In the Supreme Court of Ohio

MON CHERI DAVENPORT, *et al.*, *Plaintiffs-Appellees,* v. **PROGRESSIVE DIRECT INSURANCE COMPANY, *et al.*,** *Defendants-Appellants.*	)	Case No. 2025-1102 On Appeal from the Cuyahoga County, Ohio Court of Appeals, Eighth Appellate District Case No. CA-24-114306

BRIEF OF AMICI CURIAE OHIO INSURANCE INSTITUTE AND NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES IN SUPPORT OF APPELLANTS

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TABLE OF CONTENTS

INTRODUCTION 1

STATEMENT OF INTEREST OF *AMICUS CURIAE* OHIO INSURANCE INSTITUTE 2

STATEMENT OF INTEREST OF *AMICUS CURIAE* NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES 3

STATEMENT OF THE CASE AND FACTS 3

ARGUMENT IN SUPPORT OF APPELLANTS' PROPOSITIONS OF LAW 3

Proposition of Law No. 1 3

Undertaking a rigorous analysis of Rule 23 predominance requires an analysis of the essential elements of the class claims and whether they involve individualized or common questions 3

A. A Rigorous Rule 23 Predominance Analysis Requires More Than a Common Practice. 4

B. Accepting Appellants' First Proposition of Law Will Instill Predictability and Uniformity Across Ohio While Preventing Litigation Tourism. 5

1. Ohio's Class Action Jurisprudence Requires Predictability. 5

2. The Eighth District's Continued Missteps Have Impeded Predictability and Uniformity in Ohio's Class Action Jurisprudence. 6

3. Uniform and Strong Predominance Requirements Prevent Litigation Tourism 8

4. Additional Consequences of Accepting the Eighth District's Reasoning. 9

Proposition of Law No. 2 10

A putative class cannot satisfy Rule 23's predominance requirement by alleging that only a single adjustment in an insurance valuation process was flawed when liability for class members' claims turns on the undervaluation of insured property 10

A. The Individualized Nature of An "Actual Cash Value" Underpayment Prevents a PSA-Only Challenge from Satisfying Predominance. 10

B. This Court Should Continue to Signal That Overbroad and Overinclusive Classes Must be Narrowed, Thereby Restoring Predictability and Tempering Judicial Activism. 12

1. The Court Should Again Hold That Ohio's Class Action Jurisprudence Rejects Classes That Include Uninjured Members. 12

2. This Court Should Deter Judicial Activism, Which Forces Settlements Through Class Actions. 14

CONCLUSION..... 16

CERTIFICATE OF SERVICE 17

TABLE OF AUTHORITIES

Page(s)

Cases

AT&T Mobility LLC v. Concepcion,
563 U.S. 333 (2011).....6

Barbara v. Trump,
790 F.Supp.3d 80 (D.N.H. 2025).....10

Barbara v. Trump,
No. 1:25-CV-00244 (D.N.H. June 27, 2025).....10

CASA, Inc. v. Trump,
No. 8:25-CV-00201 (D.Md. June 27, 2025).....10

Cross v. Univ. of Toledo,
2022-Ohio-3825 (10th Dist.) 4, 5, 12

Cullen v. State Farm Mut. Auto. Ins. Co.,
2013-Ohio-4733.....1, 4, 6, 7

Davenport v. Progressive Direct Ins.,
2025-Ohio-2449 (8th Dist.) 4, 11

Drummond v. Progressive Specialty Ins. Co.,
142 F.4th 149 (3d Cir. 2025) 11, 12

Duke v. Ohio Univ.,
2022-Ohio-4694 (10th Dist.) 5

Felix v. Ganley Chevrolet, Inc.,
2015-Ohio-3430..... *passim*

State ex rel. Jones v. Ohio State House of Representatives,
2022-Ohio-1909.....14

Kohen v. Pacific Invest. Mgt. Co. LLC & PIMCO Funds,
571 F.3d 672 (7th Cir. 2009) 6

