**[Cite as *Williams v. Erie Ins. Co.*, 2026-Ohio-4314.]**

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MIAMI COUNTY

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| MICHAEL WILLIAMS, DBA IT'S ALL MINE, LLC, ET AL. | : | C.A. No. 2026-CA-9 |
| Appellants | : | Trial Court Case No. 24 CV 609 |
| v. | : | (Civil Appeal from Common Pleas Court) |
| ERIE INSURANCE COMPANY | : | |
| Appellee | : | **FINAL JUDGMENT ENTRY & OPINION** |

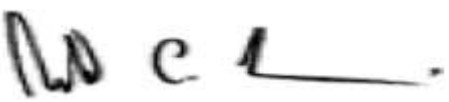
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Pursuant to the opinion of this court rendered on October 30, 2026, the judgment of the trial court is reversed, and the cause is remanded for further proceedings consistent with the opinion.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), the clerk of the court of appeals shall immediately send a copy of the court's ruling to each party and note that action on the docket. Additionally, pursuant to App.R. 27, the clerk of the court of appeals shall send a certified copy of this judgment, which constitutes a mandate, to the clerk of the trial court and note the service on the appellate docket.

For the court,



RONALD C. LEWIS, PRESIDING JUDGE

EPLEY, J., and HUFFMAN, J., concur.

**OPINION**
MIAMI C.A. No. 2026-CA-9

BENJAMIN COSGROVE and CORY THOMPSON, Attorneys for Appellant
BARTHOLOMEW T. FREEZE and SHELBY L. SPROUSE, Attorneys for Appellee

LEWIS, P.J.

**{¶ 1}** Plaintiffs-appellants Cornerstone Vet Clinic and Michael Williams, d.b.a. It's All Mine, LLC (collectively, "Williams"), appeal from the Miami County Common Pleas Court's judgment in favor of defendant-appellee Erie Insurance Company ("Erie"). For the following reasons, we reverse the judgment of the trial court and remand the cause for a new trial on Williams's breach of contract claim against Erie.

## I. Facts and Course of Proceedings

**{¶ 2}** This appeal involves an insurance coverage dispute between Williams and Erie. According to Williams's first amended complaint, a July 20, 2023 windstorm damaged the roof of the commercial building located at 301 Kienle Drive in Piqua, which was owned by Williams and covered by an insurance policy issued by Erie. Williams alleged that Erie failed to conduct a reasonable investigation of the loss and failed to properly indemnify Williams for the loss pursuant to the terms of the insurance policy. Williams believed that Erie should pay to replace the entire roof rather than pay only the cost of the four shingles, six appliques,[1] and one ridge cap that were damaged in the windstorm. Williams raised a claim for breach of contract and a claim for bad faith.

**{¶ 3}** Erie filed an answer to the amended complaint and moved for summary judgment on both of Williams's claims. The trial court granted Erie's motion for summary

1. "Appliques is a fancy term for the top layer of a shingle." Trial Tr. 92-93.

judgment as to the bad faith claim but denied the motion as to Williams's breach of contract claim.

**{¶ 4}** A jury trial was held on Williams's breach of contract claim on March 31 and April 1, 2026. Michael Williams, the owner of It's All Mine, LLC, testified at the trial. He explained that Erie hired a company called Seek Now to inspect the roof of the 301 Kienle Drive building after Williams contacted Erie about the damage caused by the windstorm. The inspector from Seek Now found that only 4 out of over 12,000 shingles had been damaged during the windstorm. Williams hired Van Martin Roofing to assess the damage to the roof of the building, because it had previously replaced a flat portion of the building's roof. Jim Honious, who was employed by Van Martin Roofing, attempted to repair the four wind-damaged shingles, but informed Mr. Williams that the roof was not repairable. According to Mr. Williams, Erie did not send anyone to attempt to repair the roof or watch Honious's attempt to repair the roof.

