

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
PAULDING COUNTY

TABBETHA SCOTT,

PLAINTIFF-APPELLANT,

v.

JEFF MOORE, ET AL.,

DEFENDANTS-APPELLEES.

CASE NO. 11-26-04

OPINION AND
JUDGMENT ENTRY

Appeal from Paulding County Common Pleas Court
Trial Court No. CI 24 219

Judgment Affirmed

Date of Decision: October 13, 2026

APPEARANCES:

Michael D. Portnoy for Appellant

Thomas B. Bruns for Appellee

ZIMMERMAN, P.J.

{¶1} Plaintiff-appellant, Tabbetha Scott (“Scott”), appeals the judgment of the Paulding County Court of Common Pleas granting defendant-appellee, Owners Insurance Company’s (“Owners Insurance”), Civ.R. 12(B)(6) motion to dismiss her claims for bad faith and violations of the Ohio Corrupt Practices Act and the federal Racketeer Influenced and Corrupt Organizations Act (collectively, “civil RICO”), granting its cross-motion for summary judgment as to her breach of contract claim, striking her class action allegations, and denying her request to file a second amended complaint. For the reasons that follow, we affirm.

{¶2} This case stems from personal injuries sustained by Scott while she was a passenger on an ATV owned and operated by defendant-appellee, Jeff Moore (“Moore”). On April 14, 2024, Moore was negligently operating the ATV in an off-road location—rather than on a public road—when he crashed, resulting in Scott suffering severe injuries, including a broken neck.

{¶3} After Moore’s liability insurer, Progressive Casualty Insurance Company (“Progressive”), tendered its policy limits, Scott sought underinsured motorist benefits to cover her remaining damages. She filed this claim under her own personal insurance policy, which was issued by Owners Insurance. The waters of this coverage dispute, however, have been somewhat muddied because Scott paid additional premiums to Owners Insurance for two distinct, ATV-related coverages

listed on her policy's declarations page: a general "Unlicensed RV Liability" endorsement, and the separate scheduling of her own 2023 Polaris Ranger XP with specific uninsured and underinsured motorist limits of \$100,000 per person and \$300,000 per occurrence. The presence of these distinct ATV coverages makes this case look like a dispute over specialized "ATV Insurance." It is not.

{¶4} Instead, because Scott was a passenger on Moore's ATV at the time of the accident, the specific coverages tied to her own ATV and her Unlicensed RV Liability endorsement do not govern her recovery.¹ Rather, her claim relies entirely on the portable uninsured and underinsured motorist coverage provided by her standard auto policy, which generally extends to protect her when occupying a third party's vehicle. Crucially, however, the relevant Ohio uninsured and underinsured motorist forms governing her standard automobile policy explicitly exclude from the definition of an uninsured or underinsured automobile any vehicle "designed for use primarily off public roads except while actually on public roads." (Doc. No. 17, Ex. 1). Relying on this unambiguous language, Owners Insurance denied Scott's claim, asserting that Moore's ATV did not meet the definition of an underinsured automobile because the accident occurred off of a public roadway.

¹ Because Scott sought portable uninsured or underinsured benefits as a passenger on a third party's off-road vehicle at a location remote from any insured premises, a general automobile policy is the appropriate policy for this claim. *See Ribeiro v. John Doe Ins. Cos.*, 2003-Ohio-433, ¶ 20 (8th Dist.) (distinguishing homeowner's policies from motor vehicle liability policies by noting that homeowner's policies do not cover general motor vehicle liability, but instead provide only incidental coverage for unregistered, off-road motorized vehicles used around the insured's property).

{¶5} On December 23, 2024, Scott filed a complaint alleging class action claims against Owners Insurance for breach of contract, civil RICO, a violation of the Ohio Consumer Sales Practices Act, and bad faith, alongside a negligence claim against Moore. Scott filed an amended complaint on January 27, 2025 to correct a clerical error.

{¶6} On February 5, 2025, Scott sought leave to file a motion for summary judgment, which Owners Insurance opposed. The trial court denied the request on February 28, 2025 after determining that the motion was premature since the parties agreed Owners Insurance's responsive pleading was not due until March 12, 2025.

{¶7} On March 11, 2025, Owners Insurance filed a Civ.R. 12(B)(6) motion to dismiss Scott's claims for bad faith, civil RICO, and a violation of the Ohio Consumer Sales Practices Act. In the same filing, Owners Insurance moved to strike the class action allegations pursuant to Civ.R. 23(D)(1)(d). On March 18, 2025, Scott filed her memorandum in opposition to Owners Insurance's motion to dismiss her bad faith and civil RICO claims, while voluntarily dismissing her Ohio Consumer Sales Practices Act claim without prejudice. That same day, Scott also filed a motion for summary judgment as to her breach of contract claim. Subsequently, on April 10, 2025, Owners Insurance filed a memorandum in opposition to Scott's motion for summary judgment alongside a cross-motion for summary judgment regarding the breach of contract claim, which Scott then opposed.

{¶8} On May 23, 2025, Moore sought leave to file his answer instanter. The delayed filing stemmed from an ongoing dispute over a proposed settlement for Moore's Progressive policy \$50,000.00 limits, prompting Moore to include an affirmative defense of accord and satisfaction. The trial court granted the motion and accepted Moore's answer. However, the parties continued to dispute whether additional insurance coverage existed. Consequently, on July 7, 2025, Scott moved for leave to file a second amended complaint to add Progressive as an additional party, asserting a claim for fraud regarding the coverage limits.

{¶9} On July 11, 2025, Moore filed a motion to enforce the parties' settlement agreement. Scott opposed this motion on July 15, 2025, and concurrently filed a motion for sanctions under Civ.R. 11, which Moore opposed. However, that same day, after Moore provided the requested additional insurance disclosures, Scott formally withdrew her pending request to add Progressive as a party to the case.