Laboratory Corp. of Am. Holdings v. Davis,
605 U.S. 327 (2025) (Kavanaugh, J., dissenting from the dismissal of certiorari as improvidently granted).....15

Pivonka v. Corcoran,
2020-Ohio-3476.....8

In re Rhone-Poulenc Rorer Inc.,
51 F.3d 1293 (7th Cir. 1995) (Posner, J.) 6

Satterfield v. Ameritech Mobile Comms., Inc.,
2018-Ohio-5023 .....8, 12, 13, 14

Trump v. CASA, Inc.,
606 U.S. 831 (2025) 9, 10

Wal-Mart Stores, Inc. v. Dukes,
564 U.S. 338 (2011) 14

State ex rel. Yost v. Holbrook,
2024-Ohio-1936 (DeWine, J., concurring, joined by Fischer and Deters, JJ.) 10

Rules

Civ.R. 23 ..... *passim*

Other Authorities

Berman, *Class Problem!: Why the Inconsistent Application of Rule 23's Class Certification Requirements During Overbreadth Analysis is a Threat to Litigant Certainty*, 87 Fordham L. Rev. 253 (2018). 6

Chemerinsky & Friedman, *The Fragmentation of Federal Rules*, 46 Mercer L. Rev. 757 (1995) 9

Effron, *Reason Giving and Rule Making in Procedural Law*, 65 Ala. L. Rev. 683 (2013) 5

Insurance Information Institute, *Legal System Abuse Adding to Increasing Auto Insurance Costs, Creating a New Asset Class of Investors Betting on Litigation* (Feb. 27, 2024) (https://www.iii.org/press-release/legal-system-abuse-adding-to-increasing-auto-insurance-costs-creating-a-new-asset-class-of-investors-betting-on-litigation-022724) 15

INTRODUCTION

Ohio's insurance markets run on rules that are stable, knowable, and predictable. *Amici Curiae* Ohio Insurance Institute and the National Association of Mutual Insurance Companies submit this brief to offer a statewide perspective on the impact this case will have, not only on the parties, but also on Ohio's citizens and businesses. Amici's members insure most Ohio drivers and homeowners, whose premiums are affected by legal risks such as those resulting from this Court's class-action jurisprudence. When class certification standards drift away from the rigorous analysis this Court has mandated, premiums rise, settlement pressure surges regardless of the merits, and choice of forum—not law—starts to drive outcomes.

This appeal and its first proposition of law provide the Court with two potential pathways: one follows *Cullen v. State Farm Mut. Auto. Ins. Co.*, 2013-Ohio-4733, and its instruction that courts must rigorously analyze Civil Rule 23's predominance requirement by examining (a) the elements of the claim, and (b) whether those elements can be proved with common evidence. The other path repeats the Eighth District's class certification shortcut—***treating a shared practice as a shared breach and assuming injury, which results in an overbroad and overinclusive class***. This Court has rejected the latter course before and should do it again here. A clear, statewide rule will restore predictability, discourage litigation tourism, and ensure that class actions are reserved for disputes appropriately suited for aggregate resolution.

The second proposition of law further highlights the impropriety of relying on a single adjustment in an insurance valuation process to certify a class. The contractual duty of Defendants-Appellants Progressive Direct Insurance Company, Progressive Specialty Insurance Company, and Progressive Preferred Insurance Company ("Progressive") is to pay actual cash value of an insured's total-loss claims, a measure tied to various adjustments and methods of valuation.

Whether any insured was underpaid turns on individualized facts and defenses applicable to each subject vehicle, which means that a challenge to a single adjustment, such as Plaintiff-Appellees' ("Plaintiffs") challenge to Progressive's Projected Sold Adjustment ("PSA"), does not convert those individual inquiries into common proof of breach. ***By holding that predominance cannot rest on a single input to a multi-step valuation calculation when liability hinges on individualized actual cash value, the Court will aid in preventing future overbroad classes and judicial activism while also sending a message to all 88 Ohio counties that class certification indeed requires a rigorous and thoughtful analysis.***

STATEMENT OF INTEREST OF *AMICUS CURIAE* OHIO INSURANCE INSTITUTE

Amicus Curiae, Ohio Insurance Institute ("OII"), is uniquely qualified to provide this Court with a broad perspective on the principles of insurance law relevant to this appeal. OII is also well positioned to offer practical insight into the issues presented in this and similar cases pending in Ohio's courts as the outcome in this case will have a significant impact on OII's members, their policyholders, and the insurance marketplace as a whole.

