., Inc.*, 83 F.3d 610, 627 (3d Cir. 1996), *aff'd sub nom. Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997). In *Georgine*, despite arguably compelling policy reasons for certification of a nationwide settlement class to resolve claims of asbestos exposure, the Third Circuit held that a wide range of factual and legal issues raised by various class members' individual claims would have to be decided under the differing laws of many States, defeating the predominance requirement for certification. In *Zinser v. Accufix Research Institute, Inc.*, 253 F.3d 1180, 1187-1188 (9th Cir. 2001), the Ninth Circuit rejected the plaintiffs' argument that Colorado law should apply to a nationwide consumer class because the defendant's headquarters and manufacturing operations were there, agreeing with the district court that plaintiffs had not offered an individualized choice of law analysis

supporting the application of Colorado law to each claim. And in *Spence v. Glock, Ges. m.b.H.*, 227 F.3d 308, 311-313 & n.5 (5th Cir. 2000), the Fifth Circuit reversed the district court's conclusion that Georgia law applied because one defendant had its principal place of business there and the products in question were assembled and distributed from there, holding that the court failed to consider that individual class members lived and bought the products in every State.[2]

2. Many state high courts have also recognized that an individualized choice of law analysis is required for each class member's claims. Indeed, the Connecticut Supreme Court reversed a class certification on quite similar facts in *Macomber v. Travelers Property & Casualty Corp.*, 894 A.2d 240 (Conn. 2006). There, the complaint alleged that Travelers received undisclosed rebates when it purchased annuities that it used to create structured settlements for the plaintiff class. *Id.* at 246. The trial court certified the class and ruled that Connecticut law would apply because Travelers' home office was in Connecticut and the challenged company policies were set there. *Id.* at 257-258. The supreme court reversed

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[2] *See also O'Bryan v. Holy See*, 556 F.3d 361, 381 n.8 (6th Cir. 2009) ("Under [*Shutts*], due process requirements apply to nationwide class action lawsuits, requiring courts to engage in individualized choice of law analysis for each plaintiff's claims and not just named plaintiffs."); *Kirkpatrick v. J.C. Bradford & Co.*, 827 F.3d 718, 725 & n.6 (11th Cir. 1987) (reasoning that under *Shutts*, "the law of [a particular State] could be applied consistent with due process only if the particular transaction had some significant relation to [that State]," and agreeing with district court's holding that state-law claims regarding securities "require application of the standards of liability of the state in which each purchase was transacted").

and remanded, holding that the trial court failed to "'apply an individualized choice of law analysis to each plaintiff's claims.'" *Id.* at 256 (quoting *Georgine*, 83 F.3d at 627). It reasoned that such an analysis was required because—as in this case—"the nationally dispersed potential class members entered their structured settlements in different jurisdictions throughout the nation," and the representations in question "necessarily were made to them by the . . . agents of the defendants in those various jurisdictions." *Id.* at 257.

The highest court of Maryland has likewise held that courts must "engage in individualized [choice of law] assessments for each class member." *Philip Morris Inc. v. Angeletti*, 752 A.2d 200, 232 (Md. 2000) (citing *Shutts*, 472 U.S. at 823; *Georgine*, 83 F.3d at 627). It held that the lower court erred in applying Maryland law to all class members "in blanket fashion" without any "individualized inquiry." *Ibid.* Although the class was limited to smokers currently residing in Maryland, the court reasoned that some class members may have first suffered harm years earlier in other States, requiring application of those States' laws. *Id.* at 232-33.

Finally, Texas courts have taken a similar approach. In *Compaq Computer Corp. v. Lapray*, 135 S.W.3d 657 (Tex. 2004), the Texas Supreme Court recognized that "[t]he Due Process Clause limits the extent to which one state's law can be applied to claims that arise in many states." *Id.* at 680 (citing *Shutts*, 472 U.S. at 821-822). It held that the trial court erred in using the defendant's Texas headquarters to justify the application of Texas law to a nationwide consumer class action, observing that it would be "a novelty" to apply the law of a defendant's

domicile to all consumer complaints. *Id.* at 681 (quoting *In re Bridgestone/Firestone, Inc.*, 288 F.3d 1012, 1016 (7th Cir. 2002)). Instead, it conducted a more individualized analysis, concluding that plaintiffs had failed to demonstrate that Texas law would apply to the claims of class members who purchased and used the product in other States. *Ibid.*[3]

* * *

As these cases show, there is a well-developed conflict over whether the federal Constitution as interpreted in *Shutts* requires an individualized choice of law analysis. Moreover, this conflict is outcome determinative: an appellate court in any of the jurisdictions discussed above would reverse the Illinois trial court's application of Illinois law to a nationwide class because it failed to conduct an individualized analysis of Illinois' contacts with each class member's claims. If the Court concludes that *Shutts* does not straightforwardly forbid the Illinois court's analysis, it should grant certiorari to resolve this conflict.