{¶10} Shortly thereafter, on July 21, 2025, Scott filed a new motion for leave to amend her complaint to add a claim for negligent misrepresentation against "insurance agents and insurance agencies [who sold Owners Insurance policies], who negligently misrepresented that uninsured/underinsured coverage would be paid to Plaintiffs when this was false." (Doc. No. 32). Owners Insurance subsequently filed a memorandum in opposition to the requested amendment.

{¶11} On October 22, 2025, the trial court granted Moore’s motion to enforce the settlement agreement and denied Scott’s request for sanctions, prompting Scott to dismiss her claims against Moore with prejudice on November 10, 2025.

{¶12} On March 5, 2026, the trial court granted Owners Insurance’s Civ.R. 12(B)(6) motion to dismiss Scott’s civil RICO and bad faith claims; granted summary judgment in favor of Owners Insurance as to Scott’s breach of contract claim; and denied Scott’s motion for leave to amend her complaint.² Because the trial court granted summary judgment in favor of Owners Insurance as to Scott’s breach of contract claim, the trial court dismissed Scott’s class action.

{¶13} Scott filed her notice of appeal on March 24, 2026. She raises four assignments of error for our review.

First Assignment of Error

The Trial Court committed prejudicial error to Plaintiff by granting Owner’s Insurance motions with supporting memorandum to dismiss Counts two (2) and four (4) of Plaintiff’s amended complaint.

{¶14} In her first assignment of error, Scott argues that the trial court erred by granting Owners Insurance’s Civ.R. 12(B)(6) motion to dismiss her civil RICO

² Owners Insurance filed a separate declaratory judgment action regarding the applicability of the policy’s coverage—case number CI-24-224—which the trial court consolidated with the present case on December 30, 2025. Even though the trial court’s final judgment entry does not explicitly dispose of the consolidated declaratory judgment action, the trial court’s decision granting summary judgment in favor of Owners Insurance as to Scott’s breach of contract claim effectively resolved the coverage dispute at issue in the declaratory action.

and bad faith claims. Specifically, she contends that her amended complaint satisfied the generalized notice pleading requirements of Civ.R. 8, which she argues was sufficient to survive a motion to dismiss.

Standard of Review

{¶15} “We review de novo a judgment on a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted.” *Bd. of Health of Defiance Cty. v. McCalla*, 2012-Ohio-4107, ¶ 33 (3d Dist.). “Under de novo analysis, we are required to ‘accept all factual allegations of the complaint as true and draw all reasonable inferences in favor of the nonmoving party.’” *McBroom v. Safford*, 2012-Ohio-1919, ¶ 9 (10th Dist.), quoting *Grey v. Walgreen Co.*, 2011-Ohio-6167, ¶ 3 (8th Dist.).

Analysis

{¶16} “A motion to dismiss under Civ.R. 12(B)(6) ‘is a procedural mechanism that tests the sufficiency of the allegations in the complaint.’” *Pond v. E & E Towing & Recovery, LLC*, 2024-Ohio-800, ¶ 16 (10th Dist.), quoting *State Auto. Mut. Ins. Co. v. Titanium Metals Corp.*, 2006-Ohio-1713, ¶ 8. “‘When reviewing a Civ.R. 12(B)(6) motion, courts are confined to the allegations contained in the complaint.’” *Betscher v. Governing Bd. of Putnam Cty. Educational Serv. Ctr.*, 2015-Ohio-4727, ¶ 9 (3d Dist.), quoting *Cooper v. Highland Cty. Bd. Of Commrs.*, 2002-Ohio-2353, ¶ 9 (4th Dist.). “For purposes of the Rule, the trial court must presume all facts alleged in the complaint are true and it must draw all

reasonable inferences in favor of the non-moving party.” *Melesky v. SummaCare, Inc.*, 2012-Ohio-1336, ¶ 5 (5th Dist.). “[H]owever, ‘while we are to assume the facts alleged in the complaint are true, we do not assume the legal conclusions alleged to be drawn from those facts are also true and disregard any unsupported conclusions included among the facts alleged in the complaint.’” *Med. Mut. of Ohio v. FrontPath Health Coalition*, 2023-Ohio-243, ¶ 12 (6th Dist.), quoting *STE Invests., LLC v. Macprep, Ltd.*, 2022-Ohio-2614, ¶ 14 (6th Dist.).

{¶17} A court may not grant a motion to dismiss for failure to state a claim upon which relief can be granted unless it appears beyond doubt that the plaintiff can prove no set of facts entitling them to relief. *Melesky* at ¶ 5. “[A]s long as there is a set of facts, consistent with the plaintiff’s complaint, which would allow the plaintiff to recover, the court may not grant a defendant’s motion to dismiss.” *York v. Ohio State Hwy. Patrol*, 60 Ohio St.3d 143, 144 (1991). Conversely, “[d]ismissal is proper if the complaint fails to sufficiently allege an essential element of the cause of action.” *Melesky* at ¶ 5, citing *State ex rel. Cincinnati Enquirer v. Ronan*, 2009-Ohio-5947, ¶ 8. Nevertheless, because of the notice pleading requirements of the Ohio Rules of Civil Procedure, a plaintiff is not required to prove his or her case at the pleading stage, as the evidence necessary for a plaintiff to prevail is often not obtained until discovery is conducted. *Id.*

{¶18} “‘Ohio is a notice-pleading state.’” *Hall v. Crawford Cty. Job & Family Servs.*, 2022-Ohio-1358, ¶ 16 (3d Dist.), quoting *Pugh v. Warden of LaECI*,

2019-Ohio-3615, ¶ 26 (11th Dist.). *See also Allstate Ins. Co. v. Electrolux Home Prods.*, 2012-Ohio-90, ¶ 9 (8th Dist.) (“Ohio is a notice-pleading state, and Ohio law does not ordinarily require a plaintiff to plead operative facts with particularity.”). “Under Civ.R. 8(A), ‘[a] pleading that sets forth a claim for relief . . . shall contain (1) a short and plain statement of the claim showing that the party is entitled to relief, and (2) a demand for judgment for the relief to which the party claims to be entitled.’” *Hall* at ¶ 16, quoting Civ.R. 8(A). And, “[e]ach averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.” *Id.*, quoting Civ.R. 8(E)(1). Ultimately, a plaintiff is only required to plead sufficient operative facts to give the defendant fair notice of the claim and the grounds upon which it is based. *Id.* *See also Electrolux Home Prods.* at ¶ 9.