OII is the professional trade association for property and casualty insurance companies in the State of Ohio. Its members include twenty-seven domestic property and casualty insurers, twelve foreign property and casualty insurers and reinsurers, seven insurance trade associations, and four insurance-related organizations. OII's member companies represent 87% of Ohio's private passenger auto insurance market, 81% of the homeowner's market, and more than 50% of the commercial market.

OII strives for stability, predictability, and consistency in Ohio's case law and jurisprudence governing insurance coverage and policy interpretation. On issues of importance to its members, OII has filed amicus briefs in significant cases before federal and state courts in Ohio to promote

and advocate for sound public policy and to share its perspective with the judiciary on matters that will shape Ohio insurance law.

STATEMENT OF INTEREST OF *AMICUS CURIAE* NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

The National Association of Mutual Insurance Companies ("NAMIC") is the foremost trade association representing the property/casualty insurance industry. Serving more than 1,300 member companies—including local and regional insurers as well as some of the nation's largest carriers—NAMIC members collectively write $467 billion in annual premiums, representing 61% of the homeowners and 53% of the automobile insurance markets. For more than 130 years, NAMIC has been the leading voice advancing public policy solutions and regulatory frameworks that promote a strong, competitive market and protect our members and their policyholders.

STATEMENT OF THE CASE AND FACTS

Amici curiae OII and NAMIC adopt and incorporate Progressive's Statement of the Case and Facts.

ARGUMENT IN SUPPORT OF APPELLANTS' PROPOSITIONS OF LAW

Proposition of Law No. 1:

> *Undertaking a rigorous analysis of Rule 23 predominance requires an analysis of the essential elements of the class claims and whether they involve individualized or common questions.*

Courts cannot certify classes by pointing only to a shared or common practice involving the putative class members. They certify only after a rigorous analysis, beginning with the elements of the claims and determining whether, as in this case, breach can be proved with common evidence. The Eighth District's shortcut to predominance is part of a continued trend in how that court handles class-action litigation, which will undermine predictability and invite forum shopping. ***This Court should therefore reverse the decision below and reaffirm an element-***

driven class-action certification inquiry, restoring statewide uniformity of Ohio law in the process.

A. A Rigorous Rule 23 Predominance Analysis Requires More Than a Common Practice.

In *Cullen*, this Court explained that "a plaintiff must establish that issues subject to generalized proof and applicable to the class as a whole predominate over those issues that are subject to only individualized proof" in order to "meet the predominance requirement." *Cullen*, 2013-Ohio-4733, at ¶ 30. And, as the Tenth District has recognized in the context of a breach of contract claim, "the predominance inquiry must ask whether the essential breach element of the breach-of-contract claim is an individualized fact question that justifies class certification." *Cross v. Univ. of Toledo*, 2022-Ohio-3825, ¶ 34 (10th Dist.) (internal quotations omitted). Because the Eighth District's failure to perform that rigorous analysis here constitutes an abuse of discretion, reversal is warranted.

Just as in *Cullen*, the trial court and the Eighth District in this case looked no further than the existence of a common practice in order to certify a class—both courts failed to analyze whether that common ***practice*** established a common ***breach***. *See Cullen* at ¶ 7. Specifically, the Eighth District reasoned that commonality and predominance were established here because there existed a common practice of applying "a one-line item deduction – the PSAs" and damages could be easily calculated by removing the PSA deductions, regardless of any determination of breach. *Davenport v. Progressive Direct Ins.*, 2025-Ohio-2449, ¶ 43 (8th Dist.). Based on that reasoning, the Eighth District concluded "the trial court did not abuse its discretion by finding that plaintiffs' contention about the PSA deduction as a means of valuing their claims raises common issues that predominate this litigation." *Id.* at ¶ 57.