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[3] *See also Henry Schein, Inc. v. Stromboe*, 102 S.W.3d 675, 695-697 (Tex. 2003) (rejecting class-wide application of Texas law and requiring more individualized choice of law analysis for class members who did not agree to Texas choice of law clause); *Tracker Marine, L.P. v. Ogle*, 108 S.W.3d 349, 352 (Tex. App.—Houston [14th Dist.] 2003, no pet.) (holding that choice of law "analysis must be conducted on an individual basis; a nationwide class is not entitled to a 'looser' analysis merely because applying one state's law would be easier than applying many" (citing *Shutts*, 472 U.S. at 821-822)).

B. Lower courts also disagree over whether a court can take into account the class nature of a lawsuit in determining whether the laws of a single State can be applied to each class member's claims.

As discussed in Part I, *Shutts* and *Amchem* make clear that constitutional limitations on choice of law are not altered merely because an individual's claim is brought in the procedural context of a class action. Relying on *Amchem*, the Seventh Circuit has held that a court's choice of law analysis in a nationwide class action must be identical to the one it would conduct if each class member had instituted the action individually. *In re Bridgestone/Firestone, Inc.*, 288 F.3d 1012 (7th Cir. 2002). There, the Seventh Circuit rejected the trial court's attempt to alter Indiana's choice of law rules to facilitate its adjudication of a nationwide class action. Highlighting the trial court's departure from traditional choice of law principles in order to make the class suitable for certification, the Seventh Circuit made clear that, "[t]empting as it is to alter doctrine in order to facilitate class treatment, judges must resist so that all parties' legal rights may be respected." *Id.* at 1018-1021 (citing *Amchem*, 521 U.S. at 613).

Similarly, the Second Circuit has advised courts that "[t]he systemic urge to aggregate litigation must not be allowed to trump our dedication to individual justice, and we must take care that each individual plaintiff's—and defendant's—cause not be lost in the shadow of a towering mass litigation." *In re Brooklyn Navy Yard Asbestos Litig.*, 971 F.2d 831, 853 (2d Cir. 1992). And the Supreme Court of Texas has made plain that "[t]he class action is a procedural device

intended to advance judicial economy" that may not be used to alter substantive rights because, "[a]lthough a goal of our system is to resolve lawsuits with 'great expedition and dispatch and at the least expense,' the supreme objective of the courts is 'to obtain a just, fair, equitable and impartial adjudication of the rights of litigants under established principles of substantive law.'" *Southwest Ref. Co. v. Bernal*, 22 S.W.3d 425, 437 (Tex. 2000); *see also Henry Schein, Inc.*, 102 S.W.3d at 693. As a commentator recently observed, *Shutts* "effectively says that the class-wide nature of the case has no freestanding capacity to alter preexisting rights. . . . [C]hoice of law in the absence of bootstrapping results in the same choice being made for the purposes of a class action as would be made in an individual action brought in the forum state." Richard A. Nagareda, *Bootstrapping In Choice Of Law After The Class Action Fairness Act*, 74 UKMC L. REV. 661, 665 (2006).

Contrary to the Seventh Circuit's holding, the Illinois court below and the courts of Oklahoma have altered their choice of law analyses to facilitate the adjudication of nationwide classes with individual claims emanating from all across the country. As explained in Part I, the Illinois courts below relaxed the constitutional choice of law analysis based on the plaintiff's membership in a nationwide class—contrary to a holding of the federal appellate court that covers Illinois. The Supreme Court of Oklahoma has explicitly performed a similar exercise in bootstrapping, holding that Michigan law should apply to each class member's claims because "Michigan is the only state where conduct relevant to all class members occurred." *Ysbrand*, 81 P.3d at 626. The court reasoned that a single State's law should apply to each class member's claims because the "needs of the

interstate system and the basic policies of predictability and uniformity of result require that the issue of product defect be determined in one forum with one result rather than in 51 jurisdictions with the very real possibility of conflicting decisions." *Ibid.*

This Court's review is necessary to resolve this conflict over whether the federal Constitution, and this Court's decisions in *Shutts* and *Amchem*, forbid a court from altering its traditional choice of law analysis when adjudicating a nationwide class.

