

No. C3-02-857

**STATE OF MINNESOTA
IN SUPREME COURT**

Ronald Peterson, et al.,

Plaintiffs/Respondents,

v.

BASF Corporation, a foreign corporation,

Defendant/Appellant.

**BRIEF OF MINNESOTA FARMERS UNION
AS AMICUS CURIAE
IN SUPPORT OF PLAINTIFFS/RESPONDENTS**

Hugh V. Plunkett III (#87282)
LOCKRIDGE, GRINDAL & NAUEN, PLLP
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401-2179
612-339-6900

Douglas J. Nill (#194876)
DOUGLAS J. NILL LAW OFFICE
1100 One Financial Plaza
120 South Sixth Street
Minneapolis, MN 55402-1801
612-573-3669

Counsel for Plaintiffs/Respondents

James A. O'Neal (#8248X)
Bruce Jones (#179553)
FAEGRE & BENSON, LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901
612-766-7000

Kenneth F. Johannson (#5043X)
JOHANNSON, RUST, FAGERLUND,
YON & STOCK, PA
407 North Broadway
P.O. Box 605
Crookston, MN 56716
218-281-2400

Counsel for Appellant

Susan E. Stokes (#226725)
David R. Moeller (#0287295)
FARMERS' LEGAL ACTION GROUP, INC.
46 East Fourth Street, Suite 1301
St. Paul, Minnesota 55101
651-223-5400

Elizabeth J. Cabraser
Scott P. Nealey
LIEFF CABRASER HEIMANN &
BERNSTEIN
275 Battery Street, 30th Floor
San Francisco, CA 94111
415-956-1000

***Counsel for Amicus Curiae
Minnesota Farmers Union***

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IDENTITY AND INTEREST OF AMICUS CURIAE

Minnesota Farmers Union (“MFU”) is a non-profit membership-based organization with approximately 23,400 members, about 95 percent of whom are Minnesota farmers.¹ Farmers and consumers have a strong interest in ensuring the continued vitality of the legal tools available to hold national and multi-national corporations accountable for their unlawful actions, including vigorous enforcement of state consumer protection statutes and access to courts through the class action device. MFU urges affirmance of the trial court and the Minnesota Court of Appeals decisions.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

BASF and its *amici*, United States Chamber of Commerce and NAI, advance a radical, and entirely unsupportable proposition: that when a corporation engages in a nationwide fraudulent practice which emanates in large part from a single state, choice of law rules require that it must be sued in *each* of the 50 states, rather than in a single action. This argument was conclusively rejected by the United States Supreme Court in two landmark opinions, *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985) and *Sun Oil Co. v. Wortman*, 486 U.S. 717 (1988), authored respectively by then-Justice, now Chief Justice Rehnquist, and Justice Scalia. As discussed herein, numerous state and federal courts have applied the *Shutts* rule (and the related most significant contacts choice of law rule) and applied a single state’s law to a nationwide class when that state has “a significant contact or significant aggregation of contacts, creating state

¹ Pursuant to Minn.R.Civ.App.P. 129.03, *amicus* Minnesota Farmers Union certifies that this brief was not authored in whole or in part by counsel for either party to this appeal, and that no other person or entity made a monetary contribution to the preparation or submission of this brief.

interests, such that choice of its law is neither arbitrary nor fundamentally unfair.” *Shutts*, 472 U.S. at 818 (quoting *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 312-13 (1981)).

Shutts allows consumers, such as the farmers affected by BASF’s fraudulent scheme, to bring a single nationwide action in circumstances where the claims at issue are too small in dollar value to support wasteful and time-consuming state-by-state litigation. Unhappy with this result, *amici* seek to undercut *Shutts* and its progeny by (1) seeking to federalize class actions, and (2) filing *amicus* briefs in any court that will listen, implicitly arguing that *Shutts* is no longer good law.² However, *amicis*’ arguments were recently rejected by the United States Supreme Court in two well-reasoned decisions reiterating the centrality of the *Shutts* rule. Given the High Court’s opinions in *Franchise Tax Bd. of California v. Hyatt*, 538 U.S. ___, 123 S.Ct. 1683 (2003), and *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. ___, 123 S.Ct. 1513 (2003), the correctness of the trial court’s application of the New Jersey Consumer Fraud Act (“NJCFA”) to a practice found to be emanating from that state under this state’s significant contacts choice of law rule cannot be doubted. The result is also the only one that affords fairness to both parties, while allowing consumers such as MFU’s members access to justice.