But the decisions of the trial court and Eighth District improperly "assumed an economic injury occurred" without "evaluating whether [plaintiffs] proved by a preponderance of the evidence each requirement for certification was met." *Duke v. Ohio Univ.*, 2022-Ohio-4694, ¶¶ 43, 44 (10th Dist.). Specifically, those courts did not determine whether common application of the PSA deduction resulted in a common breach of the terms of the applicable insurance policies—which would require individualized evidence of the actual cash value of the subject vehicles. By assuming common injury without ever determining whether application of the PSA deduction did, in fact, result in a breach of the insurance policies, both courts abused their discretion and should be reversed. Moreover, this Court should explicitly adopt the analysis followed in *Cross*, making plain that in the context of a breach of contract claim, a court undertaking a predominance inquiry must focus on the existence of a common breach of the underlying contract, not just a common practice that might result in a breach.

B. Accepting Appellants' First Proposition of Law Will Instill Predictability and Uniformity Across Ohio While Preventing Litigation Tourism.

1. Ohio's Class Action Jurisprudence Requires Predictability.

Class actions carry high stakes for plaintiffs and defendants alike, making predictability essential to a coherent and fair legal system. Generally, "[p]redictable rules allow litigants to structure their affairs, both in terms of the consequences of substantive law and the procedural rules that will govern possible litigation." Effron, *Reason Giving and Rule Making in Procedural Law*, 65 Ala. L. Rev. 683, 693 (2013). But when constant unpredictability arises for how litigants and courts should apply rules, such as those in the class action context, a disservice is done to the development and use of those procedures. *Id.* Indeed, for defendants, class certification often forces them "to stake their companies on the outcome of a single jury trial, or be forced by fear of

the risk of bankruptcy to settle even if they have no legal liability." *In re Rhone-Poulenc Rorer Inc.*, 51 F.3d 1293, 1299 (7th Cir. 1995) (Posner, J.).

Some courts refer to this as the "*in terrorem*" nature of a class action lawsuit, where a defendant, "[f]aced with even a small chance of a devastating loss," would "be pressured into settling questionable claims." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011); *see Kohen v. Pacific Invest. Mgt. Co. LLC & PIMCO Funds*, 571 F.3d 672, 677-678 (7th Cir. 2009). Therefore, "risks of litigant confusion, unnecessary litigation costs, and the potential for forum shopping remain heightened when courts inconsistently apply . . . class certification requirements." Berman, *Class Problem!: Why the Inconsistent Application of Rule 23's Class Certification Requirements During Overbreadth Analysis is a Threat to Litigant Certainty*, 87 Fordham L. Rev. 253, 259 (2018).

Here, it is apparent that a predictable predominance inquiry has a necessary starting point: analyzing the essential elements of the class claim. If the elements require individualized proof, predominance fails. A court's failure to undertake that rigorous analysis will fuel instability in Ohio's class action litigation, as certification will begin to turn on how the plaintiff frames the dispute (*e.g.*, one "common" practice, or one "uniform" adjustment) and will defer the required elemental inquiry to later phases of the case. ***If the decision below stands, settlements will increasingly be driven by procedural uncertainty rather than by the parties' legal entitlements.***

2. The Eighth District's Continued Missteps Have Impeded Predictability and Uniformity in Ohio's Class Action Jurisprudence.