**{¶ 5}** James Whited, a training and sales manager for Van Martin Roofing, testified that he had inspected thousands of roofs for storm damage, including the roof of the building at issue. Based on his inspection of the roof, he opined that it was not repairable, because every time a shingle would be lifted in an attempt to replace it, the seal from the shingle below it would be pulled and the replacement shingle would not seal correctly. Whited did not personally try to repair the damaged portions of the roof.

**{¶ 6}** Angela Mobley, a representative of Erie, testified that no representative of Erie watched Honious attempt to repair the wind-damaged shingles. Mobley also stated that Erie did not send anyone back to inspect the roof after Honious attempted to repair the wind-damaged shingles.

**{¶ 7}** Stacey Vogel, a property claims re-inspector for Erie, testified by video deposition. She explained how Honious could have done a better job in attempting to repair the wind-damaged shingles. Vogel believed that if proper care had been taken, the wind-damaged shingles could have been repaired without damaging other shingles. She opined that even if the roof had not been repairable, the age of the shingles and how they were set would have caused the lack of repairability, rather than the windstorm. Therefore, coverage for the extra cost to replace the roof was excluded under the insurance policy. Vogel conceded that she did not personally inspect the roof and that the final insurance coverage decision was made without anyone from Erie or Seek Now re-inspecting the roof after Honious attempted to replace the wind-damaged shingles.

**{¶ 8}** Ethan Arbogast testified last at trial. He worked for Seek Now as a roof inspector. Arbogast inspected Williams's roof at Erie's request, and he explained how he removed a shingle without creasing it. Arbogast testified that four areas on the roof showed wind damage, and he passed that information on to Erie. He estimated that the roof was 20 years old.

**{¶ 9}** The evidence at trial established that the windstorm directly damaged four shingles, six appliques, and one ridge cap. Erie estimated that the cost to repair the four shingles, six appliques, and one ridge cap was below the insurance policy's $2,500 deductible. But Williams argued that these wind-damaged portions of the roof could not be repaired without damaging the rest of the roof. Therefore, Williams contended that Erie was required to pay approximately $70,000 to have the entire roof replaced. Erie argued that even if the jury found the wind-damaged portions could not be repaired without damaging the remainder of the roof, an exclusion in the insurance policy precluded coverage

for the additional cost to replace the roof. Counsel for the parties emphasized their clients' competing positions during their closing statements.

**{¶ 10}** After counsel for the parties finished their closing statements, the trial court gave the jury its instructions, five interrogatories, and general verdict forms. During its deliberations, the jury asked for clarification about how Adm.Code 3901-1-54 related to Interrogatory No. 1. The trial court decided not to provide any clarification to the jury. At the end of its deliberations, the jury answered "No" to Interrogatory No. 1 and signed the verdict form in favor of Erie. As a result, the jury did not answer the remaining four interrogatories. The trial court issued a judgment in favor of Erie on that same day. Williams filed a notice of appeal from the trial court's judgment.

## II. Williams Is Entitled to a New Trial on The Breach of Contract Claim

**{¶ 11}** Williams's first assignment of error states:

> The trial court committed reversible error by submitting Interrogatory No. 1, which failed to test the determinative issue tried to the jury and prevented the jury from deciding Plaintiff-Appellant's breach-of-contract theory.

**{¶ 12}** Interrogatory No. 1 asked the jury, "Did Plaintiff prove by a preponderance of the evidence that on July 20, 2023, there was a windstorm at the insured location of sufficient force to proximately cause wind damage beyond the repair of four shingles, six appliques and one ridge cap?" Williams contends that the trial court abused its discretion by submitting Interrogatory No. 1 to the jury, because the interrogatory failed to test the determinative issue tried to the jury and prevented the jury from deciding Williams's breach of contract theory. As Williams explains, "the determinative issue was not whether the windstorm directly damaged additional portions of the roof. It was whether repairing the undisputed covered damage would cause consequential physical damage included within

the loss or, instead, whether any resulting damage arose from an excluded cause." Appellants' Brief, p. 12-13. Williams believes we must review whether the trial court abused its discretion by submitting Interrogatory No. 1 to the jury, but argues that, even under the plain error standard of review, we should reverse the judgment of the trial court and grant a new trial on the breach of contract claim.