² One need look no further than the Chamber’s website to see the extensiveness of its efforts to limit consumers’ access to courts. As the Chamber proudly trumpets, its numerous *amicus* briefs are “a tool in persuading courts to rule in favor of business.” www.uschamber.com/nclc/about. The Chamber and its affiliated U.S. Chamber Institute for Legal Reform also tout their efforts to remove jurisdiction from state courts to hear class actions due to state courts’ purported “lax enforcement of class certification rules.” www.legalreformnow.com/issues/. The NAII has worked hand-in-glove with the Chamber by filing *amicus* briefs in favor of business and by supporting efforts to federalize class actions. See www.naii.org/sitehome.nsf/industryissuesclassactionreform.

ARGUMENT

A. The Trial Court’s Application of New Jersey Consumer Fraud Law to the Nationwide Class of Farmers Is Appropriate under This State’s Significant Contacts Choice of Law Rule

In *Milkovich v. Saari*, 203 N.W.2d 408 (Minn. 1973), this Court rejected *lex loci* in favor of modern choice of law principles. Minnesota has adopted the “significant contacts test” under which a court must, first, determine “if the choice of one forum’s law over the other will determine the outcome of the case,” *Nodak Mut. Ins. Co. v. American Fam. Mut. Ins. Co.*, 604 N.W.2d 91, 94 (Minn. 2000); second, “ensure that each state has significant contacts so that its law can be constitutionally applied,” *id.* at 94, fn.2 (citing *Jepson v. General Cas. Co. of Wis.*, 513 N.W.2d 467, 469 (Minn. 1994)); and finally, consider five “choice influencing factors” so as to identify the law most connected to the issues in a case. *Id.* at 94.

Although neither BASF nor its *amici* demonstrate how any of the claimed variations in consumer fraud laws they discuss would have affected the outcome of this case by *immunizing* BASF from liability for consumer fraud, and it is therefore not apparent that there in fact are any “outcome determinative” conflicts even requiring a choice of law analysis, the trial court below considered the facts and expressly found that New Jersey, as the state from which “BASF’s alleged deceptive practices emanated,” had sufficient contacts and a superior interest in application of its law, observing correctly that:

It is not arbitrary or fundamentally unfair to apply New Jersey’s consumer protection law to BASF and national plaintiffs when **BASF’s alleged deceptive practices emanated from corporate headquarters** and when New Jersey courts have held that their state consumer protection laws extend to protect nonresidents and other New Jersey corporations from sharp business practices originating within the state. New Jersey’s articulated interest in preventing [New Jersey-based] corporations engaging in deception and fraud, outweighs any possible interest of each of the 50

states and avoids clogging court dockets with hundreds of individual cases by farmers against BASF. Likewise, it cannot rationally be argued that any of the 50 states have a *public policy* interest that is in *direct conflict* with New Jersey's consumer protection statute, and New Jersey's policy of protecting nonresidents from the alleged deceit of New Jersey corporations.

Clerk Doc. No. 154 (emphasis added).

Although BASF and its *amici* breezily assert that other states have an interest in application of their particular laws, they nowhere explain why the trial court was incorrect in its analysis, nor explain *how* any specific state whose resident farmers were harmed by BASF's conduct could possibly have an interest in immunizing BASF's conduct, thereby denying New Jersey the ability to have its law applied so as to deter wrongful conduct emanating from New Jersey. BASF's and its *amicis'* assertions regarding the relevant interests are in fact wrong as a matter of both Minnesota and New Jersey law.

This Court has repeatedly and sensibly noted that Minnesota's interest is in ensuring compensation to tort victims, such as the farmers at issue in this case, even if in doing so, other states' laws are applied. *See Jepson*, 513 N.W. 2d at 472 ("Minnesota places great value in compensating tort victims. We have even refused to apply our law when the law of another state would better serve to compensate a tort victim."). New Jersey's highest court has reached the same result, most recently in *Erny v. Estate of Merola*, 792 A.2d 1208 (N.J. 2002), where the court noted that New Jersey had no interest in applying its own law to protect a non-resident defendant from the greater deterrence (and resulting liability) provided by other states' laws. *Id.* at 1219-20.

New Jersey has similarly repeatedly stressed its interest in application of its own law so as to deter conduct in New Jersey which injures—both in and out of the state—consumers. *Gantes v.*

Kason Corp., 679 A.2d 106 (N.J. 1996). The NJCFA expresses this important governmental interest in deterring fraud by explicitly being applicable to out-of-state plaintiffs. *See, e.g., Kugler v. Haitian Tours, Inc.*, 293 A.2d 706, 710-11 (N.J. Super. Ct. Ch. Div. 1972) (NJCFA applies to practices emanating from New Jersey which affect residents of other states); *Boyes v. Greenwich Boat Works, Inc.*, 27 F. Supp. 2d 543, 547 (D.N.J. 1998) (it is “clear that this state has a powerful incentive to ensure that local merchants deal fairly with citizens of other states and countries”). Thus the forum state of this litigation and the state with the most significant contacts are in complete accord: New Jersey law properly applies to this dispute. The trial court and Court of Appeals correctly applied these principles in finding that New Jersey law, as the law of the state with the most significant contacts to this litigation, could be applied to all claims.