With respect to predictability, this case is one that unfortunately fits a familiar cycle: the Eighth District affirms class certification; this Court intervenes to restore uniformity to Ohio's class action jurisprudence; and the cycle repeats. Take *Cullen*, 2013-Ohio-4733, as a starting point. To reiterate, *Cullen* explained that courts must undergo a rigorous analysis of the Rule 23

requirements and must consider the underlying merits of the cause of the action when necessary. *Id.* at ¶ 51. In arriving at that foundational holding, this Court took aim at various missteps made by the Eighth District. It first faulted the court of appeals for adopting a lenient view that dispensed with the rigorous analysis required to certify a class under Rule 23(B)(2). *Id.* at ¶¶ 23, 25, 28. The Court then criticized the Eighth District's handling of Rule 23(B)(3), by explaining that the court of appeals did not determine whether the putative class satisfied Rule 23(B)(3) by a preponderance of the evidence. *Id.* at ¶ 31. Instead, it hypothesized what ***could*** happen, did not evaluate the evidence presented to the trial court, accepted the plaintiff's arguments at face value, and failed to consider the merits. *Id.* at ¶¶ 31-35. In sum, it treated a "colorable claim" as sufficient. *Id.* at ¶¶ 34-35. The Court was quick to fix those mistakes, explaining that a "colorable claim does not satisfy the requirements of Civ.R. 23," "[n]or can compliance with the rule be presumed from allegations in a complaint." *Id.* at ¶ 34.

Only a few years later, in *Felix v. Ganley Chevrolet, Inc.*, the Court again reversed the Eighth District on the issue of class certification. 2015-Ohio-3430. In *Felix,* the plaintiff filed a class action lawsuit against a car dealership, alleging violations of the Consumer Sales Practices Act for including a certain arbitration provision in a purchase agreement. *Id.* at ¶¶ 10-11. The trial court certified a class of all consumers of vehicles from the car dealership who signed the purchase agreement over a two-year period. *Id.* at ¶ 17. On appeal, the car dealership argued to the Eighth District that, by certifying "all customers," the class contained individuals who had not actually been damaged. *Id.* at ¶ 21. The court of appeals rejected that argument and affirmed class certification. *Id.* at ¶ 21. This Court reversed. *Id.* at ¶¶ 21-43. In doing so, it reminded the courts below that they must "give careful consideration to the class-certification process" and explained

that the broadly defined class failed because there was no showing that *all* class members suffered an injury in fact. *Id.* at ¶¶ 26, 37.

This trend, with the Supreme Court correcting the Eighth District's class action errors, continues to occur every few years. *See Satterfield v. Ameritech Mobile Communications, Inc.*, 2018-Ohio-5023 (unanimously reversing the Eighth District's class certification because the class was too broad); *Pivonka v. Corcoran*, 2020-Ohio-3476 (reversing the Eighth District's approval of class certification because the trial court lacked subject-matter jurisdiction over the case).

Overall, these cases reflect an issue that presents as a policy problem: the Eighth District has been relatively plaintiff-friendly in certifying or upholding classes, occasionally stretching Rule 23 standards or overlooking legal requirements in order to allow class action litigation to move forward. The Supreme Court of Ohio, in contrast, has acted as a corrective backstop, ensuring that class actions adhere strictly to Rule 23's requirements, such as performing a "rigorous analysis" and ensuring there is a common injury.

Here, once again, this Court should cure the Eighth District's leniency, clarify the rigorous analysis required under Civ.R. 23, and reverse the Eighth District.

3. Uniform and Strong Predominance Requirements Prevent Litigation Tourism.

By emphasizing that Rule 23 requires a rigorous predominance analysis with predictable and uniform application through Ohio, this Court can prevent another unfortunate side effect of the decision below and those like it: litigation tourism. One reality in litigation is that parties tend to forum shop wherever they might receive favorable results. If this Court were to affirm the

Eighth District's lax class certification standards, it would make Ohio a magnet for such litigation, by signaling that this is where you come to get your class certified, regardless of the merits.

But inviting all who seek class relief to forum shop into Ohio courts has inherent issues. First, there comes with it the "inchoate sense that it is wrong to have results turn on the choice of forum." Chemerinsky & Friedman, *The Fragmentation of Federal Rules*, 46 Mercer L. Rev. 757, 782 (1995). There is also the unfairness that results in having the success of a class action, or class action certification, turn on the choice of forum. *See id.* There is further an efficiency-based reason: the more location matters, the more venue and jurisdiction will be litigated. *Id.*

A clear holding that predominance requires an element-based analysis will also serve an institutional function: it will communicate to every trial court and every appellate district that Rule 23 is not a vehicle for district-by-district experimentation. The Court should prefer a statewide rule that reduces incentives for forum shopping, discourages litigation tourism, and restores confidence that outcomes are driven by what must be proven—not by where the case is filed.