**{¶ 13}** Erie argues that Williams may not raise an objection to Interrogatory No. 1 on appeal, because Williams neither sought modification of Interrogatory No. 1 nor objected to it at the trial court level. Further, Erie argues that Interrogatory No. 1 addressed the dispositive issue in the case and that the jury's response of "No" to the interrogatory meant that the jury believed "any need to replace the roof was from causes excluded from insurance coverage." Appellee's Brief, p. 9.

**{¶ 14}** We must first determine whether Williams objected to the submission of Interrogatory No. 1 to the jury, which will establish what standard of review to apply in this appeal. Then, we must apply the proper standard of review to determine whether Williams is entitled to a new trial on his breach of contract claim.

**a. Williams Objected to Interrogatory No. 1**

**{¶ 15}** Typically, the standard under which we review a trial court's decision to submit a proposed interrogatory to the jury is abuse of discretion. *Freeman v. Norfolk & W. Ry. Co.*, 1994-Ohio-326, ¶ 16, citing *Ragone v. Vitali & Beltrami, Jr., Inc.*, 42 Ohio St.2d 161 (1975), paragraph one of the syllabus. But "[a] reviewing court will not consider any error which a party failed to bring to the trial court's attention at a time when that error could have been avoided or corrected by the court." *Druzin v. S.A. Comunale Co., Inc.*, 2015-Ohio-4699, ¶ 17 (8th Dist.), citing *LeFort v. Century 21-Maitland Realty Co.*, 32 Ohio St.3d 121, 123 (1987). The Ohio Supreme Court has applied a plain error review when a party failed

to object to interrogatories that undermined the proper function of the jury and rendered the verdict unreliable. *Eberly v. A-P Controls, Inc.*, 61 Ohio St.3d 27, 36 (1991), citing *O'Connell v. Chesapeake & Ohio RR. Co.*, 58 Ohio St.3d 226 (1991).

**{¶ 16}** To determine whether we apply the abuse of discretion or plain error standard of review, we must review the interrogatories proposed by the parties, the arguments made by the parties, and the trial court's submissions to the jury. On March 13, 2026, a little over two weeks before the jury trial commenced, Erie submitted proposed jury instructions to the trial court, which included the following five interrogatories:

> Interrogatory No. 1: Did plaintiff prove by a preponderance of the evidence that on July 20, 2023, there was a windstorm at the insured location of sufficient force to proximately cause wind damage?
>
> Interrogatory No. 2: Did plaintiff prove by a preponderance of the evidence the extent of actual damage, proximately caused to the roofs, by wind on July 20, 2023?
>
> Interrogatory No. 3: Did plaintiff prove by a preponderance of the evidence the reasonable cost to repair the actual damage, proximately caused to the roofs, by wind on July 20, 2023?
>
> Interrogatory No. 4: What amount did plaintiff prove by a preponderance of the evidence was the reasonable cost to repair the actual damage, proximately caused to the roofs by wind, on July 20, 2023?
>
> Interrogatory No. 5: Did defendant Erie prove by a preponderance of the evidence that the loss claimed by the plaintiff in this case resulted from an excluded cause of loss or damage?

**{¶ 17}** On March 31, 2026, Williams filed proposed jury instructions that included the following two proposed interrogatories: (1) "Do you find by a preponderance of the evidence that Defendant breached the contract with the Plaintiff?" and (2) "What were the damages to the Plaintiff that were caused by Defendant's breach of the contract?"

**{¶ 18}** On the morning of April 1, 2026, Erie submitted another iteration of proposed jury instructions that included the same five proposed interrogatories that it had submitted with its March 13, 2026 proposed jury instructions. Later that same morning, Williams filed a memorandum opposing a portion of Erie's proposed jury instructions, including its proposed interrogatories. Williams stated that "Erie's interrogatories mirror its theory of the case and break the issue into defense-oriented subparts. Accordingly, this Court should adopt Plaintiff's more neutral interrogatories."