B. Other Jurisdictions Applying the Most Significant Relationship Choice of Law Rule Have Also Applied the Law of the State from Which Common Conduct Emanates to Nationwide Class Actions

Numerous federal and state courts have, under the same significant contacts choice of law rule applied in this state, reached the same result as the trial court and the Minnesota Court of Appeals and applied the law of the state from which conduct emanated. *See, e.g., National Western Life Ins. Co. v. Rowe*, 86 S.W.3d 285, 300-301 (Tex. App. 2002) (Texas law applied to nationwide class, defendant’s principal place of business was Texas); *Farmers Ins. Exch. v. Leonard*, ___ S.W.3d ___, No. 03-01-00649-CV, 2003 WL 1831928, at *3-4 (Tex. App. Apr. 10, 2003) (California law applied to nationwide class affected by California defendant’s scheme); *Ysbrand v. DaimlerChrysler Corp.*, ___ P.3d ___, No. 97,469, 2003 WL 437160 (Okla. Feb. 25, 2003) (Michigan law applied to nationwide class: “Michigan is where the decisions concerning the design, manufacture, and distribution of the minivans were made”); *Wershba v. Apple*

Computer, Inc., 110 Cal. Rptr.2d 145, 159 (Cal. App. 2001) (California law applied to nationwide class; California had significant contacts with practices emanating from California);

Cunningham v. PFL Life Ins. Co., 42 F. Supp. 2d 872, 882-83 (N.D. Iowa 1999) (under Florida's "most significant relationship" test, Iowa law applied because defendant headquartered there and

"a substantial portion of the fraudulent conduct occurred in Iowa"); *Grove v. Principle Mut. Life*

Ins. Co., 14 F. Supp. 2d 1101, 1106 (S.D. Iowa 1998) (Iowa law applied to nationwide class to

address a fraudulent scheme orchestrated in Iowa); *Avery v. State Farm*, 746 N.E.2d 1242,

1254-55 (Ill. App. Ct. 2001) (Illinois law applied to nationwide class when there was an Illinois

based and centered practice); *Lobo Explor. Co. v. Amoco Prod. Co.*, 991 P.2d 1048, 1053-54

(Okla. Civ. App. 1999) (Oklahoma law applied to nationwide class; defendant failed to show that

any state has an interest in applying its own consumer protection law so as to outweigh

Oklahoma's interest in protecting nonresidents from fraud by Oklahoma corporation);

Renaissance Cruises, Inc. v. Glassman, 738 So.2d 436, 439 (Fla. Dist. Ct. App. 1999) (Florida

consumer protection law applied to national class action against Florida corporate defendant).

BASF and its *amici* simply ignore these decisions which have applied a single state's law to a practice emanating from that state and instead cite to easily distinguishable cases which involved different choice of law principles which, unlike Minnesota law, required the automatic application of multiple state laws.

First, certain cases cited by BASF and its *amici* involved application of the mechanical *lex loci* choice of law rule which requires automatic application of the law of the "place of injury" even when that state's interest in application of its law is insignificant or non-existent. *See, e.g., In re Bridgestone/Firestone, Inc. Tires Prods. Liab. Litig.*, 288 F.3d 1012, 1018 (7th Cir. 2002)

(characterizing Indiana law as using a *lex loci* choice of law rule, therefore case unmanageable);⁴ *In re Masonite Hardboard Siding Prod. Liab. Litig.*, 170 F.R.D. 417, 422-23 (E.D. La. 1997) (as MDL transfer court, court must apply Mississippi's *lex loci* rule); *Poe v. Sears, Roebuck & Co.*, No. 96-CV-358-RLV, 1998 WL 113561, at *3 (N.D. Ga. Feb. 13, 1998) (under Georgia's *lex loci contractual* multiple states' laws would need to be applied).