4. Additional Consequences of Accepting the Eighth District's Reasoning.

Recent activity in the federal courts illustrate yet another reason why this Court should emphasize the rigorous nature of the analysis required by Rule 23. In *Trump v. CASA, Inc.*, the United States Supreme Court determined that a federal court's ability to issue universal injunctions—that is, injunctions that stretch beyond the issuing court's jurisdiction—fell outside the bounds of a federal court's equitable authority. 606 U.S. 831, 847 (2025). In light of that limitation on universal injunctions, several Justices underscored the need for a rigorous Rule 23 analysis and warned that litigants may turn to class actions as a substitute for universal injunctive relief. *See id.* at 867 (Alito, J., concurring, joined by Thomas, J.); *id.* at 869 (Kavanaugh, J., concurring). Indeed, those Justices' concerns may not have been far off. *See* Motion for Class

Certification, *CASA, Inc. v. Trump*, No. 8:25-CV-00201 (D.Md. June 27, 2025) (the plaintiffs in *CASA* filing a motion for class certification the same day the Supreme Court issued its opinion); Complaint, *Barbara v. Trump*, No. 1:25-CV-00244 (D.N.H. June 27, 2025) and *Barbara v. Trump*, 790 F.Supp.3d 80, 87 (D.N.H. 2025) (advocacy groups filing a class-action lawsuit challenging the subject-matter involved in *CASA* the day the Supreme Court issued the decision, and the District Court Judge provisionally certifying a class less than two weeks later). While this Court has not yet resolved that question for Ohio, several members have signaled a willingness to take it up. *State ex rel. Yost v. Holbrook*, 2024-Ohio-1936, ¶¶ 1, 9 (DeWine, J., concurring, joined by Fischer and Deters, JJ.). That makes it all the more important to set clear Rule 23 guardrails in this case, before any additional and unintended consequences arise.

Proposition of Law No. 2:

> *A putative class cannot satisfy Rule 23's predominance requirement by alleging that only a single adjustment in an insurance valuation process was flawed when liability for class members' claims turns on the undervaluation of insured property.*

Two core themes guide Progressive's second proposition of law. First, because ACV underpayment is inherently individualized, a PSA-only theory cannot establish predominance or a common breach under Rule 23. Second, the Court should continue to narrow overbroad classes and discourage certification practices that invite coercive settlements.

A. The Individualized Nature of An "Actual Cash Value" Underpayment Prevents a PSA-Only Challenge from Satisfying Predominance.

Plaintiffs' claims are based on a single component of a multi-step calculation used by their insurer to pay total-loss claims. But their reliance on what may be a common practice of applying those PSA deductions does nothing to establish a common breach. Indeed, there is no dispute that "plaintiffs' policies with Progressive required Progressive to pay insureds the actual cash value ('ACV') of their total-loss claims," which amount "is based on the market value, age, and condition

of the vehicle at the time the loss occurs." *Davenport*, 2025-Ohio-2449, at ¶ 3 (8th Dist.). But even assuming that the PSA deduction "always results in a downward deduction," it does not automatically result that Progressive paid any less than the ACV of the subject claims. Without evidence of a common breach of the policies, Plaintiffs cannot satisfy the predominance element, and a class cannot be certified.