**{¶ 19}** Before the last witness was called to testify, the trial court informed counsel that it had finished the jury instructions and provided counsel with copies. The court noted that, among other revisions, it had revised Erie's proposed first interrogatory to align with the fact that Williams had to prove that the windstorm was "the proximate cause of any damage over and above those agreed upon shingles that are already damaged." Trial Tr. 118.

**{¶ 20}** Ultimately, the trial court submitted to the jury Erie's second, third, fourth, and fifth interrogatories without substantive revision. But as Interrogatory No. 1, the trial court submitted a revised version of Erie's first proposed interrogatory. As revised, Interrogatory No. 1 asked, "Did Plaintiff prove by a preponderance of the evidence that on July 20, 2023, there was a windstorm at the insured location of sufficient force to proximately cause wind damage *beyond the repair of four shingles, six appliques and one ridge cap?*" (Emphasis added.) This italicized language is the only substantive difference between the five

interrogatories proposed by Erie and the five interrogatories the trial court submitted to the jury. The instructions at the bottom of Interrogatory No. 1 stated, "If YES, go to Interrogatory No. 2. If NO, please sign the general verdict form for the Defendant, and report that you have completed your deliberations. If you are unable to agree, please inform the Court."

**{¶ 21}** During its deliberations, the jury submitted a question to the trial court asking for clarification as to how Adm.Code 3901-1-54 applied to Interrogatory No. 1. Adm.Code 3901-1-54(I)(1)(a) states, "When a loss requires replacement of an item or part, any consequential physical damages incurred in making such repair or replacement not otherwise excluded by the policy, shall be included in the loss." After the jury submitted its question, the trial court and counsel for the parties discussed what should be done with the jury's question. The court explained that it was inclined to not provide any clarification. Counsel for Williams, however, requested that the court clarify to the jury that Adm.Code 3901-1-54 did apply. Erie's counsel agreed with the trial court that no clarification was needed.

**{¶ 22}** The trial court noted that Adm.Code 3901-1-54 is "solely related to consequential damages, which has absolutely nothing to do with question number one. Question number one is just asking if the damage alleged is related to the windstorm. It's not related to whether there's consequential damages to be included in that replacement cost." Trial Tr. 186. According to the trial court, "it's been agreed to that there's been four shingles; six appliques; and one ridge cap that's been damaged from the wind. The jury's being asked to decide whether that wind damage was a proximate cause of the further damage alleged." *Id.* The trial court explained that Erie argued the consequential damage was not caused by the wind but was instead caused by "either wear and tear; weather; or the contractor's error in how it was replaced." *Id.* at 187.

**{¶ 23}** Counsel for Williams disagreed with the trial court's interpretation of Interrogatory No. 1 and expressed the concern that the wording of it would cause the jury to answer "No" and prevent the jury from reaching the determinative issues in the case. Williams's counsel stated, in part:

> [T]he way that the question's phrased and what the jury is asking indicates that they are wondering whether they are supposed to answer that wind itself on that day damaged these four shingles; six appliques; and the ridge vent and if not anything else on that day, then they would have to answer no on this one when it's our position that the fact that the roof is not repairable in the condition it's in is, in fact, evidence of additional damage beyond just what was seen on that day and, therefore, it's an argument of proximate cause but also an argument of the Ohio Administrative Code about that consequential damage and this could result in the jury entering a no here when they actually should enter a yes and then go on to consider what consequential damage, if any, there is based upon the other interrogatories concerning the exclusions and further consideration of the Ohio Administrative Code. That's our concern.

*Id.* at 188. After taking a brief recess and noting the parties' positions, the trial court decided not to provide any clarification in response to the jury's question. The jury subsequently answered "No" to the first interrogatory and signed the general verdict form for Erie.