{¶19} In evaluating a motion to dismiss, courts must remain mindful of these liberal notice-pleading standards. *See Karr v. Dianna Sayre Estate*, 2026-Ohio-1462, ¶ 10 (5th Dist.). A plaintiff is not required to plead specific legal theories, allege every fact they intend to prove, or demonstrate absolute technical conformity with arcane rules of pleading. *Id.* Because Civ.R. 8(A) does not contemplate evidentiary pleading, a plaintiff is not required to prove his or her case at the pleading stage. *Id.*

Instead, this simplified standard relies on liberal discovery rules and summary judgment practice to clarify the issues, define disputed facts, and dispose of

nonmeritorious claims. *Id.* Because it is relatively easy for a pleader to satisfy Civ.R. 8(A), a motion to dismiss for failure to state a claim is viewed with disfavor and is rarely granted. *Id.*

{¶20} However, the liberal notice-pleading standard is not without limits. *See Jordan v. Giant Eagle Supermarket*, 2020-Ohio-5622, ¶ 24 (8th Dist.). While a complaint no longer must set forth specific factual allegations, it must still “““contain allegations from which an inference fairly may be drawn that evidence on these material points will be introduced at trial.””” *Karr* at ¶ 10, quoting *Bethel Oil & Gas, LLC v. Redbird Dev., LLC*, 2024-Ohio-5285, ¶ 42 (4th Dist.), quoting *Schlenker Enters., LP. v. Reese*, 2010-Ohio-5308, ¶ 29 (3d Dist.), quoting *Fancher v. Fancher*, 8 Ohio App.3d 79, 83 (1st Dist. 1982).

Bad Faith

{¶21} “It is well established under Ohio law that ‘based upon the relationship between an insurer and its insured, an insurer has the duty to act in good faith in the handling and payment of the claims of its insured.’” *Coy v. Grange Mut. Cas. Co.*, 2004-Ohio-6955, ¶ 20 (11th Dist.), quoting *Hoskins v. Aetna Life Ins. Co.*, 6 Ohio St.3d 272 (1983), paragraph one of the syllabus. “The insurer’s failure to act in good faith is the equivalent of acting in bad faith.” *Id.*

{¶22} To state a valid cause of action for bad faith, a plaintiff must establish that the insurer failed to exercise good faith in processing the claim because its refusal to pay was not predicated upon circumstances that furnish reasonable

justification. *Zoppo v. Homestead Ins. Co.*, 71 Ohio St.3d 552 (1994), paragraph one of the syllabus. “An insurer lacks reasonable justification for denying a claim when its refusal to pay is predicated on an arbitrary or capricious belief that the insured is not entitled to coverage.” *Reece v. Grange Guardian Ins. Co.*, 2004-Ohio-5668, ¶ 31 (6th Dist.).

{¶23} “Bad faith is not shown by a mere breach of a contractual duty.” *Wagner v. Midwestern Indemn. Co.*, 83 Ohio St.3d 287, 295 (1998). *See also Sanzo Ents., LLC v. Erie Ins. Exchange*, 2021-Ohio-4268, ¶ 72 (5th Dist.) (“Even if a denial of coverage had been erroneous, the mere wrongful denial of a claim is not actionable under Ohio law.”). An insured must “prove that the insurer committed some act above and beyond simply breaching the insurance contract.” *Wagner* at 295. *See also Stefano v. Commodore Cove E. Ltd.*, 145 Ohio App.3d 290, 293 (9th Dist. 2001) (noting that “the insurer’s failure to pay a claim need not involve bad intent or malice to amount to ‘bad faith’”).

{¶24} To survive a motion to dismiss, a plaintiff must plead factual allegations showing that the insurer breached its tort duty to act in good faith by refusing to pay the claim without reasonable justification. Merely reciting the elements of the tort or making conclusory statements is not enough; the complaint must contain operative facts showing how the insurer’s conduct lacked reasonable justification. *Clemens v. Katz*, 2009-Ohio-1461, ¶ 7 (6th Dist.) (relating that “to

constitute fair notice, the complaint must still allege sufficient underlying facts that relate to and support the alleged claim, and may not simply state legal conclusions”).

{¶25} In this case, notwithstanding Ohio’s liberal notice pleading rules, Scott’s bad faith claim fails because it consists of unsupported legal conclusions. Indeed, a review of the amended complaint reveals that Scott simply parroted the legal standard from *Zoppo*, summarily alleging that Owners Insurance’s “refusal to pay . . . is not predicated upon circumstances that furnish reasonable justification” and characterizing the denial as being “willful, wanton and malicious.” (Doc. No. 6).

{¶26} Critically, Scott’s amended complaint fails to allege any specific actions Owners Insurance took during the processing or investigation of the claim that lacked reasonable justification. Merely disagreeing with a coverage decision and alleging a breach of the insurance contract is insufficient to state an independent tort for bad faith. *See Hoskins v. Aetna Life Ins. Co.*, 6 Ohio St.3d 272, 276 (1983) (noting that bad faith liability “does not arise from its mere omission to perform a contract obligation, for it is well established in Ohio that it is no tort to breach a contract, regardless of motive”). Because Scott failed to plead any operative facts elevating her claim beyond a mere breach of contract, the trial court properly dismissed Scott’s bad faith claim under Civ.R. 12(B)(6).