Second, other cited cases involved the unique procedural and more complicated setting presented by a federal MDL proceeding in which a transferee court must automatically apply *each* individual transferor state('s) choice of law rules under *Van Dusen v. Barrack*, 376 U.S. 612 (1964). *See In re Ford Motor Co., Bronco II Prod. Liab. Litig.*, 177 F.R.D. 360, 370-71 and n.25 (E.D. La. 1997) (noting special procedural rule applicable to MDL proceedings; Plaintiffs failed to demonstrate any state with greater interest in application of its laws); *In re Ford Motor Co. Ignition Switch Litig.*, 174 F.R.D. 332, 348 (D.N.J. 1997) (same).

Third, other cases did not involve, as does this case, an effort to apply the law of the state with the most significant connection to defendant's conduct, but instead featured unsupported efforts to simply apply the *forum* state's law with no showing that the forum has the greatest interest in application of its law. *See e.g., Lyon v. Caterpillar, Inc.*, 194 F.R.D. 206, 213 (E.D. Pa. 2000) ("the only contact the parties have with Pennsylvania is that some of the putative class members may reside in Pennsylvania"); *Montgomery v. New Piper Aircraft, Inc.*, 209 F.R.D. 221, 228 (S.D. Fla. 2001) ("Florida's interest is not particularly strong given that the bearings, the failure of which allegedly gives rise to an engine defect . . . were manufactured in Indiana and

Germany and installed in Textron engines in Pennsylvania”); *Chin v. Chrysler Corp.*, 182 F.R.D. 448, 457 (D.N.J. 1998) (New Jersey had no interest in applying its law to nationwide class against Michigan defendant); *In re Jackson Nat. Life Ins. Co. Premium Litig.*, 183 F.R.D. 217, 223 (W.D. Mich. 1998) (declining to apply forum law; no discussion of state’s interests); *Tylka v. Gerber Prod. Co.*, 178 F.R.D. 493, 497 (N.D. Ill. 1998) (plaintiffs sought certification under multiple states’ laws, not single state’s law); *Endo v. Albertine*, No. 88-C-1815, 1995 WL 170030, at *5 (N.D. Ill. Apr. 7, 1995) (declines to apply forum law as there was no showing that Illinois had significant contacts with proposed class members); *Duvall v. TRW, Inc.*, 578 N.E.2d 556, 559 (Ohio Ct. App. 1991) (court, without explanation, finds plaintiffs had presented “insufficient basis for applying Ohio law to these potential out-of-state class members”); *cf. Mandell v. Bell Atlantic Nynex Mobile*, 717 A.2d 1002, 1007-08 (N.J. Law Div. 1997) (court grants forum non-convenience motion where “non-New Jersey residents seeking recovery against the corporate parent of the essentially non-New Jersey subsidiaries with which they did business elsewhere.”)

Finally, the remainder of the cases cited by or on behalf of Appellant involved consumer fraud statutes that, unlike the NJCFA, were authoritatively construed by the courts of the enacting states as not to apply to deceptive schemes that originated within the state but injure consumers outside of the state. *See Goshen v. Mutual Life Ins. Co. of NY*, 774 N.E.2d 1190, 1193 (N.Y. 2002) (NY CFA does not apply to “deceptive scheme that originates in New York, but injure a consumer in a transaction outside of the state”).

In sum, there is simply no authority which suggests that when a trial court as in this case has made a *factual finding* that a particular state’s laws should be applied because that state has

the most significant contacts with the issues in a case, that despite this finding, 50 states' laws must still be applied.

C. The Application of New Jersey Law in This Case Fully Satisfied The Due Process Requirements of *Shutts* And Its Progeny

Citing to language from cases that predated the modern constitutional choice of law analysis found in *Shutts*, BASF and its *amici* suggest that despite the finding by the trial court that the *Shutts* test was satisfied, *see* Clerk Doc. No. 154, additional constitutional principles bar application of New Jersey law. BASF and its *amici* are simply wrong. This term the United States Supreme Court addressed these arguments in *Hyatt, supra*, and unanimously held: “we decline to embark on the constitutional course of balancing coordinate States’ competing sovereign interests to resolve conflicts of law under the Full Faith and Credit Clause.” *Hyatt*, 123 S.Ct. at 1690. *Hyatt* is controlling as to the arguments before this Court.

In *Hyatt*, plaintiff Hyatt was audited by the Franchise Tax Board of California (Tax Board) and found to be liable for unpaid taxes and penalties, a determination he challenged in California. *Id.* at 1685-86. While appealing in California, Hyatt also sued the Tax Board in Nevada. *Id.*

The Tax Board moved to dismiss, demonstrating that it was immune from suit under California law. *Id.* The trial court denied the motion, and was upheld by the Nevada Supreme Court, which found that Nevada law, which directly conflicted with California law by permitting suits against state agencies, could be applied. *Id.* at 1686-87. The United States Supreme Court granted *certiorari* to resolve whether “the Constitution requires Nevada to give full faith and credit to California’s statute providing its tax agency with immunity from suit.” *Id.* at 1687.