Plaintiffs acknowledge that the ACV calculation is highly individualized and involves multiple steps, including adjustments for "observed differences between an insured's vehicle and a comparable vehicle, such as for mileage, trim, and equipment" and "for considerations such as aftermarket parts, refurbishment, condition, and prior damage" in addition to the PSA. *Id.* at ¶ 7. Plaintiffs do not challenge the use of any of those other adjustments. In fact, during discovery related to class certification, Plaintiffs' experts concluded that Progressive's ACV calculations did follow industry standards, except with respect to the PSA deduction. *Id.* at ¶ 8. Those experts then identified several purported bases for challenging the PSA deduction, including that it was "speculative" and generally "inconsistent with industry standards." *Id.* at ¶¶ 8–11. In response, Progressive provided expert evidence that the PSA deductions were "remarkably accurate." *Id.* at ¶ 13. But all of that evidence did nothing more than challenge the use of the PSA deduction in its current form—nothing established that the use of the PSA deduction actually resulted in a breach, *i.e.*, a payment to any insured in an amount less than the ACV. Thus, as the Third Circuit recognized when it reversed class certification in a lawsuit involving similar claims as here, "just because Progressive's final settlement value could have been higher but for the use of the PSA does not mean that a given insured was actually underpaid," and "if an insured was not underpaid, then Progressive did not breach its contract with that insured." *Drummond v. Progressive Specialty Ins. Co.*, 142 F.4th 149, 160 (3d Cir. 2025).

The trial court and Eighth District were required to determine whether the use of the PSA deduction actually resulted in a common breach of payment less than the ACV, because "the predominance inquiry must ask whether the essential breach element of the breach-of-contract claim is an individualized fact question that justifies class certification." *Cross*, 2022-Ohio-3825, at ¶ 34 (10th Dist.) (internal quotations omitted). Because that highly individualized inquiry was skipped by both the trial court and Eighth District, the class must be decertified. *See Drummond* at 160-161 ("Accordingly, individual issues predominate as to whether the putative class members actually received less than ACV. Since the District Court's conclusion as to Rule 23(b)(3) predominance rested upon an errant conclusion of law, the classes must be decertified.") (internal quotations and citations omitted).

B. This Court Should Continue to Signal That Overbroad and Overinclusive Classes Must be Narrowed, Thereby Restoring Predictability and Tempering Judicial Activism.

By adopting Progressive's second proposition of law, this Court will send a statewide message that overbroad and overinclusive classes should be avoided, which, in turn, will curb judicial overreach and restore predictability. The Court has corrected such missteps before and should do so again to ensure that classes are tailored to common proof of injury and liability.

1. The Court Should Again Hold That Ohio's Class Action Jurisprudence Rejects Classes That Include Uninjured Members.

Here, as a result of the Eighth District's certification of a class that merely involves a common practice, rather than a common breach, it has created an overbroad class that would include uninjured members. This case, along with *Felix* and *Satterfield*, demonstrate the Eighth District's wider habit of certifying classes to include a broader set of members that do not belong. For example, the Eighth District in *Felix* approved a certified class that included "all customers" who signed a purchase agreement over a two-year period. 2015-Ohio-3430, at ¶¶ 18-21. But

predominance requires something more than a contract with a common provision, such as the arbitration clause in *Felix*—it requires a showing that the class members actually fit within the class, *i.e.*, that all class members have suffered an injury in fact. *Id.* at ¶ 36.

Satterfield offers another example. There, a statute allowed a defined group of persons injured by a public utility to seek treble damages, but only if the PUCO had previously declared the utility violated specified laws. 2018-Ohio-5023, at ¶ 19. The PUCO had made such a declaration as to wholesale rate discrimination against purchasers of *wholesale* cellular service. *Id.* at ¶ 24. The Eighth District permitted a class action to proceed against the defendant to include all *retail* purchasers of defendant's cellular service. *Id.* at ¶¶ 11-12. But a unanimous Supreme Court reined in the Eighth District, explaining that, per the plain language of the statute at hand, only *wholesale* customers, *i.e.*, those injured by the utility under the PUCO's declaration, could bring the action. *Id.* at ¶ 25. As a result, the defendant in *Satterfield* went from facing a high-risk class action lawsuit seeking treble damages from all cellular retail customers to no class certification at all, based on this Court's straightforward interpretation of the applicable law and rules. The Court thus rejected the idea that courts may award class-wide damages untethered to individualized harm.