Civil RICO

{¶27} “The Ohio Corrupt Practices Act is modeled after the federal RICO act, 18 U.S.C. 1961 et seq., and provides, ‘No person employed by, or associated with, any enterprise shall conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of corrupt activity or the collection of an unlawful debt.’” *JPMorgan Chase Bank, NA v. Asbury*, 2018-Ohio-1652, ¶ 28 (6th Dist.), quoting R.C. 2923.32(A)(1). “R.C. 2923.34 grants a civil remedy to a person injured or threatened with injury by a violation of R.C. 2923.32.” *Morrow v. Reminger & Reminger Co. LPA*, 2009-Ohio-2665, ¶ 26 (10th Dist.).

To state a civil claim under the federal RICO act or the Ohio Corrupt Practices Act, “‘a plaintiff must establish: (1) that the conduct of the defendant involves the commission of two or more specifically prohibited state or federal criminal offenses; (2) that the prohibited criminal conduct of the defendant constitutes a pattern; and (3) that the defendant has participated in the affairs of an enterprise or has acquired and maintained an interest in or control of an enterprise.’”

Asbury at ¶ 28, quoting *Morrow* at ¶ 27, quoting *Patton v. Wilson*, 2003-Ohio-3379, ¶ 12 (8th Dist.). Critically, a “Corrupt Practices Act claim is subject to a higher pleading standard.” *Med. Mut. of Ohio v. FrontPath Health Coalition*, 2023-Ohio-243, ¶ 30 (6th Dist.). Consequently, “[t]he failure to plead any of those elements with particularity results in a defective complaint that cannot withstand a Civ.R. 12(B)(6) motion to dismiss.” *Morrow* at ¶ 27. *See also Sutton Funding LLC v. Herres*, 2010-Ohio-3645, ¶ 50 (2d Dist.) (“Failure to specifically plead the operative

facts constituting an alleged fraud presents a defective claim that may be dismissed.”).

{¶28} “Civil Rule 9(B) provides that, when pleading fraud or mistake, the circumstances constituting fraud or mistake shall be pleaded with particularity.” *Bear v. Bear*, 2014-Ohio-2919, ¶ 23 (9th Dist.). “““The circumstances constituting fraud, as that phrase is used in Rule 9(B), include the time, place, and content of the false representation; the fact misrepresented; the identification of the individual giving the false representation; and the nature of what was obtained or given as a consequence of the fraud.”” *Id.*, quoting *Wright v. Bank of New York*, 2012-Ohio-2289, ¶ 19 (9th Dist.), quoting *Hamblin v. Daugherty*, 2007-Ohio-5893, ¶ 20 (9th Dist.). “The particularity requirement of Rule 9(B) must be applied together with the more general pleading requirement in Rule 8” *Id.* Thus, “[t]o have met the requirements of Civ.R. 9(B), the complaint . . . must have “sufficiently apprised” the defendant “of the specific claims to be required to answer.”” *Id.*, quoting *L.E. Sommer Kidron, Inc. v. Kohler*, 2007-Ohio-885, ¶ 27 (9th Dist.), quoting *Haddon View Invest. Co. v. Coopers & Lybrand*, 70 Ohio St.2d 154, 159 (1982).

{¶29} In this case, Scott argues that her amended complaint sufficiently detailed a civil RICO claim against Owners Insurance for engaging in a pattern of corrupt activity through mail fraud. Specifically, Scott alleges that Owners Insurance used the mail to commit fraud by refusing to pay uninsured or underinsured motorist benefits to policyholders who purchased what they

understood to be specialized insurance for their ATVs. She contends that Owners Insurance deceived these policyholders by routinely denying coverage for off-road accidents despite collecting premiums for ATVs.

{¶30} “To survive a motion to dismiss, the amended complaint must contain allegations that the appellees’ criminal conduct constitutes a pattern of corrupt activity.” *Morrow*, 2009-Ohio-2665, at ¶ 29 (10th Dist.). “R.C. 2923.31(E) defines a ‘[p]attern of corrupt activity’ as ‘two or more incidents of corrupt activity, whether or not there has been a prior conviction, that are related to the affairs of the same enterprise, are not isolated, and are not so closely related to each other and connected in time and place that they constitute a single event.’” *Id.*, quoting R.C. 2923.31(E). “The commission of two incidents of corrupt activity alone is insufficient to demonstrate a pattern of corrupt activity.” *Id.* “2923.31(I) defines ‘corrupt activity’ as the commission of any one of the several crimes enumerated therein.” *Sheets v. Carmel Farms*, 1997 Ohio App. LEXIS 2422, *12 (10th Dist. Jun. 5, 1997).

{¶31} “The United States Supreme Court, addressing RICO, has stated that ‘legislative history reveals Congress’ intent that to prove a pattern of racketeering activity a plaintiff . . . must show that the racketeering predicates are related, *and* that they amount to or pose a threat of continued criminal activity.’” (Emphasis in original.) *Morrow* at ¶ 30, quoting *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239 (1989). “These factors of continuity and relationship combine to produce a pattern.” *Id.* “Similarly, in Ohio, a pattern of corrupt activity under the OCPA

requires that predicate crimes be related and pose a threat of continued criminal activity.” *Id.*

{¶32} Based on our review of Scott’s amended complaint, we conclude that Scott failed to specifically plead the existence of a pattern of corrupt activity. *Accord Herakovic v. Catholic Diocese*, 2005-Ohio-5985, ¶ 37 (8th Dist.). Critically, “[a] single event cannot establish a pattern regardless of the number of criminal acts emanating therefrom.” *Id.* at ¶ 36. *See also Morrow* at ¶ 33 (rejecting the proposition that a single scheme is sufficient to demonstrate a pattern, and instead requiring a plaintiff to plead either multiple related criminal episodes or an open-ended scheme). Instead, courts follow a “‘common-sense approach,’ requiring a plaintiff to plead either that the defendant “engaged in more than one related criminal episode or scheme” or that the complaint alleges “an open-ended scheme over an extended period to demonstrate that the alleged criminal activity is continuous rather than isolated.” *Morrow* at ¶ 33, quoting *B.J. Skin & Nail Care, Inc. v. Internatl. Cosmetic Exchange, Inc.*, 641 F.Supp. 563, 566 (D.Conn. 1986). To determine whether a complaint sufficiently alleges a pattern of corrupt activity, courts evaluate the sum of various factors, including the duration of the racketeering activity, the number of distinct schemes, the number and variety of predicate acts, the distinct types of injuries, and the respective numbers of victims and perpetrators. *Id.* at ¶ 34.