III. These Questions Are Important And Recur Frequently, And State Courts Conducting Nationwide Class Certification Proceedings Need This Court's Direction.

A. Class action litigation has increased dramatically, especially in "magnet" state courts that subvert constitutional choice of law requirements to facilitate class certification.

Class action litigation against U.S. companies has exploded over the past few decades. One study showed that class action filings increased between 300% and 1,000% per year from 1994 to 1997. *See* 1 Working Papers of the Advisory Committee on Civil Rules on Proposed Amendments to Civil Rule 23, at x (May 1, 1997). State courts have been the preferred forum for class action plaintiffs, most likely because some States persist in misapplying this Court's opinion in *Shutts*. Indeed, a recent study found that between 1988 and 1998, class actions in state court increased by 1,315%, while those in federal court increased by only 340%. *Class Action Litigation: A Federalist Society Survey, Part III*, CLASS ACTION WATCH, at 3 (Fall 1999). Given these dramatic

trends, there is a glaring need for this Court's direction to state courts about the proper constitutional standards for choice of law.

Moreover, the preference shown by class action plaintiffs (and their lawyers) is not just for any state courts, but for particular ones. A small subset of state courts routinely apply the law of a single State to all of the claims in a multi-state class action to facilitate certification, a practice that flies in the face of *Shutts*' requirement of an individualized choice of law analysis for every class member. Oklahoma and, notably, Illinois are known for taking that approach. Both States have been recognized as refusing to undertake an individualized choice of law analysis, instead applying the substantive law of a single State to every claim in a class action. *See, e.g., Ysbrand*, 81 P.3d at 625-626; *Martin v. Heinold Commodities, Inc.*, 510 N.E.2d 840, 846-847 (Ill. 1987).

As a result, Oklahoma and Illinois have become class action magnets: forums that lawyers flock to for the sole purpose of avoiding the constitutional choice of law requirements announced by this Court. Illinois, in particular, has developed a reputation for being a class action magnet forum, and even the Illinois Appellate Court has recognized that "50-state class actions are not uncommon in Illinois." *P.J.'s Concrete Pumping Serv., Inc. v. Nextel W. Corp.*, 803 N.E.2d 1020, 1030 (Ill. App. Ct. 2004). In fact, Madison County, Illinois was recently ranked third nationwide in annual class action filings, a ranking disproportionate to its small population. *See* John H. Beisner & Jessica Davidson Miller, *They're Making a Federal Case Out of It . . . In State Court*, 25 HARV. J.L. & PUB. POL'Y 143, 159 (2001). Moreover, approximately 81% of the putative class actions filed in

Madison County between February 1998 and March 2001 sought to certify *nationwide* class actions. *Id.* at 169.

The problem of class action magnet forums is therefore real. And the Class Action Fairness Act of 2005 (CAFA) offers no solution to that problem. Most importantly, CAFA does not cover all class actions: it allows removal to federal court of only a defined subset of class actions, and it does not apply to the many class actions filed before its enactment. 28 U.S.C. § 1332(d)(3), (d)(4) (2006); Class Action Fairness Act of 2005, Pub. L. No. 109-2, § 9, 119 Stat. 4 (2005). For the class actions that CAFA does cover, moreover, the availability of removal does nothing to curb the distortion of state choice of law principles in class action magnet forums because federal courts sitting in diversity are required to apply those principles. *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941).

B. Class action magnet forums undermine due process rights, violate the Full Faith and Credit Clause, and make for bad policy.

The costs of class action magnet forums are significant. By refusing to protect the due process rights of defendants through individualized choice of law analysis, these state courts increase the uncertainty faced by potential defendants. With magnet States arbitrarily applying the law of a single State to all the claims in a class action, businesses have no hope of structuring their conduct to avoid litigation.

Here, for instance, a Delaware corporation headquartered in Tennessee (HCA) dealt with an Aon entity incorporated in Tennessee. There is no evidence

that either HCA or the Aon entity could have expected that an Illinois court would later reach out and apply Illinois law to that Tennessee-based fiduciary relationship. One of the natural consequences of a federal system of fifty States is that the laws of various States will sometimes conflict. An unpredictable method of selecting which of the conflicting laws will apply to class action claims is a recipe for arbitrary liability, which provides no due process to potential litigants.