**{¶ 24}** Based on our review of the record, we conclude that Williams objected to the interrogatories proposed by Erie before the trial court submitted them to the jury. Williams also asked the trial court to submit to the jury Williams's two interrogatories instead of Erie's five interrogatories. Moreover, after the jury asked for clarification regarding Interrogatory No. 1, Williams's counsel explained why the language added by the trial court to the end of

Erie's first proposed interrogatory was likely confusing the jury and forcing it to render a general verdict in favor of Erie without reaching the determinative issues in the case. Because Williams initially raised objections to Erie's proposed interrogatories and later raised concerns with Interrogatory No. 1 when the trial court still could have corrected any problems with it, we review the trial court's decision to submit Interrogatory No. 1 to the jury for an abuse of discretion rather than for plain error. "A trial court abuses its discretion when it makes a decision that is unreasonable, unconscionable, or arbitrary." *State v. Darmond*, 2013-Ohio 966, ¶ 34, citing *State v. Adams*, 62 Ohio St.2d 151, 157 (1980).

**b. The Trial Court Submitted an Improper Interrogatory to the Jury**

**{¶ 25}** Civ.R. 49(B) states, "The court shall submit written interrogatories to the jury, together with appropriate forms for a general verdict, upon request of any party prior to the commencement of argument." While this language is mandatory, "the trial court retains discretion to reject interrogatories that are inappropriate in form or content." *Freeman*, 1994-Ohio-326, at ¶ 11, citing *Ragone*, 42 Ohio St.2d 161, at paragraph one of the syllabus. "A court may reject a proposed interrogatory that is ambiguous, confusing, redundant, or otherwise legally objectionable." *Id.*, citing *Ramage v. Cent. Ohio Emergency Servs., Inc.*, 1992-Ohio-109, paragraph three of the syllabus.

**{¶ 26}** "Proper jury interrogatories must address determinative issues and must be based upon the evidence presented." *Ramage* at paragraph three of the syllabus. "An interrogatory that asks for a conclusion that is not a legitimate issue is improper." *Freeman* at ¶ 14. "The purpose of an interrogatory is to 'test the jury's thinking in resolving an ultimate issue so as not to conflict with its verdict.'" *Id.* at ¶ 12, quoting *Riley v. Cincinnati*, 46 Ohio St.2d 287, 298 (1976). The Ohio Supreme Court "has defined proper interrogatories as those that will lead to 'findings of such a character as will test the

correctness of the general verdict returned and enable the court to determine as a matter of law whether the verdict shall stand.'" *Id.*, quoting *Bradley v. Mansfield Rapid Transit, Inc.*, 154 Ohio St. 154, 160 (1950).

**{¶ 27}** Based on our review of the record, including the parties' filings, the arguments made by the parties at trial, and the evidence presented at trial, we conclude that Interrogatory No. 1 was legally objectionable, did not address a determinative issue, and undermined the proper function of the jury. Therefore, the trial court abused its discretion by submitting it to the jury, and Williams is entitled to a new trial on the breach of contract claim.

**{¶ 28}** Our analysis begins with the filings made by Erie before Interrogatory No. 1 was submitted to the jury. These filings set up the initial framework that the trial court used to draft the final jury instructions and interrogatories. In its March 13, 2026 proposed jury instructions, Erie proposed jury instruction number six, which provided a step-by-step guide for how the jury should resolve Williams's breach of contract claim. First, the jury had to decide whether the plaintiff proved by a preponderance of the evidence that on July 20, 2023, there was a windstorm at the insured location of sufficient force to proximately cause wind damage. Erie noted that "plaintiff has admitted, and Erie does not dispute, that four shingles, one ridge cap, and six appliques were the only items directly damaged by the storm." Second, the jury then had to determine if Williams proved the amount of the actual damage proximately caused by the July 20, 2023 windstorm, as measured by the cost to repair the actual damage caused by the wind. Erie stated that Williams "has admitted, and Erie does not dispute, that four shingles, one ridge cap, and six appliques were the only items directly damaged by the storm, but the parties disagree about the cost to repair the actual damage caused by any wind on July 20, 2023." Finally, the jury had to determine

whether any loss in excess of $2,500 resulted from an excluded cause of loss or damage. Erie Proposed Jury Instructions (Mar. 13, 2026), p. 5. The five proposed interrogatories Erie submitted with its March 13, 2026 proposed jury instructions followed the step-by-step guide that it provided in its proposed jury instruction number six.