{¶33} Here, Count Two of Scott’s amended complaint alleges, in general terms, that Owners Insurance engaged in a fraudulent enterprise by using the mail system to send false notices to policyholders. Specifically, she claims that Owners Insurance made material misrepresentations by mailing notices to her and other policyholders stating that insurance payments would be—or had already been—made pursuant to their insurance contracts, when in reality those payments were not made to insureds who purchased coverage. Even accepting those allegations as true, Scott’s amended complaint does not plead facts showing multiple related criminal episodes, an open-ended course of criminal conduct, or a continuing threat of future corrupt activity. *Compare id.* (concluding that “[t]he allegations demonstrate, at best, a single scheme of narrow scope, to avoid liability for the default judgment, and a single type of predicate act, i.e., perjury”). Rather, the alleged predicate acts all arise from the same narrow coverage dispute and the same asserted objective: avoiding payment of claimed uninsured or underinsured motorist benefits for off-road recreational vehicle accidents.

{¶34} Moreover, general references to “other policyholders” does not cure the defect because the complaint does not identify particularized facts concerning separate victims, separate claims, separate fraudulent communications, or distinct injuries sufficient to transform the alleged conduct into a pattern of corrupt activity. *See id.* at ¶ 35; *Med. Mut. of Ohio v. FrontPath Health Coalition*, 2023-Ohio-243, ¶ 43-44 (6th Dist.) (determining that broad allegations of corrupt activity involving

“victims” on “multiple occasions” lacked operative facts, and holding that a plaintiff fails to plead a pattern with specificity when they do not identify the specific dates or particular transactions involved).

{¶35} Accordingly, we conclude that Scott failed to plead the pattern element with the specificity required to survive dismissal under Civ.R. 12(B)(6). *Accord Morrow* at ¶ 35. *See also Herakovic* at ¶ 37 (declining to address additional elements where the failure to establish a pattern defeated the cause of action). Thus, the trial court did not err by granting Owners Insurance’s motion to dismiss Scott’s civil RICO claim under Civ.R. 12(B)(6).

{¶36} Scott’s first assignment of error is overruled.

Second Assignment of Error

The Trial Court committed prejudicial error to Plaintiff by granting Owner’s insurance motion with supporting memorandum for summary judgment.

{¶37} In her second assignment of error, Scott argues that the trial court erred by granting summary judgment in favor of Owners Insurance as to her breach of contract claim. Specifically, Scott argues that the uninsured and underinsured motorist coverage in her insurance policy is illusory. She contends that, because an insured can only trigger coverage by illegally driving an ATV on a public roadway, the contract merely appears to grant a benefit while practically failing to do so.

Standard of Review

{¶38} We review a decision to grant summary judgment de novo. *Doe v. Shaffer*, 90 Ohio St.3d 388, 390 (2000). Summary judgment is proper where there is no genuine issue of material fact, the moving party is entitled to judgment as a matter of law, and reasonable minds can reach but one conclusion when viewing the evidence in favor of the non-moving party, and the conclusion is adverse to the non-moving party. Civ.R. 56(C); *State ex rel. Cassels v. Dayton City School Dist. Bd. of Edn.*, 69 Ohio St.3d 217, 219 (1994).

{¶39} “The party moving for summary judgment has the initial burden of producing some evidence which demonstrates the lack of a genuine issue of material fact.’ *Carnes v. Siferd*, 2011-Ohio-4467, ¶ 13 (3d Dist.). “In doing so, the moving party is not required to produce any affirmative evidence, but must identify those portions of the record which affirmatively support his argument.” *Id.* “The nonmoving party must then rebut with specific facts showing the existence of a genuine triable issue; he may not rest on the mere allegations or denials of his pleadings.” *Id.*

Analysis

{¶40} In this case, the trial court granted summary judgment in favor of Owners Insurance as to Scott’s breach of contract claim after determining that the ATV accident did not fall within the policy’s uninsured or underinsured motorist coverage because the insurance policy unambiguously excluded vehicles “designed

for use primarily off public roads except while actually on public roads,” and the undisputed facts established that the accident occurred off of a public road. In reaching this decision, the trial court determined that the uninsured and underinsured motorist policy language was not illusory because it clearly afforded coverage for ATV accidents occurring on public roadways—regardless of whether such operation was lawful—while explicitly excluding coverage for accidents occurring off public roadways.

{¶41} On appeal, Scott contends that the trial court erred by granting summary judgment in favor of Owners Insurance as to her breach of contract claim because the trial court failed to consider that Ohio law prohibits operating an ATV on a public roadway, except in limited circumstances that do not apply here. Therefore, Scott contends that the trial court erred by enforcing the contract since an insurance policy that requires an insured to break the law to recover benefits is inherently illusory.

{¶42} In response, Owners Insurance counters that the coverage is not illusory because the policy explicitly provides benefits for accidents occurring on public roadways, even if the ATV is operated illegally at the time. Owners Insurance maintains that, because the contract would pay out under that circumstance, it provides a valid benefit rather than an illusion.

{¶43} “A cause of action for breach of contract requires the claimant to establish the existence of a contract, the failure without legal excuse of the other

party to perform when performance is due, and damages or loss resulting from the breach.” *Lucarell v. Nationwide Mut. Ins. Co.*, 2018-Ohio-15, ¶ 41. “To establish the existence of a valid contract, a plaintiff must demonstrate the essential elements of an offer, acceptance, contractual capacity, consideration, a manifestation of mutual assent, and legality of object and of consideration.” *Rena Lyon Revocable Trust v. Berry*, 2026-Ohio-2369, ¶ 11 (3d Dist.).