In addition to undermining due process rights, class action magnet forums cast aside respect for State sovereignty by failing to extend full faith and credit to the laws of sister States. For instance, the Illinois court refused to apply Tennessee laws more favorable to HCA and, in doing so, failed to give effect to the public policy of Tennessee embodied in those laws. A State violates the Full Faith and Credit Clause when its choice of law "threatens the federal interest in national unity by unjustifiably infringing upon the legitimate interests of another State." *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 323 (1981) (Stevens, J., concurring in judgment). "Differences across states may be costly for courts and litigants alike, but they are a fundamental aspect of our federal republic and must not be overridden in a question to clear the queue in court." *In re Bridgestone/Firestone*, 288 F.3d at 1020.

Furthermore, as a policy matter, the existence of class action magnet forums harms both the magnet States and the nation as a whole. Most obviously, businesses do not want to locate their principal place of business in magnet States, given that it would facilitate class actions against it in that State. But the larger cost is to the nation as a whole because busi-

nesses will continue to avoid establishing their principal locations in magnet States that might otherwise be the most economically efficient choice, resulting in loss of business to those States and increased costs to businesses. Magnet States thus create economic inefficiencies in the already struggling national free enterprise marketplace.

For all of these reasons—harm to due process, federalism, and economic policy—state courts in magnet forums should not be allowed to continue refusing to follow *Shutts*. Though few in number, class action magnet forums exercise disproportionate power. As Judge Easterbrook has explained, even if as few as 10% of judges begin to certify class actions based on the spurious standards espoused by class action magnet forums, these 10% will drown out the rulings of the 90% of judges following the constitutional standards. *In re Bridgestone/Firestone, Inc., Tires Prods. Liab. Litig.*, 333 F.3d 763, 766-767 (7th Cir. 2003); *see also* Nagareda, *supra*, 74 UMKC L. REV. at 670 ("From the standpoint of defendants that market goods or services across the country, it matters little that forty-nine states might be disinclined to certify a nationwide consumer class against them if one anomalous state would be prepared to do so.").

This Court's intervention is needed to rein in the States that have become class action magnet forums, and to ensure that the constitutional limitations on choice of law are respected throughout the country.

IV. This Case Offers An Ideal Vehicle—And A Rare, Important Opportunity—For Resolving The Questions Presented.

Whether the Court grants briefing and argument or simply reaffirms that *Shutts* means what it says,

this case provides a unique chance to address the questions presented. As explained below, this is the rare case in which this Court has jurisdiction to review a state court's refusal to follow *Shutts*, or to resolve the confusion over what *Shutts* means. Further, the case has enormous practical significance, thus warranting review.

First, while claims similar to Petitioners' have been raised to this Court numerous times in the past, this is the unusual case in which there are no jurisdictional obstacles to review. In the cases located by Petitioners that properly raise this issue, the petition for certiorari concerned an *interlocutory* class-certification ruling by a state court, where there were further proceedings (such as a trial) left to occur.[4] In that context, there were serious questions about the Court's jurisdiction to address this important and recurring issue because this Court may review only *final* judgments of state courts. *See* 28 U.S.C. § 1257(a).

Here, in contrast, the decision below is final. The Illinois courts decided that the settlement class could be certified consistent with federal constitutional principles and entered final judgment, thus dispos-

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[4] *See, e.g.*, *Gen. Motors Corp. v. Bryant*, No. 08-349 (pet. filed Sept. 15, 2008); *Sprint Spectrum L.P. v. Hall*, No. 07-1358 (pet. filed Apr. 28, 2008); *Compaq Computer Corp. v. Grider*, No. 07-95 (pet. filed July 25, 2007); *Gen. Motors Corp. v. Ford*, No. 05-39 (pet. filed July 1, 2005); *AT&T Corp. v. Allen*, No. 03-1046 (pet. filed Jan. 20, 2004); *DaimlerChrysler Corp. v. Ysbrand*, No. 03-1342 (pet. filed Mar. 19, 2004); *Mobil Corp. v. Adkins*, No. 02-132 (pet. filed July 24, 2002); *AMOCO Prod. Co. v. Lobo Exploration Co.*, No. 99-1502 (pet. filed Mar. 9, 2000); *State Farm Mut. Auto. Insur. Co. v. Speroni*, No. 97-2063 (pet. filed June 22, 1998).

ing of the entire case. App. 53a-86a. There is, in short, nothing left to be done. Like *Shutts* itself, this case presents a final judgment, offering the Court an opportunity to address the state courts' refusals to honor *Shutts*.