The same policy concern applies with particular force to classes built around a single adjustment, such as the PSA here. Even if removing the PSA changes a vehicle's value, that alone does not establish breach, causation, or injury for each insured. Some claimants may have received amounts that were at or above the ACV, while all will require individualized proof about the property and the market to establish any shortfall. Treating those individualized questions as issues that only need to be resolved later inverts the purpose of predominance, which is to screen out cases where individualized proof is the rule, not the exception.

The trend in recent class action jurisprudence is toward demanding proof that all class members "have suffered the same injury" through common evidence. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349-350 (2011); *Felix*, 2015-Ohio-3430, at ¶ 33; *Satterfield* at ¶ 25. This safeguard ensures class cohesion and preserves defendants' rights to present individualized defenses where appropriate.

2. This Court Should Deter Judicial Activism, Which Forces Settlements Through Class Actions.

By relying on a single adjustment in an insurance contract to certify a class, the decision below underscores additional risks to Ohio citizens and businesses. For example, it invites judicial activism, where a court can transform itself into a manager of industry-wide practices through the blunt instrument of certification pressure. It also calls into question the separation of powers. With a single order, the judiciary becomes the regulator, overriding the policy choices of the executive and legislative branches by effectively nullifying an insurer's use of an adjustment method. This Court has warned that such improprieties should be avoided. S*ee State ex rel. Jones v. Ohio State House of Representatives*, 2022-Ohio-1909, ¶ 10-11. And further, the single-adjustment reliance signals to future plaintiffs that certification can be obtained by narrowing the dispute to one adjustable variable—thereby turning class actions into a settlement pipeline.

A holding for Progressive on its second proposition of law would send a statewide message that Rule 23 is not a substitute for regulation, and that courts will not certify classes that use aggregation to avoid proving injury and liability as the law defines them. That message matters beyond this case. It restores confidence that settlement pressure flows from provable wrongdoing, not from procedural asymmetry, and it protects the legitimacy of class actions by confining them to the cases for which they were designed.

The practical costs will be significant if courts begin to certify broad classes based solely on a single adjustment in an insurance valuation. That approach inflates exposure, distorts settlement dynamics, and imposes real economic harms on Ohio citizens and businesses. As Justice Kavanaugh recently explained, "[c]lasses that are overinflated with *uninjured* members raise the stakes for businesses that are the targets of class actions. Overbroad and incorrectly certified classes threaten massive liability." *Laboratory Corp. of Am. Holdings v. Davis*, 605 U.S. 327, 333 (2025) (Kavanaugh, J., dissenting from the dismissal of certiorari as improvidently granted). That dynamic, in turn, "can coerce businesses into costly settlements that they sometimes must reluctantly swallow rather than betting the company on the uncertainties of trial." *Id.* But the ripple effects of improperly certifying overbroad and overinclusive classes extend well beyond the litigants, as "the coerced settlements substantially raise the costs of doing business. And companies in turn pass on those costs to consumers in the form of higher prices; to retirement account holders in the form of lower returns; and to workers in the form of lower salaries and lesser benefits. So overbroad and incorrectly certified classes can ultimately harm consumers, retirees, and workers, among others. Simply put, the consequences of overbroad and incorrectly certified . . . class actions can be widespread and significant." *Id.*

Indeed, excessive litigation volatility has been linked to higher premiums and even insurer insolvencies in some states, underscoring that unpredictable class-litigation exposure undermines the neutrality of litigation risk that insurers and businesses require. *See* Insurance Information Institute, *Legal System Abuse Adding to Increasing Auto Insurance Costs, Creating a New Asset Class of Investors Betting on Litigation,* (Feb. 27, 2024) (https://www.iii.org/press-release/legal-system-abuse-adding-to-increasing-auto-insurance-costs-creating-a-new-asset-class-of-investors-betting-on-litigation-022724).

This Court should aim to deter coercive judicial activism by ensuring that class action jurisprudence emphasizes the rigorous analysis with which classes must be certified.

CONCLUSION

This Court should therefore reverse the Eighth District and decertify the class.

Respectfully submitted,

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