{¶44} “In Ohio, insurance contracts are construed as any other written contract.” *Grange Ins. Co. v. Farmers Ins.*, 2022-Ohio-4303, ¶ 9 (6th Dist.), quoting *Andray v. Elling*, 2005-Ohio-1026, ¶ 18 (6th Dist.). “The coverage under an insurance policy is determined by construing the contract ‘in conformity with the intention of the parties as gathered from the ordinary and commonly understood meaning of the language employed.’” *Crow v. Dooley*, 2012-Ohio-2565, ¶ 8 (3d Dist.), quoting *King v. Nationwide Ins. Co.*, 35 Ohio St.3d 208, 211 (1988). Thus, policy “terms are to be given their plain and ordinary meaning” *Id.* If the language of the policy, read as a whole, “is clear and unambiguous, then its interpretation is a matter of law and there is no issue of fact to be determined.” *Barhorst, Inc. v. Hanson Pipe & Prods. Ohio, Inc.*, 2006-Ohio-6858, ¶ 10 (3d Dist.), quoting *Inland Refuse Transfer Co. v. Browning-Ferris Industries of Ohio, Inc.*, 15 Ohio St.3d 321, 322 (1984).

{¶45} “[W]hen an insurance contract contains exceptions to coverage, there is a presumption that all coverage applies unless it is clearly excluded in the

contract.” *Crow* at ¶ 10. “It is well established that contracts of insurance are to be strictly construed against the insurer, especially when an exclusionary clause is at issue.” *Great Am. Assur. Co. v. Acuity*, 2022-Ohio-501, ¶ 20 (12th Dist.). “Accordingly, in order for an insurer to defeat coverage through a clause in the insurance contract, it must demonstrate that the clause in the policy is capable of the construction it seeks to give it, and that such construction is the only one that can be fairly placed upon the language.” *Crow* at ¶ 10, quoting *Bosserman Aviation Equip. v. U.S. Liab. Ins. Co.*, 2009-Ohio-2526, ¶ 11 (3d Dist.). That is, “under Ohio law, ““an exclusion in an insurance policy will be interpreted as applying only to that which is *clearly* intended to be excluded.”” (Emphasis in original.) *Grange Ins.* at ¶ 10, quoting *Sauer* at ¶ 11, quoting *Hybud Equip. Corp. v. Sphere Drake Ins. Co.*, 64 Ohio St.3d 657, 665 (1992). “However, while exclusions in insurance contracts are read narrowly in Ohio to apply only to that which is clearly intended to be excluded, that rule of strict construction does not permit a reviewing court to ignore the obvious intent of an exclusionary provision.” *Acuity* at ¶ 20.

{¶46} “The party seeking to recover under an insurance policy bears the burden of demonstrating that the policy provides coverage for the particular loss.” *Crow* at ¶ 11. “However, ‘when an insurer denies liability coverage based upon a policy exclusion, the insurer bears the burden of demonstrating the applicability of the exclusion.’” *Id.*, quoting *Beaverdam Contracting, Inc. v. Erie Ins. Co.*, 2008-Ohio-4953, ¶ 19 (3d Dist.).

{¶47} Here, Scott obtained an automobile insurance policy from Owners Insurance under which she paid additional premiums for specific, distinct coverages listed on her declarations pages. First, she purchased an “Unlicensed RV Liability” endorsement, which provided bodily injury limits of \$100,000 each person and \$300,000 each occurrence, property damage limits of \$100,000 each occurrence, and medical payments limits of \$500 each person. Separately, Scott scheduled her own 2023 Polaris Ranger XP as an insured vehicle, for which she specifically purchased uninsured and underinsured motorist limits of \$100,000 each person and \$300,000 each occurrence, as well as comprehensive and collision coverages.

{¶48} However, because Scott was injured while riding as a passenger on Moore’s ATV rather than her own, her claim does not trigger the specific coverages tied to her scheduled Polaris Ranger or the separate Unlicensed RV Liability endorsement. Instead, her claim relies on the portable nature of the policy’s general uninsured and underinsured motorist coverage, which extends first-party protection to the named insured while occupying a non-owned automobile. Specifically, under Section 2.b.(1) of the relevant coverage forms (forms 99302 and 99303), this protection is explicitly extended to the named insured “when [they] are **occupying** an **automobile** that is not covered by SECTION II - LIABILITY COVERAGE of the policy” (Emphasis in original.) (Doc. No. 17, Ex. 1).

{¶49} Critically, even though this general coverage follows the insured into third-party vehicles, the policy strictly limits the definition of a qualifying uninsured

or underinsured automobile. As a threshold matter, the policy broadly defines an “automobile” as “a passenger automobile, a truck, truck tractor, farm implement or other land motor vehicle.”³ (*Id.*). However, the definitions sections of the uninsured and underinsured motorist coverage forms explicitly dictate that an uninsured or underinsured automobile *does not include* an automobile “that is designed for use primarily off public roads except while actually on public roads.” (*Id.*).

{¶50} Therefore, applying the plain and ordinary meaning of the policy’s language, the policy clearly and unambiguously excludes coverage for accidents involving an off-road vehicle unless that vehicle is on a public roadway at the time of the accident. Because it is undisputed that Moore’s ATV was an off-road vehicle and the accident occurred off of a public roadway, Moore’s ATV fails to meet the contractual definition of an uninsured or underinsured automobile. Therefore, Owners Insurance possessed a valid legal excuse for non-performance.