**{¶ 29}** On April 1, 2026, the morning of the second day of trial, Erie submitted another set of proposed jury instructions that provided a similar step-by-step guide to the one in its first set of proposed jury instructions. With this second iteration of proposed jury instructions, Erie included the same five proposed interrogatories that it had included with its first iteration of proposed jury instructions.

**{¶ 30}** The trial court appears to have relied heavily on Erie's proposed jury instructions and Erie's five proposed interrogatories in drafting the jury instructions and five interrogatories that were submitted to the jury. But the trial court did make important revisions to Erie's proposed jury instructions and Erie's first proposed interrogatory. Notably, the instructions the trial court provided to the jury included a section that laid out the issues of fact that the jury needed to determine to resolve Williams's breach of contract claim. The instructions provided, in pertinent part:

> The parties agree that four shingles, six appliques, and one ridge cap were the only items directly damaged by the storm. You are instructed to determine the following disputed issues of fact.
>
> 1. Did Plaintiffs prove by a preponderance of the evidence the windstorm proximately caused wind damage to the property's roof *beyond the four singles, six appliques and one ridge cap*?
>
> 2. If yes, what was the cost to repair that actual damage, and did it exceed the $2,500 Deductible of the insurance contract?

3. If yes, did Defendant Erie prove by a preponderance of the evidence that the loss claimed by the Plaintiff in this case resulted directly or indirectly from an excluded cause of loss or damage under the insurance contract?

You may find a breach of contract only if the Plaintiff proved by a preponderance of the evidence: (1) that on July 20, 2023, there was a windstorm at the insured location to have proximately caused wind damage; and (2) that the cost to repair that actual damage exceeded the $2,500.00 deductible of the insurance contract. And even if Plaintiff proves those things, you must find there was no breach of contract if Defendant Erie proved by a preponderance of the evidence that the loss claimed by Plaintiffs in this case resulted from an excluded cause of loss or damage under the insurance contract.

(Emphasis added.) Jury Instructions, p. 6-7. The jury instructions also contained the following direction relating to Adm.Code 3901-1-54:

Ohio Administrative Code § 3901-1-54 establishes a minimum standard for recovery on a claim. That minimum standard includes consequential damages for when a loss requires replacement of an item or part. Consequential damages are damages incurred in making such repair or replacement not otherwise excluded by the policy. This section does not supersede any exclusion in the insurance policy.

Jury Instructions, p. 8-9. These excerpts from the trial court's jury instructions help highlight the confusion and resulting prejudice caused by the revisions the trial court made to the proposed jury instructions and Erie's first proposed interrogatory. Specifically, a part of the jury instructions stated that the jury could award damages to Williams if the evidence showed

a windstorm proximately caused wind damage to the insured location that cost more than $2,500 to repair. This is consistent with the parties' arguments and their proposed jury instructions and interrogatories. At the same time, however, a different portion of the jury instructions, along with the plain language of Interrogatory No. 1, directed the jury to return a general verdict for Erie if Williams failed to show the windstorm was of sufficient force to proximately cause wind damage "beyond" the four shingles, six appliques, and one ridge cap.