Both BASF and its *amici* argue that even where, as in this case, New Jersey has sufficient state interests to apply its law under *Shutts*, 472 U.S. at 821-22, the trial court should still have applied other states' laws under the Full Faith and Credit or other constitutional clauses. *Hyatt*, per Justice O'Connor, unanimously rejected such a proposition in a fact situation (suit against a sister sovereign) presenting a much stronger case for adoption of what the Supreme Court characterized as a request for a "new rule" requiring recognition of a sister state's statutory law. 123 S.Ct. at 1688. The "new rule" rejected in *Hyatt* (which *amici* posits is already the law of the land), and the Supreme Court's reaffirmation of the principles relied upon by the trial court and Court of Appeals below from *Shutts* and *Sun Oil Co. v. Wortman*, 486 U.S. 717, 722 (1988) compels affirmation.

In *Hyatt*'s case, the laws of Nevada and California were on a collision course. Yet even when there were, as in *Hyatt*, true conflicts in the laws at issue, the Court reaffirmed the constitutional propriety of the holding in *Shutts* that a state court could indeed select the law of one state to govern the claims of a nationwide class if that state had "significant contacts or significant aggregation of contacts." *Hyatt*, 123 S.Ct. at 1687. Finding the interests of Nevada sufficed under *Shutts* to apply its laws, the Court pertinently observed that "it is undisputed that at least some of the conduct alleged to be tortious occurred in Nevada." *Id.* at 1688.

This case, where the illegal conduct was indisputably conceived, executed and disseminated from New Jersey, presents a far stronger case for application of that state's laws than did the facts of *Hyatt* where the California Franchise Tax Board was not a resident of Nevada, and self-evidently conceived of and likely undertook many of the allegedly illegal acts in California.

The holding of *Hyatt* is particularly relevant to this case in light of the Supreme Court's decision in *State Farm Mut. Auto. Ins. Co. v. Campbell, supra*, which invoked *Shutts* as the mechanism by which all parties affected by a nationwide course of conduct could be brought before a single state court, with an appropriate choice of law decision to then be made under *Shutts*. 123 S.Ct. at 1522. In *Hyatt*, the Supreme Court again invoked *Shutts*, for the proposition that, in an interstate dispute, a state court may properly select a single law to govern a dispute, even in the event of a conflict under an interest-based choice of law analysis such as that used in Minnesota. *Hyatt*, 123 S.Ct. at 1688. As the High Court observed: "We have recognized, instead, 'that it is frequently the case under the Full Faith and Credit Clause that a court can lawfully apply either the law of one State or the contrary law of another.'" *Id.* (quoting *Wortman*, 486 U.S. at 727). Here the appropriate analysis was "sensitively" applied by the trial court and the Court of Appeals, it is not subject to further Constitutional challenge, and should be upheld. *Id.* at 1690.

CONCLUSION

For the foregoing reasons, *amicus* Minnesota Farmers Union respectfully urges affirmance of the trial court and Minnesota Court of Appeals decisions.

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Respectfully submitted,

s/ Susan E. Stokes
Susan E. Stokes (#226725)
David R. Moeller (#0287295)
FARMERS' LEGAL ACTION GROUP, INC.
1301 Minnesota Building
46 East Fourth Street
St. Paul, Minnesota 55101
Telephone: 651-223-5400
Facsimile: 651-223-5335

Elizabeth J. Cabraser
Scott P. Nealey
Lief Cabraser Heimann & Bernstein
275 Battery Street, 30th Floor
San Francisco, CA 94111
Telephone: 415-956-1000

ATTORNEYS FOR *AMICUS CURIAE*
MINNESOTA FARMERS UNION

**CERTIFICATE OF COMPLIANCE WITH THE
REQUIREMENTS OF MINN. R. APP. P. 132.01**

I, Susan E. Stokes, one of the attorneys for *Amicus Curiae* Minnesota Farmers Union, hereby certify that this brief complies with the form and length requirements of Minn. R. App. P. 132.01, subds. 1 and 3. Attorneys for *amicus* prepared this brief using the word processing software Microsoft Word 2000. The *amicus* brief was printed in 13-point type using the proportional font Times New Roman. According to the software's word county utility, the brief contains 3,429 words and, hence, is within the 3,500-word limit set by this Court's order dated May 20, 2000.

July 23, 2003

s/ Susan E. Stokes
Susan E. Stokes