{¶51} Nevertheless, because the plain language of the policy clearly and unambiguously bars recovery, Scott’s claim relies on the premise that this exclusion renders the coverage inherently illusory. That is, Scott contends that the policy is illusory because the only circumstance under which the uninsured or underinsured

³ See generally R.C. 3937.18 (establishing the framework for uninsured and underinsured motorist coverage in Ohio and permitting insurers to define “uninsured automobile” and “underinsured automobile” within their policies, subject to statutory minimum requirements). While R.C. 3937.18 sets the statutory boundaries for uninsured or underinsured offerings, Ohio courts consistently uphold policy language that defines “uninsured automobile” or “underinsured automobile” to exclude off-road vehicles from the scope of coverage. See *State Auto. Ins. Co. v. Pasquale*, 2007-Ohio-970, syllabus (holding that “[a]n insurance policy may exclude off-road vehicles from uninsured- and underinsured-motorist coverage”); *State Farm Mut. Auto. Ins. Co. v. Grace*, 2009-Ohio-5934, ¶ 36.

motorist exclusion would not apply—an ATV being operated on a public road—is itself a violation of Ohio law, meaning the coverage theoretically exists but cannot be lawfully triggered, rendering the premium paid for that protection a nullity.

{¶52} “An insurance provision is illusory when it appears to grant a benefit to the insured, although in reality it does not.” *Cincinnati Specialty Underwriters Ins. Co. v. Larschied*, 2014-Ohio-4137, ¶ 33 (3d Dist.), quoting *Beaverdam Contracting, Inc. v. Erie Ins. Co.*, 2008-Ohio-4953, ¶ 49 (3d Dist.). “An illusory promise is a promise that lacks consideration and thus, is unenforceable.” *McGlone v. Motorist Mut. Ins.*, 2001 Ohio App. LEXIS 1626, *10 (3d Dist.). However, “when some benefit to the insured is evident from the endorsement, the endorsement is not an illusory contract.” *Id.* See also *Larschied* at ¶ 33 (“So long as an exclusion does not eliminate all coverage under a policy, it will not render the policy illusory.”).

{¶53} Based on our review of the record before us, we conclude that the trial court did not err by granting summary judgment in favor of Owners Insurance since the plain language of the insurance policy provides uninsured and underinsured motorist coverage for ATV accidents that occur on public roadways. See *Larschied* at ¶ 34 (concluding that an insurance policy is not illusory simply because it contains a specific exclusion, provided the exclusion does not eliminate all coverage and the policy still protects the insured against other foreseeable claims). Even though Scott argues that this coverage is illusory because R.C. 4519.41 generally prohibits

operating ATVs on public roads, this statutory prohibition does not render the contractual coverage nonexistent. As the trial court correctly noted, operating an ATV illegally on a public roadway does not negate the coverage under the policy. Because a factual circumstance exists that would trigger the insurer's obligation to pay—specifically, an uninsured or underinsured motorist accident occurring on a public roadway—a benefit to the insured is evident from the language of the contract. *See McGlone* at *10 (concluding that an insurance contract did not contain an illusory promise because a benefit to the insured was indeed evident from the contractual language establishing the insurer had foregone its right to force arbitration).

{¶54} Consequently, the policy does not contain an illusory promise and is enforceable as written. *See Thiemens v. Grange Mut. Cas. Co.*, 2013-Ohio-1643, ¶ 49 (5th Dist.) (determining that an insurance policy was not illusory because several circumstances would trigger coverage and thus grant a benefit to the insured). Accordingly, because the contract is valid, the trial court properly applied the plain language of the policy, which explicitly excludes coverage for accidents involving an off-road vehicle off a public highway. Thus, since it is undisputed that Scott's injuries resulted from an off-road accident, the trial court properly concluded that Owners Insurance was entitled to summary judgment as to Scott's breach of contract claim. *See Acuity*, 2022-Ohio-501, at ¶ 32 (12th Dist.).

{¶55} Scott's Second assignment of error is overruled.

Fourth Assignment of Error

The Trial Court committed prejudicial error to Plaintiff by striking her class action allegations.

{¶56} In her fourth assignment of error, Scott argues that the trial court by striking her class action allegations. Specifically, she contends that, because she established her underlying causes of action for breach of contract and bad faith against Owners Insurance, the trial court’s decision to strike the class allegations—which was based entirely on its granting of summary judgment against her on the breach of contract claim—was improper.

Standard of Review

{¶57} “A trial judge has broad discretion in determining whether a class action may be maintained and that determination will not be disturbed absent a showing of an abuse of discretion.” *Marks v. C.P. Chem. Co.*, 31 Ohio St.3d 200 (1987). Again, an abuse of discretion suggests the trial court’s decision is unreasonable, arbitrary, or unconscionable. *Blakemore*, 5 Ohio St.3d at 219.

{¶58} “However, the trial court’s discretion, while expansive, “‘is not unlimited, and indeed is bounded by and must be exercised within the framework of Civ.R. 23.’”” *Midland Funding LLC v. Colvin*, 2019-Ohio-5382, ¶ 16 (3d Dist.), quoting *State ex rel. Davis v. Pub. Emps. Retirement Bd.*, 2006-Ohio-5339, ¶ 20, quoting *Hamilton v. Ohio Savs. Bank*, 82 Ohio St.3d 67, 70 (1998). “““The trial court is required to carefully apply the class action requirements and conduct a

rigorous analysis into whether the prerequisites of Civ.R. 23 have been satisfied.””

Id., quoting *Davis* at ¶ 20, quoting *Hamilton* at 70.

Analysis

{¶59} “Civ.R. 23 sets forth the requirements for maintaining a class action. *Stammco, L.L.C. v. United Tel. Co.*, 2010-Ohio-1042, ¶ 6. Before a trial court grants class certification, it must find that the requirements of Civ.R. 23(A) have been met and that the class fits within one of the Civ.R. 23(B) categories.” *Rimedio v. SummaCare, Inc.*, 2004-Ohio-4971, ¶ 18 (9th Dist.). Those requirements include:

“(1) an identifiable class must exist and the definition of the class must be unambiguous; (2) the named representatives must be members of the class; (3) the class must be so numerous that joinder of all members is impracticable; (4) there must be questions of law or fact common to the class; (5) the claims or defenses of the representative parties must be typical of the claims or defenses of the class; (6) the representative parties must fairly and adequately protect the interests of the class; and (7) one of the three Civ.R. 23(B) requirements must be met.”