**{¶ 31}** The two sets of jury instructions submitted by Erie along with the evidence presented at the trial made it clear that the windstorm was of sufficient force to cause wind damage to *exactly* four shingles, six appliques, and one ridge cap, which needed to be repaired. There was no evidence of any "wind damage" beyond that. For example, Williams did not claim that additional shingles, appliques, or ridge caps were damaged by the force of the windstorm. Rather, Williams claimed that the cost to repair the wind-damaged four shingles, six appliques, and one ridge cap would be much higher than the estimate given by Erie because the process of repairing these particular items would inevitably result in the need to replace the entire roof. The plain language in Interrogatory No. 1, however, required the jury to return a general verdict for Erie unless it found that the windstorm was of sufficient force to cause *wind damage beyond the repair* of four shingles, six appliques, and one ridge cap. Given how Interrogatory No. 1 was written, the jury was required to answer "No" unless it found that the windstorm caused *wind damage* to the roof beyond the wind damage to the four shingles, six appliques, and one ridge cap.

**{¶ 32}** Apparently, the trial court decided to revise Erie's proposed first interrogatory because it was not confident Erie's first interrogatory, as proposed, was sufficient to guard against the jury wrongfully awarding a replacement roof if the additional repair cost sought

by Williams was actually caused by poor workmanship, deterioration, or wear and tear rather than the windstorm. But Interrogatory No. 5 was in place to prevent such a wrongful award if the jury calculated a repair cost above $2,500 and Erie showed that an exclusion precluded the award of this additional repair cost. In short, there was no need for the trial court to revise Erie's first proposed interrogatory in the way that it did.

**{¶ 33}** As a reminder, Erie's first proposed interrogatory simply asked, "Did plaintiff prove by a preponderance of the evidence that on July 20, 2023, there was a windstorm at the insured location of sufficient force to proximately cause wind damage?" As drafted by Erie, the first interrogatory was designed to confirm that Williams proved by a preponderance of the evidence that the windstorm caused actual damage to the roof. Once the jury confirmed that to be the case, then it was to advance through the remaining interrogatories one at a time to determine whether the preponderance of the evidence showed the extent of the actual damage to the roof proximately caused by the storm (Interrogatory No. 2) and the reasonable cost to repair the actual damage to the roof proximately caused by the wind (Interrogatory Nos. 3 and 4). If the jury answered yes to the first three interrogatories *and* calculated an amount over $2,500 in its answer to the fourth interrogatory, then, *and only then*, would the jury answer Interrogatory No. 5, which asked the jury to determine whether Erie had shown the loss claimed by Williams resulted from an excluded cause of loss or damage. Therefore, Interrogatory No. 5—not Interrogatory No. 1—was designed to test the causal link between the windstorm and the consequential damage claimed by Williams.

**{¶ 34}** Once the trial court revised Erie's first proposed interrogatory and submitted Interrogatory No. 1 with the jury instructions, the jury had no choice but to render a verdict in favor of Erie, because neither party argued the windstorm proximately caused wind damage *beyond* the four shingles, six appliques, and one ridge cap. The trial court's

revision to Interrogatory No. 1 prevented the jury from resolving the determinative issues in Interrogatory Nos. 2 through 5. Accordingly, we must conclude that the trial court abused its discretion by revising and submitting Interrogatory No. 1 to the jury, which undermined the proper function of the jury in this case and rendered the verdict unreliable. We note that even if we had applied the plain error standard of review to this appeal, we would have concluded that the trial court committed plain error when it revised Erie's first proposed interrogatory in the way that it did and submitted it to the jury. *See Eberly*, 61 Ohio St.3d at 36. We reverse the trial court's judgment and remand this cause for a new trial on Williams's breach of contract claim. *Id.*

**{¶ 35}** The first assignment of error is sustained.

## III. The Second Assignment of Error Is Moot

**{¶ 36}** Williams's second assignment of error states:

> The trial court committed reversible error by refusing to answer the jury's request for clarification concerning the relationship between Adm. Code 3901-1-54 and Interrogatory No. 1.

**{¶ 37}** Based on our disposition of Williams's first assignment of error, the second assignment of error is overruled as moot. App.R. 12(A)(1)(c).

## IV. Conclusion

**{¶ 38}** Having sustained Williams's first assignment of error, we reverse the judgment of the trial court and remand the cause for a new trial on Williams's breach of contract claim.

. . . . . .

EPLEY, J., and HUFFMAN, J., concur.