The rarity of a final judgment on such a class certification issue cannot be overstated. Given the realities of our litigation system today, defendants who face enormous potential exposure when a nationwide class action is certified will quickly settle, and final judgments will rarely arise. As the Fifth Circuit has explained:

> [C]ertification dramatically affects the stakes for defendants. Class certification magnifies and strengthens the number of unmeritorious claims. Aggregation of claims also makes it more likely that a defendant will be found liable and results in significantly higher damages awards.

Castano v. Am. Tobacco Co., 84 F.3d 734, 746 (5th Cir. 1996) (citations omitted). The settlement pressure in such a case has led to dramatic, noticeable results: "the vast majority of certified class actions settle." Robert G. Bone & David S. Evans, *Class Certification and the Substantive Merits*, 51 DUKE L.J. 1251, 1291 (2002); *see also* Br. of Chamber of Commerce of the U.S. and Alliance of Auto. Mfrs. as Amici Curiae in Support of Pet'r at 17-20, *DaimlerChrysler Corp. v. Ysbrand*, 124 S.Ct. 2907 (2004) (No. 03-1342), 2004 WL 1174634 (collecting other materials showing the unlikelihood of final judgments presenting *Shutts* issues, as this case does).

In addition, these issues were properly preserved in the Illinois courts. This Court cannot consider a federal claim if it was not addressed by, or properly presented to, the state court below. *Adams v. Robertson*, 520 U.S. 83, 88 (1997). In some of the petitions filed in this Court raising these issues, there were questions regarding whether the *Shutts* claim had been pressed or passed upon below. *See, e.g.*, *Gen. Motors Corp. v. Bryant*, No. 08-349 (pet. filed Sept. 15, 2008); *Gen. Motors Corp. v. Ford*, No. 05-39 (pet. filed July 1, 2005).

Here, however, there can be no question about preservation: the *Shutts* argument was squarely pressed and passed upon in the Illinois Appellate Court; it was squarely pressed in Petitioners' motions for leave to appeal to the Illinois Supreme Court (which denied review without explanation); and there are no independent state-law grounds supporting the judgments below. This is, in sum, an ideal vehicle for addressing these important issues.

Finally, the practical significance of this case makes it especially worthy of review. The severity and widespread nature of the misconduct by Aon and its affiliates, which affected at least 1.5 million of its customers nationwide, is remarkable. Yet after paying nearly $190 million to resolve the separate regulatory investigations, Aon has almost succeeded in using a pre-existing lawsuit to reach a contrived, attorney-driven private settlement, paying just $14 million to compensate millions of customers nationwide. This settlement will have ripple effects throughout the businesses of the affected customers, as well. For instance, HCA has continued to object in this case to fight the effects that Aon's practices have had on the costs of health care. Allowing an offend-

ing party such as Aon to profit so enormously and then settle on a nationwide basis so inexpensively not only fails to deter similar future conduct, but encourages it. At a time when health care costs are of such importance to our national economy—not to mention the other sectors that would be affected—this case takes on added significance.

CONCLUSION

The petition for writ of certiorari should be granted and the case set for plenary review. In the alternative, the petition should be granted and the judgment below summarily reversed.

Respectfully submitted.

J. CRAIG FALLS
Falls Smith LLP
111 Congress Avenue, Suite 4000
Austin, TX 78701
(512) 542-2090

L. DEWAYNE LAYFIELD
Law Office of L. DeWayne Layfield
P.O. Box 3829
Beaumont, TX 77704
(409) 832-1891

J. BRETT BUSBY
Counsel of Record
JEFFREY L. OLDHAM
RALPH D. "SKIP" MCBRIDE
BRYAN S. DUMESNIL
Bracewell & Giuliani LLP
711 Louisiana, Ste. 2300
Houston, TX 77002
(713) 223-2300

HUBERT OXFORD, III
JOSHUA C. HEINZ
Benckenstein & Oxford L.L.P.
P.O. Drawer 150
Beaumont, TX 77704
(409) 833-9182

Counsel for Petitioners

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