Stammco at ¶ 6, quoting *Hamilton* at 71. “The party moving for class certification must prove each of these seven requirements by a preponderance of the evidence.” *Midland Funding* at ¶ 14. A plaintiff’s failure to satisfy any single prerequisite will defeat a request for class certification. *Id.*

{¶60} To satisfy the second requirement, “the named plaintiff must be a member of the class he or she seeks to represent and, in connection with this requirement, must have standing.” *Wilson v. Directions Credit Union*, 2024-Ohio-105, ¶ 15 (6th Dist.). See *Woods v. Oak Hill Community Med. Ctr.*, 134 Oho App.3d

261, 268 (4th Dist. 1999) (“The standing inquiry is part and parcel of the requirement that the representative is a member of the class he seeks to represent.”). “To have standing, the party must allege a personal stake in the outcome of the controversy.” *Wilson* at ¶ 15. *See Hamilton v. Ohio Savs. Bank*, 82 Ohio St.3d 67, 74 (1998) (explaining that a plaintiff must possess the same interest and suffer the same injury as the class members to have standing as a class representative). “Thus, if a named plaintiff purporting to represent a class does not establish the requisite standing, he may not seek relief on behalf of himself or any other member of the class.” *Woods* at 269.

{¶61} The timing of a trial court’s decision regarding the maintainability of a class action is left to its sound discretion and need only be made at a time that is “fair and reasonable to all parties.” *Rece v. Dominion Homes, Inc.*, 2008-Ohio-24, ¶ 12 (10th Dist.). As Ohio courts have recognized, addressing class certification prior to determining the merits of the underlying claims can sometimes “result in unnecessary discovery procedures and the unjustified and unnecessary expenditure of judicial time and energy.” *Id.* *See also Castillo v. Nationwide Fin. Servs.*, 2003-Ohio-4766, ¶ 26 (10th Dist.) (“A court may defer a class certification question until after deciding the defendant’s motion for summary judgment, thus ‘winnow[ing] out substantively deficient class actions, prior to class certification.’”), quoting *Thomas v. Moore USA, Inc.*, 194 F.R.D. 595, 603 (S.D. Ohio 1999). Therefore, it is entirely proper for a trial court to resolve a dispositive motion on the named

plaintiff's individual claims before reaching the issue of class certification. *See Rece* at ¶ 17; *Castillo* at ¶ 26.

{¶62} When a trial court resolves the merits of the plaintiff's individual claims prior to certification, no controversy remains. *Castillo* at ¶ 26. *See also Stewart v. Farmers Ins. of Columbus*, 2026-Ohio-1451, ¶ 22 (8th Dist.) ("Where the named plaintiff's individual claim becomes moot before class certification, dismissal of the entire action, including the class claims, is required."). "Certification of a class is the critical act which reifies the unnamed class members and, critically, renders them subject to the court's power." *Gembarski v. PartsSource, Inc.*, 2019-Ohio-3231, ¶ 31, quoting *Larsen v. Citibank FSB (In re Checking Account Overdraft Litigation)*, 780 F.3d 1031, 1037 (11th Cir. 2015). Absent class certification, there is no justiciable controversy between a defendant and the unnamed putative class members. *Id.*

{¶63} In this case, the trial court struck Scott's class action allegations after determining that, because it had granted summary judgment in favor of Owners Insurance as to her individual breach of contract claim, she no longer possessed a valid claim to serve as the class representative. Because the trial court properly dismissed Scott's bad faith and civil RICO claims under Civ.R. 12(B)(6) and properly granted summary judgment as to her breach of contract claim before any class was certified, Scott lost her personal stake in the controversy and lacked standing to represent the class. *See Rece*, 2008-Ohio-24, at ¶ 17 (10th Dist.) (finding

no abuse of discretion where the trial court immediately proceeded to the merits on summary judgment before ruling on class certification). Therefore, the trial court did not abuse its discretion by striking Scott's class action allegations as moot. *See Castillo*, 2003-Ohio-4766, at ¶ 26 (10th Dist.) (concluding that a trial court is permitted to declare a plaintiff's attempt to obtain class action status moot once it determines the underlying cause of action is meritless),

{¶64} Scott's fourth assignment of error is overruled.

Third Assignment of Error

The Trial Court committed prejudicial error to Plaintiff by not allowing Plaintiff to file her second amended complaint.

{¶65} In her third assignment of error, Scott argues that the trial court erred by denying her request to file a second amended complaint. However, at oral argument, Scott orally moved to withdraw this assignment of error, stating that a settlement outside the record has rendered the issue moot. Accordingly, we decline to address it. *See* App.R. 12(A)(1)(c).

{¶66} Having found no error prejudicial to the appellant herein in the particulars assigned and argued, we affirm the judgment of the trial court.

Judgment Affirmed

MILLER and WILLAMOWSKI, J.J., concur.

JUDGMENT ENTRY

For the reasons stated in the opinion of this Court, the assignments of error are overruled and it is the judgment and order of this Court that the judgment of the trial court is affirmed with costs assessed to Appellant for which judgment is hereby rendered. The cause is hereby remanded to the trial court for execution of the judgment for costs.

It is further ordered that the Clerk of this Court certify a copy of this Court's judgment entry and opinion to the trial court as the mandate prescribed by App.R. 27; and serve a copy of this Court's judgment entry and opinion on each party to the proceedings and note the date of service in the docket. *See* App.R. 30.

William R. Zimmerman, Judge

Mark C. Miller, Judge

John R. Willamowski, Judge

DATED:
/hls